

Draft of Notification to be issued under section 112A(4) of the Income-tax Act, 1961

S.O. ..(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 all 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 of India:

Provided that nothing contained in this clause shall apply to the following acquisition of listed equity shares in a company made in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), if applicable,

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

- (iii) acquisition which has been 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) acquisition 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) acquisition by any non-resident in accordance with foreign direct investment guidelines of the Government of India;
- (vi) where acquisition of shares of company is made under Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011;
- (vii) acquisition from the Government;
- (viii) acquisition 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) acquisition by mode of transfer referred to in sections 47 or 50B of the Income-tax Act, if the previous owner 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 there under;

*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 there under.

(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(via) 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.

(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 to assessment year 2019-20 and subsequent assessment years.