LONG – TERM CAPITAL GAINS ON SALE OF LISTED SECURITIES (Section 112A)

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The Finance Act, 2018 inserts a new Section 112A with effect from Assessment Year 2019-20. As per the new section capital gains arising from transfer of a long term capital asset being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust shall be taxed at the rate of 10 per cent of such capital gains exceeding Rs. 1,00,000.

As per the old provisions of Income Tax Act, long-term capital gains (LTCG) arising from the transfer of listed equity shares, or units of an equity-oriented fund (EOF) or business trust (sold on the floor of a recognised stock exchange) is exempted so long as Securities Transaction Tax (STT) has been paid on such a transaction [as per Section 10(38)].

The concessional rate of 10% will be applicable if:

a) in a case of an equity share in a company, securities transaction tax has been paid on both acquisition and transfer of such capital asset; and
b) in a case a unit of an equity-oriented fund or a unit of a business trust, STT has been paid on transfer of such capital asset.

Further, sub-section (4) of the new section 112A empowers the Central Government to specify by notification the nature of acquisitions in respect of which the requirement of payment of securities transaction tax shall not apply in the case of equity share in a company. Similarly, the requirement of payment of STT at the time of transfer of long term capital asset, being a unit of equity oriented fund or a unit of business trust, shall not apply if the transfer is undertaken on recognized stock exchange located in any International Financial Services Centre (IFSC) and the consideration of such transfer is received or receivable in foreign currency.

Further, the new provision of section 112A also provides the following:-

i. The long term capital gains will be computed without giving effect to the first and second provisos to section 48, i.e. inflation indexation in respect of cost of acquisitions and cost of improvement, if any, and the benefit of computation of capital gains in foreign currency in the case of a non-resident, will not be allowed.

ii. The cost of acquisitions in respect of the long-term capital asset acquired by the assessee before the 1st day of February,2018, shall be deemed to be the higher of –
   a) the actual cost of acquisition of such asset; and
   b) the fair market value of such asset

iii. Fair market value has been defined to mean –
   a) in a case where the capital asset is listed on any recognized stock exchange, the highest price of the capital asset quoted on such exchange on the 31st day of January,2018. However, where there is no trading in such asset on such exchange on 31.01.2018, the highest price of such asset on such exchange on a date immediately preceding 31.01.2018 when such asset was traded on such exchange shall be the fair market value; and
   b) in a case where the capital asset is a unit and is not listed on recognized stock exchange, the net asset value of such asset as on 31.01.2018.

iv. The benefit of deduction under chapter VIA shall be allowed from the gross total income as reduced by such capital gains. Similarly, the rebate under section 87A shall be allowed from the income tax on the total income as reduced by tax payable on such capital gains.

Example:

Mr. X is a salaried employee. In the month of July, 2016 he purchased 100 shares of ABC Ltd. @ Rs. 2,000 per share from Calcutta Stock Exchange. These shares were sold through NSE in June, 2018 @ Rs. 4,900 per share. The highest price of ABC Ltd. share quoted on the stock exchange on January 31, 2018 was Rs. 3,800 per share. What will be the nature of capital gain in this case?

Shares were purchased in July,2016 and were sold in June, 2018, i.e., sold after holding them for a period of more than 12 months and, hence, the gain will be LTCG.

In the given case, shares are sold after holding them for a period of more than 12 months, shares are sold through recognized stock exchange and the transaction is liable to STT. Therefore, section 112A is applicable in this case.

The cost of acquisition of X Ltd. shares shall be higher of:

a) Cost of acquisition i.e., 2,00,000 (2,000 × 100);
b) Lower of: (i) Highest quoted price as on 31-1-218 i.e., 3,80,000 (3,800 × 100);
(ii) Sales consideration i.e., 4,90,000 (4,900 × 100)

Thus from above, the cost of acquisition of shares shall be Rs. 3,80,000. Accordingly, Long-term capital gains taxable in hands of Mr. X would be Rs. 1,10,000 (i.e., 4,90,000 – 3,80,000). Since the long-term capital gains exceeds Rs. 1,00,000, hence it will be covered under section 112A. Mr.X would be liable to pay at the rate of 10% on Rs. 10,000 i.e., gains exceeding Rs. 1,00,000.

Hence, the summary of taxability under section 112A is as under:

Sl No	Scenario	Tax Implications
1	Purchase and sale before 31/1/2018	Exempt under Section 10(38)
2	Purchase before 31/1/2018 Sale after 31/1/2018 but before 1/4/2018	Exempt under Section 10(38)
3	Purchase before 31/1/2018 Sale on or after 1/4/2018	LTCG taxable **Gains accrued before 31/1/2018 exempt** Capital Gains computed in the manner as discussed above
4	Purchase after 31/1/2018 Sale on or after 1/4/2018	LTCG taxable Capital Gains computed in the manner as discussed above