

## MORE VALUATION FLEXIBILITY ON THE CARDS

# Changes Proposed to Angel Tax Rules

SWFs, pension funds, FPIs, banks, insurers may be exempted from purview of angel tax

### Our Bureau

**New Delhi:** India on Friday proposed to exclude a host of foreign investors including sovereign wealth funds and pensions funds from the purview of the so-called “angel tax”, offering the much-needed relief to the startup sector staring at a funding winter.

Those entities that face this tax will also have more valuation flexibility while computing this it, according to the draft rules put out by the Central Board of Direct Taxes (CBDT), the apex direct taxes body.

Five more valuation methods to determine tax could be allowed

A safe harbour of 10% variation from determined value may be provided

### WHO ALL MAY BE EXEMPTED

Sovereign wealth funds, pension funds



Entities with direct or indirect govt ownership of 75% or above

CENTRAL BANKS, MULTILATERAL INSTITUTIONS, ENDOWMENT FUNDS, BANKS AND INSURERS

FPIs, entities registered with Sebi



# Merchant Banker Valuation

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Investments by non-resident investors including central banks, multilateral entities, foreign pension and endowment funds, banks and insurers, foreign portfolio investors and entities registered with market regulator Securities and Exchange Board of India will not attract the angel tax.

Broad Based Pooled Investment Vehicle or Fund where the number of investors in such vehicle or fund is more than 50, barring hedge funds, have also been excluded from the tax's purview.

Overseas investments into startups recognised by the Department for Promotion of Industry and Internal Trade (DPIIT) will not attract this tax, the statement said.

Investments by foreign entities that have not been excluded will face the angel tax. The CBDT has proposed to accept valuation by a merchant banker undertaken within 90 days of issue of shares by a startup.

ET in its May 3 edition had reported on the proposed move.

## WIDER VALUATION NORMS

The draft regime allows five more valuation methods besides the discounted cash flow and net asset value methods permitted as of now.

The final rules will be notified after taking into account public comments.

Further, to account for forex fluctuations, bidding processes and variations in other economic indicators, which may affect the valuation of the unquoted equity shares during multiple rounds of investment, it is proposed to provide a safe harbour of 10% variation from the determined value.

Tax experts said the suggestions from the stakeholders have been taken into consideration for the proposed changes.

“Care has been taken to exempt institutional investors of all kinds thus leaving only individual investors and companies to comply with the prescribed valuation norms,” said Sudhir Kapadia, partner, tax and regulatory services, EY. “Perhaps the variance from prescribed valuation could have been kept at 25% instead of 10%.”

“The government seems to have listened to the hues and cries of the investor community, and as a welcome move, has proposed to introduce five new valuation rules to bridge the gap,” said Sandeep Jhunjunwala, M&A tax partner, Nangia Andersen LLP.



# SEBI-registered FPIs and sovereign wealth funds among those exempt from angel tax

**ENS ECONOMIC BUREAU**  
NEW DELHI, MAY 19

GOVERNMENT AND government-related investors such as central banks, sovereign wealth funds, international or multilateral organisations; entities registered with Securities and Exchange Board of India; and banks or entities involved in insurance business: These are among the categories of investors that are proposed to be exempted from the levy of angel tax, the Central Board of Direct Taxes (CBDT) said Friday.

It also outlined five more valuation methods apart from Discounted Cash Flow (DCF) and Net Asset Value (NAV) method for resident investors.

The Finance Act, 2023, had amended Section 56(2)(viib) of the Income-tax Act. The provision, colloquially known as the 'angel tax' was first introduced in 2012 to deter the generation and use of unaccounted money through the subscription of shares of a closely held company at a value that is higher than the fair market value of the firm's shares.

The provision stated that when an unlisted company, such as a start-up, receives equity investment from a resident for issue of shares that exceeds the face value of such shares, it will be counted as income for the start-up and be subject to income tax under the head 'Income from other Sources' for the relevant financial year. With the latest amendment, the government had proposed to also include foreign investors in the ambit, meaning that when a start-up raises funding from a foreign investor, that too will now be counted as in-

come and be taxable. DPIIT-recognised startups were excluded.

Outlining the proposed changes in Rule 11UA or valuation rules, the statement said where any consideration is received by a company for issue of shares, from any non-resident entity notified by the central government, the price of the equity shares corresponding to such consideration may be taken as the fair market value of the equity shares for resident and non-resident investors. It would be conditional to the extent that the consideration from such FMV does not exceed the aggregate consideration that is received from the notified entity and the consideration has been received by the company from the notified entity within a period of 90 days of the date of issue of shares under valuation.

The tax department listed the excluded entities from angel tax — government and government-related investors such as central banks, sovereign wealth funds, international or multilateral organisations or agencies including entities controlled by the government or where ownership of the government is 75 per cent or more; banks or regulated entities involved in insurance business; and entities registered with SEBI as Category I Foreign Portfolio Investors (FPI), endowment funds and pension funds.

Broad-based pooled investment vehicles or funds where the number of investors is more than 50 and such fund is not a hedge fund too are exempt.

Nangia Andersen LLP M&A Tax Partner Sandeep Jhunjunwala said the proposal could free up some startups from the rigour of angel tax.

## LIBERAL EXEMPTIONS, EASIER VALUATION NORMS

# Govt softens angel tax blow

### Safe harbour of 10% variation

SURABHI  
New Delhi, May 19

**THE FINANCE MINISTRY** on Friday exempted a broad set of foreign investors, including almost all public funds, banks and insurers from the ambit of the so-called angel tax. It also widened the scope of valuation of unlisted shares, which will make it easier for Indian firms to justify the premium received by them while issuing shares to foreign equity investors.

Tax experts and investment inter-

### NEW NORMS



■ Tax experts and investment intermediaries welcomed the dilution of the tax

■ Fundraise by India's growth-hungry MSMEs and start-ups won't be hindered much

■ Five more valuation tools will be made available for non-resident investors

mediaries welcomed the dilution of the tax, which was extended to foreign investors in Budget FY24. Fundraise by India's growth-hungry medium and small enterprises and start-ups won't

be hindered much by the new tax thanks to the easier rules, they added.

According to notification issued by the Central Board of Direct Taxes (CBDT), five more valuation tools

will be made available for non-resident investors, apart from the Discounted Cash Flow (DCF) and Net Asset Value (NAV) methods.

A safe harbour of 10% variation in value will be allowed to account for forex fluctuations as well as the impact of bidding processes and variations in other economic indicators in the valuation of unquoted shares.

Where any consideration is received by a company for issue of shares, from any non-resident entity notified by the Central government, the price of the equity shares corresponding to the consideration may be taken as the fair market value for resident and non-resident investors.

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## Govt softens angel tax blow

It should however, not exceed the aggregate consideration that is received from the notified entity and should be received within 90 days from the date of issue of shares, the CBDT said.

On similar lines, price matching for resident and non-resident investors would be available with reference to investment by venture capital funds or specified funds, the ministry said. Valuation report by the merchant banker would be acceptable, if it is not more than 90 days prior to the date of issue of shares.

The draft rules on these will be shared for public comments for 10 days, after which these will be notified, the CBDT said.

Sandeep Jhunjhunwala, M&A Tax Partner at Nangia Andersen, said: "The government seems to have listened to the investor community. The safe harbour of 10% is welcome." The proposal to notify non-resident entities for angel tax immunity and broadening of the list of excluded entity category to cover non-resident entities with 75% government ownership and broad-based pooled investment vehicles, could also free up a few more Indian startups from the rigour of the angel tax, he added.

"It is also proposed to notify certain classes of persons being non-resident investors to whom clause (viib) of sub-section (2) of section 56 of the Act shall not be applicable," the CBDT said.

The exemption list for foreign investors includes the following: government and government related investors such as central banks, sovereign wealth funds, international or multilateral organisations including entities controlled by the government or where direct or indirect ownership of the government is over 75% and banks or entities involved in insurance business subject to regulations in their country of incorporation.

Further, entities registered with Sebi as Category-I foreign portfolio investors, endowment funds associated with a university, hospitals or charities, pension established under the law of the foreign country or specified territory, broad based pooled investment vehicle or fund where the number of investors is more than 50 and it employs diverse or complex trading strategies would also be exempt. These entities should however, be resident of a certain countries or specified territories having robust regulatory framework, the finance ministry said.

As per the angel tax, introduced in 2012, if an Indian unlisted company issues



# No TCS on forex payment up to ₹7 lakh through credit cards

**SURABHI**  
New Delhi, May 19

**THE GOVERNMENT ON** Friday relaxed the recently notified regulations on spending in foreign exchange through international credit cards, amidst the concerns raised by a cross section of the stakeholders.

“To avoid any procedural ambiguity, it has been decided that any payments by an individual using their international debit or credit cards up to ₹7 lakh (\$8,444) at current exchange rate per financial year, will be excluded from the LRS limits and hence, will not attract any TCS,” the finance ministry said in a statement.

Also, the existing beneficial Tax Collection at Source (TCS) treatment for education and health payments will also continue, it added.

The necessary changes to the Rules (Foreign Exchange Management (Current Account Transactions Rules), 2000) will be issued soon.

Via a notification amending the relevant FEMA rules on May 16, the government had brought credit card transactions by individuals under an annual Liberalised Remittance Scheme (LRS) limit of \$2,50,000, meaning any higher spend would require the Reserve Bank of India's prior approval. The higher TCS of 20% on such transactions (up from 5% now) was slated to apply from July 1.

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## No TCS on forex payment up to ₹7 lakh through credit cards

The latest relaxation would mean that such transactions up to ₹7 lakh a year will be outside the purview of the higher tax.

Experts welcomed the relaxation but said that the rule will still apply "for a relatively small amount. Srinath Sridharan, independent markets commentator, noted, that the entire approach to TCS presupposes that everyone who goes abroad must be hiding something. "If there is already data on how LRS is misused and by whom and other foreign remittance schemes, take action on that basis. Don't stress the entire set of Indian travellers", he said.

Sandeep Jhunjhunwala, Partner, Nangia Andersen also said the exclusion would bring some relief. "Frequent business travellers may however seek higher exemption limits even though the base protection from TCS if expenses are borne by employer is available," he said.

In a set of FAQs on Thursday, the ministry had clarified that the changes are intended to bring in parity in tax treatment of remittances using debit and credit cards. The RBI had also written to the government on more than one occasion, pointing to the need to remove this differential treatment. Further, data collected from top money remitters under LRS reveals that international credit cards are being issued with limits over the \$2.5 lakh limit, it had noted.

However, concerns had been raised that an additional tax burden was being imposed on the salaried class, which already pays taxes and it would also block their funds in TCS, which