

Valuation for M&A and restructuring – tax considerations

May 11, 2024

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Typical M&A and restructuring transactions

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Investment in shares and securities – tax considerations and valuation u/s 56(2)(x)

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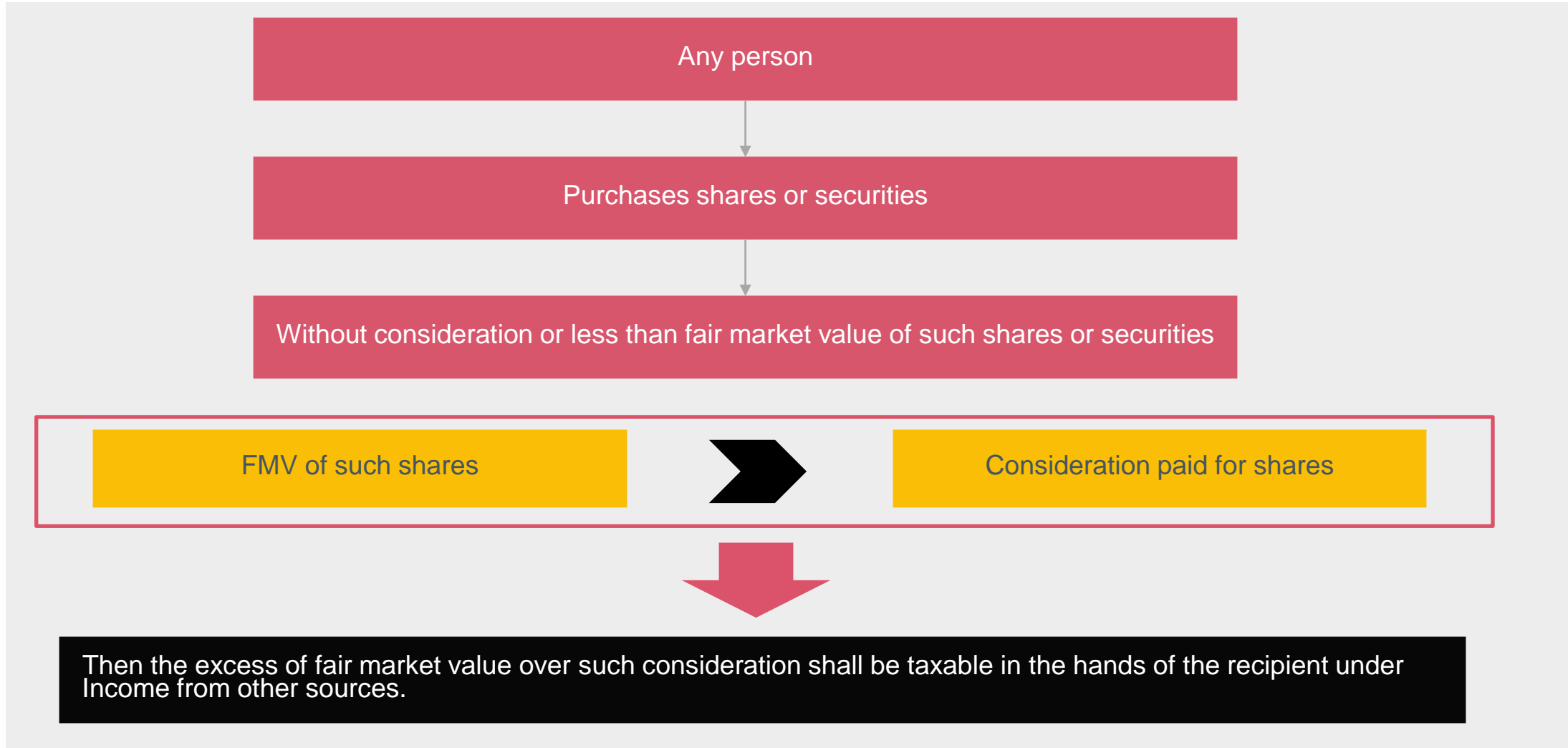
Case studies

Typical M&A and restructuring transactions

- **Transaction in Shares & Securities**
 - Primary issue
 - Secondary sale / purchase
 - Conversion of convertible instruments (eg CCPS , CCD into equity shares)
 - Buy back of shares
 - Capital reduction
- **Merger**
- **Demerger**
- **Slump Sale**
- **Asset Sale**
- **Voluntary Liquidation under IBC**

Investment in shares and securities – tax considerations and valuation u/s 56(2)(x)

Section 56(2)(x)



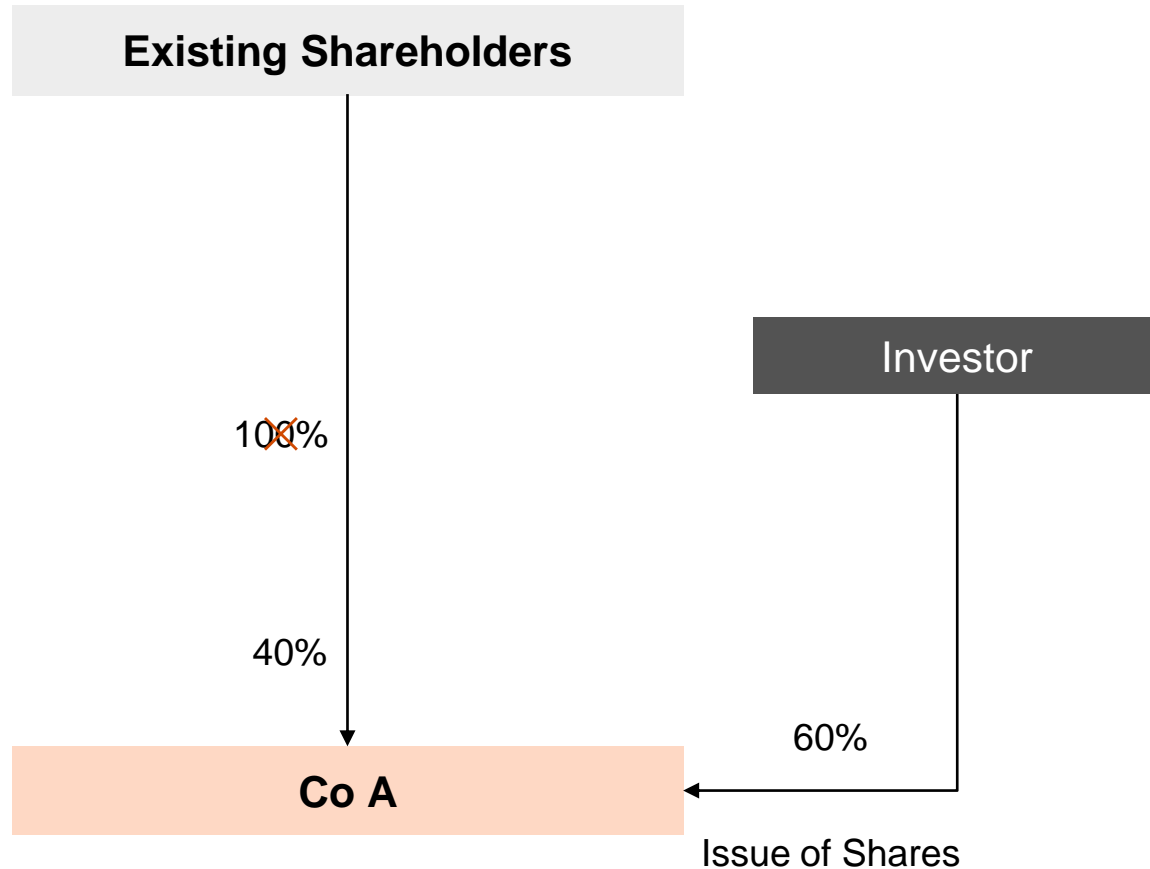
Rule 11UA for determining valuation for shares and securities

Types of shares and securities	Valuation Methodology to determine FMV for recipient	Valuation report to be obtained
Quoted shares and securities	Acquisition through stock exchange: Actual transaction value Off-market acquisition: Lowest quoted price on any recognised stock exchange on: <ul style="list-style-type: none"> ▪ Transaction date; or ▪ Immediately preceding date on which shares/ securities were traded 	No
Unquoted equity shares	Prescribed formula in Rule 11UA(1)(c)(b) basis the adjusted value of assets and liabilities as per audited balance sheet of the Company as on transaction date	No
Unquoted shares and securities other than equity shares	Estimated price it would fetch if sold in the open market	Yes – From Merchant Banker or CA

Practical difficulties in obtaining audited balance sheet as on transaction date to determine Rule 11UA value for unquoted equity shares

Case studies

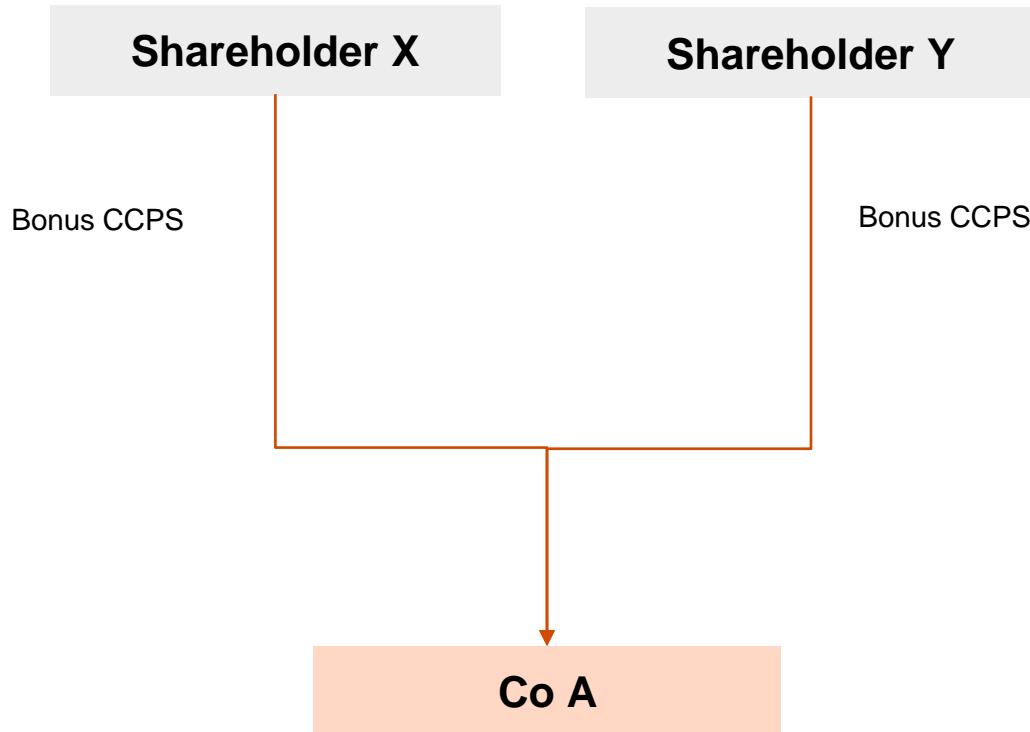
Case Study 1 – Applicability of section 56(2)(x) on fresh allotment of shares and securities?



- Existing shareholders holds 100% equity shares in Co A
- Investor infuse capital to get 60% stake in Co A

Whether section 56 (2)(x) will apply in the hands of investor ?

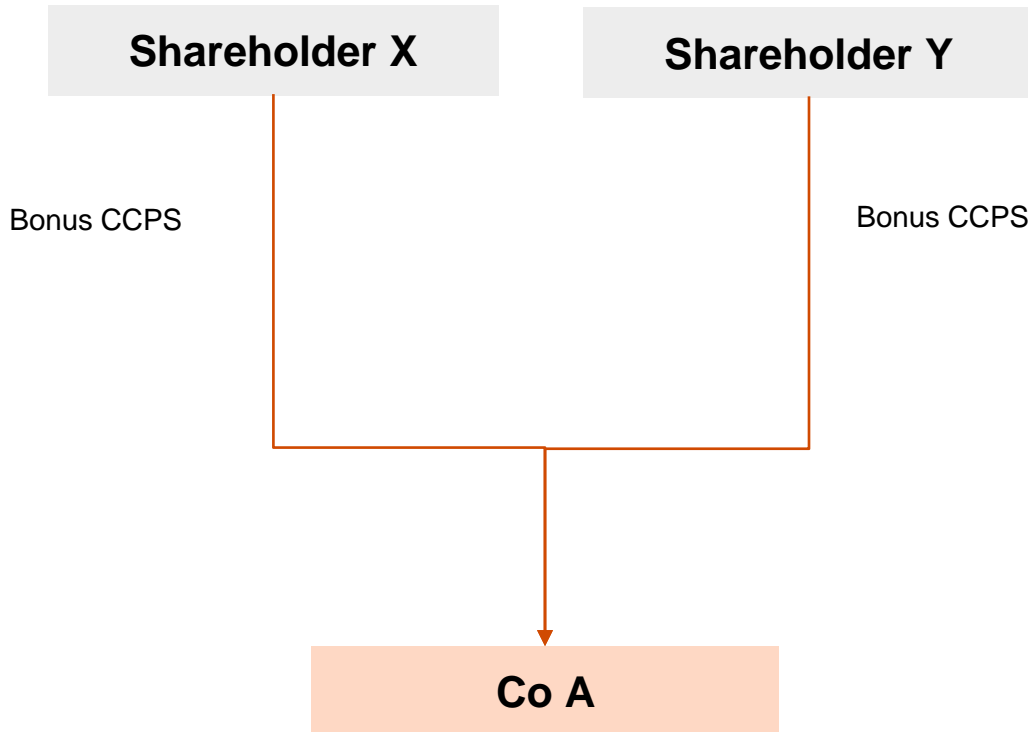
Case Study 2 – Issue of bonus CCPS



- Co A issues bonus CCPS to shareholder X & Y
- Bonus CCPS are issued by capitalizing free reserves of the Co A

Whether Rule 11UA will apply on issue of bonus CCPS?

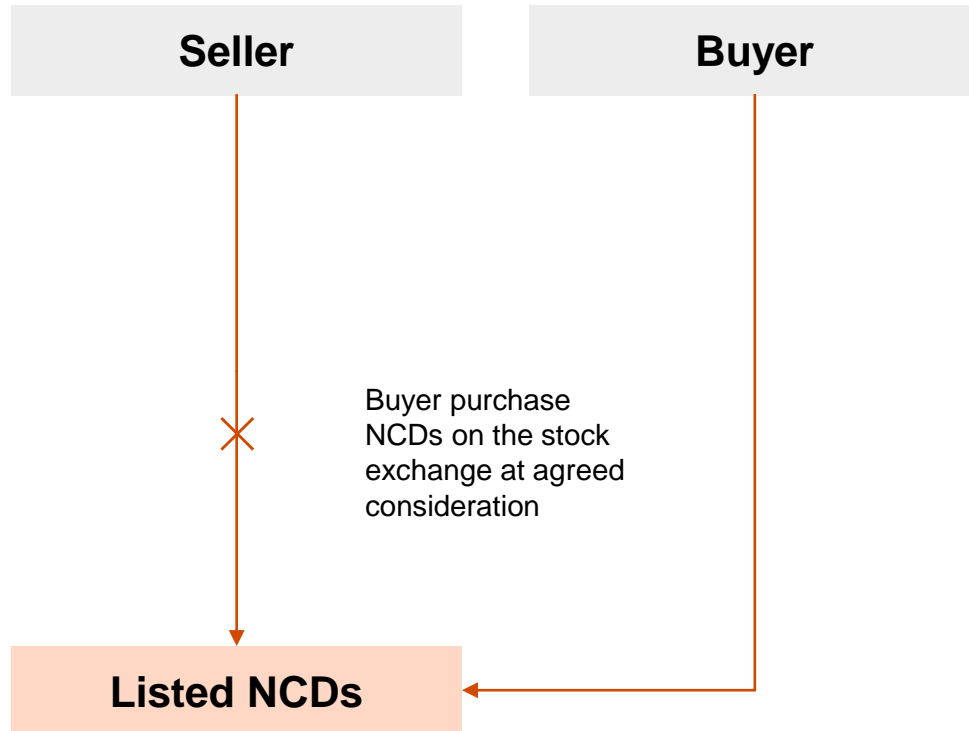
Case Study 3 – Conversion of bonus CCPS into equity shares



- Co A issued bonus CCPS to shareholder X & Y in 2017
- Bonus CCPS are convertible into equity shares in the ratio of 2 equity shares for every 1 CCPS
- Shareholder Y decides to convert CCPS into equity shares in 2024

Whether Rule 11UA will apply on conversion of bonus CCPS into equity shares in 2024 ?

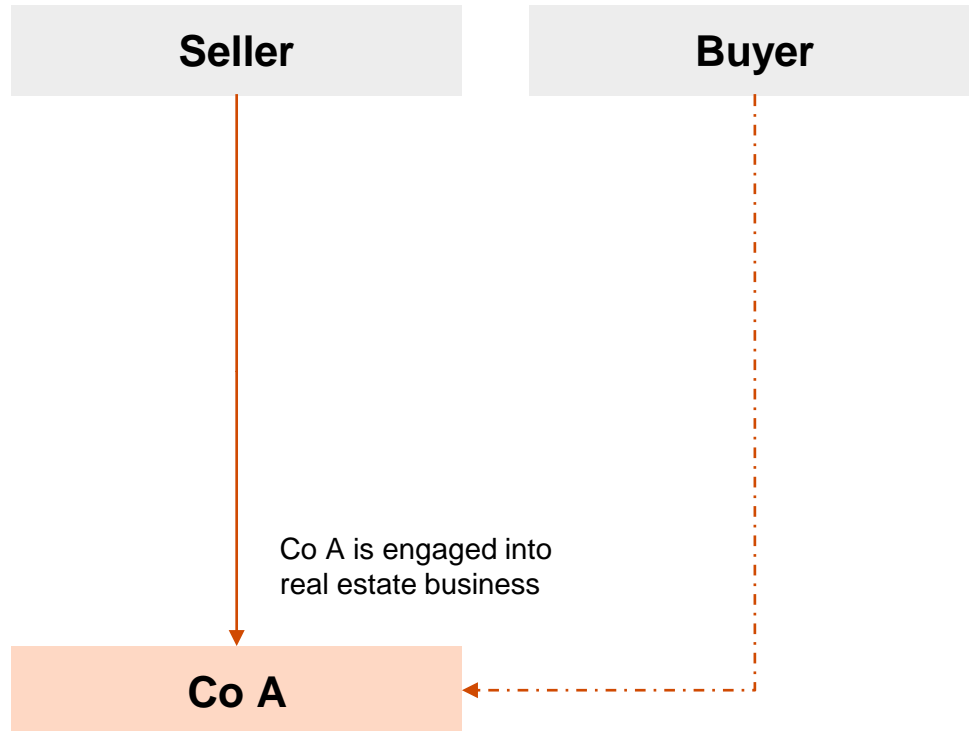
Case Study 4 - Listed NCDs purchased on the stock exchange – whether valuation required under Income Tax Act?



- Seller subscribed to NCDs issued by issuer Company
- NCDs are listed on stock exchange in India
- NCDs are not frequently traded on stock exchange
- Buyer purchased NCDs from seller on the stock exchange at commercially agreed consideration

Whether valuation required under Income Tax Act?

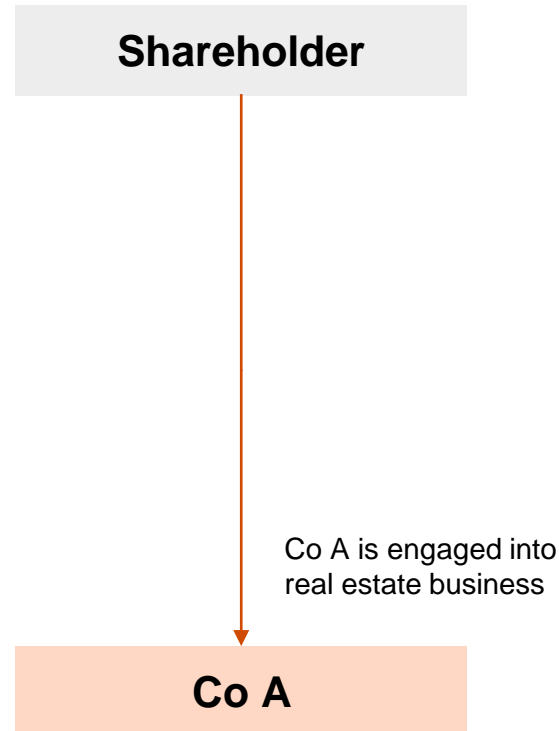
Case Study 5 - Share acquisition of a real estate company – Rule 11 UA value vs agreed consideration



- Co A is engaged into real estate business and holds land parcels
- Seller and buyer agreed for sale consideration for Co A shares 2 years back
- Circle value of lands increased substantially in last 2 years exceeding commercially agreed sale consideration

Whether buyer can acquire shares of Co A at sale consideration agreed with seller two years back?

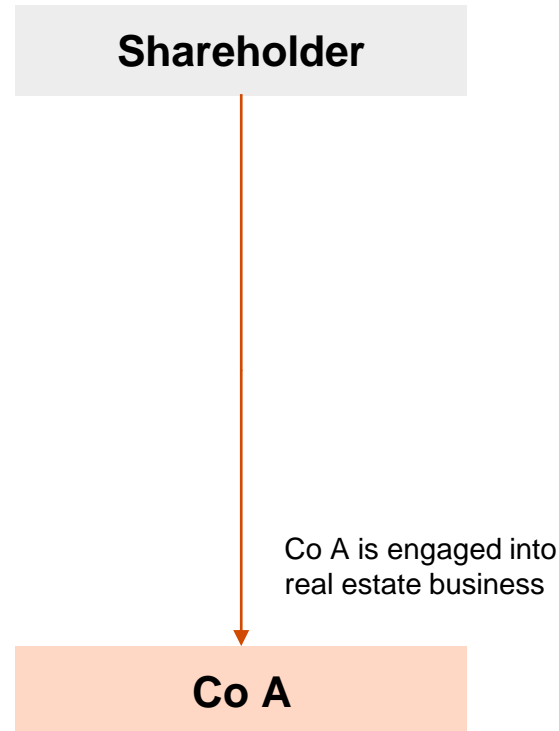
Case Study 6 – 11 UA value of a real estate company where it had entered into agreement to sell immovable property



- Co A is engaged into real estate business and holds immovable property
- Co A had entered into an agreement to sell immovable property to buyer in 2015 and received as advance against the same
- Now shareholders wants to sell shares of Co A to buyer basis the consideration for immovable property agreed in 2015
- Circle value of lands increased substantially in 2024

How Rule 11UA value will be calculated for Co A ?

Case Study 7 – 11 UA value of a real estate company which sold land at FMV



- Co A is engaged into real estate business and holds land parcels 1,2,3 at adjacent location
- Co A sold land parcel 1 at FMV exceeding circle rate to third party buyer
- Now shareholders wants to sell shares of Co A (holding land parcel 2 and 3) to buyer at Rule 11UA value

How Rule 11UA value will be calculated for Co A ?

Questions?

Thank you

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Annexure 1 – Meaning of quoted shares or securities as per Rule 11U

Rule 11 U - For the purposes of this rule and rule 11UA,—

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(d) "quoted shares or securities" in relation to share or securities means a share or security quoted on any recognized stock exchange **with regularity from time to time**, where the **quotations** of such shares or securities are based on **current transaction made in the ordinary course of business**

Annexure 2 – Meaning of quoted shares or securities as per Rule 11U

Section 56(2)(x)

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(b) any immovable property,—

(A) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(B) for a consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely:—

(i) the amount of fifty thousand rupees; and

(ii) the amount equal to ten per cent of the consideration:

Provided that where the date of agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of agreement may be taken for the purposes of this sub-clause:

Provided further that the provisions of the first proviso shall apply only in a case where the **amount of consideration referred** to therein, or a part thereof, **has been paid by way of an account payee cheque or an account payee bank draft** or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed²⁸, on or before the date of agreement for transfer of such immovable property: