

Info Capsule

CBDT NOTIFIES TRANSACTIONS FOR WHICH THE CONDITION OF CHARGEABILITY TO STT FOR CLAIMING EXEMPTION UNDER SECTION 10(38) OF THE INCOME TAX ACT, 1961 SHALL NOT APPLY¹

Section 10(38) of the Income-tax Act, 1961 ('the Act'), prior to its amendment by Finance Act, 2017 provided that the income arising by way of a transfer of long term capital asset, being equity share in a company shall be exempt from tax if such transfer is undertaken after 1st October, 2004 and chargeable to Securities Transaction Tax (STT) under Chapter VII of the Finance (No.2) Act, 2004.

In order to curb the practice of declaring unaccounted income as exempt long term capital gain by entering into sham transactions, the Finance Act, 2017 amended the provisions of section 10 (38) of the Act to provide that exemption under this section for income arising on transfer of equity share acquired or on after 1st day of October, 2004 shall be available only if the acquisition of share is chargeable to STT. However, to protect the exemption for genuine cases where the STT could not have been paid, it was also provided that the Central Government shall notify the acquisition for which the condition of chargeability to STT shall not apply.

In view of the above, it has been notified 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 specified transactions such as acquisition of listed shares in preferential issues of a company whose shares are not frequently traded in a recognised stock exchange; acquisition of existing listed equity share in a company not through a recognised stock exchange of India and acquisition of shares of company during the period of its delisting. However, to protect the interest of genuine investors, exceptions are also provided in the specified transactions. The notification is available on www.incometaxindia.gov.in.

THE CENTRAL GOVERNMENT ABOLISHED VARIOUS CESSES IN THE LAST THREE YEARS FOR SMOOTH ROLL-OUT OF GST²

The Central Government in the last three General Budgets viz 2015-16, 2016-17 and 2017-18 has gradually abolished various cesses on goods and services in order to prepare the ground for smooth roll- out of Goods and Service Tax (GST) from 1st July, 2017.

The Central Government has taken this step in stages by abolishing various cesses so that it is easier to fit in various goods and services in different tax slabs for GST.

The Central Government in its General Budget 2015-16 had abolished Education Cess, including Secondary and Higher Education Cess on taxable services, and exempted Education Cess on excisable goods as well as Secondary and Higher Education Cess on excisable goods.

¹ Available at : <http://pib.nic.in/newsite/erelease.aspx?relid=0>

² Available at : <http://pib.nic.in/newsite/erelease.aspx>

In its General Budget 2016-17, the Central Government abolished cess on cement, strawboard, three cesses including cess on Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines by amending Labour Welfare Cess Act, 1976, Tobacco cess by amending the Tobacco Cess Act 1975, and Cine Workers Welfare Cess by amending the Cine Workers' Welfare Cess Act 1981 among others.

In its General Budget 2017-18, the Central Government abolished Research and Development cess by amending the Research and Development Cess Act.

Through Taxation Laws Amendment Act 2017, the following cesses are abolished. However, the date of the implementation will coincide with the date of the GST roll-out:

- I. The Rubber Act 1947 – Cess on Rubber
- II. The Industries (Development and Regulation) Act 1951 – Cess on Automobile
- III. The Tea Act 1953 – Cess on Tea
- IV. The Coal Mines (Conservation and Development) Act, 1974 – Cess on Coal
- V. The Beedi Workers' Welfare Cess Act 1971 – Cess on Beedis
- VI. The Water (Prevention and Control of Pollution) Cess Act 1977 – Cess levied on Water consumed by certain industries and by local authorities.
- VII. The Sugar Cess Act 1982, the Sugar Development Fund Act 1982 – Cess on Sugar
- VIII. The Jute Manufacturers Cess Act 1983 – Cess on Jute Goods manufactured or produced or in part of Jute.
- IX. The Finance (2) Act 2004 – Education Cess on Excisable Goods
- X. The Finance Act, 2007 – Secondary and Higher Education Cess on Excisable Goods
- XI. The Finance Act 2010 – Clean Energy Cess
- XII. The Finance Act 2015 – Swachh Bharat Cess
- XIII. The Finance Act 2016 – Infrastructure Cess and Krishi Kalyan Cess

However, the following cesses will continue to be levied under the GST regime since they pertain to customs or goods which are not covered under the GST regime:

- I. The Finance (2) Act 2004 – Education Cess on Imported Goods
- II. The Finance Act, 2007 – Secondary and Higher Education Cess on Imported Goods
- III. Cess on Crude Petroleum Oil under the Oil Industry Development Act, 1974
- IV. Additional Duty of Excise on Motor Spirit (Road Cess)
- V. Additional Duty of Excise on High Speed Diesel Oil (Road Cess)
- VI. Special Additional Duty of Excise on Motor Spirit
- VII. NCCD on Tobacco and Tobacco Products and Crude Petroleum Oil.

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