



### CENTRAL GOVERNMENT ISSUES NOTIFICATION UNDER SEC. 10(38) OF THE INCOME-TAX ACT, 1961

**CBDT Notification No.43/2017 dt. 5th June 2017**

#### **Background**

The Finance Act, 2017 amended section 10(38) of the Income-tax Act, 1961 (Act) stating that long-term capital gains from transfer of listed equity shares acquired on or after 1<sup>st</sup> October 2004, would be exempt from tax under section 10(38) of the Act only if Securities Transaction Tax (STT) was paid at the time of acquisition of such shares. However, with the intent to continue the exemption in respect of genuine cases, it was proposed to notify transactions of acquisition, for which the pre-condition of chargeability to STT on acquisition would not be applicable.

CBDT issues final notification u/s 10(38) providing for exceptions to long term capital gains exemption where STT is not paid; The final notification provides that the condition of chargeability to STT shall not apply to all transactions of acquisitions of equity shares entered into on or after the first day of October, 2004 **other than the three 'specified transactions'** (*mentioned below*); The final notification further provides that capital gains exemption u/s 10(38) shall be available in case of share acquisition (without STT) made by non-residents / venture capital funds under the specified situations, for share acquisition made under ESOP or approved M&A schemes and the SEBI guidelines; The notification also extends the relief to share acquisition 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; The notification shall come into force with effect from **April 1, 2018** and shall accordingly apply to AY 2018-19 onwards (**i.e., F.Y 2017-18**).

#### **Specified Transactions: -**

- Where acquisition of existing listed equity shares in a company whose equity shares are not frequently traded in a recognised stock exchange of India is made through a preferential issue.
- Where transaction for acquisition of existing listed equity share in a company is not entered through a recognised stock exchange of India.
- 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.