



INCOME TAX ALERT

N. A. SHAH **BULLETIN**

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N. A. SHAH ASSOCIATES LLP
Chartered Accountants



Press Release dated 03.04.2017 on taxability of non-STT paid shares

- i. The existing provision of section 10(38) of the income-tax Act, 1961 ('Act'), provides that capital gains arising on transfer of long-term capital asset, being equity share in a company or unit of an equity oriented fund, shall be exempt if the transfer is made after 01.10.2004 and is chargeable to Securities Transaction Tax ('STT').
- ii. In order to curb the practice of declaring unaccounted income as exempt and to ensure that fake transactions in equity shares do not get benefit of an exemption u/s 10(38) of the Act, Finance Act, 2017 amended to state that STT should be paid on both legs of the transaction i.e. acquisition and sale – for it to be eligible for the exemption.
- iii. The memorandum of Finance Bill, 2017 also stated that to protect genuine cases of Initial public offering ('IPO'), Follow-on public offer ('FPO'), bonus or right shares issued by a listed company, acquisition by a non-resident as per foreign direct policy ('FDI') policy, etc, where STT cannot be paid, a notification shall be issued for which above condition of chargeability to STT shall not apply.
- iv. In this connection, by way of this press release, CBDT has released a draft of notification to be issued u/s 10(38) of the Act, for stakeholders' comments to be submitted by 11.04.2017.
- v. The draft notification provides that all transactions of acquisition of equity shares entered into on or after 01.10.2004, which are not chargeable to STT, are proposed to be notified other than the following transactions:
 - Where the acquisition of listed equity share of a company (whose shares are not frequently traded on recognized stock exchange in India) is made through a preferential issue to which the provisions of Securities and Exchange Board of India ('SEBI') (Issue of Capital and Disclosure Requirements) Regulations, 2009 apply
 - Where the purchase of listed equity share is not made through a recognized stock exchange

- Where the equity share of a company is acquired between the period from when the company is delisted from the recognized stock exchange till the date on which it is again listed on a recognized stock exchange in accordance with Securities Contracts (Regulations) Act, 1956 read with SEBI Act, 1992 and any rules made thereunder.
- vi. For the purpose of this notification, "Frequently traded shares" means shares of a company, in which the traded turnover on a recognized stock exchange during the twelve calendar months preceding the calendar month in which the transfer is made, is at least ten per cent of the total number of shares of such class of the company.

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From:

N. A. Shah Associates LLP

Chartered Accountants

Address: B 41-45, Paragon Centre, Pandurang Budhkar Marg, Mumbai – 400
013.

Tel: 91-022-4073 3000, Fax: 91-022-4073 3090

E-mail Id: info@nashah.com