



## MANISH JAIN & ASSOCIATES

Chartered Accountants

Plot No.- 290, Phase -I, Industrial Area

Panchkula - 134113, Haryana (India)

Email: [cadiwanneeraj@gmail.com](mailto:cadiwanneeraj@gmail.com)

Mob. : 09780043314

To,

The Board of Directors

**COSMO FIRST LIMITED (Formerly known as Cosmo Films Limited)**

1008, DLF Tower-A, Jasola District Centre,

New Delhi - 110 025, India

Dear Sir/ Madam,

**Sub: Certificate on note on taxation for Buyback of Shares of the company.**

In connection with the Buyback of shares of the company, we, M/s Manish Jain & Associates, Chartered Accountants, have received a request from the Company to provide necessary information on taxation law applicable for Buy-back of shares. We are giving you following notes on taxation for Buyback of Shares applicable for the company.

### **Note on Taxation for Buyback of Shares**

THE FOLLOWING SUMMARY OF THE TAX CONSIDERATIONS IS BASED ON THE READING OF 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 IMPLICATIONS ON THESE TAX CONSIDERATIONS.

AS PER THE FINANCE (NO. 2) ACT, 2019 READ WITH TAXATION LAWS (AMENDMENT) ACT, 2019, SECTION 115QA RELATING TO TAX ON DISTRIBUTED INCOME OF DOMESTIC COMPANY FOR THE BUY BACK OF SHARES, HAS NOW BEEN MADE APPLICABLE TO BUY BACK OF SHARES OF ALL COMPANIES (INCLUDING SHARES LISTED ON A RECOGNISED STOCK EXCHANGE WHOSE PUBLIC ANNOUNCEMENT FOR BUY-BACK HAS BEEN MADE ON OR AFTER 5 JULY 2019).

IN VIEW OF THE COMPLEXITY AND THE SUBJECTIVITY INVOLVED IN THE TAX CONSEQUENCES OF A BUY BACK TRANSACTION, ELIGIBLE SHAREHOLDERS ARE REQUIRED TO CONSULT THEIR TAX ADVISORS FOR THE TAX TREATMENT IN THEIR HANDS CONSIDERING THE RELEVANT TAX PROVISIONS, FACTS AND CIRCUMSTANCES OF THEIR CASE.

THE COMPANY DOES NOT ACCEPT ANY RESPONSIBILITY FOR THE ACCURACY OR OTHERWISE OF THIS TAX SUMMARY AND EXPLICITLY DISOWNS ANY LIABILITY ARISING OUT OF ANY ACTION INCLUDING A TAX POSITION TAKEN BY THE ELIGIBLE SHAREHOLDER BY RELYING ON THIS SUMMARY. THE SUMMARY OF TAX CONSIDERATIONS RELATING TO BUY BACK OF EQUITY SHARES LISTED ON THE STOCK EXCHANGE SET OUT BELOW SHOULD BE TREATED AS INDICATIVE AND FOR GENERAL GUIDANCE PURPOSES ONLY.

#### **1. GENERAL:**

- a. The Indian tax year runs from 1st April to 31st March. 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 1961 ('Income Tax Act' or 'ITA').

- b. A person who is treated as a non-resident for Indian tax purposes is generally liable to tax in India only on his/her India sourced income or income received by such person in India. Finance Act, 2020, has introduced deeming provisions whereby non-resident individuals are deemed to be resident in India upon triggering of certain conditions. Such deemed residents would be liable to pay tax in India only on their India sourced income or income from business or profession 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 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 ITA subject to any specific exemption in this regard. Further, the 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. The above benefit may be available subject to satisfaction of the relevant conditions prescribed under ITA 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 ITA as well as satisfying the relevant conditions under the respective DTAA including anti-abuse measures under MLI, if applicable.

c. Classification of Shareholders

Section 6 of the ITA, determines the residential status of an assessee. Accordingly, shareholders can be classified broadly in the following categories:

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 (corporate bodies):
  - Company
  - Other than Company

- d. The summary of 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 note refer to equity shares listed on the recognised stock exchange(s) in India unless stated otherwise.

**2. INCOME TAX PROVISIONS IN RESPECT OF BUY BACK OF SHARES LISTED ON THE RECOGNISED STOCK EXCHANGE (BUY BACK WHOSE PUBLIC ACCOUNTANCE HAS BEEN MADE AFTER 5TH JULY 2019) CONSIDERING RELEVANT AMENDMENTS UNDER THE FINANCE (NO. 2) ACT, 2019) AND TAXATION LAWS (AMENDMENT) ORDINANCE ACT, 2019 AND FINANCE ACT, 2020.**





- a. Section 115QA of the Act provides for the levy of additional Income-tax at the rate of twenty per cent (plus surcharge @ 12% and Health and Education cess @ 4%) of the distributed income on account of buyback of shares of all domestic Indian companies including listed companies i.e. companies whose shares are listed on a recognized stock exchange. In respect of listed companies, the provisions of section 115QA are applicable in respect of all the buy backs of shares whose public announcement has been made after 5 July 2019. Accordingly, the Company would be subject to an additional Income-tax at the rate of twenty per cent (as increased by surcharge and Health and Education cess, as applicable) of the distributed income on account of buyback of shares. "Distributed income" means the consideration paid by the company on buy-back of shares as reduced by the amount, which was received by the company for issue of such shares, determined in the manner as may be prescribed.
- b. As additional income-tax has been levied on the company under Section 115QA of the Act, the consequential income arising in the hands of shareholders has been exempted from tax under sub-section (34A) of section 10, of the Act. Accordingly, any income arising in the hands of shareholder on account of buyback of shares shall be exempt from tax under sub-section (34A) of section 10 of the Act. The said income will be exempted in the hands of the shareholder irrespective of the class/residential status of the shareholder and purpose for which shares are held (i.e. as "Investments" or "Stock in Trade").
- c. In view of the above and in the absence of any specific provision under the Income Tax Act, the Company is not required to deduct tax at source on the consideration payable to shareholders pursuant to the Buyback.
- d. While the income arising to the shareholder on account of buy back of shares as referred to in section 115QA is exempt from tax under the provisions of the amended section 10(34A), the same may be subject to tax in the country of residence for non-resident shareholders as per the tax laws of that country subject to provisions of Double Taxation Avoidance Agreement, if any.
- e. Thus the tax implications to the following categories of shareholders are as under:
  1. Resident Shareholders or Deemed Resident Shareholders - Income arising to the shareholder on account of buyback of shares as referred to in section 115QA of the ITA is exempt from tax under the provisions of the amended section 10(34A) of the ITA with effect from July 5, 2019.
  2. Non-Resident Shareholders While the income arising to the shareholder on account of buyback of shares as referred to in section 115QA of the ITA is exempt from tax under the provisions of the amended section 10(34A) with effect from July 5, 2019 in the hands of a non-resident shareholder as well, 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 Sec 115QA (4) and (5) of the ITA. Non-resident shareholders need to consult their tax advisors with regard to availability of such a tax credit.
- f. Tax Deducted at Source ('TDS/WHT'): Currently, there are no provisions for tax deduction at source in respect of income earned from transfer/ buyback of shares in case of resident shareholders/ deemed resident shareholders. The consequential income arising in the hands of shareholder will be exempted by virtue of sub clause (34A) of Section 10 of the Act. Therefore, no TDS/WHT will be deductible on the said income.
- g. 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 above note on taxation 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. 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 as set out above.

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. 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.

Yours faithfully,

For Manish Jain & Associates

Neeraj Diwan  
Partner

M. No:514575

FRN No.:015608N

Place: Delhi

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UDIN:22514575BEYJKW3932

