

## Section 112A: Taxation of LTCG

### GLOSSARY

Abbreviations	Full Form
“COA”	Cost Of Acquisition
“FMV”	Fair Market Value
“HQP”	Highest Quoted Price
“ITA”	Income Tax Act, 1961
“LTCA”	Long Term Capital Asset being Listed Equity Shares, Equity Oriented Mutual Fund or unit of business trust
“LTCG”	Long Term Capital Gains
“LTCL”	Long Term Capital Loss
“NCLT”	National Company Law Tribunal
“RBI”	Reserve Bank of India
“SEBI”	Securities and Exchange Board of India
“STT”	Securities Transaction Tax

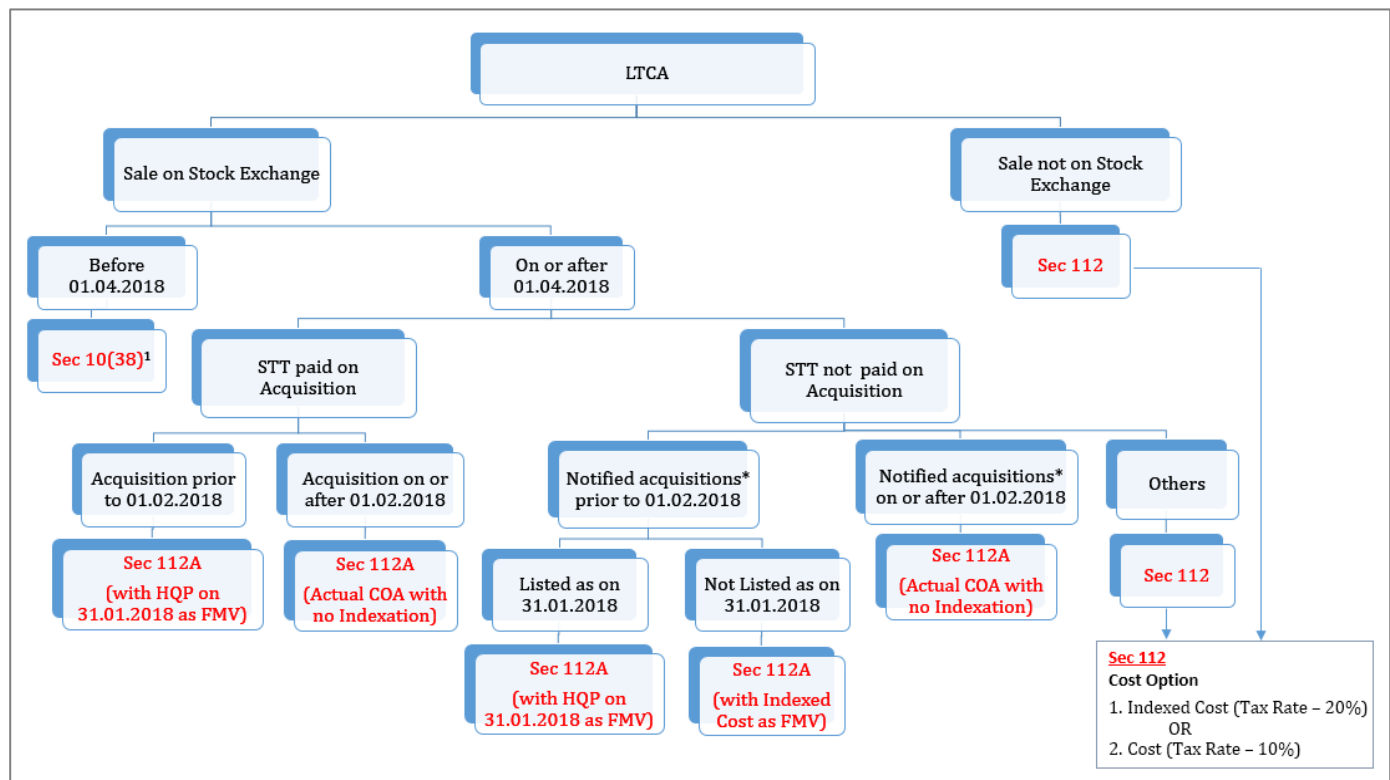
### 1. INTRODUCTION

Earlier, LTCG arising from Sale of Listed Equity Shares or unit of Equity Oriented Fund or of Business Trusts, was exempt from income tax u/s 10 (38) of the Income Tax Act subject to fulfilment of prescribed conditions<sup>1</sup>. The Finance Act, 2018, has withdrawn the exemption u/s 10(38) and introduced a new section 112A in the ITA, to tax such LTCG exceeding Rs. 1 Lakh at the **rate of 10%**. The amendment is **effective from 01<sup>st</sup> April, 2018** and accordingly will apply to sale of listed equity shares, unit of Equity Fund or of Business Trust on or after 01<sup>st</sup> April, 2018. It is pertinent to note that sale transactions undertaken before 01<sup>st</sup> April, 2018 will be entitled to exemption u/s 10(38).

<sup>1</sup> • Upto 31.3.2017, the requirement of payment of STT on sale of these LTCA was only applicable u/s 10(38).

• For F.Y. 2017-18, payment of STT on acquisition as well as on sale of Listed Equity shares was required in order to take the benefit of exemption u/s 10(38)

## 2. SNAPSHOT OF LTCG u/s 112A AND 112



**Note:** Wherever FMV has been mentioned, it has to be first compared with Sale Consideration and lower of the two shall be compared with Actual COA to calculate COA for computation of LTCG. (Refer Point 4)

## 3. APPLICABILITY OF SECTION 112A

As mentioned earlier, LTCG from Listed Equity Shares, unit of Equity Fund or unit of Business Trust exceeding Rs. 1 Lakh is taxed at the rate of 10% u/s 112A. The tax regime of Section 112A is available subject to following conditions:

- If LTCA = Listed Equity Shares then STT has been paid on **acquisition\*** as well as on **Sale**
- If LTCA = Unit of Equity oriented fund or of a business trust, then STT has been paid on **Sale**

Note: The requirement of payment of STT 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.

\*The CBDT vide notification dated 1<sup>st</sup> October, 2018 provides that payment of STT at the time of acquisition shall not apply on acquisitions

I. Before 01<sup>st</sup> October, 2004 or

II. On or after 01<sup>st</sup> October, 2004 which are not subject to payment of STT, **except**

where acquisition of existing equity shares

- being listed

a) but not frequently traded in a RSE in India by way of preferential issue

b) but transaction is not entered through a RSE in India

There are exceptions to point (a) and (b) mentioned above i.e. they will still get covered under notified acquisitions.

- not being listed

c) during the period when company is delisted on RSE and then again listed on RSE

**Some of the important notified acquisitions** [Exceptions to Point (a) and (b) above]

- ✓ By mode of transfer referred to in Section 47 of ITA (i.e. Merger, Demerger, Gift, etc.)
- ✓ By way of Slump sale u/s 50B
- ✓ By ESOP
- ✓ By Non Resident in accordance with FDI Guidelines
- ✓ By an Investment fund (referred to in clause (a) to Explanation 1 to section 115UB) or a Venture Capital Fund or a Qualified Institutional Buyer
- ✓ Approved by Supreme Court, High Court, NCLT, SEBI or RBI
- ✓ Through issue of share by a company other than the issue referred to in Point (a) above

#### 4. TAXATION u/s 112A

Particulars	Detail												
Cost of Acquisition for computing LTCG u/s 55 of ITA	<ul style="list-style-type: none"> <li>▪ <b>If Acquired before 01st February, 2018</b>, then the cost of acquisition shall be <b>Higher of A or B:</b> <ul style="list-style-type: none"> <li>A. Actual cost of acquisition<sup>3</sup> or,</li> <li>B. <u>Lower of:</u> <ul style="list-style-type: none"> <li>FMV</li> <li>or</li> <li>Sale Consideration</li> </ul> </li> </ul> </li> </ul> <p><i>(The above provision can be referred as “Cost Grandfathering”)</i></p> <p><b>Note: <u>Determination of FMV</u></b></p> <table border="1"> <thead> <tr> <th>FMV</th> <th>Equity Shares</th> <th>Units</th> </tr> </thead> <tbody> <tr> <td>Listed as on 31.01.2018</td> <td colspan="2">Highest Quoted Price as on 31.01.2018 on RSE<sup>4</sup></td> </tr> <tr> <td>Unlisted Units as on 31.01.2018</td> <td>N.A.</td> <td>NAV<sup>5</sup> as on 31.01.2018</td> </tr> <tr> <td>Unlisted Equity shares as on 31.01.2018 (But Listed as on Date of Transfer)</td> <td>Actual COA<sup>3</sup> x Indexation Upto F.Y. 2017-18</td> <td>N.A.</td> </tr> </tbody> </table> <ul style="list-style-type: none"> <li>▪ <b>If Acquired on/after 01st February, 2018</b> COA = Actual cost of acquisition</li> </ul>	FMV	Equity Shares	Units	Listed as on 31.01.2018	Highest Quoted Price as on 31.01.2018 on RSE <sup>4</sup>		Unlisted Units as on 31.01.2018	N.A.	NAV <sup>5</sup> as on 31.01.2018	Unlisted Equity shares as on 31.01.2018 (But Listed as on Date of Transfer)	Actual COA <sup>3</sup> x Indexation Upto F.Y. 2017-18	N.A.
FMV	Equity Shares	Units											
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Indexation Benefit	<b>Not Available</b> (Proviso 3 to Section 48)												
Tax Rate	<b>10%</b> on amount of LTCG exceeding Rs. 1 Lakh plus applicable surcharge and cess												
Computation of capital gains in foreign currency (for non-resident)	<b>Not Allowed</b>												
Benefit of Exemption u/s 54F (Investment in Residential house)	<b>Available</b>												

<sup>3</sup> It is pertinent to note that Actual Cost of Acquisition of bonus will be Nil. If asset was acquired prior to 01<sup>st</sup> April, 2001 then the assessee has option of substituting Fair Market value as on 1<sup>st</sup> April, 2001 instead of Actual Cost of Acquisition.

<sup>4</sup> In case of no trading on 31st January, 2018, highest price on a date immediately preceding 31.01.2018 when such share/unit was traded shall be considered.

<sup>5</sup> <https://www.amfiindia.com/nav-history-download>

Particulars	Detail
Set off of <b>LTCL</b> on LTCA	<ul style="list-style-type: none"> <li>▪ Set off of LTCL on these LTCA is possible against any other LTCG [Section 70(3) and Section 71(3)]</li> <li>▪ It can be carried forward for 8 years and can be set off against LTCG (Section 74)</li> </ul>
Set off of other losses against <b>LTCG</b> on LTCA	Losses under all heads of income (except Income from House property exceeding Rs.2 Lakhs) can be set off against LTCG on these LTCA

If conditions given u/s 112A are not satisfied, then the LTCG will be taxable as per normal provisions of Long term capital gains at the rate prescribed u/s 112.

## 5. CONCLUSION

To sum up, the legislature has levied a tax of 10% on LTCG arising on LTCA w.e.f. 1.04.2018. By and large, the provisions are just and fair, i.e. they allow cost grandfathering either on the basis of highest quoted price as on 31.1.2018 or they allow indexation on actual cost upto FY 2017-18 for LTCA acquired before 01.02.2018.

Even after applying Cost Grandfathering provision, it can be seen that in all scenarios of LTCL in the example given below, Actual COA is the final COA which is considered for computation of LTCG u/s 112A. Thus, Cost Grandfathering provision does not allow one to take the benefit of notional loss.

Listed Equity Shares	Scenarios					
	I	II	III	IV	V	VI
<b>A. Actual COA</b>	<b>10</b>	<b>2</b>	<b>2</b>	<b>5</b>	<b>10</b>	<b>5</b>
<b>B. Lower of the two</b>	<b>2</b>	<b>5</b>	<b>5</b>	<b>2</b>	<b>2</b>	<b>2</b>
Fair Market Value (Highest Quoted price as on 31.01.2018)	5	10	5	2	2	10
<b>OR</b> Sale Consideration	2	5	10	10	5	2
<b>Final COA</b> (Higher of A or B)	<b>10</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>10</b>	<b>5</b>
<b>LTCG/(LTCL)</b>	<b>(8)</b>	<b>0</b>	<b>5</b>	<b>5</b>	<b>(5)</b>	<b>(3)</b>