

CBDT issues draft for securities tax exemption

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The Central Board of Direct Taxes (CBDT) issued a draft notification specifying transactions that would not be subject to a securities transaction tax (STT) during acquisition to obtain a beneficial tax rate.

The Finance Act, 2018, withdrew an exemption under section 10(38) of the Income Tax Act, 1961 (ITA), on long-term capital gains (LTCG) arising from the transfer of listed equity shares or units of an equity oriented fund. The Finance Act, 2018, also introduced section 112A to impose LTCG tax on capital gains exceeding ₹100,000 (US\$1,500) at the rate of 10%, effective from the 2018-19 financial year.

Section 112A provides that the beneficial rate of the LTCG tax, i.e. 10%, shall be available only if the requisite STT is paid at the time of acquisition and transfer of the long-term capital asset. However, section 112A left room for the government to notify certain modes of acquisitions where the requirement to pay the STT would not apply to obtain the beneficial LTCG tax rate of 10%.

The list of transactions in the draft notification includes all transactions of acquisitions that are not chargeable to STT, except: (i) preferential issue of shares that are not frequently traded on a stock exchange (excluding categories such as acquisitions that have been approved by the Supreme Court/ high court/Securities and Exchange Board of India/Reserve Bank of India (RBI), acquisitions by a non-resident in accordance with foreign direct investment guidelines introduced by the Indian government etc.); (ii) off-market acquisition of listed shares (excluding categories such as such as acquisitions under the employee stock option plans scheme, acquisition of shares approved by the Supreme Court/ high court/National Company Law Tribunal/RBI, acquisitions by certain kinds of domestic and international investment funds including category I and category II alternative investment funds, acquisitions by mode of transfer referred to in section 47 or 50B of the ITA, etc.); and (iii) acquisition of delisted shares.

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