



# Bombay Chartered Accountants' Society



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10<sup>th</sup> April, 2017

The Director of Income-tax  
TPL-2,  
Ministry of Finance,  
New Delhi.

Dear Sir,

Ref.: Suggestions in respect of **Draft Notification issued for public comments**

This is with reference to the draft of the notification to be issued under third proviso to section 10(38). Our suggestions in this regard are given below.

At the outset, we once again reiterate our fullest support to the Government of India in its efforts to curb misuse of the law by unscrupulous elements and compliment the Ministry of Finance for constantly bringing out amendments aimed at preventing such misuse. The “penny stock” scam that a few people have perpetrated needs to be dealt with in the strictest possible manner and the guilty must be brought to book so that an example is set for others.

The draft of the notification to be issued under third proviso to section 10(38) is, in principle, a step in the right direction. We would like to suggest a few changes to the same in order to bring greater clarity and prevent unnecessary and unintended harassment to genuine investors.

1. While the press release does mention, inter alia “acquisition by non-resident in accordance with FDI policy of the Government” to be one of the genuine cases which needs to be protected, clause (b) of the draft notification seems to indicate that acquisition by a non-resident, where transaction for purchase of listed equity share in a company is not entered through a recognised stock exchange, will not be entitled to exemption u/s. 10(38).

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**Suggestion:**

Accordingly, it needs to be clarified that condition of applicability of STT in respect of transaction of acquisition shall not be applicable to various genuine transaction of foreign investment through a recognized and approved regulatory mechanism (viz FDI by non-resident investors, by SEBI registered Foreign Venture Capital Investors, Alternative Investment Funds, Qualified Institutions Placement etc).

2. Under clause (b), the intention of the Legislation seems to capture purchase of existing shares of listed securities done off-market and not issue of new shares by a SEBI recognized mechanism (IPOs, FPOs, bonus issue, conversion etc).

**Suggestion:**

The language of clause (b) needs to be suitably amended to reflect this intention and meaning of the term “purchase” needs to be clarified.

The clause (b) should contain reference to the shares referred to in clause (a) i.e. only those shares which are not “frequently” traded should be covered in clause (b). This would automatically exclude all other forms of acquisition of shares and would take care of the present problem.

3. Since the intention is to exempt genuine investments from the provisions of the amendment, it is suggested that the following transactions need to be exempted from the condition of applicability of STT on purchase/acquisition:
  - Shares issued pursuant to ESOPs implemented by listed companies;
  - Shares offered to Employees under the Employee Offer for Sale;
  - Third party off market acquisition of shares of listed company by strategic investors, by way of purchase, exchange (e.g. against business transfer), group restructuring;
  - Initial Public Offer of shares - when private company goes public or Follow-on Public Offer of shares;
  - Issue of shares against warrants;
  - Issue of shares on settlement of dues under a scheme of debt restructuring; and
  - Inter-se transfer of equity shares between promoters

4. The definition of “frequently traded shares” as provided in the Explanation is such that a common man may not be able to find out easily whether the shares acquired by him are frequently traded or not.

**Suggestion:**

Necessary amendments may be made in the SEBI Issue of Capital and Disclosures Requirements Regulations, 2009 and Companies Act, 2013 to provide that at the time of preferential issue of shares, every company should mandatorily mention in the offer document and/or any other communication that is sent to prospective investors as to whether its shares are “frequently traded” or not.

We request you to kindly take into considerations our suggestions while finalising the notification to be issued.

Thanking you,

For Bombay Chartered Accountants' Society



Chetan Shah  
President



Ameet Patel  
Chairman - Taxation Committee