Finance (No. 2) Act, 2004

Chapter 7 - Securities Transaction Tax

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(1) This Chapter extends to the whole of India.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(3) It shall apply to taxable securities transactions entered into on or after the commencement of this Chapter.

Section 97 - Definitions

In this Chapter, unless the context otherwise requires.--

(1) "Appellate Tribunal" means the Appellate Tribunal constituted under section 252 of the Income-tax Act, 1961(43 of 1961);

(2) "Assessing Officer" means the Income-tax Officer or Assistant Commissioner of Income-tax or Deputy Commissioner of Income-tax or Joint Commissioner of Income-tax or Additional Commissioner of Income-tax who is authorised by the Board to exercise or perform all or any of the powers and function's conferred on, or assigned to, an Assessing Officer under this Chapter;

(3) "Board" means the Central Board of Direct faxes constituted under the Central Boards of Revenue Act, 1963(54 of 1963);

(4) "derivative" has the meaning assigned to it in clause (aa) of section 2 of the Securities Contracts (Regulation) Act, 1956(42 of 1956);

(5) "equity oriented fund" means a fund--

(i) where the investible funds are invested by way of equity shares in domestic companies to the extent of more than 1 [sixty-five per cent]. of the total proceeds of such fund; and

(ii) which has been set up under a scheme of a Mutual Fund:

Provided that the percentage of equity share holding of the fund shall be computed with reference to the annual average of the monthly averages of the opening and closing figures;

(6) "Mutual Fund" means a Mutual Fund specified under clause (23D) of section 10 of the Income-tax Act, 1961(43 of 1961);

(7) "option in securities" has the meaning assigned to it in clause (d) of section 2 of the Securities Contracts (Regulation) Act, 1956(42 of 1956);

(8) "option premium" means the premium payable by the purchaser of an "option in securities" at the time of such purchase;

(9) "prescribed" means prescribed by rules made by the Board under this Chapter;

(10) "recognised stock exchange" shall have the same meaning as in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956(42 of 1956);

(11) "securities transaction tax" means tax leviable on the taxable securities transactions under the provisions of this Chapter;

(12) "strike price" means the price at which the "option in securities" may be exercised on the expiry date of such option;

(13) "taxable securities transaction" means a transaction of--

(a) purchase or sale of an equity share in a company or a derivative or a unit of an equity oriented fund, entered into in a recognised stock exchange; or

(b) sale of a unit of an equity oriented fund to the Mutual Fund;

(14) words and expressions used but not defined in this Chapter and defined in the Securities Contracts (Regulation) Act, 1956(42 of 1956), the Income-tax Act, 1961(43 of 1961) or the rules made thereunder, shall apply, so far as may be, in relation to securities transaction tax.

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1. Substituted by the Finance Act, 2006 (21 of 2006) for the words "fifty per cent" w.e.f 01-06-2006.

Section 98 - Charge of securities transaction tax

On and from the commencement of this Chapter, there shall be charged a securities transaction tax in respect of the taxable securities transaction specified in column (2) of the Table below, at the rate specified in the corresponding entry in column (3) of the said table, on the value of such transaction and such tax, shall be payable by the purchaser or the seller, specified in the corresponding entry in column (4) of the said Table:

TABLE

Sl. No.	**Taxable securities transaction**
(1)	**(2)**
1	Purchase of an equity share in a company or a unit of an equity oriented fund, where -- (a) the transaction of such purchase is entered into in a recognised stock exchange; and (b) the contract for the purchase of such share or unit is settled by the actual delivery or tra such share or unit.
2	Sale of an equity share in a company or a unit of an equity oriented funds, where -- (a) the transaction of such sale is entered into in a recognised stock exchange; and (b) the contract for the sale of such share or unit is settled by the actual delivery or transfer share or unit.

3	Sale of an equity share in a company or a unit of an equity oriented fund, where -- (a) the transaction of such sale is entered into in a recognised stock exchange; and (b) the contract for the sale of such share or unit is settled otherwise than by the actual de transfer of such share of unit.
5[4	(a) Sale of an option in securities
	(b) Sale of an option in securities, where option is exercised
	(c) Sale of a futures in securities
5	Sale of a unit of an equity oriented fund to the Mutual Fund.

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1. Substituted by the Finance Act, 2006 (21 of 2006) for the figures and words "0.1 per cent." w.e.f 01-06-2006.

2. Substituted by the Finance Act, 2006 (21 of 2006) for the figures and words "0.02 per cent." w.e.f 01-06-2006.

3. Substituted by the Finance Act, 2006 (21 of 2006) for the figures and words "0.0133 per cent." w.e.f 01-06-2006.

4. Substituted by the Finance Act, 2006 (21 of 2006) for the figures and words "0.2 per cent." w.e.f 01-06-2006.

5. Substituted by the Finance Act, 2008 w.e.f. 1st day of June, 2008 for the following :-

"4	Sale of a derivative, where the transaction of such sale is entered into in a recognised stock exchange.	3 [0.017 per cent.]	Seller"

Section 99 - The value of taxable securities transactions

1[(a) in the case of a taxable securities transaction relating to an option in securities, shall be--

(i) the option premium, in respect of transaction at item (a) of serial number 4 of the Table in section 98;

(ii) the settlement price, in respect of transaction at item {b) of serial number 4 of the Table in section 98;]

(b) in the case of a taxable securities transaction relating to a derivative, being "futures", shall be the price at which such "futures" is traded; and

(c) in the case of any other taxable securities transaction, shall be the price at which such securities are purchased or sold:

Provided that the Board may, having regard to the manner in which taxable securities transactions are settled in a recognised stock exchange or such other factors which may be relevant for the purposes of determining the price of such securities, specify, by rules made by it, the method of determining the price of such securities for the purposes of this clause.

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1. Substituted by the Finance Act, 2008 w.e.f. 1st day of June, 2008 for the following :-

(a) in the case of a taxable securities transaction relating to a derivative, being "option in securities", shall be the aggregate of the strike price and the option premium of such "option in securities";

Section 100 - Collection and recovery of securities transaction tax

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(1) Every recognised stock exchange shall collect the securities transaction tax from every person, being a purchaser or a seller, as the case may be, who enters into a taxable securities transaction in that stock exchange, at the rates specified in section 98.

(2) The prescribed person in the case of every Mutual Fund shall collect the securities transaction tax from every person who sells a unit to that Mutual Fund, at the rate specified in section 98.

(3) The securities transation tax collected during any calendar month in accordance with the provisions of sub-section (1) or sub-section (2), shall be paid by every recognised stock exchange or by the prescribed person in the case of every Mutual Fund, as the case may be, to the credit of the Central Government by the Seventh day of the month immediately following the said calendar month.

(4) Any recognised stock exchange or the prescribed person in the case of any Mutual Fund, who fails to collect the tax in accordance with the provisions of sub-section (1) or subsection (2), shall notwithstanding such failure, be liable to pay the tax to the credit of the Central Government in accordance with the provisions of sub-section (3).

Section 101 - Recognised stock exchange to furnish prescribed return

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(1) Every recognised stock exchange or the prescribed person in the case of every Mutual Fund (hereafter in this Chapter referred to as assessee) shall, within the prescribed time after the end of each financial year, prepare and deliver or cause to be delivered to the Assessing Officer or to any other authority or agency authorised by the Board in this behalf, a return in such form and verified in such manner and setting forth such particulars as may be prescribed, in respect of all taxable securities transactions entered into during such financial year in the stock exchange or, as the case may be, in respect of all taxable securities transactions, being sale of units to such Mutual Fund during such financial year.

(2) Where any assessee fails to furnish the return under sub-section (1) within the prescribed time, the Assessing Officer may issue a notice to such assessee and serve it upon him, requiring him to furnish the return in the prescribed form and verified in the prescribed manner setting forth such particulars within such time as may be prescribed.

(3) Any assessee who has not furnished the return within the time allowed under subsection (1) or sub-section (2), or having furnished a return under sub-section (1) or subsection (2), discovers any omission or wrong statement therein, may furnish a return or a revised return, as the case may be, at any time before the assessment is made.

Section 102 - Assessment

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(1) For the purposes of making an assessment under this Chapter, the Assessing Officer may serve on any assessee, who has furnished a return under section 101 or upon whom a notice has been served under sub-section (2) of section 101 (whether a return has been furnished or not), a notice requiring him to produce or cause to be produced on a date to be specified therein such accounts or documents or other evidence as the Assessing Officer may require for the purposes of this Chapter and may, from time to time, serve further notices requiring the production of such further accounts or documents or other evidence as he may require.

(2) The Assessing Officer, after considering such accounts, documents or other evidence, if any, as he has obtained under sub-section (1) and after taking into account any other relevant material which he has gathered, shall, by an order in writing, assess the value of taxable securities transactions during the relevant financial year and determine the amount of securities transaction tax payable or refundable on the basis of such assessment:

Provided that no assessment shall be made under this sub-section after the expiry of two years from the end of the relevant financial year.

(3) Every assessee, in case any amount is refunded to it on assessment under subsection (2), shall, within such time as may be prescribed, refund such amount to the concerned person from whom such amount was collected.

Section 103 - Rectification of mistake

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(1) With a view to rectifying any mistake apparent from the record, the Assessing Officer may amend any order passed by him under the provisions of this Chapter within one year from the end of the financial year in which the order sought to be amended was passed.

(2) Where any matter has been considered and decided in any proceeding by way of appeal relating to an order referred to in sub-section (1), the Assessing Officer passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.

(3) Subject to the other provisions of this section, the Assessing officer may--

(a) make an amendment under sub-section (1) of his own motion; or

(b) make such amendment if any mistake is brought to his notice by the assessee.

(4) An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this section unless the

Assessing Officer concerned has given notice to the assessee of his intention so to do and has allowed the assessee a reasonable opportunity of being heard.

(5) Where an amendment is made under this section, an order shall be passed in writing by the Assessing Officer.

(6) Subject to the other provisions of this Chapter, where any such amendment has the effect of reducing the assessment, the Assessing Officer shall make any refund, which may be due to such assessee.

(7) Where any such amendment has the effect of enhancing the assessment or reducing the refund already made, the Assessing Officer shall make an order specifying the sum payable by the assessee and the provisions of this Chapter shall apply accordingly.

Section 104 - Interest on delayed payment of securities transaction tax

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Every assessee who fails to credit the securities transaction tax or any part thereof as required under section 100, to the account of the Central Government within the period specified in that section, shall pay simple interest at the rate of one per cent. of such tax for every month or part of a month by which such crediting of the tax or any part thereof is delayed.

Section 105 - Penalty for failure to collect or pay securities transaction tax

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Any assessee who--

(a) fails to collect the whole or any part of the securities transaction tax as required under section 100; or

(b) having collected the securities transaction tax, fails to pay such tax to the credit of the Central Government in accordance with the provisions of sub-section (3) of that section, shall be liable to pay,--

(i) in the case referred to in clause (a), in addition to paying the tax in accordance with the provisions of sub-section (4) of that section, or interest, if any, in accordance with the provisions of section 104, by way of a penalty, a sum equal to the amount of securities transaction tax that he failed to collect; and

(ii) in the case referred to in clause (b), in addition to paying the tax in accordance with the provisions of sub-section (3) of that section and interest in accordance with the provisions of section 104, by way of penalty, a sum of one thousand rupees for every day during which the failure continues, so, however, that the penalty under this clause shall not exceed the amount of securities transaction tax that it failed to pay.

Section 106 - Penalty for failure to furnish prescribed return

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If an assessee fails to furnish in due time the return which it is required to furnish under sub-section (1) of section 101 or by notice given under sub-section (2) of that section, it shall be liable to pay, by way of penalty, a sum of one hundred rupees for every day during which the failure continues.

Section 107 - Penalty for failure to comply with notice

If the Assessing Officer in the course of any proceedings under this Chapter is satisfied that any person has failed to comply with a notice under sub-section (1) of section 102, he may direct that such person shall pay, by way of penalty, in addition to any securities transaction tax and interest, if any, payable by him, a sum of ten thousand rupees for each such failure.

Section 108 - Penalty not to be imposed in certain cases

Notwithstanding anything contained in the provisions of section 105 or section 106 or section 107, no penalty shall be imposable for any failure referred to in the said provisions if the assessee proves that there was reasonable cause for the said failure:

Provided that no order imposing a penalty under this Chapter shall be made unless the assessee has been given a reasonable opportunity of being heard.

Section 109 - Application of certain provision of Act 43 of 1961

The provisions of the following sections of the Income-tax Act, 1961(43 of 1961), as in force from time to time, shall apply, so far as may be, in relation to securities transaction tax as they apply in relation to income-tax:--

120, 131, 133A, 156, 178, 226 to 227, 229, 232, 260A, 261, 262, 265 to 269, 278B, 282 and 288 to 293.

Section 110 - Appeals to Commissioner of Income-tax (Appeals)

(1) Any assessee aggrieved by any assessment order passed by the Assessing Officer under section 102 or any order under section 103, or denying his liability to be assessed under this Chapter, or by an order levying penalty under this Chapter, may appeal to the Commissioner of Income-tax (Appeals) within thirty days from the date of receipt of the order of the Assessing Officer.

(2) Every appeal under sub-section (1) shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a fee of one thousand rupees.

(3) Where an appeal has been filed under the provisions of sub-section (1), the provisions of sections 249 to 251 of the Income-tax Act, 1961(43 of 1961), shall, as far as may be, apply.

Section 111 - Appeals to the Appellate Tribunal

(1) Any assessee aggrieved by an order passed by a Commissioner of Income-tax (Appeals) under section 110 may appeal to the Appellate Tribunal against such order.

(2) The Commissioner of Income-tax may, if he objects to any order passed by the Commissioner of Income-tax (Appeals) under section 110, direct the Assessing Officer to appeal to the Appellate Tribunal against such order.

(3) Every appeal under sub-section (1) or sub-section (2) shall be filed within sixty days of the date on which the order sought to be appealed against is received by the assessee, or by the Commissioner of Income-tax, as the case may be.

(4) Every appeal under sub-section (1) or sub-section (2) shall be in the prescribed form and shall be verified in the prescribed manner and in the case of an appeal filed under sub-section (1) shall be accompanied by a fee of one thousand rupees.

(5) Where an appeal has been filed before the Appellate Tribunal under sub-section (1) or sub-section (2), the provisions of sections 252 to 255 of the Income-tax Act, 1961(43 of 1961), shall, as far as may be, apply.

Section 112 - False statement in verification etc.

(1) If a person make a statement in any verification under this Chapter or any rule made thereunder or delivers an account or statement, which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to three years and with fine.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974), an offence punishable under sub-section (1) shall be deemed to be non-cognizable within the meaning of that Code.

Section 113 - Institution of proceedings

A person shall not be proceeded against for any offence under section 112 except with the previous sanction of the Chief Commissioner of Income-tax.

Section 113A - Chapter VII not to apply in certain cases

1[Notwithstanding anything contained in this Chapter, the provisions of this Chapter shall not apply to taxable securities transactions entered into by any person for, or on behalf of, the New Pension System Trust referred to in clause (44) of section 10 of the Income-tax Act, 1961 (43 of 1961).]

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1. Inserted by the Finance (No. 2) Act, 2009 w.e.f. 1st October, 2009.

Section 114 - Power to make rules

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Chapter

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any Of the following matters, namely:--

(a) the time within which the return shall be delivered or caused to be delivered to the Assessing Officer or to any other agency and the form and the manner in which such return shall be furnished under sub-section (1) or sub-section (2) of section 101;

(b) the time with which the return shall be furnished on receipt of notice under sub-section (2) of section 101;

(c) the form in which an appeal under section 110 or section 111 may be filed and he manner in which they may be verified;

(d) any other matter which by this Chapter is to be, or may be, prescribed.

(3) Every rule made under this Chapter and every notification issued under this Chapter shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both

Houses agree that the rule should not be made or the notification should not be issued, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

Section 115 - Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Chapter, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Chapter come into force.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.