

CBDT's Final Notification on exemption from long-term capital gains in respect of certain modes of acquisitions of listed shares including that under an Equity Based Compensation Plan

1. This is further to our newsletter released in May 2017 in respect of Finance Ministry's draft Notification vide Press Release dated April 03, 2017 seeking public comments on certain modes/ transactions of acquisition of shares specified therein as being not chargeable to STT, but would still qualify for exemption under Section 10(38) of the Income Tax Act, 1961.
2. We had made a written representation before the Finance Ministry justifying for a specific mention of acquisition of shares under an equity based compensation plan of a listed company to exempt under Section 10(38), among other qualifying modes of acquisition; with a view to avoid confusion and advance compliance by a large mass of employees of listed companies.
3. The Finance Ministry (Central of Board of Direct Taxes) came out with a Notification ("Final Notification") dated June 05, 2017, clarifying that acquisition of shares under a share based employee benefit plan framed under relevant Regulation issued by Securities and Exchange Board of India, has been specifically exempted.
4. Please note that the subject matter of the Final Notification is to qualify or disqualify certain modes of acquisition of existing listed shares only and it does not attempt to deal with shares which were acquired while shares were not listed (except the case of a delisted company). In our view, shares acquired under a pre-IPO equity based compensation plan are not subject matter of this Notification and as such continue to get exemption.

