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TAX FLASH NEWS

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CBDT issues FAQs on new taxation regime of long-term capital gains proposed in Finance Bill, 2018

The Finance Bill, 2018 proposed to withdraw the exemption under Section 10 (38)[1] of the Income-tax Act, 1961 (the Act) and to introduce a new Section 112A to provide that Long Term Capital Gain(s) (LTCG) arising from the transfer of long-term capital asset exceeding INR1 lakh will be taxed at a concessional rate of 10 per cent.

Since the introduction of the Finance Bill, 2018 on 1 February 2018, several queries have been raised on various issues relating to the proposed new regime for the taxation of LTCG.

The Central Board of Direct Taxes (CBDT) has issued responses to these queries in the form of 24 Frequently Asked Questions (FAQs)[2] which are discussed as follows:

FAQ No.	Questions	Clarification/response
1.	What is the meaning of LTCG under the new tax regime for long-term capital gains?	LTCG means gains arising from the transfer of the long-term capital asset. The Finance Bill, 2018 proposes to provide for a new long-term capital gains tax regime for the following assets– • Equity shares in a company listed on a recognised stock exchange; • Unit of an equity oriented fund; and • Unit of a business trust. The proposed regime applies to the above assets if the assets are held for a minimum period of 12 months from the date of acquisition; and the Securities Transaction Tax (STT) is paid at the time of transfer. However, in the case of equity shares acquired after 1 October 2004, STT is required to be paid even at the time of acquisition (subject to notified exemptions).
2.	What are the modes of acquisition of equity shares which are proposed to be exempted from the condition of payment of STT?	The Central Government had exempted certain modes of acquisition of equity shares for the purposes of Section 10 (38) of the Act vide Notification no. 43/2017 dated 5 June 2017. This notification is proposed to be reiterated for the purposes of clause 31 of the Finance Bill, 2018 after its enactment.
3.	What is the point of chargeability of the tax?	The tax will be levied only upon transfer of the long-term capital asset on or after 1 April 2018, as defined in Section 2(47) of the Act.
4.	What is the method for calculation of long-term capital gains?	The LTCG will be computed by deducting the cost of acquisition from the full value of consideration on transfer of the long-term capital asset.
5.	How do we determine the cost of acquisition for assets acquired on or before 31 January 2018?	The cost of acquisition for the long-term capital asset acquired on or before 31 January 2018 will be the actual cost.

[1] Under the existing regime, Long-term capital gains arising from transfer of long-term capital assets, being equity shares of a company or a unit of equity oriented fund or a unit of business trust, is exempt from income tax under Section 10(38) of the Income-tax Act, 1961. However, transactions in such long-term capital assets are liable to Securities Transaction Tax

[2] F. No. 370149/20/2018-TPL, dated 4 February 2018

		However, if the actual cost is less than the Fair Market Value (FMV) of such asset as on 31 January 2018, the FMV will be deemed to be the cost of acquisition. Further, if the full value of consideration on transfer is less than the FMV, then such full value of consideration or the actual cost, whichever is higher, will be deemed to be the cost of acquisition.
6.	How will the FMV be determined?	In case of a listed equity share or unit, the FMV means the highest price of such share or unit quoted on a recognised stock exchange on 31 January 2018. However, if there is no trading on 31 January 2018, the FMV will be the highest price quoted on a date immediately preceding 31 January 2018, on which it has been traded. In the case of the unlisted unit, the net asset value of such unit on 31 January 2018 will be the FMV.
7.	Please provide illustrations for computing long-term capital gains in different scenarios, in the light of answers to questions 5 and 6.	The computation of LTCG in different scenarios is illustrated in the Annexure below.
8.	Whether the cost of acquisition will be inflation indexed?	As per Clause 31(5) of the Finance Bill, 2018 the benefit of inflation indexation of the cost of acquisition would not be available for computing LTCG under the new tax regime.
9.	What is the date of commencement of the proposed new tax regime?	The proposed new tax regime will apply to transfer made on or after 1 April 2018. The existing regime providing an exemption under Section 10(38) of the Act will continue to be available for transfer made on or before 31 March 2018.
10.	What will be the tax treatment of accrued gains up to 31 January 2018?	As the fair market value on 31 January 2018 will be taken as the cost of acquisition (except in some typical situations covered in the Annexure below), the gains accrued up to 31 January 2018 will continue to be exempt.
11.	What will be the tax treatment of the transfer of share or unit between 1 February 2018 and 31 March 2018?	The new tax regime will be applicable to transfer made on or after 1 April 2018. Thus, the transfer made between 1 February 2018 and 31 March 2018 will be eligible for exemption under Section 10(38) of the Act.
12.	What will be the tax treatment of transfer made on or after 1 April 2018?	The LTCG exceeding INR1 lakh arising from the transfer of these assets made on after 1 April 2018 will be taxed at 10 per cent. However, there will be no tax on gains accrued up to 31 January 2018.
13.	What is the date from which the holding period will be counted?	The holding period will be counted from the date of acquisition.
14.	Whether tax will be deducted at source in case of gains by the resident tax payer?	There will be no deduction of tax at source from the payment of LTCG to a resident tax payer.
15.	Whether tax will be deducted at source in case of payment of LTCG by non-resident tax payer [other than a Foreign Institutional Investor[3] (FII)]?	Ordinarily, under section 195 of the Act, the tax is required to be deducted on payments made to non-residents, at the prescribed rates[4]. In terms of the said provisions, tax at the rate of 10 per cent will be deducted from payment of LTCG to a non-resident tax payer (other than FII). The capital gains will be required to be computed in accordance with clause 31 of the Finance Bill, 2018.
16.	Whether tax will be deducted at source in	There will be no deduction of tax at source from payment of LTCG to FII in view of the Section 196D(2) of the Act.

[3] The Foreign Portfolio Investor (FPI) regulations replaces the old FII regime providing that the overseas investors wanting to enter the Indian market is required to be registered under the FPI Regulations

[4] Rates are prescribed under Part-II of the First Schedule to the Finance Act. The rate of deduction in the case of capital gains is also provided therein.

	case of payment of LTCG by FIIs?	
17.	How will the gains in the case of FIIs be determined?	The LTCG in case of FIIs will be determined in the same manner in the case of resident tax payers.
18.	What will be the treatment of the gains accrued up to 31 January 2018 in the case of FIIs?	In case of FIIs also, there will be no tax on gains accrued up to 31 January 2018.
19.	What will be the tax treatment of the transfer of share or unit between 1 February 2018 and 31 March 2018 in the case of FIIs?	In case of FIIs also, the transfer made between 1 February 2018 and 31 March 2018 will be eligible for exemption under Section 10(38) of the Act.
20.	What will be the tax treatment of transfer made on or after 1 April 2018 in case of FIIs?	In case of FIIs also, the LTCG exceeding INR1 lakh arising from the transfer of these assets made on after 1 April 2018 will be taxed at 10 per cent. However, there will be no tax on gains accrued up to 31 January 2018.
21.	What will be the cost of acquisition in the case of bonus shares acquired before 1 February 2018?	The cost of acquisition of bonus shares acquired before 31 January 2018 will be determined as per Clause 31(6) of the Finance Bill, 2018. Therefore, the FMV of the bonus shares as on 31 January 2018 will be taken as the cost of acquisition (except in some typical situations explained in the Annexure), and hence, the gains accrued up to 31 January 2018 will continue to be exempt.
22.	What will be the cost of acquisition in the case of a right share acquired before 1 February 2018?	The cost of acquisition of right share acquired before 31 January 2018 will be determined as per Clause 31(6) of the Finance Bill, 2018. Therefore, the FMV of right shares as on 31 January 2018 will be taken as the cost of acquisition (except in some typical situations explained in the Annexure), and hence, the gains accrued up to 31 January 2018 will continue to be exempt.
23.	What will be the treatment of long-term capital loss (LTCL) arising from a transfer made between 1 February 2018 and 31 March 2018?	As the exemption from LTCG under Section 10(38) of the Act will be available for transfer made between 1 February 2018 and 31 March 2018, the long-term capital loss arising during this period will not be allowed to be set-off or carried forward.
24.	What will be the treatment of long-term capital loss arising from a transfer made on or after 1 April 2018?	Long-term capital loss arising from a transfer made on or after 1 April 2018 will be allowed to be set off and carried forward in accordance with the existing provisions of the Act. Therefore, it can be set off against any other LTCG, and unabsorbed loss can be carried forward to subsequent eight years for set off against LTCG.

Annexure

Scenarios	**Actual cost of shares acquired before 31 January 2018 (A)**	**FMV of such share as on 31 January 2018 (B)**	**Sale value of such share on or after 1 April 2018 (C)**	**Cost of acquisition is to be higher of:** • **A ; and** • **Lower of** - **B** - **C** **(D)**	**LTCG/LTCL (C) – (D)**
1	100	200	250	200	50
2	100	200	150	150	0
3	100	50	150	100	50
4	100	200	50	100	(50)

Our comments

While the Finance Bill, 2018 introduced a new regime for the taxation of LTCG on the specified class of assets, there has been a lot of ambiguity surrounding applicability of this new regime.

Instantly, CBDT has come out with a set of FAQs clarifying issues raised by various stakeholders. CBDT, *inter alia*, clarified that the grandfathering provisions with respect to LTCG would also be applicable to FII and the capital gains will be determined in the same manner in the case of resident taxpayers. The provisions relating to LTCG tax will be applicable from 1 April 2018 (FY 2018-19), and therefore the LTCG from the transfer between 1 February 2018 and 31 March 2018 will be exempt under the existing provisions of the Act. It has also been clarified that the holding period for computation of LTCG will be counted from the date of acquisition. Further FAQs provide clarity on applicability of TDS provisions on new LTCG regime vis-à-vis resident as well as non-resident taxpayers. It also deals with set-off and carry forward of STCL as well as tax treatment of bonus and right shares.

Though FAQs clarify various issues, non-availability of indexation benefit is in itself a blow to the investor community who is facing inflationary trends in the economy, and will have to do without the benefit of the cost inflation index. Further, since the STT was introduced as an alternative to LTCG tax on equities, retaining the STT is a big concern. The new LTCG tax regime provides threshold of INR one lakh. However, there is no clarity that while calculating tax on balance total income whether such amount of INR one lakh is to be excluded.

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