



## **PROCEDURE OF TRANSFER OF SHARES BY GIFT & TAX IMPLICATIONS**

Dear Friends,

As you are aware that “Gift” is transfer of movable or immovable property by one person to another person’s without consideration or in lieu of love or affection. The sale consideration or transaction value in case of Gift will be nil and hence there is no Capital Gain Tax in hand of donor of the gift. But remember that “Gift” transactions are controlled by provisions of Section 56(2) of the Income Tax Act, 1961. Any transfer of property by way of gift, whether movable or immovable exceeding Rs. 50000/- will be treated as income of the recipient in the year of receipt of gift. In some occasions gift to individual is exempted such as marriage and gifts received by a person from his/her relatives. The definition of relatives has been given in Section 2(47) of the Companies Act, 2013.

Since the Gift Tax Act (GTA) was abolished, the sender is not liable to pay any tax on gifts.

As per Section 2(14) of the Income Tax Act, shares and securities are Capital Assets. The transfer of a Capital Asset is taxable as Capital Gains. However, Section 47 specifically excludes ‘gift’ from the definition of ‘transfer’. Thus, the sender of a gift is not liable to pay income tax on such a transaction.

Since in case of Gift, there is no sale consideration or consideration is NIL and hence there is no Capital Gain in the hand of Donor.

**SECTION 122 OF TRANSFER OF PROPERTY ACT, 1882 provides that**—“Gift” is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. Acceptance when to be made.—Such acceptance must be made during the lifetime of the donor and while he is still capable of giving. If the donee dies before acceptance, the gift is void.

**SECTION 123 OF TRANSFER OF PROPERTY ACT, 1882 provides that- Transfer how effected**

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*For the purpose of making a gift of immovable property, the transfer must be affected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.*

*For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.*

**PLEASE NOTE THAT-** *transfer of interest in shares from the transferor to the transferee is independent of the requirements of its registration for the purpose of the Companies Act, 2013 as, without an interior transfer, there can be no question of applying for registration of the transfer.*

*There should be first be a transfer properly made of shares which should be then presented along with the share certificates to the company for registration of the transfer until such registration is affected in the books of the company , the transferor will continue be the holder of the shares under transaction. However the delivery of the registered deed gift the Share Certificates or mere delivery of duly executed Share Transfer Form and Share Certificate to the done ; results in donation of right to the Share Certificate transferred in the name of the done which become irrevocable , and the actual transfer of the shares in the register of the company constitutes mere enforcement of rights of the shareholder.*

*The mere fact that such transfer has to be recorded in accordance with the Companies Act, 2013 does not detract from the completeness of gift.*

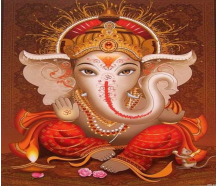
**PLEASE NOTE THAT FOR TRANSFER OF SHARES;** *First you have to complete transfer of shares by executing Registered Deed of Gift and then send the same along with Share Transfer Form and Share Certificate to the company to be noted in the Register of Share Transfer and the Register of Members. If there is no intimation to the company of the Gift of shares , then the Donor will remain the shareholders of the company and no interest in shares will be transferred to the Donee/Transferee.*

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## **MODE OF TRANSFER**

### **SECTION 2(7) IN THE SALE OF GOODS ACT, 1930**

*“GOODS” means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.*

**DEFINITION OF GOODS SECTION 2(52)-** *means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;*

**DEFINITION OF SERVICES SECTION 2(102)-***means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;”*

### **PLEASE NOTE THAT**

*The definition of both goods and services excludes securities from their scope. This means that securities cannot be regarded as either goods or services. Upon carefully observing the definition of supply as per Section 7 of the CGST Act, it can be found that supply can only be in respect of goods and/or services. Anything which is not goods and / or services should not be considered as a supply altogether within the terms of Section 7 of the CGST Act 2017. Further, it is already known that Section 9 of the CGST Act and Section 5 of the IGST Act which are chargeability sections under the GST law presupposes that tax is leviable on supplies. Any activity failing the test of supply will escape the taxability under GST law. Thereby, it can be gathered that securities are outside the bounds of GST as regards the definition of supply.*

**THE DEFINITION OF SECURITIES AS PER SECTION 2(101) OF THE CGST ACT** *straightaway requires one to draw parallel from the definition of securities given under Section 2(h) of the Securities Contracts (Regulation) Act 1956.*

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**THE DEFINITION OF SECURITIES GIVEN UNDER THE SAID PROVISION IS AS BELOW:**

**“SECURITIES” INCLUDE—**

*(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;*

*(ia) derivative;*

*(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;*

*(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*

*(id) units or any other such instrument issued to the investors under any mutual fund scheme;*

*(ie) any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable including mortgage debt, as the case may be;*

*(ii) Government securities;*

*(iia) such other instruments as may be declared by the Central Government to be securities; and*

*(iii) rights or interests in securities;” Any consideration earned from transaction in the abovementioned securities will be outside the levy of GST.*

**PLEASE NOTE THAT:-** Shares, debentures and mutual funds are all part of the definition of securities given above. As already stated above, transaction in securities cannot be considered as supplies altogether.

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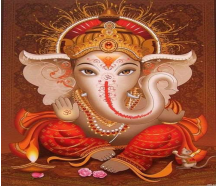
- i) Since from the definition of Sale of Goods Act, Section 2(7) provides that Shares are Goods and hence transfer of Shares by way of gift can be made by a registered instrument of gift, such as GIFT DEED or by deliver of share but requirements of Section 56 of the Companies Act, 2013 must be fulfilled.*

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- ii) *In other case a Gift of shares is complete as soon as the shares are handed over to the donee along with Blank Transfer Form signed by the Donor.*

**SECTION 56. TRANSFER AND TRANSMISSION OF SECURITIES.**

**EFFECTIVE FROM 01-04-2014**

**REGULATION 40 OF LODR**

*(1) A company shall not register a transfer of securities of the company, or the interest of a member in the company in the case of a company having no share capital, other than the transfer between persons both of whose names are entered as holders of beneficial interest in the records of a depository, unless a proper instrument of transfer, in such form as may be prescribed, duly stamped, dated and executed by or on behalf of the transferor and the transferee and specifying the name, address and occupation, if any, of the transferee has been delivered to the company by the transferor or the transferee within a period of sixty days from the date of execution, along with the certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities:*

***Provided** that where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed period, the company may register the transfer on such terms as to indemnity as the Board may think fit.*

***Provided further** that the provisions of this sub-section, in so far as it requires a proper instrument of transfer, to be duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee, shall not apply with respect to bonds issued by a Government company, provided that an intimation by the transferee specifying his name, address and occupation, if any, has been delivered to the company along with the certificate relating to the bond; and if no such certificate is in existence, along with the letter of allotment of the bond:*

***Provided also** that the provisions of this sub-section shall not apply to a Government Company in respect of securities held by nominees of the Government.*

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*(2) Nothing in sub-section (1) shall prejudice the power of the company to register, on receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted.*

*(3) Where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered, unless the company gives the notice of the application, in such manner as may be prescribed, to the transferee and the transferee gives no objection to the transfer within two weeks from the receipt of notice.*

*(4) Every company shall, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of all securities allotted, transferred or transmitted—*

*(a) within a period of two months from the date of incorporation, in the case of subscribers to the memorandum ;*

*(b) within a period of two months from the date of allotment, in the case of any allotment of any of its shares;*

*(c) within a period of one month from the date of receipt by the company of the instrument of transfer under sub-section (1) or, as the case may be, of the intimation of transmission under sub-section (2), in the case of a transfer or transmission of securities;*

*(d) within a period of six months from the date of allotment in the case of any allotment of debenture :*

***Provided*** that where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.

***Provided further that*** a Specified IFSC public company shall deliver the certificates of all securities to subscribers after incorporation, allotment, transfer or transmission within a period of sixty days.

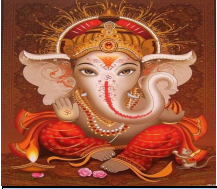
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*Provided further that a Specified IFSC private company shall deliver the certificates of all securities to subscribers after incorporation, allotment, transfer or transmission within a period of sixty days.*

*(5) The transfer of any security or other interest of a deceased person in a company made by his legal representative shall, even if the legal representative is not a holder thereof, be valid as if he had been the holder at the time of the execution of the instrument of transfer.*

*(6) Where any default is made in complying with the provisions of sub-sections (1) to (5), the company and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees. ~~(6) Where any default is made in complying with the provisions of sub-sections (1) to (5), the company shall be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.~~*

*(7) Without prejudice to any liability under the Depositories Act, 1996 (22 of 1996), where any depository or depository participant, with an intention to defraud a person, has transferred shares, it shall be liable under section 447.*

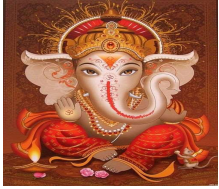
- iii) When a company receives an instrument of transfer along with Share Certificate , as a Gift, it should be ensured that the Instrument of Transfer is in compliance with the provisions of Section 56 of the Companies Act, 2013.*
- iv) It must be ensured that appropriate value of Stamp Duty be paid on the Value of Shares gifted on the date of the Gift, notwithstanding that Gift is always without consideration and hence the Share Transfer Form must show NIL Consideration.*
- v) Section 56(1) provides that the Share Transfer Form along with Share Certificate must be delivered to the company within a period of 60 days from the date of execution.*

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### **WHEN GIFT COMPLETE**

*A gift of shares is complete as soon as the shares are handed over to the Donee by the Donor along with Blank Share Transfer Form and Share Certificate. Non recording of Share Transfer in the Books of the Company does not invalidate the Share Transfer Gift in any way. Although before register of Share Transfer as Gift in the name of the Donee, a Donee is not become shareholder for the company but in law Donee become owner of the shares under Gift on handover of Deed of Gift, Share Transfer Form and the Share Certificate by the Donor to the Donee. The Donee acquired complete legal right to have shares registered in his name.*

### **TAX IMPLICATIONS IN THE HANDS OF THE RECEIVER OF THE GIFT**

#### **1. ON RECEIVING THE GIFT:**

*Gift of movable property such as shares, ETFs, mutual funds, jewellery, drawings etc without consideration and exceeding Fair Market Value of more than INR 50,000 is taxable in the hands of the recipient under Section 56(2) of the Income Tax Act.*

*Such income should be reported under the head 'Income from Other Sources' in the Income Tax Return and tax should be paid at slab rates.*

### **TAXES ON THE GIFTING OF SHARES ARE EXEMPT IN THE FOLLOWING SITUATIONS:**

- i) Individual receiving gift from a relative (including siblings, spouse and lineal ascendants or descendants);*
- ii) Individual receiving gift on the occasion of marriage;*
- iii) Gift received by way of inheritance.*

### **ON THE SALE OF THE GIFT:**

- i) Sale of shares, ETFs, mutual funds, etc received as a gift would be taxable under the head Income from Capital Gains .*
- ii) The recipient should file return of income and pay tax at applicable rates.*

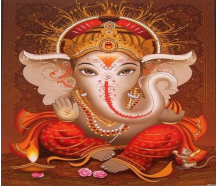
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- iii) To determine the nature of Capital Gains whether STCG or LTCG, the holding period would be determined from the date of acquisition by the previous owner till the date of sale.
- iv) To compute the Capital Gains, Cost of Acquisition of the Capital Asset would be determined as the purchase price of the previous owner.
- v) The sender and recipient must maintain proper documentation such as a gift deed to justify the genuineness of the gift transaction since there are chances of scrutiny from the tax department if the gift amount is high.

**CONCLUSION:** Since “Gifts” has been excluded from the definition of Transfer u/s. 2(47) of the Income Tax Act, 1961. Since Capital Gain arise only in case of transfer of Capital Assets as defined u/s. 2(14) of the Income Tax Act, 1961. A Gift is voluntary transfer of movable or immovable property by Donor to the Donee, without consideration or at NIL consideration. Since Sale Consideration is NIL or ZERO in case of Gift and hence there is no Capital Gain in hand of Donor. The Donee is required to pay the tax according to the provisions of Section 56(2) of the Income Tax Act, 1961 as discussed above.

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