

Circular No. 02/2008

F.No.153/82/2007-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
(TPL Division)

New Delhi, the 22nd February, 2008.

To
All Chief Commissioners of Income-tax
All Directors General of Income-tax.

**Sub : Securities lending/borrowing Scheme of Securities and Exchange
Board of India.**

Sir/Madam,

Securities and Exchange Board of India (SEBI) vide circular No.-MRD/DoP/SE/Dep/Cir-14/2007 dated 20/12/2007, has decided to permit all classes of investors (individuals, institutional, etc.) to short sell. Further, with a view to provide a mechanism for borrowing of securities to enable settlement of securities sold short, SEBI has also decided to put in place a full-fledged Securities Lending and Borrowing (SLB) Scheme for all market participants in the Indian securities market under the overall framework of "Securities Lending Scheme", 1997" of SEBI (Circular No.SMD/Policy/SL/ CIR-09/97 dated May 07, 1997).

2. In this context, the following taxation issues have arisen in respect of transactions under the Scheme of Securities Lending:

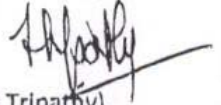
- (i) Whether the lending/ borrowing of securities under the Securities Lending Scheme will amount to "transfer" under clause (47) of section 2 of the income-tax Act (Act) in the hands of the lender?
- (ii) Whether lending/ borrowings of the securities will be subjected to securities transaction tax (STT)?

3. The Lending and Borrowing of Securities under the new scheme notified by SEBI vide circular No.-MRD/DoP/SE/Dep/Cir-14/2007 dated 20/12/2007 is in accordance with the overall framework of the Securities lending Scheme of 1997. Accordingly, the provisions of Section 47(xv) of the Act will be equally applicable in respect of the transactions under the new Scheme.

4. Securities Transaction Tax (STT) is levied on purchase or sale of an equity share, unit and derivative, under such circumstances as specified in section 98 of the Finance (No.2) Act, 2004. The transactions in the nature of lending and borrowing under the new Scheme do not fall within the scope of section 98 to the Finance (No.2) Act, 2004. Therefore, the transactions of lending and borrowing are not liable to securities transaction tax (STT).

5. The contents of this circular may be brought to the notice of all the officers in your region.

Yours faithfully,



(Sambit Tripathy)

Under Secretary (TPL-IV)

Copy to:-

1. All Chief Commissioners/Directors General of Income-tax with a request to circulate amongst all officers in their regions/charges.
2. Director General, National Academy of Direct Taxes, Nagpur.
3. Directors, Regional Training Institutes, Ahmedabad/Bangalore/Chandigarh/Chennai/Kolkata/Lucknow/Mumbai.
4. Comptroller and Auditor General of India (30 copies)
5. Ministry of Law (10 copies)
6. Secretary, Settlement Commission, New Delhi.
7. All officers and technical sections in CBDT.
8. All Chambers of Commerce/Industry/Trade Associations.

(Sambit Tripathy)

Under Secretary (TPL-IV)