

A.R. & Co.  
Chartered Accountants  
A-403, Gayatri Apartment  
Airlines Group Housing Society  
Plot No 27, Sector -10, Dwarka  
New Delhi – 110075

Gandhi Minocha & Co.  
Chartered Accountants  
B-6, Shakti Nagar Ext.  
Near Laxmi Bai College  
Ashok Vihar  
New Delhi – 110052

To,  
**The Board of Directors,**  
**GAIL (India) Limited**  
16, Bhikaji Cama Place  
R.K. Puram, New Delhi - 110066

**Sub: Proposed buyback of Equity Shares of not exceeding 10% of the aggregate of the fully paid-up share capital and free reserves as per the audited standalone accounts of the Company for the financial year ended March 31, 2021, on a proportionate basis (the “Buyback”), from the Eligible Shareholders by way of a tender offer through the stock exchange mechanism by GAIL (India) Limited (the “Company”).**

Dear Sirs,

With reference to the captioned subject, given below is a broad summarization of the applicable sections of the Income Tax Act, 1961, (“**Income Tax Act**”) relating to treatment of income-tax in case of buyback of listed equity shares on the stock exchange, which shall form part of the disclosure in the Draft Letter of Offer, Letter of Offer or any other document in relation to the Buyback of the Company.

The summary of the tax considerations in this section are based on 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 tax implications on these tax considerations.

In view of the particularized nature of tax consequences, shareholders are required to consult their tax advisors for the applicable tax provisions including the treatment that may be given by their respective tax officers in their case, and the appropriate course of action that they should take.

The company does not accept any responsibility for the accuracy or otherwise of this tax summary and 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 set out below should be treated as indicative and for guidance purposes only.

**1. GENERAL**

The Indian tax year runs from April 1 to March 31 of subsequent year. 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 (“**ITA**”).

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A person who is treated as a non-resident for Indian tax purposes is generally liable to tax in India only on his/her Indian sourced income or income received by such person in India. Vide Finance Act, 2020, certain non-resident individuals are deemed to be resident in India upon triggering of certain conditions. Deemed residents would be liable to pay tax in India only on their Indian sourced income or income from business or professional 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 ITA and 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 Double Taxation 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 shareholder is tax resident. The above benefit may be available subject to satisfying 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 ITA as well as satisfying the relevant conditions under the respective DTAA including anti-abuse measures under the MLI, if applicable.

## 2. CLASSIFICATION OF SHAREHOLDERS

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

### A. 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

B. 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





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exceeding Rs 15 lakh during the tax year.

**C. Non-Resident Shareholders being:**

- Non-Resident Indians (NRIs)
- Foreign Institutional Investors (FIIs) / Foreign Portfolio Investors (FPIs)
- Others:
  - Company
  - Other than Company

**3. BUYBACK OF SHARES**

Section 115QA of the ITA introduced w.e.f. June 1, 2013 contains provisions for taxation of a domestic company in respect of buy-back of shares (within the meaning of Sec. 68 of the Companies Act, 2013). In effect, the incidence of tax stands shifted completely to the Company and not the recipient of the buyback proceeds.

Before the enactment of Finance Act (No 2), 2019, this section was not applicable to shares listed on a recognized stock exchange. The Finance Act (No 2), 2019 has amended section 115QA of the ITA with effect from 5th July, 2019 extending its provisions to cover distributed income on buy-back of equity shares of a company listed on a recognized stock exchange as well.

As per Section 115QA, listed companies making a public announcement of Buyback of shares on or after 5th July 2019 are required to pay an additional Tax @ 20%, plus Surcharge @ 12%, plus Health & Education Cess @4% on the Distributed Income.

Distributed Income is defined under section 115QA to include Consideration paid by the company on buyback of Shares as reduced by the amount which was received by the company on issue of such shares, determined in the manner specified in Rule 40BB.

The tax on the distributed income by the company shall be treated as the final payment of tax in respect of the said income and no further credit therefor shall be claimed by the company or by any other person in respect of the amount of tax so paid.

No deduction under any other provision of this Act shall be allowed to the company or a shareholder in respect of the income which has been charged to tax.

Section 10(34A) of the ITA provided for exemption to a shareholder in respect of income arising from buy-back of shares w.e.f. April 1, 2014 (i.e. Assessment year 2014-15). The



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Finance Act (No. 2), 2019 has also made consequential changes to section 10(34A) of the ITA extending the benefit of exemption of income from buy-back to shareholders in respect of shares listed on recognized stock exchange as well.

Thus, the tax implications to the following categories of shareholders are as under:

***A. Resident Shareholders or Deemed Resident Shareholders***

Income arising to the shareholder on account of buy-back 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.

***B. Non-Resident Shareholders***

While the income arising to the shareholder on account of buy back 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 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.

**4. TAX DEDUCTION AT SOURCE**

Currently, there are no provisions for tax deduction at source in respect of income earned from transfer/ buy-back of shares in case of resident shareholders/ deemed resident shareholders.

Given that income arising on account of the buy-back of shares is exempt from tax under Section 10(34A) of ITA, the same would not be subject to tax deduction at source for non-resident shareholders.

**5. SECURITIES TRANSACTION TAX**

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.



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***Caveat:***

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.



I hereby consent to inclusion of the extracts of this certificate in the Draft Letter of Offer and the Letter of Offer or any other document in relation to the Buyback.

**For A.R. & Co.**  
Chartered Accountants  
Firm Registration No: 002744C


**Pawan K Goel**  
Partner  
Membership No. 072209  
UDIN: 22072209AGBMAO1702

**For Gandhi Minocha & Co.**  
Chartered Accountants  
Firm Registration No: 000458N

**Manoj Bhardwaj**  
Partner  
Membership No. 098606  
UDIN: 22098606AGBWOZ9814

Place: New Delhi

Date: March 31, 2022