

**NOTIFICATION NO. 264/2007, DATED 23-10-2007**

In exercise of the powers conferred by section 295 read with Explanation (i) to clause (ba) of sub-section (1) of section 115WC of the Income-tax Act, 1961 (43 of 1961), read with section 22 of the General Clauses Act, 1897 (10 of 1897), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. (1) These rules may be called the Income-tax (Twelfth Amendment) Rules, 2007.  
(2) They shall come into force with effect from the 1<sup>st</sup> day of April, 2008.
2. In the Income-tax Rules, 1962, after Part VII B, the following shall be inserted, namely:-

**“PART VII C**

**FRINGE BENEFIT TAX**

**Valuation of specified security or sweat equity share being a share in the company.**

**40C.** (1) For the purposes of clause (ba) of sub-section (1) of section 115WC, the fair market value of any specified security or sweat equity share, being an equity share in a company, on the date on which the option vests with the employee, shall be determined in accordance with the provisions of sub-rule (2) or sub-rule (3).

(2) In a case where, on the date of the vesting of the option, the share in the company is listed on a recognized stock exchange, the fair market value shall be the average of the opening price and closing price of the share on that date on the said stock exchange:

Provided that where, on the date of vesting of the option, the share is listed on more than one recognized stock exchanges, the fair market value shall be the average of opening price and closing price of the share on the recognised stock exchange which records the highest volume of trading in the share:

Provided further that where, on the date of vesting of the option, there is no trading in the share on any recognized stock exchange, the fair market value shall be -

(a) the closing price of the share on any recognised stock exchange on a date closest to the date of vesting of the option and immediately preceding such date; or

(b) the closing price of the share on a recognised stock exchange, which records the highest volume of trading in such share, if the closing price, as on the date closest to the date of vesting of the option and immediately preceding such date, is recorded on more than one recognized stock exchange.

(3) In a case where, on the date of vesting of the option, the share in the company is not listed on a recognized stock exchange, the fair market value shall be such value of the share in the company as determined by a merchant banker on the specified date.

(4) For the purpose of this rule,-

(a) (a) “closing price” of a share on a recognised stock exchange on a date shall be the price of the last settlement on such date on such stock exchange:

Provided that where the stock exchange quotes both “buy” and “sell” prices, the closing price shall be the “sell” price of the last settlement.

(b) (b) "merchant banker" means category I merchant banker registered with Security and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(c) (c) "opening price" of a share on a recognised stock exchange on a date shall be the price of the first settlement on such date on such stock exchange:

Provided that where the stock exchange quotes both "buy" and "sell" prices, the opening price shall be the "sell" price of the first settlement.

(d) (d) "recognised stock exchange" shall have the same meaning assigned to it in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(e) (e) "specified date" means,-

(i) (i) the date of vesting of the option; or

(ii)(ii) any date earlier than the date of the vesting of the option, not being a date which is more than 180 days earlier than the date of the vesting;

(f) "equity share" shall have the meaning assigned to it in section 85 of the Companies Act, 1956 (1 of 1956).

[F.No.142/25/2007-TPL]

### EXPLANATORY MEMORANDUM

The Finance Act, 2007 amended the provisions of the Income-tax Act to provide that employers will be liable to pay fringe benefit tax on the value of ESOPs granted to employees as and when the ESOPs were allotted or transferred to the employees. The value of ESOPs for the purposes of levy of FBT shall be the fair market value of the ESOPs on the date of vesting of the options as reduced by the amount actually paid, or recovered from, the employee.

Explanation (i) to clause (ba) of sub-section (1) of section 115WC of the Income-tax Act defines "fair market value" to mean the value determined in accordance with the method as may be prescribed by the Board. Accordingly, a new Rule 40C has been inserted in the Income-tax Rules for this purpose.

The new Rule 40C will take effect from the 1<sup>st</sup> April, 2008 and will, accordingly, apply in relation to the assessment year 2008-2009 and subsequent years.

SOBHAN KAR, Under Secretary