



## 1. NOTE ON TAXATION

THE SUMMARY OF THE INCOME-TAX CONSIDERATION IN THIS SECTION ARE BASED ON THE CURRENT PROVISIONS OF THE TAX LAWS OF INDIA AND THE REGULATIONS THEREUNDER, THE JUDICIAL AND THE ADMINISTRATIVE INTERPRETATIONS THEREOF, WHICH ARE SUBJECT TO CHANGE OR MODIFICATION BY SUBSEQUENT LEGISLATIVE, REGULATORY, ADMINISTRATIVE OR JUDICIAL DECISIONS. ANY SUCH CHANGES COULD HAVE DIFFERENT TAX IMPLICATIONS. IN VIEW OF THE PARTICULARISED NATURE OF TAX CONSEQUENCES, SHAREHOLDERS ARE REQUIRED TO CONSULT THEIR TAX ADVISORS FOR THE APPLICABLE TAX PROVISIONS INCLUDING THE TREATMENT THAT MAY BE GIVEN BY THEIR RESPECTIVE TAX OFFICERS IN THEIR CASE, AND THE APPROPRIATE COURSE OF ACTION THAT THEY SHOULD TAKE.

THE COMPANY DOES NOT ACCEPT ANY RESPONSIBILITY FOR THE ACCURACY OR OTHERWISE OF THIS TAX SUMMARY AND THERE CAN BE NO LIABILITY ON THE COMPANY IF ANY ACTION IS TAKEN BY THE SHAREHOLDER SOLELY BASED ON THIS TAX SUMMARY. THEREFORE, SHAREHOLDERS CANNOT RELY ON THIS ADVICE AND THE SUMMARY TAX IMPLICATIONS RELATING TO THE TREATMENT OF INCOME TAX IN THE CASE OF BUYBACK OF EQUITY SHARES LISTED ON THE STOCK EXCHANGE SET OUT BELOW SHOULD BE TREATED AS INDICATIVE AND FOR GUIDANCE PURPOSES ONLY.

- 1. GENERAL:** The Indian tax year runs from April 1 to March 31. The 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 Indian Income Tax Act, 1961 ("ITA"). 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. Certain non-resident individuals, being a citizen of India are deemed to be resident in India upon triggering of certain conditions. Deemed residents would be liable to pay tax in India only on their Indian sourced income or income from business or professional controlled 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 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 "situs" of the shares of the Company would be in India and any gains arising to a non-resident on transfer of such shares should be taxable in India under the ITA subject to any specific exemption in this regard.

A non-resident can avail the beneficial tax treatment prescribed under the relevant Double Tax 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 non-resident shareholder is tax resident subject to satisfaction of the relevant conditions including non-applicability of General Anti-Avoidance Rule ("GAAR") and providing and maintaining necessary information and documents as prescribed under the ITA as well as satisfying the relevant conditions under the respective DTAA including anti-abuse measures under the MLI, if applicable. The summary of direct tax implications on buyback of equity shares listed on the stock exchanges in India is set out below. All references to equity shares in this memorandum refer to equity shares listed on the stock exchanges in India unless stated otherwise.



2. **CLASSIFICATION OF SHAREHOLDERS:** Section 6 of the ITA, determines the residential status of an assessee. Accordingly, shareholders can be classified broadly in categories as mentioned below:

1. **Resident Shareholders being:**

- Individuals, Hindu Undivided Family (HUF), Association of Persons (AOP) and Body of Individuals (BOI), Firm, LLP
- Others (corporate bodies):
  - Company
  - Other than Company

2. **Deemed Resident Shareholder** — an individual being a citizen of India who is not liable to tax in any other country or territory by reason of domicile, residence or any other criteria of similar nature and has total income other than foreign sourced income exceeding Rs. 15 lakhs during the tax year.

3. **Non-Resident Shareholders being:**

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

3. **INCOME TAX PROVISIONS IN RESPECT OF BUY BACK OF SHARES LISTED ON THE RECOGNISED STOCK EXCHANGE**

- a) As per Section 115QA of ITA, listed companies making a public announcement of buyback of shares on or after July 5, 2019 are required to pay an additional tax @ 20%, plus surcharge @ 12% plus health & education cess @ 4% on the distributed income. Distributed income is defined under Section 115QA to include consideration paid by the company on buyback of shares as reduced by the amount which was received by the company on issue of such shares, determined in the manner specified in Rule 40BB of the Income Tax Rules, 1962.
- b) The tax on the distributed income by the company shall be treated as the final payment of tax in respect of the said income and no further credit thereof shall be claimed by the company or by any other person in respect of the amount of tax so paid.
- c) No deduction under any other provision of the ITA shall be allowed to the company or a shareholder in respect of the income which has been charged to tax.
- d) Income arising to the shareholders (whether resident or non-resident) on buyback of equity shares is exempt from tax in India under section 10(34A) of the ITA, irrespective of the characterization of the shares, i.e., whether long term or short term or held as investment or stock-in-trade. In case of Non-Resident shareholders, the same may be subject to tax in the country of residence of the shareholder as per the provisions of the tax laws of that country. The credit of tax may or may not be allowed to such non-resident shareholder to be claimed in the country of residence in respect of the buy-back tax paid by the company in view of Section 115QA (4) and (5) of the ITA. Non-Resident shareholders need to consult their tax advisors with regard to availability of such tax credit.

4. **TAX DEDUCTION AT SOURCE ("TDS"):** Since there is no provision regarding the TDS in case of buyback, company is not required to deduct any tax at source on



consideration payable to Resident shareholders. Given that income arising on account of the buy-back of shares is exempt from tax under Section 10(34A) of ITA, the same would not be subject to tax deduction at source for Non-Resident shareholders.

5. **SECURITIES TRANSACTION TAX ON ACCOUNT OF BUYBACK OF SHARES:** Since the buyback of shares shall take place through the settlement mechanism of the Stock Exchange, securities transaction tax at 0.1% of the value of the transaction will be applicable.

*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 by the shareholder solely based on this tax summary.*

