VALUATION: VCM ATQS

"IS DCF THE ONLY METHOD FOR VALUATION OF SHARES UNDER INCOME-TAX ACT?"

VALUATION STANDARDS BOARD
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up under an Act of Parliament)
New Delhi

Series-3

Valuation: VCM ATQs
"Is DCF the only method for valuation of shares under Income-tax Act?"

Valuation Standards Board
The Institute of Chartered Accountants of India

Preamble

Valuation Standards Board of ICAI (VSB) had organised a live webcast on the topic- "Is DCF the only method for valuation of shares under Income-tax Act?" on 6th June, 2021. The details of the webcast are:

President ICAI:	CA. Nihar N. Jambusaria
Vice President ICAI:	CA. Debashis Mitra
Address by:	CA. Anil Bhandari, Chairman, VSB, ICAI CA. M. P. Vijay Kumar, Vice- Chairman, VSB, ICAI
Speaker:	CA. Pramod Jain
Director:	Shri Rakesh Sehgal, Director, ICAI
Secretary:	CA. Sarika Singhal, Deputy Secretary, ICAI

The Webcast received overwhelming response and was attended by more than 9500 viewers. The said webcast can be viewed again at https://live.icai.org/vsb/vcm/06062021/

There were many questions raised during the webcast. We have prepared answers to the questions (ATQs) raised during the webcast, which do not require application of valuation practices and principles. Also, repetitive questions and questions not related to subject matter have not be answered.

We would also like to mention that the Valuation Standards Board has brought many publications and the Concept papers that may be referred for guidance and reference. All the below publications are available on the Committee link at ICAI website i.e., www.icai.org

- ICAI Valuation Standards 2018
- Educational Material on ICAI Valuation Standard 103 - Valuation Approaches and

Methods

- Educational Material on ICAI Valuation Standard 301- Business Valuation
- Valuation: Professionals' Insight- Series- I, II, III, IV and V
- Answers to the Questions raised during the Live Webcast on "Valuation and Valuation Standards Compliance and other aspects under various Laws"
- Technical Guide on Valuation
- Frequently Asked Questions on Valuation
- Concept Paper on findings of Peer Review of Valuation Reports
- Concept Paper on All About Fair Value
- Sample Engagement Letter for accepting Valuation assignment

The answers have been given for reference purposes. Detailed analysis may be done, and other material may be referred.

Valuation Standards Board

New Delhi

30th June 2021

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DCF method for Valuation of Shares under Income-tax Act

Background

For issuance of valuation reports under the Companies Act, 2013, a valuer registered with IBBI is eligible to use any of the methods including Discounted Cash Flow Method as per the Valuation Standards. However, the eligible valuer for undertaking valuation and issuing valuation report under Rule 11UA(2)(b) of the Income-tax Act, 1961 can use either book value method or Discounted Cash Flow Method. Consequently, the fair value derived under Companies Act, 2013 may be fundamentally different from what is sought as a fair market value under Income Tax Act, 1961. Hence, this disparity can be reconciled by allowing methods and approaches prescribed under ICAI Valuation Standards (or International Valuation Standards) as an accepted practice in deriving fair market value under Income Tax Act, 1961.

Further, presently, valuers registered with IBBI are not eligible valuers under Income Tax Act.

Share Valuation requirement under The Income Tax Act, 1961

1. **Section 56(2)(X)(c) of Income Tax Act, 1961 is as follows:**

"Section 56 of Income Tax Act, 1961

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following income shall be chargeable to income-tax under the head "Income from other sources", namely:—

(X) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,

(c) any property, other than immovable property,—

(A) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of

such property;

(B) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration"

2. **Section 50CA of Income Tax Act, 1961 is as follows:**

"Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being share of a company other than a quoted share, is less than the fair market value of such share determined in such manner as may be prescribed, the value so determined shall, for the purposes of section 48, be deemed to be the full value of consideration received or accruing as a result of such transfer."

3. **Valuation Rules Under Income Tax Act**

The **valuation rules** are specified under Rule 11U, Rule 11UA, Rule 11UAA and Rule 11UB for various provisions under the Income-tax Act, 1961 which cover valuation options in case of various assets including equity shares and other securities.

Income Tax Rule 11UA deals with Valuation of unquoted equity shares and provides two options of computing fair market value. These two options for valuation of FMV u/r 11UA are as given below:-

I. **NAV method (Net asset value):**

NAV is simply the price per share of the fund. As per Rule 11UA, there is no specific requirement that which person will do the valuation. Therefore, any registered valuer can do the valuation for issue of shares on fair Market Value.

II. **Discounted Free Cash (DFC) Flow Method:**

DCF model indicates the fair market value of a business based on the value of projected cash flows that the business is expected to generate in future. Rule 11UA(2)(b) deals with valuation as per DCF.

In Rule 11UA(2)(b) the fair market value of the unquoted equity shares shall be determined by a merchant banker or an accountant as per the Discounted Free Cash

Flow method.

Earlier, a Chartered Accountant was also permitted to determine the FMV of such equity shares. However, with effect from 24th May 2018, this right of Chartered Accountant is taken away and therefore only Merchant Banker is authorized to determine the FMV of such equity shares under DCF method.

Who shall be the valuer?

Particulars	Income Tax Act, 1961	Companies Act, 2013	FEMA, 1999
In case FMV is based on "**Discounted cash flow (DCF)**" method	Only Merchant Banker can do valuation	Registered Valuer* can do valuation	CA or SEBI registered Merchant Banker can do valuation
In case FMV is based on other than "Discounted cash flow (DCF)" method	Any CA can do valuation	Registered Valuer can do valuation	CA or SEBI registered Merchant Banker can do valuation

Share Valuation Framework under Income Tax Act, 1961

In the case where the company has issued shares at a premium during the year and at a value greater than fair value, the difference between issued price and fair value price is taxed in the hands of the company. The auditor of the company has to report such an event under the specific clause in the tax audit report.

Here the company has a choice to adopt either:

I. Break-up as per 11UA (no certificate is required), or
II. Fair value to be determined as per DCF and by the merchant banker.

This section is applicable to investee companies in which the public are not substantially interested (typically privately held companies). There is an explicit definition under IT Act on "a company in which public are not substantially interested.

Further, if an investee company is a venture capital undertaking and has received VC investment, section does not apply.

Further, a notified and registered start-up is also exempt from valuation requirements.

The section does not apply where the investor is a non-resident.

Summary – Tax Implications for Company Issuing of Shares

Part A – when shares are issued ABOVE fair value

Transaction	Non-Start-up Company	Start-up Company
Shares issued to Resident Indian	1. Difference between issued price and fair value price is taxed in the hands of the company 2. Auditor of the company must report such an event under the specific clause in the tax audit report 3. Fair value is either 3.1. Break-up value as per 11UA (here no certificate is required) 3.2. DCF based value and by the merchant banker	Exempt
Shares issued to Non-resident Indian	Not Applicable, hence, no challenge	Not Applicable, hence, no challenge

Part B – when shares are issued BELOW fair value

Transaction	Non-Start-up Company	Start-up Company

Shares issued to Resident Indian	No Tax Implications	Exempt
Shares issued to Non-resident Indian	Not Applicable, hence, no challenge	Not Applicable, hence, no challenge

Challenge – For Company Issuing Shares because of Valuation rules under Income Tax Act

1. Let us assume Peace Ltd. is a Non-Start-up Company and issues shares to Resident Shareholder after application of Guideline Public Company Method (commonly referred as Market Multiple Method) as follows:
   1.1. Peace Ltd. is a product-based information technology company. Recently it has diversified into IoT business and has achieved a breakthrough (or you can assume Peace Ltd. is a pharma company and has recently achieved a breakthrough in terms of molecule of life saving drug which is yet to be patented)
   1.2. Domestic Investor has agreed a multiple based total valuation of Rs. 1000 Crore at controlling level and Rs. 700 Crore at Non-controlling level (i.e., after application of Discount for Lack of Control). As investor is expected to invest in 10% stake i.e., minority holding, further discount for lack of market of 30% is applied and commercially agreed total valuation is identified at Rs. 490 Crore (i.e., Rs. 700 Crore – 30%).
   1.3. Break-up value under 11UA is at Rs. 100 Crore. DCF based value by merchant banker is Rs. 300 Crore.
   1.4. Consequently, tax department is of the opinion that consideration of Rs. 49 Crore (i.e., 10% of Rs.490 Crore) over fair value of Rs. 30 Crore (i.e., 10% of Rs. 300 Crore) is to be taxed in the hands of company under section 56(2)(X)(c)

2. As observed in the above example, Income Tax Act does not allow valuation method other than Break-up or DCF method. However, valuation standards issued by ICAI (as well as International valuation standard) allow various other methods in deriving at fair value, provided method adopted is suitable and justifiable for a valuation of asset under valuation.

3. The above anomaly is discouraging entrepreneurs in asking for a better price.

4. Income Tax department, if allows, adoption of ICAI Valuation Standards (or International Valuation Standards) in deriving fair value, consistency in fair value calculation can be achieved between income tax act and other corporate laws.

5. Further, if income tax act allows IBBI Registered Valuer as an eligible professional to conduct the valuation under the act, it can eliminate duplicated requirement of valuation report under Companies Act, 2013 by IBBI Registered Valuer and under Income Tax Act, 1961 by Merchant Banker (when DCF Method is adopted)

Framework – Transfer of Shares

There are two sections that impact seller of shares and buyer of shares.

Buyer of shares is impacted by section 56(2)(X): the amount of difference between the fair value of shares and transfer value, if greater than Rs.50,000/-, is taxed as other source income, subject to few exceptions, like transfer from relative etc.

The fair value of unquoted equity shares is the break-up value as per Rule 11UA with specified adjustments. No valuation report is necessary.

For preference shares, the valuation report is to be obtained from CA or merchant banker and there is no specific prescription of the valuation method. Impact for the seller would be governed by section 50CA.

If transfer value is less than fair value, the transfer value is replaced by fair value while calculating Capital Gains and the seller will have to pay taxes as per fair value regardless of the transfer price.

The fair value of unquoted equity shares is the break-up value as per Rule 11UA with specified adjustments. No valuation report is necessary.

For preference shares, the valuation report is to be obtained from CA or merchant banker and there is no specific prescription of the valuation method.

Thus, where the shares are transferred at less than fair value, both the buyer and seller are exposed to the tax on the same transaction.

Summary – Tax Implications for Buyer & Seller in case of Transfer of Equity Shares

Part A – when shares are transferred by shareholder <u>ABOVE</u> fair value

Transaction	All Companies
Seller	No Problem, normal capital gain tax provisions will apply
Buyer	No Problem, the actual purchase price is treated as an acquisition price

Part B – when shares are transferred by shareholder BELOW fair value

Transaction	All Companies
Seller	Section 50CA is effected and seller needs to pay tax on Difference between Fair Value and Consideration Paid The Fair Value is identified under 11UA as a Break-up Value

Summary – Valuation of Shares as per Income Tax Rules

Rule 11(UA)(1)(c), provides valuation rules for both quoted and unquoted securities as given below:

(A) Rule 11UA(1)(c)(a) : Quoted shares and securities

(a)	If transaction carried out through	FMV is the Transaction Value as recorded in stock exchange

	recognized stock exchange	
(b)	If transaction carried out other than through recognized stock exchange	Lowest price of such shares quoted on any recognized stock exchange : • As on the valuation date: when trading in such shares and securities on any recognized stock exchange • As on the day immediately preceding the valuation date: When no trading in such shares and securities on any recognized stock exchange

Transfer of Quoted shares (Based on actual price of the equity shares quoted on a recognised stock exchange)

The transfer of quoted shares is done through trading that takes place at the transaction value in the secondary market of the stock exchanges which is said to be its Fair Market Value. However, if such securities are transacted through a medium other the recognized stock exchange, then the basis for determination of FMV would be the lowest price quoted as on the said date.

(B) Rule 11UA(1)(c)(b) : Unquoted equity shares

As per Rule 11UA of the Income-tax Rules, 1962, the FMV of unquoted shares is to be determined as under:

The fair market value of unquoted equity shares = $(A+B+C+D - L) \times (PV)/(PE)$, *where,*

A = book value of all the assets (other than jewellery, artistic work, shares, securities and immovable property) in the balance-sheet as reduced by,—

(i) any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any; and

(ii) any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

B = the price which the jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer;

C = fair market value of shares and securities as determined in the manner provided in this rule;

D = the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property;

L= book value of liabilities shown in the balance sheet, but not including the following amounts, namely:—

(i) the paid-up capital in respect of equity shares;
(ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;
(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;
(iv) any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;
(v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;
(vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

PV= the paid up value of such equity shares;

PE = total amount of paid up equity share capital as shown in the balance-sheet

(C) Rule 11UA(1)(c)(c) : Unquoted shares and securities other than equity shares

The fair market value of unquoted shares and securities other than equity shares in a company which are not listed in any recognized stock exchange shall be estimated to be price it would fetch if sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker or an accountant in respect of which such valuation.

Rule 11(UA)(2) explains determination of fair value under Sec- 56(2) (viib) of the Income Tax Act, 1961. Section 56(2)(Viib) requires determination of fair value in a case where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares.

Explanation (a) to Section 56(2)(viib) deals with fair value and states

The fair value of the share shall be the value-

i. as may be determined in accordance with such methods as may be prescribed, or
ii. as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value, on the date of issue of shares, of its assets, including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature,

whichever is higher;

Rule 11(UA)(2) states that the fair value for the purpose of sub-clause (i) of clause (a) of Explanation to clause (viib) of sub-section (2) of section 56 shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner under clause (a) or clause (b), at the option of the assessee, namely:—

a) *the fair market value of unquoted equity shares =* $(A–L)/(PE)\times (PV)$,

where,

A = book value of the assets in the balance-sheet as reduced by any amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act and any amount shown in the balance-sheet as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

L = book value of liabilities shown in the balance-sheet, but not including the following amounts, namely:

i. the paid-up capital in respect of equity share
ii. the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;
iii. reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;
iv. any amount representing provision for taxation, other than amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;
v. any amount representing provisions made for meeting liabilities, other than ascertained liabilities;
vi. any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

PE = total amount of paid up equity share capital as shown in the balance-sheet;

PV = the paid up value of such equity shares; or

b) the fair market value of the unquoted equity shares determined by a merchant banker as per the Discounted Free Cash Flow method.

Freedom to choose Valuation method with Assessee

Section 56(2)(viib) read with Rule 11UA reflect that in determination of the fair value under act, the assessee has choice to opt for either Net Valuaton Method (NAV) or Discounted Cash Flow Method (DCF). Assessing Officer cannot change share valuation method adopted by assessee. Thus, if the assessee has chosen one method of valuation provided under Rule 11UA (i.e. DCF method), the Assessing Officer has no power or jurisdiction to change that method to another method

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Answers to the Questions (ATQs) raised during the Virtual CPE Meeting Series "Sundays with Valuation Experts" on the topic "Is DCF the only method for valuation of shares under Income-tax Act" held on 6th June, 2021

S. No	Question	Answer
1.	The Companies (Registered Valuers and valuation) Rules, 2017 and the Insolvency and Bankruptcy Code mandated valuation under these laws by a Registered Valuer, who is eligible to undertake valuation under the Income-tax Act?	For Transfer of Shares under Income Tax Act any one can value, the buyers and sellers can themselves undertake valuation as no certificate required. However, for valuation of securities other than equity shares, valuation is required by an **accountant or a merchant banker.** For Issue of Equity Shares under Income Tax Act valuation is required under certain conditions specifically when issue is above the face value. Multiple methods are prescribed in the Act at the choice of assessee. However, in case DCF method is used only then it is compulsory that a merchant banker can only undertake valuation. For valuation of securities other than equity shares valuation is required by an **accountant or a merchant banker**
2.	Whether DCF is the only method for valuations to be carried out under Income-tax Act?	**For issue of shares** DCF is not the only method of valuation. As per rule 11UA in addition to DCF method a formula-based valuation is also prescribed based on book value at the option of the assessee. Further under section 56(2)(viib) an assessee can also undertake any other method of

S. No	Question	Answer
		valuation provided he is able to convince the assessing officer to his satisfaction. Hence there are three different methods from which an assessee can choose any. **For transfer of shares** there is a fixed method prescribed under Income Tax Rules and it is not DCF Method.
3.	What is the method for valuation of buyback of equity shares of a private or unlisted company or no method has been prescribed in Companies Act 2013 or its Rules?	As per Companies Act 2013, valuation is not required for buy back of shares, however valuation report can be obtained from Chartered Accountant or Registered Valuer for justifying the buyback price.
4.	Rule 11UA of the Income Tax Act states "value shall be determined by a merchant banker or an accountant". Is a registered valuer considered as an accountant under Income Tax Act?	Under Income Tax Act an Accountant is defined as per explanation to section 288(2). *"accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) who holds a valid certificate of practice under sub-section (1) of section 6 of that Act, but does not include [except for the purposes of representing the assessee under sub-section (1)]—* *(a) in case of an assessee, being a company, the person who is not eligible for appointment as an auditor of the said company in accordance with the provisions of sub-section (3) of section 141 of the Companies Act, 2013 (18 of 2013); or* *(b) in any other case,—*

S. No	Question	Answer
		(i) the assessee himself or in case of the assessee, being a firm or association of persons or Hindu undivided family, any partner of the firm, or member of the association or the family; *(ii) in case of the assessee, being a trust or institution, any person referred to in clauses (a), (b), (c) and (cc) of sub-section (3) of section 13;* *(iii) in case of any person other than persons referred to in sub-clauses (i) and (ii), the person who is competent to verify the return under section 139 in accordance with the provisions of section 140;* *(iv) any relative of any of the persons referred to in sub-clauses (i), (ii) and (iii);* *(v) an officer or employee of the assessee;* *(vi) an individual who is a partner, or who is in the employment, of an officer or employee of the assessee;* *(vii) an individual who, or his relative or partner—* *(I) is holding any security of, or interest in, the assessee:* *Provided that the relative may hold security or interest in the assessee of the face value not exceeding one hundred thousand rupees;* *(II) is indebted to the assessee:* *Provided that the relative may be indebted to the assessee for an amount not exceeding one hundred thousand rupees;*

S. No	Question	Answer
		(III) has given a guarantee or provided any security in connection with the indebtedness of any third person to the assessee: *Provided that the relative may give guarantee or provide any security in connection with the indebtedness of any third person to the assessee for an amount not exceeding one hundred thousand rupees;* *(viii) a person who, whether directly or indirectly, has business relationship with the assessee of such nature as may be prescribed;* *(ix) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction."*
5.	In case of a private company, for transactions involving issue and transfer of shares, valuation report of registered valuer is required under the Companies Act but under Income Tax Act if the valuation is carried out under Discounted Cash Flow Method, the valuation report should be from a merchant banker only. This valuation interplay between the Acts has been creating confusion, so kindly clarify. Are the two Valuers required to give similar Valuations?	Such situation arises only when a company issues shares and chooses to ascertain Fair Market Value based on DCF method under 11UA(2). In such cases, a company normally appoints a person who is both a merchant banker and a registered valuer. Ideally yes, there should not be a very high difference between the two values as valuation date is same for both.
6.	In order to give the economy, the much required boost the Government of India has been promoting Startups	The DPIIT vide notification no. G.S.R. 127 (E) dated 19.02.2019, has laid down that the provisions of section 56(2)(viib) of the I.T. Act,

S. No	Question	Answer
	and for same it has introduced several beneficial policies and exemptions for them, a. Are there any special Provisions or exemptions available to Start-ups under Income Tax Act for issue and transfer of shares to both resident and non-residents? b. How is a Start-up defined for the purpose of Income Tax Act?	1961 shall not apply to any consideration received by a Startup Company, if the Startup Company fulfils the conditions mentioned in para 4(i) and 4(ii) of the said notification and is recognized by the DPIIT. In pursuance to the above, the Central Board of Direct Taxes (CBDT) had issued notification no.13/2019/F.No. 370142/5/2018-TPL(Pt.)} dated 5th March,2019 reiterating that the provisions of clause (viib) of sub-section (2) of section 56 of the said Act shall not apply to consideration received by a company for issue of shares that exceeds the face value of such shares, if the said consideration has been received from a person, being a resident, by a company which fulfils the conditions specified in para 4 of the notification dated 19.02.2019 issued by DPIIT.
7.	Bonus is quasie dividend. How to account for Bonus Shares to confirm demat balance to book value? How does bonus share appear in AS26? What is the tax implication on bonus share?	Under Income Tax Bonus Shares are not treated as dividend. Bonus shares are considered as shares acquired at nil cost for any future capital gains computation thereon.
8.	Considering that there are several factors and assumptions which go into DCF valuation what are the liability of a Chartered Accountant who does this valuation and how it can be mitigated?	Kindly refer to guidelines issued by IBBI on "Guidelines on use of Caveats, Limitations and Disclaimers by the Registered Valuers in Valuation Reports".

S. No	Question	Answer
9.	How does the formula in the DCF method work if the perpetuity growth rate is higher than the discount rate? Arithmetically, it may give weird results.	Under Gordon's Growth Model estimation of the stable growth rate is of great significance because even a minor change in the stable growth rate assumption can have a profound impact on the terminal value and hence the overall business value. Various factors like the size of a company, existing growth rate, competitive landscape, profit reinvestment ratio, etc. must be kept in mind while estimating the stable growth rate. If the expected growth rate tends towards the discount rate, terminal value will approach infinity and then turn negative if expected growth rate exceeds the discount rate. The expected growth rate should be constrained (capped) to be less than or equal to the growth rate of the economy in which the business operates. If the growth rate of the company is more than the growth rate of the economy for infinite period (perpetuity), the business will eventually become larger than the economy.
10.	Deferred Tax Assets shall be considered as assets under Rule 11 UA or it is considered as fictitious?	Deferred Tax Assets are not fictitious assets. Deferred Tax Assets shall be included in assets but not deferred expenditure. Further, under AS and INDAS deferred expenditure are no longer carried in books. Deferred tax Liability like any other liability shall be deducted from the value.

S. No	Question	Answer
11.	When or in which position can we be called for valuation by a bank?	As of now, there is no specific regulatory requirement under which banks are required to seek a Registered Valuer's valuation, especially a Securities and Financial Assets valuer. However, in terms of expertise and for commercial decisions they may seek valuation of intangibles or valuation of business/ shares.
12.	How to derive Beta, kindly share various methods prescribed?	Please refer Educational Material on ÏCAI Valuation Standard 103 – Valuation Approaches and Methods as issued by Valuation Standards Board of ICAI and ICAI RVO available at 63029vsb51000.pdf (icai.org)
13.	How can we value compulsorily convertible preference shares? Conversion may take place anytime in next 20 years at the option of holder or alternatively compulsorily after 20 years.	The valuation of such CCD's can be done using Option valuation models and in this particular case, probably the valuation using binomial model / monte carlo simulation may be more appropriate and convenient. **As per Rule 11UA of Income Tax Act** The fair market value of unquoted shares and securities other than equity shares in a company which are not listed in any recognized stock exchange shall be estimated to be price it would fetch if sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker or an accountant in respect of such valuation.

S. No	Question	Answer
14.	Are the CPE hours for this VCM available to the registered valuers registered with IBBI as well?	In accordance with IBBI Guidelines for online training only 100 participants are allowed. Hence CPE hours credit for these VCM's are not available for Registered Valuers registered with IBBI.
15.	Why is Registered Valuer not allowed to do valuation under rule 11UA?	**Income Tax Rules, 1962**, defines "accountant" as for the purposes of sub-rule (2) of Rule 11UA means a fellow of the Institute of Chartered Accountants of India within the meaning of the Chartered Accountants Act, 1949 (38 of 1949) who is not appointed by the company as an auditor under section 44AB of the Act or under section 224 of the Companies Act. Hence a registered valuer subject to above definition can undertake valuation under Rule 11UA if he is a fellow Chartered Accountant. However, for determination of FMV of unquoted shares under DCF method u/s 11UA(2), a Merchant Banker shall only be appointed.
16.	If the shareholder of a small Pvt Ltd Company sells shares in the middle of the year, when Audited Balance Sheet is not available what should be the base for valuation of book value? Can we consider last year's audited balance sheet?	**For Unlisted Company** **- For issue of shares** – It must be Audited B/S (including the notes) as drawn up on valuation date; or where the B/S on the valuation date is not drawn: B/S (including the notes) drawn up as on a date immediately preceding the valuation date

S. No	Question	Answer
		which has been approved & adopted in AGM can be used. **- For transfer of shares**– Audited B/S along with the notes is compulsorily required as on the date of Transfer of shares. This is the legal position under Income Tax laws. However, pragmatically, assesses do use the previous year ended balance sheet where audited balance sheet as on the date of transfer and if there is not likely to be any significant value implications, tax authorities may not raise an issue around this. However, to reiterate, the legal position is that the computation should be based on the audited balance sheet as on the date of transfer.
17.	Kindly share the key Income Tax implications for following transactions undertaken by a private company. a. Buy Back of Shares b. Issuance of Employee Stock Options c. Rights Issue	**Buy Back of Shares** Under Section 115QA of the Income Tax Act at a flat rate of 20% on the 'distributed income'. Distributed income means the consideration paid by the company on buyback of shares as reduced by the amount which was received by the company for the issuance of such shares. Receipts in the hands of shareholder is exempt under Section 10(34A) of Income Tax Act. **ESOPs** At the time of exercise of the ESOPs, U/s 17(2)(vi) the difference between the FMV and

S. No	Question	Answer
		the exercise price is taxable in the hands of the employee as perquisite under the Head Salaried Income. **Rights Issue** Rights issue is treated same as any other issue of shares for Company in Income Tax Act, no specific sections separately for right issue.
18.	Whether ICAI conduct Valuation course?	ICAI is conducting Refresher Course on Valuation. Certificate Courses for Valuation are not being conducted by ICAI, however ICAI RVO conducts same as per IBBI guidelines.
19.	What should be treatment of MAT credit entitlement in 11UA?	It shall be added to the asset value while determining the book value as per Income Tax Rules.
20.	Valuer registered u/s 34AB is eligible to do DCF valuation?	No, for the purpose of Rule 11UA(2), only Merchant Banker can undertake valuation under DCF method .
21.	In DCF method, while arriving at free cash flow to the firm, we factor income tax outflow. Should the discounting rate also be after tax?	While estimating discount rate under DCF, cost of Debt considered is always after tax.
22.	If shares of an Indian company are being transferred amongst two foreign investors, which section and rule of valuation would be required under Income Tax Act.	Requirements of Section 50CA and 56(2)(x) will have to be considered from an income tax act perspective.
23.	For issuance of shares, valuation report is required from both SEBI	Registered Valuers has been recognised by Government of India by notification of

S. No	Question	Answer
	registered merchant banker as well as Registered Valuer for unlisted shares, while there is no difference in both the reports, what is the rationale for such a requirement?	Companies (Registered Valuers and valuation) Rules, 2017. Hence, it is a relatively new profession, while merchant bankers have been undertaking valuation for many decades now and is fairly established. However, with time it is expected that this difference shall be bridged for Income Tax Act too.
24.	Valuation of shares in case of private limited company, where there is transfer of share from business to other entity. Management fixes transfer value per share as per mutual agreement, can there be any issue by IT department about valuation?	Management can fix value as per mutual agreement however the difference between the consideration and FMV shall be subjected to tax. Reference is invited to section 50CA and 56(2) (x) of the Income Tax Act
25.	Can a Private Limited Co. issue right share without undergoing valuation under Income Tax Act and Companies Act 2013?	As per **Companies Act 2013** Valuation is not mandatory. **As per Income Tax Act**, if shares are issued on premium, then only valuation is mandatory, else it might be considered as Income of the Company.
26.	At two months gap, company takes two valuation certificates from registered valuer on DCF basis because of two different occasions but there is a huge gap in Rates per share derived. Is it not a deficiency in valuation under DCF method?	It is a very subjective question, as valuation can change substantially if there is significant change in the socio-economic environment within two months as well. In case the internal and external business conditions are constant than a substantial

S. No	Question	Answer
		change in valuation should not happen in such short duration.
27.	In a Pvt Ltd Co, when shares are directly sold by one shareholder to another shareholder what method of Valuation to be followed? Is valuation by a Registered Valuer must?	It is a case of transfer of shares and hence one should value share under Rule 11UA(1)(c) and sell at a price higher than that. Valuation certificate is not compulsory for equity shares.
28.	Buy back of shares happens every year by Infosys. How is the price of shares determined?	As per Companies Act 2013, valuation is not required for buy back of shares, however valuation report can be obtained by a company from CA or Registered Valuer for justifying the buyback price.
29.	Under Rule 11UAE, FMV2 shall be the fair market value of the consideration received or accruing as a result of transfer by way of slump sale determined in accordance with the formula- E F G H, where E = value of the monetary consideration received or accruing as a result of the transfer. What they want to say in E above since monetary consideration always have effect of non-monetary values? How can someone exclude this value from consideration?	In this rule, the assumption is that the consideration could be paid by way of a combination of • Monetary consideration • Immoveable Property • Jewellery, Artwork etc., • Property other than above Thus, E refers to one component of the above possible combinations in which the consideration could be settled.
30.	In valuation for issue of share to existing shareholders of unlisted company can we use book value method? Also, can a chartered accountant, either registered or unregistered, sign it?	**For issue of shares: -** As per Rule 11UA, for company not being a company in which the public are substantially interested the Fair Market Value of the unquoted equity shares can be determined

S. No	Question	Answer
		using either book value methods or DCF Method at the option of assessee. Valuation as per Book value for Unquoted equity shares does not require any certification by accountant or merchant banker, while the DCF method of valuation requires it to be undertaken only by a merchant banker.
31.	Generally, there is a requirement that the method for valuation must be internationally accepted method and meets arm's length pricing. So, does the valuation methods other than DCF meets these criteria under Income Tax Act?	The valuation methodology to be adopted are at times clearly spelt out in Law and in that case, it cannot be overridden. Further in Preface to the ICAI Valuation Standards it has been clearly stated that: "The Valuation Standards by their very nature cannot and do not override the local regulations which govern the preparation of valuation report in the country. However, the government may determine the extent of disclosure to be made in the valuation report."
32.	Is there a stipulation regarding the discounting rate for computation of DCF?	No
33.	How to do the valuation of shares of a Pvt. Ltd. Co. for transfer of shares, whether assets to be revalued or to be taken at books valuation?	Only assets specified in the rule like Jewellery, bullion, properties are to be revalued rest can be taken at book value.
34.	In case of transfer of shares of a real estate company, which is engaged in the development of group housing project, which method of valuation of shares will be most appropriate?	ICAI Valuation Standard 103- specifies various approaches and methods of valuation. It mentions that the valuer needs to select the most appropriate approach or method very

S. No	Question	Answer
		responsibly as there is no single approach or method that is best suited in every situation. The valuation approaches and methods shall be selected in a manner which would maximise the use of relevant observable inputs and minimise the use of unobservable inputs. **The key factors** that a valuer needs to consider while selecting an approach are as also mentioned therein. Further for a real estate company which is generally assets intensive, FMV adjusted NAV method combined with market approach for immovable properties can be an appropriate method of valuation. **For valuation under Income Tax Act** as per Rule 11UA, specified assets like properties must be valued in accordance with the method prescribed therein.
35.	DCF Valuation Under 56(2)(x): this can be done by CA, or it must be Merchant Banker?	For 56(2)(x) Rule 11UA(1) shall be adhered to, which does not specifically require valuation by merchant banker only. However, the method of valuation for equity shares is clearly spelt out and hence DCF cannot be applied.
36.	DCF Method applicable only in the case of Section 56(2)(viib)?	DCF method is one of the options available to the assessee for equity share valuation required under 56 (2) (viib). Such DCF

S. No	Question	Answer
		valuation is to be undertaken only by a merchant banker.
37.	While assessing value as per Rule 11UA, what should be the treatment for Deferred Tax Asset/Deferred Tax Liability? Could you please also throw some light as to why the same should be ignored/considered while arriving at a value as per Rule 11UA.	Deferred Tax Assets shall be included in assets but not deferred expenditure. Further, under AS and IND AS deferred expenditure are no longer carried in books. Deferred tax Liability like any other liability shall be deducted from the value.
38.	While DCF is a choice, it would be more appropriate than using book value, as book value will not reflect future growth prospects. What are the conditions under which an assessee would want to use book value?	DCF being intrinsic value does consider future growth prospects, but book value method can also be useful for asset intensive companies.
39.	Method of valuation of Book Value is different in case of transfer of share and in case of further issue of shares	Yes, in case of Transfer of shares Rule11UA(1)(c) is to be used, while for Issue of Shares Rule 11UA(2).
40.	Using DCF a company does valuation and arrives at a price certified by a SEBI Registered Merchant Banker for issue of shares. However, the AO, compares the projected turnover in the Valuation Report with the actual performance at the time of assessment which is typically after 2 years and holds that the valuation is not correct. Is he correct to questions the valuation like this?	Valuation under DCF is an estimation and hence the forecasts and projection cannot match the actual performance. Valuation at two different dates cannot be same due to change in the various internal and external socio-economic factors that impact the concerned asset. However, a valuer and assessee both shall analyse the variance between the actual and projections and prepare a just and proper

S. No	Question	Answer
		reason to justify their valuation assumptions to AO. A valuer shall maintain documentation which provides: (a) sufficient and appropriate record of the basis of the valuation report; and (b) evidence that the valuation assignment was planned and performed in accordance with the ICAI Valuation Standards and applicable legal and regulatory requirements.
41.	Under Rule 11UA, what is the applicability in case of purchase of shares by an individual from other shareholders of Unlisted Company? Can that valuation be done by CA or by Merchant Banker only.	Since it is for transfer of shares hence either can do valuation.
42.	56(2)(viib) is applicable only to issue of shares to resident investor? Any logic behind this?	The background, probably, is that the department wanted to plug monies which were taxable revenue receipts to be treated as capital items. As opposed to this, export earnings were anyway having tax exemptions at that point of time when this was introduced.
43.	For A.Y. 2015-16 whether Chartered Accountant was allowed to value share under DCF method for issue of shares?	Yes
44.	There are two set of shareholders of Pvt. Ltd Co.; one is agreeing for transfer of shares as per 11UA, but the other set of shareholders want to	Any shareholder would like to maximise the profits. Shares can be transferred for value higher than the value determined u/s 11UA. No restriction on it.

S. No	Question	Answer
	sell at a higher value than 11UA value. Is it allowable?	
45.	What is position of LLP in case of transfer of members contribution?	In an LLP or Partnership there is no concept of selling a partnership share, it is retirement of a partner. Section 45(4) read with rule 9 must be considered for transfer of capital assets at the time of dissolution or reconstitution of LLP.
46.	Under book value method all the assets and liabilities are to be taken at book value only? Whether each appreciated asset can be valued at FMV?	For Transfer of Shares- Rule 11UA(1) is applicable and assets specified in the rule like Jewellery, bullion, properties are to be revalued, rest must be taken at book value. But transfer can be made at a rate higher than the value computed under 11UA(1). For Issue of Shares- Rule 11UA(2) is applicable and under same all assets and liabilities must be valued at Book Value only. Or else the assessee can opt for DCF method of valuation.
47.	In case of Preference Shares (CCPS), Rule 11UA does not prescribe any specific method and relies on valuation report, can an Accountant issue the Report even considering DCF, as the restriction on Chartered Accountant is for valuation of Equity Shares under DCF?	As per Rule 11UA(1)(c) "the fair market value of unquoted shares and securities other than equity shares in a company which are not listed in any recognized stock exchange shall be estimated to be price it would fetch if sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker or an accountant in respect of which such valuation."

S. No	Question	Answer
		Hence yes, an Accountant can also do valuation under DCF in this case.
48.	Fresh Preference Shares of a Singapore based company are being issued to an Indian Resident assessee at premium. Is valuation u/s 11UA required in this case? If yes, only DCF can be used?	Income Tax requirements do not apply for issue of shares by a foreign company to an Indian resident. However, valuation as required under FEMA regulations for Overseas Direct Investment would be required to be obtained.
49.	Under faceless regime, if DCF valuation is submitted by an assessee but same was not seen by the AO, and AO orders that fair market valuation on shares was not submitted, is AO correct? If not, what are the remedies available?	An appeal must be filed as AO is not correct for ignoring information submitted and all the documents are present in record for assessee to prove.
50.	In a private limited Co, an NRI is holding about 25% shareholding. The Indian investors are ready to buy the shares from the NRI as per arrangement, which is more than the book value. For this purpose, is valuation of Registered Valuer required for Companies Act and from Merchant Banker for IT purposes?	Not compulsory, as it is transfer of shares and hence no valuation certificate is required under Income Tax, which only requires that it should be above book value as computed in accordance with Section 56 (2) (x). Companies Act does not require a valuation for transfer of shares between shareholders. There may be a need for valuation under FEMA which is to be undertaken by a Chartered Accountant or a Merchant Banker.
51.	How to value the fair market value of a property while calculating the value of shares? Do we have to take the valuation report of the property?	Under Income Tax Act for valuation of property, Stamp duty value adopted or assessed or assessable by any authority of the Government in respect of the immovable

S. No	Question	Answer
		property shall be considered. No certificate is compulsorily required. The rates can be obtained by assessee from any reliable sources.
52.	In case of transfer of unlisted shares, generally Merchant Banker considers net worth divided by the no. of shares issued. In case of company who are in existence for a long time the value would be high. Is this the method to be followed generally?	Net worth divided by number of shares is not used as a method of valuation generally by merchant bankers. Reference is invited to the valuation standards for determining the approach and methodologies of valuation.
53.	Can an AO change the method of valuation adopted by an assessee under explanation 1 to sec 56(viib)	If AO is not satisfied with the valuation adopted by the assessee, then assessee can do valuation as per Rule 11UA(2) wherein he has two options.
54.	In PSUs, disinvestment is carried out as per the guidelines issued by DIPAM. A portion of such shares are earmarked for employees of the respective PSU in general. How it will be valued as per IT Act?	It depends on how the shares are allocated to employees and if it is given as ESOPs then the taxation will be similar to the process of taxing ESOPs.
55.	Can a Chartered Accountant registered u/s 34AB, as a panel valuer with Department, use DCF method which is presently done by Merchant Bankers?	Under Rule 11UA(2) only a Merchant banker can use DCF method, but for other valuation requirements even a chartered accountant can use DCF method.
56.	Kindly articulate and clarify the CBDT Notification dated 24th May 2021 related to Slump Sale Valuation applicable w.e.f 01st April 2021.	CBDT vide Notification dated 24th May 2021 Amended the Income Tax Rules by inserting *"11UAE.Computation of Fair Market Value of Capital Assets for the purposes of section 50B of the Income-tax Act.*

S. No	Question	Answer
		(1) For the purpose of clause (ii) of sub-section (2) of section 50B, the fair market value of the capital assets shall be the FMV1 determined under sub-rule (2) or FMV2 determined under sub-rule (3), whichever is higher. *(2) The FMV1 shall be the fair market value of the capital assets transferred by way of slump sale determined in accordance with the formula –* " In slump sale a part of undertaking is sold for a lump sum, earlier the valuation was not done asset wise but entire undertaking being sold was valued. However, under the new notification an asset wise valuation is now required and hence lots of litigation is expected to arise in this area.
57.	Please define and illustrate Merchant Banker for Rule 11UA	As per section 11UA of Income Tax Act a merchant banker who is registered as a merchant banker in accordance with the regulations of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 made under the Securities and Exchange Board of India Act, 1992 shall be considered as Merchant Banker for the purpose of Income Tax Act.
58.	In case of 100% transfer of unlisted shares in private limited company can we use DCF method? Also, if some immovable property is there in the company, then how should we	Income Tax Act requires (Section 50CA and Section 56 (2) (x)) that the transfer is affected at least at the value computed based on Rule 11UA (which expects that the immoveable properties, securities, jewellery / artworks

S. No	Question	Answer
	proceed and what things should be kept in mind.	etc., are valued at the fair market value and the rest of the assets at their book values). Tax laws only prescribe that if the transfer price is more than this, then the actual transfer price will be the basis for determining the capital gains and taxation. However, if the transfer price is lower than the above valuation, then the seller (under section 50CA) and buyer (under Section 56 (2) (x)) could be taxed for the difference between the FMV and the transfer price
59.	We understand for transfer of shares of unlisted/ Pvt. Ltd. Co - choice is between 11UA valuation or DCF. Please confirm. (This is not for issue of shares but transfer of shares between a seller and buyer)	Rule 11UA(1) is to be followed for Transfer of shares and not DCF.
60.	Company X was incorporated during 2020-21. It acquired shares in another company Y held by VC, thereafter Company X is going to be amalgamated with Y. Being X Company going to be amalgamated with Company Y, Company X wants to issue shares at premium based on Valuation by Merchant Banker. 1. Can it be done? 2. What is impact under Income Tax for the premium collected.	**As per section 56(2)(viib)** Where a company, not being company in which public are substantially interested, receives from any person being Resident, any consideration for issue of shares, the consideration in excess of fair market value shall be taxable.
61.	Valuation for issue of shares to NRI, who can be the valuer?	Under FEMA, valuation can be done by a Chartered Accountant or a Merchant Banker.

S. No	Question	Answer
		Under Income Tax Act, if the issue is at a premium to a non-resident, then there is no requirement to value it as provided in Section 56 (2) (viib)
62.	Why Income Tax Act is not following methods other than DCF. Is it compulsory to follow DCF?	DCF is not compulsory under Income Tax Act, it is an option.
63.	If the valuation by a Registered. Valuer and by the Merchant Banker, differ significantly then which one must be adopted? Two different Acts suggesting two different authorities of valuation.	Two different valuation is required only in case of issue of shares and that too when an assessee chooses to get the valuation done under DCF method. However, if two different reports are there then difference in value should not be substantial.
64.	Shares cannot be issued at a price lower than price determined by Registered Valuer?	No, generally, transaction can be done at any price agreed between the buyer and seller. However, it is possible that certain statutory provisions may require differently. For instance, issue of shares to a non-resident cannot be below the valuation arrived at under Section 62 (1) (c) of the Companies Act, 2013.
65.	What according to you is the risk-free rate to be employed for DCF under current situation of pandemic?	Long term default free government bonds, of the country where company's headquarter is located is mostly treated as the Risk-Free Rate of Returns. During the time of global crisis, the risk-free rates are bound to go down as government takes action to mitigate the decline in economy and to stimulate growth. Lower interest rate stimulates economy by making it cheaper to borrow money. The fall

S. No	Question	Answer
		in interest rates of short-term government bonds i.e., 1-3 years will be much more significant than the fall in 5-10 years. This fall in the risk-free rate of return shall however be mitigated by rise in ERP and betas because the cost of Equity is expected to go up during crisis.
66.	Is 56(2)(x) applicable for new issues?	No. But demand could be raised by AO on the shareholder under 56 (2) (x) in case the issue price is lower than the FMV computed as per 56 (2) (x).
67.	Can a start-up, private limited company value its software product based on revenue generation by a registered valuer and later issue the shares substituting this value for the asset, do we still need a merchant banker to value the shares for issue as it can be said it is not issued based on DCF?	In case DCF method is not adopted then valuation by a Merchant Banker is not compulsory. **Further for Startups** The DPIIT vide notification no. G.S.R. 127 (E) dated 19.02.2019, has laid down that the provisions of section 56(2)(viib) of the I.T. Act, 1961 shall not apply to any consideration received by a Startup Company, if the Startup Company fulfils the conditions mentioned in para 4(i) and 4(ii) of the said notification and is recognized by the DPIIT. In pursuance to the above, the Central Board of Direct Taxes (CBDT) had issued notification no.13/2019/F.No. 370142/5/2018-TPL(Pt.)} dated 05th March, 2019 reiterating that the provisions of clause (viib) of sub-section (2) of section 56 of the said Act shall not apply to

S. No	Question	Answer
		consideration received by a company for issue of shares that exceeds the face value of such shares, if the said consideration has been received from a person, being a resident, by a company which fulfils the conditions specified in para 4 of the notification dated 19.02.2019 issued by DPIIT.
68.	If a private limited wanted to increase authorized capital, should it be valued?	No
69.	Why cannot a company give a joint mandate to arrive at one value to Merchant Banker and Registered Valuer?	Such Mandate shall be unacceptable by any professional.
70.	Summaries when valuation is compulsorily to be carried out by Merchant Banker?	Under Income Tax Act, in case of issue of shares by an unlisted company wherein assessee chooses to adopt DCF method only then a merchant bankers report is compulsory.
71.	How do I get myself designated as a registered valuer? Does institute conduct registered valuer courses, duration of course and fees.	For guidance with respect to becoming a registered valuer, you may refer to the FAQs available at ICAI RCO's Website https://icairvo.in/
72.	In respect of issue of further shares by a private limited company on rights basis, can it be issued on face value? Whether in such case section 56 will be attracted?	Yes, it can issue. If Shares are issued at Face Value, then 56(2)(viib) is not attracted.
73.	A Company is having land, the market value of which is Rs.10 Crore and Book Value is Rs 1 crore. This Company value its Unquoted Shares	As it is for issue of shares, so as long as the premium is justified by the requirements of section 56 (2) (viib), it is fine.

S. No	Question	Answer
	as per the provision of Rule 11UA (2) for the purpose of fresh allotment, taking Book Value: 1. Whether any Taxability shall arise in the hands of the Shareholder as the shares has been valued as per the Rule 11UA(2). 2. The value determined as per Provision of Rule 11UA(1)(c)(b) is higher than the value determined as per Provision of Rule 11UA(2) as the book value of the Land of Rs. One Crore has been taken for valuation of shares instead of Fair Market value of Rs 10 Crore as on Valuation date. As per the provisions of Section 56(2)(x) the Fair market value must be determined as per Rule 11UA(1)(c)(b).	However, demand could be raised by AO on the shareholder under 56 (2) (x) in case the issue price is lower than the FMV computed as per 56(2)(x).
74.	Can we use DCF method in case of transfer of shares of Pvt Ltd Company under rule 11 UA, certified by CA?	For transfer of equity shares under Rule 11UA a specific book value method is prescribed under Rule 11UA(1)(c)(b) for determining Fair Market Value. Further no valuation certificate is required for it. However, from a commercial transaction perspective, DCF method of valuation could also be used and as long as the price is more than the FMV as determined above, the actual

S. No	Question	Answer
		transfer price will be considered for capital gains computations.
75.	If company allots the share on face value to exiting share holder and the book value of the company is higher than face value what is the treatment for individual and company?	**For Issue of Shares** For the company there is no tax implication if shares are issued at Face Value. Ideally, No Tax Implications for Individual but demand can be raised by AO u/s 56(2)(x) for issue of shares below FMV.
76.	Can a Registered Valuer consider the average of DCF and Net Asset value of shares? i.e., say NAV is 500 per share and DCF is 3000 per share. Average of both i.e., Rs. 1750/- per share	For the purpose on Income Tax Act, it has to be in accordance with the methods prescribed under Income Tax Rules only and averaging is not permitted. **For any other purpose** Yes, a weighted average value can be used but following need to be remembered. • First, you should not get material difference in values under multiple methods. • If your values are significantly different, you need to bring parity in assumptions made under various methods or discard methods which are not appropriate. Valuers should not arbitrarily attach a weight to calculate weighted average value of various methods. Instead, he should choose a method that most reflects fair value of a company. Such value shall be concluded to be fair value.

S. No	Question	Answer
		Other values to be discarded without capturing them with any assigned weights.
77.	In case of conversion of CCD into equity, what method of valuation should be used under both the Income Tax Act and Companies Act?	In Companies Act, there is no specific method prescribed and the valuation must be carried out by a registered valuer. In respect of Income tax Act, as it involves issue of shares, premium, if any involved in the issue may have to be justified under section 56 (2) (viib).
78.	Please highlight valuation of startup in case of ESOP.	For Income Tax purposes, ESOP is taxable as a perquisite at the time of exercise. The same would apply in respect of start-ups also. At the time of exercise, there is a need to obtain a valuation by a merchant banker for the purpose of determining the perquisite value.
79.	A newly formed Pvt. Limited Company who has done no business till date wants to issue shares to non-resident, what method of valuation of shares to be used and who can value these shares.	a) For Companies Act, as this will be a preferential issue, a registered valuer needs to provide a valuation report. b) If the shares are being issued at a premium, and the company is not a registered start up having an exemption, the premium needs to be justified by the book value-based computation or alternatively DCF based valuation which is to be done only by a merchant banker. In the instant case, as the company is new and without any business, it is quite likely that there may not an issue at a premium.

S. No	Question	Answer
		c) For FEMA purposes, the issue price must be justified by a valuer's report prepared by a Chartered Accountant or merchant banker.
80.	Valuation for issue of shares to NRI, who can be the valuer?	Assuming it is a non-listed non-PSI company, a) For Companies Act, as this will be a preferential issue, a registered valuer needs to provide a valuation report. b) If the shares are being issued at a premium, and the company is not a registered start up having an exemption, the premium needs to be justified by the book value-based computation or alternatively DCF based valuation which is to be done only by a merchant banker. In the instant case, as the company is new and without any business, it is quite likely that there may not an issue at a premium. For FEMA purposes, the issue price has to be justified by a valuer's report prepared by a Chartered Accountant or Merchant Banker.
81.	Why in most of the cases even though company is new and have no intangible assets as such, valuer using DCF method value shares at such exorbitant price only based on assumption of huge turnover in subsequent year and by manipulation of discount rate.	Since there are no Valuation Standards issued by Central Government to regulate the Valuation Profession, The Institute of Chartered Accountants of India has issued the ICAI Valuation Standards 2018 to ensure the consistent, uniform and transparent valuation policies for the members undertaking the Valuation Assignments.

S. No	Question	Answer
	How it should be restricted or is there any way to control such manipulation?	In this regard, all the members of the Institute are advised to follow the ICAI Valuation Standards 2018 while conducting any type of Valuation Engagement to ensure uniformity and transparency.
82.	For exemption u/s 56(2)(viib) only DPIIT recognition is sufficient along with declaration in form 2 and 80IAC registration is not required, kindly clarify this.	The DPIIT vide notification no. G.S.R. 127 (E) dated 19.02.2019, has laid down that the provisions of section 56(2)(viib) of the I.T. Act, 1961 shall not apply to any consideration received by a Startup Company, if the Startup Company fulfils the conditions mentioned in para 4(i) and 4(ii) of the said notification and is recognized by the DPIIT. In pursuance to the above, the Central Board of Direct Taxes (CBDT) had issued notification no.13/2019/F.No. 370142/5/2018-TPL(Pt.)} dated 05th March, 2019 reiterating that the provisions of clause (viib) of sub-section (2) of section 56 of the said Act shall not apply to consideration received by a company for issue of shares that exceeds the face value of such shares, if the said consideration has been received from a person, being a resident, by a company which fulfils the conditions specified in para 4 of the notification dated 19.02.2019 issued by DPIIT.
83.	How is revaluation of assets treated under rule 11UA?	For Transfer of Shares Rule 11UA(1) is applicable and assets specified in the rule like Jewellery, bullion, properties are to be revalued rest must be taken at book value.

S. No	Question	Answer
		For Issue of Shares Rule 11UA(2) is applicable and under same all assets and liabilities must be valued at Book Value only. Otherwise, the assessee can opt for DCF method of valuation.
84.	How do you consider valuation methodology for service companies, because there is very low value of tangible assets, but the value is for intangibles in the form of customers and employees?	Companies with high intangibles assets shall adopt a combination of Market approach or Income approach for business valuation. However, for the purpose of Income Tax Act one necessarily needs to adhere to the valuation methodology prescribed by law.
85.	If there is immovable property in a company, can we transfer the share between share holder based on DCF which is less than FMV of such Immovable property?	Please note that for transfer of shares under income tax, Section 50CA and Section 56 (2) (x) requires valuation to be done in accordance with Rule 11UA which would become the minimum taxable consideration, if actual consideration is lower than the same.
86.	If the shares were issued for less than FMV, will the subscriber of shares be covered by the provisions of section 56(2)(x)? Because 56(2)(x) talks about receipt of any assets for inadequate consideration.	This is a grey area and matter of discussion. As per the view of the speaker it is not applicable for issue of shares and shall be taken up for appeals by chartered accountants in case taxed by AO. Circular No. 10/2018 was issued to clarify this but was later withdrawn saying that shall not be taken into account by any income-tax authority in any proceedings under the Act.
87.	Presently Sec 56(2)(vii) is not applicable as it was applicable up to 31.03.2017. Now sec. 56(2)(x) is applicable?	56(2)(vii) and 56(2)(viia) has been merged and were replaced by 56(2)(x) which is now applicable to all.

S. No	Question	Answer
88.	A valuation report issued for the purpose of Sec 62(1)(c) of Co Act,2013 has any validity period?	Valuation reports are valid forever for Value as on Valuation Date. Valuation Report will always give valuation as on the valuation date and can be referred as required. Further under IBC 2016 cases, it is now a concluded position that a valuation report is valid for 6 months, but this is not applicable for any other Act.
89.	Valuation of CCD, Compulsorily Convertible Debentures, issued to NRI Investors (being a Hybrid Investment instrument) requires conversion to be fixed at the stage of issuing CCD. In this case - from whom one must obtain valuation report.	For Companies Act, valuation is required by a registered Valuer. For Income Tax Act, valuation should be carried out by a Chartered Accountant or Merchant Banker. For FEMA, the requirement is for a Chartered Accountant to value such instruments.
90.	In case of company - which is 3 years old - the business value proposition says Trademark or process registration or software program etc. shall be done by technical people. After 3 years the first round of investors come to the company. Till such time, the promoters were funding the project/company. In this case who must value the company and which method would be appropriate?	If the promoters are raising capital by way of issuance of equity shares and are not categorized as a startup then u/s 57(2)(viib) then they can do valuation themselves (using any method) provided they are able to satisfy AO with the value so arrived at. Or, under Rule 11UA(2) they can choose one of the two options i.e., Book Value or DCF from Merchant Banker.

S. No	Question	Answer
91.	Why is Income Tax attracted on capital transaction of issue of shares at value higher than fair market value?	Any consideration received by the issuer of shares till the fair market value, which can be way above the face value of the shares, is considered as capital infusion. But any amount beyond the fair market value is taxable in the hands of the issuer.
92.	Is 56 (2) (viib) applicable for rights issue?	Yes, if the issue price is more than the Fair Market Value
93.	When we are saying that the company is issuing shares at a higher price, and this is taxable. Are we saying that a share premium is taxable? Under what head?	Yes, Under Income from other Sources.
94.	An eligible start up issued shares at Rs. 100 per share (FV Rs. 10). The start-up failed to grow the business as projected and now 3 years later the existing investors need to quit at Rs. 25 per share which is very close to the Book Value as on date. Is this ok under the IT Act?	It is essentially based on the rules provided under the Income Tax laws and if they are compliant with the same, it is in order.
95.	Issue of share below FMV determined by registered valuers and merchant banker but resulting in deviation of more than 5% from value by merchant banker will there be tax to buyer under56(2)(x)	This is a grey area and matter of discussion. As per the view of the speaker it is not applicable for issue of shares and shall be taken up for appeals by chartered accountants in case taxed by AO. Circular No. 10/2018 was issued to clarify this but was later withdrawn saying that shall not be taken into account by any income-tax authority in any proceedings under the Act.

S. No	Question	Answer
96.	Even if valuation is done by respective professional, the AO simply questions the Valuation itself by comparing the actual performance with the Projections contained in the valuation How do we mitigate this?	Valuation, other than rule based, is an estimation and hence the forecasts and projection cannot match the actual performance. Valuation at two different dates cannot be same due to change in the various internal and external socio-economic factors that impact the concerned asset. However, a valuer and assessee both shall analyse the variance between the actual and projections and prepare a just and proper reason to justify their valuation assumptions. A valuer shall maintain documentation which provides: (a) sufficient and appropriate record of the basis of the valuation report; and (b) evidence that the valuation assignment was planned and performed in accordance with the ICAI Valuation Standards and applicable legal and regulatory requirements.
97.	A company issued share at Rs 200 per share to a director of the company who has proper source of income, but as per book value, value per share is Rs. 150. Whether AO can tax to company for difference of Rs 50?	**As per section 56(2)(viib)** Where a company, not being company in which public are substantially interested, receives from any person being Resident, any consideration for issue of shares, the consideration in excess of fair market value shall be taxable. Fair Market value needs to be determined in accordance to Rule 11UA(2).

S. No	Question	Answer
98.	Whether 56(2)(x) is applicable to transfer of shares only and not issue of shares in the hands of shareholder?	This is a grey area and matter of discussion. As per the view of the speaker it is not applicable for issue of shares and shall be taken up for appeals by chartered accountants in case taxed by AO. Circular No. 10/2018 was issued to clarify this but was later withdrawn saying that shall not be taken into account by any income-tax authority in any proceedings under the Act.
99.	For assessing value as per Rule 11UA of Income Tax Act, what should be the treatment for following? a. Share Application Money b. Amount set apart for dividend for both equity shares and preference shares	**Share Application Money** It is to be treated as liability and hence shall be reduced. **Dividend** If not declared and set apart shall be added to the book value.
100.	Suppose a company has already undertaken valuation 3 months back by a Merchant banker for the purpose of funding. Now can they use the same report for issue of shares using DCF valuation under Income Tax Act?	Merchant Banker report is necessarily required in case of issue of share and use of DCF method. In case DCF method is used, the date of valuation shall be the date of issue of shares. Hence in the given case again valuation is required for issue of shares.
101.	1) For transfer of Shares: How is valuation done in case of inter-holding of shares by two or more companies?	1) For Transfer of shares valuation is to be done as per rule 11UA(1)(c) which states that for shares and securities held by a company the fair market value is to be determined in

S. No	Question	Answer
	2) In case of further issue of shares immovable property are to be taken at book value and not market value?	the same way as determined in the manner provided in this rule. For resolving arithmetically, crossholding and the value computation, liner equations could be used. 2) Immovable property is to be taken at the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property;
102.	In case of a start-up there may be intangible assets which is not taken in balance sheet which shall be calculated by formula. In case of transfer of shares how to include this in case it is not in books.	**For Transfer of Shares** the valuation is as per Book Value, which is the minimum consideration for taxation purposes. But as a transferor he can charge rate higher than the book value there is no issue, as that becomes the taxable consideration.
103.	Whether rule 11UA is applicable for buyback of equity shares by an unlisted company.	**Buy Back of Shares** Under Section 115QA of the Income Tax Act at a flat rate of 20% on the 'distributed income'. Distributed income means the consideration paid by the company on buyback of shares as reduced by the amount which was received by the company for the issuance of such shares. Receipts in the hands of shareholder is exempt under Section 10(34A) of Income Tax Act.
104.	What is the third method other than Book value method (formula Based)	For Issue of Shares kindly refer to Explanation to Section 56(2)(viib)

S. No	Question	Answer
	or DCF method? Can you give any illustration of the same?	*"For the purposes of this clause,—* *(a) the fair market value of the shares shall be the value—* *(i) as may be determined in accordance with such method as may be prescribed; or* *(ii) as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value, on the date of issue of shares, of its assets, including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, whichever is higher;* " As per clause (i) of the above explanation, an assessee has two options under Rule 11UA i.e., DCF method and Book Value Method. But as per clause (ii) an assessee can also undertake valuation as per his choice provided, he can convince the AO about it. A simple example would be let us say a company which has only an immoveable property, instead of using book value (which is not adjusted for market value of properties in the case of 56 (2) (viib)) or a discounted cash flow method, it may be more appropriate to use market value of the immoveable property to determine the share price and this may be convincing to the AO.

S. No	Question	Answer
105.	Private Limited company issued equity share @ Rs. 104 to individuals and at the same time @ Rs. 10 to private trust created by such individuals where those individuals only infused money. Kindly guide the tax implications.	From the perspective of 56 (2) (viib), the issue at Rs.104 needs justification in accordance with rule 11UA, failing which the excess premium over and above the FMV would be treated as income from other sources in the hands of the company. From the perspective of 56 (2) (x), it is a grey area whether the private trust could be taxed for asset received for inadequate consideration. As per the view of the speaker 56 (2) (x) is not applicable for issue of shares and shall be taken up for appeals by chartered accountants in case taxed by AO. Circular No. 10/2018 was issued to clarify this but was later withdrawn saying that shall not be taken into account by any income-tax authority in any proceedings under the Act.
106.	During the process of merger of two companies the valuation given by register valuer under DCF method as per Companies Act. Now what are the requirement of Income Tax Act under 11UA?	Merger is generally dealt with separately in Income Tax Act and if the merger is so exempted, then 11UA would not apply. However, if the merger involves cash consideration or optional cash consideration, it is possible that the transaction would be considered as a taxable transfer and in which case, 11UA valuation requirements could come into play. If the value of consideration is lower than that prescribed in Rule 11UA, then

S. No	Question	Answer
		the 11UA computed value would be taken as the consideration for tax computations. Section 50CA and Section 56 (2) (x) may have implications for the seller and buyer respectively.
107.	An unlisted company issues CCD at a particular rate [CCD rate] wherein the conversion will be done after 2 years from the date of issue of CCD. Between 6 months and 1 year of issue of CCD, there happens a transfer of shares among the existing shareholders/directors at a value which is lesser than the rate at which conversion happens. Should the transfer of shares among existing shareholder-directors be done only at the rate at which conversion will be done or can it be done at a lower rate? Pls explain the implications, if any, under both CA 2013 and IT Act 1961.	These must be investigated on a case-to-case basis depending on full facts of the case. For transfer, there is no specific rule under Companies Act for valuation. It is purely a commercial decision between the two parties. For Income Tax Act, transfer price if lower than the FMV computed under Section 56 (2) (x), then the FMV would be taken as the consideration for determining the tax thereon.
108.	For Issue of Shares latest Balance Sheet as Audited and approved by shareholder will do. But for Transfer of shares Balance Sheet as on date of transaction is required. How can a shareholder bind the company to get audited balance sheet on the transection date?	This is the legal position under Income Tax laws. However, pragmatically, assesses do use the previous year ended balance sheet where audited balance sheet as on the date of transfer and if there is not likely to be any significant value implications, tax authorities may not raise an issue around this. However, to reiterate, the legal position is that the computation should be based on the audited balance sheet as on the date of transfer.

S. No	Question	Answer
109.	What is the treatment of deferred tax asset in valuation under Rule 11UA?	Deferred Tax Assets shall be included in assets but not deferred expenditure. Further, under AS and INDAS deferred expenditure are no longer carried in books. Deferred tax Liability like any other liability shall be deducted from the value.
110.	How Valuation is to be done in case of transfer of entire shareholding by company owning only immovable property, which are stated at cost in Balance Sheet.	Using the same principles enunciated in the Income Tax Laws: For issue of shares – in accordance with 56 (2) (viib) For transfer of shares – in accordance with 50CA and 56 (2) (x). Practically, if the company has only the property and no business or anything else, it is possible that: For issue of shares – the Company choses the option to use any other method to the satisfaction of the AO and does fair valuation of property to determine the value of shares. For transfer of shares – Rule 11UA also prescribes that the value of share be computed by restating the value of immoveable property from cost to the value at which it is assessable for stamp duty.
111.	For valuation under rule 11UA(1), how is it possible to get the audited	**For Unlisted Company**

S. No	Question	Answer
	balance sheet on the valuation date? Please suggest any solution for this.	**- For issue of shares** – Audited B/S (including the notes) as drawn up on valuation date; or Where the B/S on the valuation date is not drawn: B/S (including the notes) drawn up as on a date immediately preceding the valuation date which has been approved & adopted in AGM. **- For transfer of shares**– Audited B/S along with the notes is compulsorily required as on the date of Transfer of shares. This is the legal position under Income Tax laws. However, pragmatically, assesses do use the previous year ended balance sheet where audited balance sheet as on the date of transfer and if there is not likely to be any significant value implications, tax authorities may not raise an issue around this. However, to reiterate, the legal position is that the computation should be based on the audited balance sheet as on the date of transfer.
112.	After revaluation of assets, book value of a company is reduced significantly. Immediately after revaluation shareholders of the company transfer their shares at revised book value. What will be the Tax Implications?	Rule 11UA(1) anyway requires securities, immoveable properties, jewellery, artwork etc., to be restated at their fair market values to arrive at the adjusted book value for determining the minimum taxable consideration for the transfer. Thus, revaluation just prior to the transfer is only likely to make this easier for the computation.

S. No	Question	Answer
113.	If FMV of shares as per DCF (CA Certificate) is Rs 66.66 per share and company has issued shares at round value Rs 67/-, whether Rs. 0.34 will be taxable u/s 56(2) in the hands of company?	No
114.	Whether Deferred Tax asset has any value if in coming years the unit earns losses? Then why it should be included in value of assets for Income Tax Purpose?	Deferred Tax Assets shall be included in assets but not deferred expenditure. Further, under AS and INDAS deferred expenditure are no longer carried in books.
115.	Can you please cover Biocon ruling of Karnataka HC?	In November 2020, the Karnataka High Court held that the shares issued at a lower cost as part of the ESOP scheme (ESOP Discount) is a cost to the company which represents consideration received by employees for services rendered by them and is accordingly a tax-deductible business expenditure. This is in line with other cases in this regard elsewhere also.
116.	Company (with negative net worth) wants to acquire shares of another company at book value by issuing its shares at par. What are the tax implications on this?	From the perspective of the company issuing the shares: a) As issue of shares is not at a premium, 56 (2) (viib) does not apply. b) As there is acquisition of shares involving a transfer, so as long as the shares which are being acquired are valued as per 56 (2) (x), then there should not be an issue. Whether 56 (2) (x) would apply to the issue of shares is a grey area. As per the view of the speaker it is not applicable for issue of shares

S. No	Question	Answer
		and shall be taken up for appeals by chartered accountants in case taxed by AO. Circular No. 10/2018 was issued to clarify this but was later withdrawn saying that shall not be taken into account by any income-tax authority in any proceedings under the Act.
117.	In case of buy back of shares, is setting off allowed?	**Buy Back of Shares** Under Section 115QA of the Income Tax Act at a flat rate of 20% on the 'distributed income'. Distributed income means the consideration paid by the company on buyback of shares as reduced by the amount which was received by the company for the issuance of such shares. Receipts in the hands of shareholder is exempt under Section 10(34A) of Income Tax Act.
118.	A private limited company holds equity shares of another private limited company as investments. a) Who i.e., Buyer or Seller is responsible to calculate the value of shares for Income tax purpose. b) Can the seller agree to sell the equity shares for a value less than the value calculated, are there any repercussions. c)What are the must have documents that the selling company needs to	In respect of transfers in unlisted shares, Seller must evaluate Section 50CA requirements and needs value computations for this purpose. Documentary needs would be varying case to case – but some key requirements are: a) 11UA computation b) Audited Balance Sheet which was the basis for the 11UA computation c) Supports for the FMV computed for Securities, immoveable properties, jewellery, artwork etc.,

S. No	Question	Answer
	have for transfer of shares to support Income tax assessment	
119.	a) For transfer of Shares: How valuation is to be done in case of inter-holding of shares by two or more companies? b) In case of further issue of shares Immovable property are to be taken at book value and NOT market value. Kindly Clarify.	a) For Transfer of shares valuation is to be done as per rule 11UA(1)(c) which states that for shares and securities held by a company the fair market value is to be determined in the same way as determined in the manner provided in this rule. For resolving arithmetically, crossholding and the value computation, liner equations could be used. b) For Further Issue of Shares valuation is to be done as per Rule 11UA(2). As per same all assets are to be valued at book value under book value method.
120.	Would the taxation for buy-back by Listed Cos be same as explained by you?	The provisions of Income Tax with regards to the buyback of shares are covered under Sec 115 QA of the Finance Act, 2013 which applied to only unlisted companies which warranted a tax of 20% on the distributed income. However, the Union Budget 2019 announced that the said section to be applicable to the listed companies as well. The amendment is effective for all buybacks post-July 5, 2019, vide Finance Act (No.2) 2019.
121.	Can company claim higher ESOP expense in case the valuation has increased between exercise date and	Accounting for ESOP costs is not linked to the valuation of the share at the time of exercise.

S. No	Question	Answer
	in Assessment the higher value is considered by AO.	Accordingly, what can be claimed as ESOP costs is only what is booked as ESOP costs in the financials.
122.	Capital reduction done under a scheme and after NCLT/ High Court approval is also being treated as taxable as Buyback under the Income-tax Act, 1961, in the hands of the Company, during assessment of the Company. Since it is not actually buy-back but capital reduction, the Shareholders treat it as capital gains and offer the same to tax in their return. This leads to double taxation which is not the intention of the law. How should we avoid or deal with such scenarios?	One could take guidance from Goldman Sachs Case - [2016] 70 taxmann.com 46 (Mumbai – Trib.) and G Narasimham case - [1999] 102 Taxman 66 (SC) as well as any other relevant cases and accordingly handle this with the income tax department.
123.	In buyback if someone purchased shares @ Rs. 100 from another shareholder who bought it at@ Rs 10. Rs 90 is already taxed as capital gains. But again, in buyback, 90 will be taxed again assuming buyback is @100	Yes, as per 115QA of Income Tax Act
124.	What is tax treatment of Bonus Debentures.?	It is treated as deemed dividend and will be accordingly taxable. This is the interpretation many professionals and companies have taken at the time of issue of such bonus debentures.
125.	In case of Buy Back, Valuation made @ Rs.50/- per share but company make offer @ Rs 25/-, what are the	**Buy Back of Shares** Under Section 115QA of the Income Tax Act at a flat rate of 20% on the 'distributed income'. Distributed income means the

S. No	Question	Answer
	Tax implications under Income Tax Act?	consideration paid by the company on buyback of shares as reduced by the amount which was received by the company for the issuance of such shares. Receipts in the hands of shareholder is exempt under Section 10(34A) of Income Tax Act.
126.	In case of private limited company, issue of new shares to new shareholders, How and what valuation method to be used.?	Kindly refer to section 56(2)(viib) read with Rule 11UA(2) of Income Tax Act.
127.	In case of Right issue below FMV whether 56(2)(x) is applicable?	This is a grey area and matter of discussion. As per the view of the speaker it is not applicable for issue of shares and shall be taken up for appeals by chartered accountants in case taxed by AO. Circular No. 10/2018 was issued to clarify this but was later withdrawn saying that shall not be considered by any income-tax authority in any proceedings under the Act.
128.	Companies Act 2013 does not mention requirement of valuation under buyback transaction by registered valuer. Any specific reason for this?	It is envisaged that as buy back is an optional acquisition process, it is meant to be a commercial process and not necessarily linked to a pricing mechanism. However, though the act or rules do not seem to indicate, there have been cases where because the form provides for valuation report to be an attachment, the ROC insists on the same being submitted.

S. No	Question	Answer
129.	56(2)(viib) covers only issue of shares to resident, it does not cover issue of shares to non-resident, please clarify.	Yes
130.	Please suggest suitable methods for start-up business valuation?	Please refer to chapter "Valuation of Start-Up Companies" in Education Material on ICAI Valuation Standard 301- Business Valuation as issued by Valuation Standards Board of ICAI and ICAI RVO available at https://resource.cdn.icai.org/63123vsb51074.pdf
131.	What is legal provision for valuation of shares of unlisted company for income tax purposes?	It varies depending upon various factors like is it transfer or issue of share, Nature of shares etc.
132.	For valuation on transfer of shares of unlisted company, how to value investments in other companies?	For Transfer of shares valuation is to be done as per rule 11UA(1)(c) which states that for shares and securities held by a company the fair market value is to be determined in the same way as determined in the manner provided in this rule. For resolving arithmetically, crossholding and the value computation, liner equations could be used.
133.	Promoters have been issued equity shares during the year under premium, no valuation is required under Companies Act for this transaction. The book value of the company as per Rule 11UA is	The premium received if not supported by book value or DCF valuation by a merchant banker or other valuation to the satisfaction of the AO, the amount of premium may be taxed as income from other sources in the hands of the company.

S. No	Question	Answer
	negative. So, in this case what will be the impact under Section 56(2)(viib)? Will there be any changes if the promoters are non-residents?	This applies only in respect of capital issued to residents and does not cover capital issues to non-residents.
134.	A company issued right share at face value @Rs 10 in March-21. After that it raised fund from investor basis Merchant Banker valuation report @ Rs 120 in the month of May-21. What will be the tax implications?	No tax implications in the hands of the issuer as right issue were made at face value and far below the FMV determined by the merchant banker later. Also, in May'21 the shares were issued at FMV only hence no tax for issuer.
135.	Would the tax impact on buy-back of shares of Listed Cos be same as that for Unlisted Co.?	The provisions of Income Tax regarding buyback of shares are covered under Sec 115 QA of the Finance Act, 2013 which applied to only unlisted companies which warranted a tax of 20% on the distributed income. However, the Union Budget 2019 announced the said section to be applicable to the listed companies as well. The amendment is effective for all buybacks post-July 5, 2019, vide Finance Act (No.2) 2019.
136.	Will the buy-back of shares by a Listed Companies also be taxed in hands of the company?	The provisions of Income Tax regarding buyback of shares are covered under Sec 115 QA of the Finance Act, 2013 which applied to only unlisted companies which warranted a tax of 20% on the distributed income. The Union Budget 2019 announced the said section to be applicable to the listed companies as well. The amendment is

S. No	Question	Answer
		effective for all buybacks post-July 5, 2019, vide Finance Act (No.2) 2019.
137.	Practically in case of transfer of share can we consider 31st March audited?	It is not at our free will to consider. If the balance sheet as on 31st March has been audited, then only it shall be considered as audited financials.
138.	Shares of many unlisted companies are being traded, such as NSE, Paytm, Ola etc. (mainly from ESOP quota, after few years). When such shares are transferred, audit of the books will be required to be done?	**For transfer of shares**– Audited B/S along with the notes is compulsorily required as on the date of Transfer of shares. This is the legal position under Income Tax laws. However, pragmatically, assesses do use the previous year ended balance sheet where audited balance sheet as on the date of transfer and if there is not likely to be any significant value implications, tax authorities may not raise an issue around this. However, to reiterate, the legal position is that the computation should be based on the audited balance sheet as on the date of transfer.
139.	Whether we can consider the value for transfer of shares as per the previous year audited balance sheet in case of gift?	**For transfer of shares**– Audited B/S along with the notes is compulsorily required as on the date of Transfer of shares. This is the legal position under Income Tax laws. However, pragmatically, assesses do use the previous year ended balance sheet where audited balance sheet as on the date of transfer and if there is not likely to be any significant value implications, tax authorities may not raise an issue around this. However, to reiterate, the legal position is that the

S. No	Question	Answer
		computation should be based on the audited balance sheet as on the date of transfer.
140.	How convertible instruments like CCPS, OCPs, CCDs, OCDs are being treated in computation of Rule 11 UA computations?	Rule 11UA(1)(c) states that the fair market value of unquoted shares and securities other than equity shares in a company which are not listed in any recognized stock exchange shall be estimated to be price it would fetch if sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker or an accountant in respect of which such valuation.
141.	As you mentioned that audit must be done for transfer of shares. Is audit on date of transfer required for private company also? What are the consequences, if the audit is not done and valuation is done based on a provisional balance sheet as on the transfer date?	Yes, in case of Transfer of shares the Balance sheet as on the transfer date shall be audited. This is the legal position under Income Tax laws. However, pragmatically, assesses do use the previous year ended balance sheet where audited balance sheet as on the date of transfer and if there is not likely to be any significant value implications, tax authorities may not raise an issue around this. However, to reiterate, the legal position is that the computation should be based on the audited balance sheet as on the date of transfer.
142.	For assessing value as per Rule 11UA of Income Tax Act, what should be the treatment for following? a. Right to Use b. Lease Liability Recognised as per IND AS 116	Both shall be considered for the purpose of determining the book value.
143.	Gains from Buy-back of shares is exempt in hands of shareholder but what about capital loss? For e.g.: if	Based on the AASL Case in Mumbai Tribunal, the view is that capital loss is not recognised

S. No	Question	Answer
	shares purchased at Rs. 100 and company buy-back at Rs 50, can assessee not claim long term capital loss?	as the transaction is solely considered as taxable at the Company's end.
144.	If there are some qualifications in the audit report which may affect valuation, what will be the role of the valuer?	The valuer can take clarification in respect of the qualification from the client and basis his professional judgement he shall do valuation by giving suitable disclaimers and limitations in the valuation report.
145.	Employee of a subsidiary in India is given ESOPs in Holding Company situated in USA and the payment is made by the subsidiary to holding company by deducting from his salary. Employee exercised ESOP at a later date. The difference in cost and the valuation of share of holding company will be treated as perquisite or capital gain?	The value of the shares as at the time of exercise will be considered for perquisite computation (less any amounts paid from his earnings).
146.	In the audit report the auditor has mentioned that there are certain Contingent Liabilities like pending demands from various departments under litigation in appeal, tribunal, court. What should be the treatment of such contingent liabilities in valuation? Should they be adjusted?	As per Rule 11UA any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares shall not be reduced from the book value as it will not be considered in book value of liability.
147.	Will the buy-back of share by a listed company also be taxed in the hands of the company?	The provisions of Income Tax regarding buyback of shares are covered under Sec 115 QA of the Finance Act, 2013 which applied to

S. No	Question	Answer
		only unlisted companies which warranted a tax of 20% on the distributed income. However, the Union Budget 2019 announced the said section to be applicable to the listed companies as well. The amendment is effective for all buybacks post-July 5, 2019, vide Finance Act (No.2) 2019.
148.	Can unlisted company issue shares on premium? What is the tax impact on such issue of share in Income Tax Act?	Yes, unlisted companies can issue share at premium, however the consideration received over and above the FMV of the shares as on valuation date shall be taxed in the hands of the issuing company.
149.	If the fair market value comes to fraction of rupee as per rule 11UA then can it be sold at nearest rupee, or it must be sold at decimals?	Generally, and practically, such rounding off is ignored.
150.	A newly incorporated Pvt. Ltd company issued shares to various investors at a premium on DCF method and valuation has been done by registered valuer and the company has not taken valuation by Merchant Banker. Whether the company should still go for valuation by Merchant Banker for income tax purpose or not?	As per Rule 11UA(2), in case of valuation under DCF method the same must be determined by the Merchant Banker only.
151.	Will registered valuers get CPE on this VCM?	In accordance with IBBI Guidelines for online training only 100 participants are allowed. Hence CPE hours credit for these VCM's are not available for Registered Valuers registered with IBBI.

S. No	Question	Answer
152.	Will MAT credit not come under assets not represented by tangible assets for 11UA?	MAT Credit shall be added to the asset value while determining the book value as per Income Tax Rules.
153.	In case of rights issue, when shareholders renounce the shares in favour of a non-resident shareholder, would the valuation be required? The assumption is the right issue and offer to non-resident shareholder is at par.	The transfer of renunciation right itself is a separate transaction of sale of renunciation rights and would require to be valued accordingly. This is required even to justify the issue at par, as non-residents are involved.
154.	For issue of shares by way of rights/preferential allotment we normally get a valuation report. Do we have to mandatorily get a valuation report from Merchant Banker also for Income Tax?	Explanation to Section 56(2)(viib) states *"For the purposes of this clause, —* *(a) the fair market value of the shares shall be the value—* *(i) as may be determined in accordance with such method as may be prescribed; or* *(ii) as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value, on the date of issue of shares, of its assets, including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, whichever is higher;* " Hence as per clause (ii) of the above explanation the company can undertake valuation themselves provided they are able to convince the AO about the valuation arrived at. Or else as per clause (i) the company has two options under Rule 11UA(2), i.e., book value

S. No	Question	Answer
		and DCF method. In case he chooses DCF he necessarily will need a report from Merchant Banker.
155.	A Pvt Ltd. company have a land in its fixed assets at book value of Rs. 40.00 lacs and there are no assets other than this. The market value of the land is 4.00 Crore. Now one of the shareholders wants to transfer his shares. How to value Fair Market Value? Can a Chartered Accountant certify the Value?	For transfer of shares Rule 11UA(1)(c)(b) is applicable for valuation of shares: Under the rule for determining FMV of unquoted equity shares – in respect of immovable property the value is determined as under:- *the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property;* Yes, a Chartered Accountant can certify under Rule 11UA(1)(c)(b)
156.	If any share holder wants to gift his shares to any unrelated person without consideration, then what is the tax implication in hands of the donor?	As gift is not considered as a transfer, to the donor it does not have any taxation. However, the gift is not tax deductible in any manner for the donor.
157.	In a slump sale scenario - if that undertaking is owning some shares in other company, will it be necessary to take valuation of such shares separately?	Yes. As explained in Rule 11UAE.
158.	In case of valuation of immovable property being land and building for the purpose of 56(2)(x), one will be able to get the guideline value for land. Assuming a factory which has	The value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property.

S. No	Question	Answer
	both factory and residential buildings [staff quarters], how to get the value for these buildings?	
159.	Can statutory auditor do valuation for companies act / income tax purpose?	No
160.	Request for your perspective on 11UB of IT Rules, 1962	This is to deal with income arising from a sale happening globally where assets are changing ownership in India and to enable tax trigger in India for such transactions.
161.	How to interpret following under 11UA, any amount representing provision for taxation, other than amount paid as advance tax under the Income-tax Act, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;	Current tax asset and liability, essentially is to be adjusted on cash basis for the purposes of 11UA.
162.	Please throw some light on requirement of valuation of shares under FEMA for transfer of shares to Foreign National.	Transfer of shares to a foreign national by a resident requires that the pricing of the transfer be at a price at least or above the valuation arrived at by a Chartered Accountant or Merchant Banker for such shares.
163.	If book value of immovable property is higher than stamp duty value, then which value to be taken under 11UA.	For the purpose of Rule 11UA(1) Stamp duty value is to be taken and for the purpose of Rule 11UA(2) Book Value is to be taken for determining book value.
164.	In case of transfer of 100% shares of Pvt. Ltd company can we use DCF method. If not, then in case of transfer in between of the financial year, can we use last audited balance	For Transfer of Shares valuation must be done as per the Rule 11UA(1) and hence not DCF.

S. No	Question	Answer
	sheet for computing book value and fair market value of property for valuation purpose.	**For transfer of shares**– Audited B/S along with the notes is compulsorily required as on the date of Transfer of shares. This is the legal position under Income Tax laws. However, pragmatically, assesses do use the previous year ended balance sheet where audited balance sheet as on the date of transfer and if there is not likely to be any significant value implications, tax authorities may not raise an issue around this. However, to reiterate, the legal position is that the computation should be based on the audited balance sheet as on the date of transfer.
165.	Kindly specify how to do valuation in case parent co. is in India and group companies are outside India?	**For taxation purposes:** The other approach is to use the group financials as a whole to arrive at the valuation, on that basis as provided in Rule 11UA.
166.	Guidance Note on ESOP is revised by ICAI and old one is withdrawn; in new version it is mentioned this is applicable for Grant date 01.04.2021 onwards. Question is if we do valuation for latest date can we apply old GN or need to adopt new GN only although grant date for such issue was old date only.	For old grant dates, the old Guidance Note could be used. However, as we have crossed into the FY 2021-22 already, for fresh grants from current FY, it is required to use the latest guidance note.
167.	What Valuation method needs to be undertaken for renunciation of rights in Shares?	The transfer of renunciation right itself is a separate transaction of sale of renunciation

S. No	Question	Answer
		rights and would require to be valued accordingly.
168.	One shareholder with 40% holding wants to sell his shares to the remaining shareholders. Valuation shall be based on audited books or DCF or higher of two? Also, valuation shall be done by Registered Valuer or Merchant Banker?	In case of Transfer of shares valuation must be done as per the method prescribed under Rule 11UA(1) which is based on Book value. For Transfer of Shares under Income Tax any one can value, the buyers and sellers can themselves undertake valuation as no certificate is required. However, for valuation of securities other than equity shares valuation is required by an **accountant or a merchant banker**
169.	In the case of a company whose share capital has eroded on account of accumulated losses, some shareholders want to transfer shares between themselves. Can they transfer at book value of the company or valuation is required?	In case of Transfer of shares valuation must be done as per the method prescribed under Rule 11UA(1) which is based on Book value. For Transfer of Shares under Income Tax any one can value, the buyers and sellers can themselves undertake valuation as no certificate required. However, for valuation of securities other than equity shares valuation is required by an **accountant or a merchant banker**
170.	There is a CBDT circular which states that 56(2)(x) will be applicable for issuance of shares. Any views on it?	Circular No. 10/2018 was issued to clarify that 56(2)(x) shall not be applicable for issue of shares but was later withdrawn saying that shall not be taken into account by any income-tax authority in any proceedings under the Act.

S. No	Question	Answer
171.	Can you please explain the interplay between transfer pricing provisions and valuation under 11UA, 11UAE?	This is a significantly large topic by itself and the Board may consider in due course a separate session on this topic.
172.	At what price shall we issue a share when net worth of the company is negative?	As per 56(2)(viib) a company can issue shares upto face value without any tax implications.
173.	Is section 56(2)(x) applicable on conversion of CCDs into equity?	This is a yet to be well settled legal issue and thus a grey area. Reference can be given to the principles enunciated in the Periar Trading Company case before Mumbai ITAT and the Sudhir Menon case before Mumbai ITAT.
174.	An unlisted company, registered since 1945, issued preferential shares to other than existing shareholders and subsequently converted disproportionately to existing shareholders in equity. Whether action for such disproportionate shares' allocation can be taken for affecting rights of then shareholders and what remedy is available for such wrongful act. Please suggest remedy	Under taxation laws, in respect of taxability, reference can be made to the principles enunciated in the Periar Trading Company case before Mumbai ITAT and the Sudhir Menon case before Mumbai ITAT. Under Companies Act, such shareholders who are affected by the act can approach NCLT under the provisions of oppression and mismanagement.
175.	Can statutory auditor challenge or put a note in his audit report if he is not convinced with value determined by merchant banker / Govt Approved Valuer, at which fresh shares were allotted or right issue share allotted?	It is a duty of statutory auditor to not blindly rely upon the report of another expert. He is expected to review and analyse same basis his professional judgement.
176.	For preference shares, what is method for valuation as per income tax act?	Rule 11UA(1)(c) states that the fair market value of unquoted shares and securities other than equity shares in a company which are not listed in any recognized stock exchange shall

S. No	Question	Answer
		be estimated to be price it would fetch if sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker or an accountant in respect of which such valuation.
177.	What should be the source of Fair Market Valuation of immovable in case of 11U(1)(c)?	An assessee can rely on any reliable source be it any government office, Government approved sites or even valuers of land and building.
178.	Whether provisions of section 56(2)(viib) read with rule 11UA for valuation of equity shares are applicable for (i) Issue of share warrants in Ist year (ii) Conversion of share warrants to equity shares in next year Conversion is done at price determined as per DCF method at the time of issue of warrants	This is not a well settled matter under Income Tax Act. Subject to this overarching position, the interpretation of the present statute could be as under: At the time of issue of warrants, as it is only an option which is being issued, there is no taxability at that point of time. If the issue price is lower than the FMV (as per Section 11UA), then the difference could be taxed in the hands of the shareholder u/s 56(2)(x). Alternatively, as some case laws have held that warrant is an asset, the conversion into shares may be treated as capital gains. Share Premium on conversion of warrants – applicability of 56(2)(viib) needs to be considered as if the premium is not justified, the same could be subjected to tax. If the company is a DPIIT registered start up having

S. No	Question	Answer
		exemption from section 56 (2) (viib), then this may not apply.
179.	For issue of shares at book value where a company is holding immovable property having high market value which will ultimately culminated into higher fair market value, what will be the consequences for the company.	**For Issue of Shares** where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be taxable in the hands of the company. **Further,** Explanation to Section 56(2)(viib) states *"For the purposes of this clause,—* *(a) the fair market value of the shares shall be the value—* *(i) as may be determined in accordance with such method as may be prescribed; or* *(ii) as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value, on the date of issue of shares, of its assets, including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, whichever is higher;* " Hence as per clause (ii) of the above explanation the company can consider

S. No	Question	Answer
		immovable property at fair market value provided he is able to convince the AO about the valuation arrived by him. The second option is, determining valuation under book value method of Rule 11UA(2). Here one needs to adhere to the methodology prescribed in the Act, and hence immovable property will be valued at book value only. The company can also consider using DCF method under Rule 11UA(2) which will also take into consideration the FMV of immovable property.

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