
Central Board of Direct Taxes (CBDT) issues draft Rules prescribing the manner for determining the “amount received” by a company for issue of shares for the purposes of section 115QA of the Income-tax Act, 1961

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**Background:**

Under the existing provisions of the Income-tax Act, 1961 (the Act), buyback tax is payable in cases where a buyback is carried out under the provisions of erstwhile Section 77A of the Companies Act, 1956 (corresponding to Section 68 of the Companies Act, 2013) by a domestic unlisted company. Such tax is payable by the company on the difference between the buyback consideration and the ‘amount which was received on issue of shares’.

With the objective of addressing ambiguity in the manner of computing the ‘amount received on issue of shares’, the Finance Act 2016 provided that a mechanism will be prescribed to determine the ‘amount received on issue of shares’.

Draft Rules:

The draft Rules (Rules) released by CBDT today lay down the methodology for determining the “amount received” by the company under different circumstances in which shares have been issued. Stakeholders and general public have been requested to send their comments and suggestions on the Rules by 31 July 2016.

The highlights of the Rules are as below:

Sr. No	Situation	Proposed manner of determining the "amount received"
1.	In respect of shares issued by company on subscription	<ul style="list-style-type: none"> Amount actually received by the company including towards share premium.
2.	In respect of shares where certain sum has been returned by the company at any time prior to undertaking the buyback	<ul style="list-style-type: none"> Amount actually received by the company in respect of such shares to be reduced by the sum returned to the shareholder.
3.	In respect of shares issued by the amalgamated company under a scheme of amalgamation in lieu of shares of the amalgamating company	<ul style="list-style-type: none"> Amount which was originally received by the amalgamating company in respect of such shares shall be deemed to be the amount received by the amalgamated company in respect of shares issued by it under the scheme of amalgamation.
4.	In respect of shares issued by the resulting company under a scheme of demerger	<ul style="list-style-type: none"> Amount received by the resulting company in respect of shares issued to the shareholders of demerged company shall be computed in accordance with the following formula: $\text{Amount received by demerged company in respect of original shares} \times \frac{\text{Net book value of assets transferred on demerger}}{\text{Net worth of demerged company immediately prior to demerger}}$
5.	In respect of original shares issued by the demerged company	<ul style="list-style-type: none"> Amount received by demerged company in respect of original shares shall be deemed to have been reduced by the amount so calculated as above (in Sr No 4)
6.	In respect of shares allotted without any consideration on basis of existing shareholding (bonus shares)	<ul style="list-style-type: none"> Amount received to be deemed to be Nil.
7.	In respect of shares issued on conversion of bond/debenture/ deposit certificate/ debenture stock	<ul style="list-style-type: none"> Actual amount received by the company in respect of the original instrument.
8.	In any other case	<ul style="list-style-type: none"> Face value of shares shall be deemed to be amount received by the company for issue of such shares.

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