DEWAN P.N. CHOPRA & CO.

DPNC BULLETIN: Tax Exemptions for Start Ups in India

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Tax Exemptions for Start Ups in India

Indian start-ups may issue shares at consideration exceeding the fair market value without attracting tax as deemed income in company's hands

Section 56(2)(viib) of the Income Tax Act, 1961 (the Act) provides for taxing in the hands of a company, the amount of consideration received from a resident person, for issue of shares exceeding the face value, to the extent of the consideration that exceeds fair market value of shares.

There is an exception provided under the said section whereby the aforesaid provisions do not apply to 'a venture capital undertaking from a venture capital company or a venture capital fund'. However, there was no such corresponding exclusion for start-up companies within the section itself.

In a welcome move to promote start-ups in India, Government of India has vide its Notification No. 45/2016 dated 14.06.2016, notified resident start-up companies for being excluded from the applicability of aforesaid section 56(2)(viib) of the Act.

It may be noted that the notification defines the "**start-up"** to mean "*a company in which the public are not substantially interested and which fulfills the conditions specified in the notification of the Government of India, Ministry of Commerce and Industry, Department of Industrial Policy and Promotion, number G.S.R.I 80(H), dated the 17th February, 2016, published in public domain."*

Additional information - other startup incentives under the Act

It may be mentioned that the Finance Act, 2016 had by insertion of new section 80-IAC, provided an incentive for eligible start-up companies and LLPs, in the form of exemption from tax of 100% of their profits from business, for the three consecutive assessment years, beginning from the year of incorporation of the eligible start-up.

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