

NOTE ON TAXATION OF BUY BACK OF LISTED EQUITY SHARES

GENERAL

The Indian tax year runs from April 1 to March 31 of subsequent year. The basis of charge of Indian income-tax depends upon the residential status of the taxpayer during a tax year. A person who is a tax resident of India is liable to taxation in India on his worldwide income, subject to certain prescribed tax exemptions provided under the Income Tax Act, 2025 ("the Act").

A person who is treated as a non-resident for Indian tax purposes is generally liable to tax in India only on his / her Indian sourced income or income received by such person in India.

In case of shares of a company, the source of income from shares would depend on the "situs" of the shares. As per the Act and judicial precedents, generally the "situs" of the shares is where company is "incorporated" and where its shares can be transferred. Accordingly, since the Company is incorporated in India, the shares of the Company would be "situated" in India and any gains arising to a non-resident on transfer of such shares should be taxable in India under the Act subject to any specific exemption in this regard. Further, the non-resident can avail the beneficial tax treatment prescribed under the Double Taxation Avoidance Agreement ("DTAA"), as modified by the Multilateral Instrument ("MLI"), if the same is applicable to the relevant DTAA between India and the respective country of which the said shareholder is tax resident. The above benefit may be available subject to satisfying relevant conditions prescribed under the Act including but not limited to availability of Tax Residency Certificate, non-applicability of General Anti-Avoidance Rule ("GAAR") and providing and maintaining necessary information and documents as prescribed under the Act as well as satisfying the relevant conditions under the respective DTAA including anti-abuse measures under the MLI, if applicable. The Act also provides for different income-tax rates applicable to the income arising from the buyback of shares, based on the residential status, classification of the shareholder, nature of the income earned, etc. The summary of income tax implications on buyback of listed equity shares on the recognized stock exchange in India is set out below. All references to equity shares herein refer to listed equity shares unless stated otherwise.

CLASSIFICATION OF SHAREHOLDERS

Shareholders must confirm their residential status as per section 6 of the Act and the provisions of the relevant DTAA, if applicable. Shareholders are broadly classified as:

1. Resident Shareholders:

- Individuals
- Hindu Undivided Family (HUF)
- Association of Persons (AOP) and Body of Individuals (BOI)
- Company

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- Firm (including Limited Liability Partnership)
- Local authority
- Artificial Juridical Person

2. Non-Resident Shareholder:

- Non-Resident Indians (NRIs)
- Foreign Institutional Investors (FIIs)/ Foreign Portfolio Investors (FPIs)
- Others:
 - Company
 - Other than Company

3. TAXATION ON BUYBACK OF SHARES

3.1 As per section 69(1) of the Act, if a shareholder receives any consideration from any company for the buy-back of its own shares in accordance with the provisions of section 68 of the Companies Act, 2013, then subject to the provisions of section 72 of the Act, the difference between the cost of acquisition and the buy-back consideration so received, shall be deemed to be the “Capital Gains” arising to such shareholder in the year in which the company buy-backs the shares.

The holding period of the shares determines the type of capital gain. For listed shares, capital gain shall be considered as short-term capital gain if shares are held upto a period of 12 months before transfer (viz. buy-back), otherwise it will be a long-term capital gain.

3.2 The capital gain tax rates applicable to listed equity shares for **shareholders other than promoters** are summarized below:

Nature of capital gains	Tax Rates
Short-term capital gains arising from the transfer of listed shares referred to in section 196 of the Act	20% plus applicable surcharge and cess
Long-term capital gains arising from the transfer of listed shares referred to in section 198 of the Act	12.5%* plus applicable surcharge and cess

** The tax rate is applicable on long term capital gains arising from transfer of listed securities, in excess of Rs. 1.25 lakhs in a tax year.*

3.3 In terms of section 69(2) of the Act, capital gains referred to hereinabove i.e. on account of buy-back, arising to a **shareholder who is a promoter of the company**, the income-tax payable by such promoter on such capital gains shall be—

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Nature of capital gains	Tax rate where the promoter is a domestic company	Tax rate where the promoter is other than a domestic company
Short-term capital gains arising from the transfer of listed shares referred to in section 196 of the Act	22% plus applicable surcharge and cess	30% plus applicable surcharge and cess
Long-term capital gains arising from the transfer of listed shares referred to in section 198 of the Act	22%* plus applicable surcharge and cess	30%* plus applicable surcharge and cess

* The tax rate is applicable on long term capital gains arising from transfer of listed securities, in excess of Rs. 1.25 lakhs in a tax year.

In the case of a company whose shares are listed on a recognized stock exchange in India, 'promoter' shall have the same meaning as assigned to it in regulation 2(k) of the Securities and Exchange Board of India (Buy-Back of Securities) Regulations, 2018 made under the Securities and Exchange Board of India Act, 1992;

3.4 The rates of surcharge for different categories of shareholders are as under:

Individuals/HUFs	Domestic Company [#]	Foreign Company
<ul style="list-style-type: none"> • 10% of tax if total income exceeds Rs. 50 lakhs but upto Rs. 1 crore • 15% of tax if total income exceeds Rs. 1 crore 	<ul style="list-style-type: none"> • 7% of tax if total income exceeds Rs. 1 crore but upto Rs. 10 crores • 12% of tax if total income exceeds Rs. 10 crores 	<ul style="list-style-type: none"> • 2% of tax if total income exceeds Rs. 1 crore but upto Rs. 10 crores • 5% of tax if total income exceeds Rs. 10 crores

[#]If domestic company opts for new taxation regime under section 200 or 201 of the Act, maximum surcharge of 10% of tax (instead of 7% or 12%) is added to the tax liability.

In addition, Health and Education Cess of 4% of total tax and surcharge is levied in order to arrive at total tax liability.

3.5 Tax rates in respect of incomes, including capital gains, of **Foreign Institutional Investors ("FIIs")** is given in section 210(1) of the Act. Such capital gains are taxable at the rates specified in the above tables depending on their classification. Taxation of **specified funds** are governed by the provisions section 210(2) and 210(3) of the Act.

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3.6 Income of certain entities is exempt under Section 11 of the Act, including the following:

- Recognised mutual fund;
- Alternative Investment Fund (AIF) Category -I or Category – II established in India;
- New Pension System (NPS) Trust;
- Corporation established by or under a Central Act;
- Any recognised provident fund;
- Approved gratuity fund or
- Approved superannuation fund

Since the income of these entities is exempt, they are not required to pay tax on capital gains arising from the buy-back of shares

4. TAX DEDUCTION AT SOURCE (“TDS”)

4.1 Resident Shareholders:

The gains on buyback of shares shall be treated as Capital Gains in the hand of the resident shareholders. The Company is not required to deduct any tax at source on the payment of buyback consideration to resident shareholders (whether or not characterized as promoters).

4.2 Non-Resident Shareholders:

The Company is required to deduct tax at source on the buy-back consideration paid/ payable to non-residents **other than FIIs** in terms of section 393(2) read with 393(4) of the Act, if such payment is chargeable to tax in India under the provisions of the Act, at the time of payment or credit whichever is earlier, at the rates specified below subject to relief under applicable DTAA.

The applicable tax rates for deducting TDS are as under:

S. No.	Income	Rates for non-resident non-promoters	Rates for non-resident promoters
1	Short term Capital gain referred in section 196 arising from the transfer of such securities	20%	30%
2	Long term Capital gain referred in section 197 or section 198 arising from the transfer of such securities	12.50%	30%

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Following surcharge rates shall also be considered for computing rates for deducting TDS:

Individuals	Foreign Company
<ul style="list-style-type: none">• 10% of tax if total income exceeds Rs. 50 lakhs but upto Rs. 1 crore• 15% of tax if total income exceeds Rs. 1 crore	<ul style="list-style-type: none">• 2% of tax if total income exceeds Rs. 1 crore but upto Rs. 10 crores• 5% of tax if total income exceeds Rs. 10 crores

In addition to the above tax rates and surcharge, Health and Education Cess of 4% of total tax and surcharge is added in order to arrive at effective rate for deducting TDS.

Non-resident shareholders tendering their shares for buyback must also enclose evidence about the date of acquisition of such shares as well as the cost of acquisition of shares so that the Company may determine the gains as well as whether the capital gains is long-term capital gains or short-term capital gains. The details must be provided separately for each purchase transaction, capturing the distinct date of acquisition and corresponding cost. Similar date-wise listing must be provided for bonus shares (if any), capturing the date of credit. The said details are required to be shared in the format enclosed as **Annexure 1**. Shareholders are required to fill all the mandatory fields in the said declaration and furnish within the timeline mentioned above. Further, it is suggested for the shareholders to provide for the declarations in system typed format as against handwritten for ease of verification and processing.

In case such evidence is not provided or where the evidence is not satisfactory in the opinion of the Company, it reserves the right to consider the entire gross consideration as taxable income, presume it as short-term capital gains, and deduct withholding tax at the highest rate of deduction of 20% (plus, applicable surcharge and cess as notified). In such a scenario, the Company shall not be responsible for any excess tax deducted, and any refund of excess tax must be claimed directly by the shareholder from the Indian Income tax authorities.

Where a shareholder furnishes a certificate under section 395(1) or 395(6) of the Act, issued by the Indian Income tax authorities, specifying lower/ nil rate, tax would be withheld at such rate mentioned in the certificate.

Section 397 of the Act provides that where non-resident shareholder does not provide a valid PAN, the tax is required to be deducted at higher of rate specified in above tables or 20% plus applicable surcharge and cess.

Kindly note that extending the benefit of tax treaty would depend on the documents submitted. Members are requested to submit relevant documents, including those specified below in accordance with the provisions of the Act. Non-resident shareholders can avail the provisions of the relevant tax treaty provided they satisfy the conditions such as non-applicability of GAAR, read with MLI, between India and the country of tax residence of the shareholders, if such tax treaty has beneficial provisions with respect to

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taxation of buy back consideration. For this purpose, non-resident shareholders will have to provide prescribed documents including:

- Copy of the PAN card allotted by the Indian income tax authorities duly attested by the shareholders or details as prescribed rule 217 under the Income-tax Rules, 2026 in absence of PAN Card.
- Copy of the Tax Residency Certificate for financial year 2026-27 obtained from the revenue or tax authorities of the country of tax residence, duly attested by shareholders/authorized signatory.
- Electronic Form 41 filed and downloaded electronically through the e-filing portal of the income tax website at <https://www.incometax.gov.in/iec/foportal/>.
- Self-declaration by the shareholders of having no permanent establishment in India in accordance with the applicable tax treaty (in the format enclosed as **Annexure 2**).
- Self-declaration of beneficial ownership of equity shares by the non-resident shareholder (in the format enclosed as **Annexure 2**).
- Self-declaration of fulfilling all conditions of tax treaty for being eligible to claim benefit of the tax treaty (DTAA) read with Multilateral Instrument (MLI) (in the format enclosed as **Annexure 2**).
- Any other documents as prescribed under the Act for lower withholding of taxes, if applicable, duly attested by the shareholders.

4.3 Foreign Institutions Investors

According to the provisions of section 393(4) of the Act, no tax is required to be deducted at source on income by way of capital gains arising from the transfer of securities referred to in section 210 of the Act, if it is payable to FIIs.

Thus, if an investor provides a valid certificate of being an FII, no TDS is required to be deducted. However, if such certificate is not provided by the investor, TDS is required to be deducted at the same rates applicable for the non-resident shareholders.

SECURITIES TRANSACTION TAX (“STT”)

Since the buyback of shares shall take place through the settlement mechanism of the Stock Exchange, Securities Transaction Tax at 0.10% of the value of the transaction will be applicable.

CAVEAT

The summary of the tax considerations as above is based on the current provisions of the tax laws of India which are subject to change or modification by subsequent legislative, regulatory, administrative or judicial decisions. The note sets out the provisions of law in a summary manner only and does not purport to be a complete analysis or listing of all potential tax consequences of the disposal of equity shares. This note is neither binding on any regulators nor can there be any assurance that they will not take a position contrary to the comments mentioned herein. There can be no liability on the company if any action is taken

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by the shareholder solely based on this tax summary. In view of the specific nature of tax consequences, shareholders who are not tax residents of India are required to consult their tax advisors for the applicable tax and the appropriate course of action that they should take considering the provisions of the relevant country or state tax law and provisions of DTAA where applicable.