

**Notification u/s 112A(4) identifying non-STT acquisitions of equity shares, which shall be eligible for 10% tax rate on LTCG on sale
(Notification No. 60/2018 dated 01.10.2018)**

Background

LTCG¹ on sale of listed equity shares / equity oriented MFs on which STT² is paid (“Specified Assets”), which were hitherto exempt u/s 10(38) of the ITA³, are now taxed u/s 112A at 10%, if LTCG exceeds Rs. 100,000/-. Section 112A is applicable from AY 2019-20 onwards.

Section 112A(iii) lays down that the concessional rate of 10% shall apply only where STT has been paid on acquisition of such Specified Assets. Further, Section 112A(4) empowers the Central Government to specify the nature of acquisitions of equity shares, where the LTCG on sale of such listed equity shares shall be eligible for the concessional rate of 10% even though STT has not been paid at the time of their acquisitions.

Synopsis of the Notification

In exercise of powers u/s. 112A(4), the Central Government has issued Notification No. 60/2018 dated 01.10.2018. Salient features of this notification are:

1. This notification is similar to notification dated 05.06.2017 issued u/s. 10(38) identifying non-STT based acquisition of equity shares that were eligible for exemption under that section.
2. As per Notification No. 60, following acquisitions of equity shares, though not subject to STT, shall be eligible for 10% tax rate u/s. 112A:
 - a. Acquisition of shares prior to 01.10.2004;
 - b. Acquisition of shares on or after 01.10.2004, which are not chargeable to STT, except in the following cases:

¹ Long Term Capital Gains

² Securities Transaction Tax

³ Income tax Act, 1961

- i. In case of acquisition through preferential issue of existing listed equity shares of a company whose equity shares are not frequently traded in the recognised stock exchanges
 - ii. In case where the transaction of acquisition of existing listed equity share in a company is not entered through a recognised stock exchange in India.
 - iii. In case of acquisition of equity share of a company during the period beginning from the date on which the company is delisted from the recognised stock exchange and ending on the date immediately preceding the date on which the company is again listed.
3. For the ineligible transactions identified in clauses (i) and (ii) above, further exceptions have been provided in the Notification, such as acquisition under a scheme approved by SEBI, SC, HC or NCLT, acquisition by a non-resident / venture capital funds under specified schemes, acquisition under ESOP schemes, acquisition under slump sale as per section 50B of ITA, etc. Please see the Notification attached herewith for the detailed list of said exceptions.

Annexure: Notification No. 60/2018 dated 01.10.2018

MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF DIRECT TAXES)

NOTIFICATION

New Delhi, the 1st October, 2018

INCOME-TAX

S.O. 5054(E).—In exercise of the powers conferred by sub-section (4) of section 112A of the Income-tax Act, 1961 (43 of 1961) hereinafter referred to as the Income-tax Act, the Central Government, with a view to specify the nature of acquisition in respect of which the provision of sub-clause (a) of clause (iii) of sub-section (1) of section 112A of the Income-tax Act shall not apply, hereby notifies the transactions of acquisition of equity share entered into—

- (I) before the 1st day of October, 2004; or
- (II) on or after the 1st day of October, 2004 which are not chargeable to securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004 (23 of 2004), other than the following, namely:—

(a) where acquisition of existing listed equity share in a company whose equity shares are not frequently traded in a recognised stock exchange of India is made through a preferential issue:

Provided that nothing contained in this clause shall apply to acquisition of listed equity shares in a company;—

- (i) which has been approved by the Supreme Court, High Court, National Company Law Tribunal, Securities and Exchange Board of India or Reserve Bank of India in this behalf;
- (ii) by any non-resident in accordance with foreign direct investment guidelines issued by the Government of India;
- (iii) by an investment fund referred to in clause (a) of Explanation 1 to section 115UB of the Income-tax Act or a venture capital fund referred to in clause (23FB) of section 10 of the Income-tax Act or a Qualified Institutional Buyer; and
- (iv) through preferential issue to which the provisions of chapter VII of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 does not apply.

(b) where transaction for acquisition of existing listed equity share in a company is not entered through a recognised stock exchange in India:

Provided that nothing contained in this clause shall apply to the acquisition of listed equity shares in a company which has been made in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), and is—

- (i) through an issue of share by a company other than the issue referred to in clause (a);
- (ii) by scheduled banks, reconstruction or securitisation companies or public financial institutions during their ordinary course of business;

- (iii) approved by the Supreme Court, High Courts, National Company Law Tribunal, Securities and Exchange Board of India or Reserve Bank of India in this behalf;
- (iv) under employee stock option scheme or employee stock purchase scheme framed under the Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999;
- (v) by any non-resident in accordance with foreign direct investment guidelines of the Government of India;
- (vi) in accordance with Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011;
- (vii) from the Government;
- (viii) by an investment fund referred to in clause (a) to Explanation 1 to section 115UB of the Income-tax Act or a venture capital fund referred to in clause (23FB) of section 10 of the income-tax Act or a Qualified Institutional Buyer; and
- (ix) by mode of transfer referred to in section 47 or section 50B or sub-section (3) of section 45 or sub-section (4) of section 45 of the Income-tax Act, if the previous owner or the transferor, as the case may be, of such shares has not acquired them by any mode referred to in clause (a) or clause (b) or clause (c) [other than the transactions referred to in the proviso to clause (a) or clause (b)].

(c) acquisition of equity share of a company during the period beginning from the date on which the company is delisted from a recognised stock exchange and ending on the date immediately preceding the date on which the company is again listed on a recognised stock exchange in accordance with the Securities Contracts (Regulation) Act, 1956 read with Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules made thereunder;

Explanation.— For the purposes of this notification,—

- (a) “frequently traded shares” means shares of a company, in which the traded turnover on a recognised stock exchange during the twelve calendar months preceding the calendar month in which the acquisition and transfer is made, is at least ten per cent. of the total number of shares of such class of the company:
Provided that where the share capital of a particular class of shares of the company is not identical throughout such period, the weighted average number of total shares of such class of the company shall represent the total number of shares;
- (b) ‘listed’ means listed in a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 and the rules made thereunder;
- (c) “preferential issue” and “Qualified Institutional Buyer” shall have the meanings respectively assigned to them in sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
- (d) “public financial institution” and “scheduled bank” shall have the meanings respectively assigned to them in *Explanation* to clause (viia) of sub-section (1) of section 36 of Income-tax Act;
- (e) “recognised stock exchange” shall have the same meaning assigned to it in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956; and
- (f) “reconstruction company” and “securitisation company” shall have the meanings respectively assigned to them in sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002).

2. This notification shall come into force with effect from the 1st day of April, 2019 and shall accordingly apply in relation to the assessment year 2019-20 and subsequent assessment years.

[Notification No. 60/2018/F. No.370142/9/2017-TPL]

PRAVIN RAWAL, Director (TPL-II)