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Annexure 1

ANNEXURE TO THE STATEMENT OF POSSIBLE SPECIAL TAX BENEFITS AVAILABLE TO CANARA HSBC LIFE INSURANCE COMPANY LIMITED (THE "COMPANY") AND ITS SHAREHOLDERS

UNDER THE INCOME TAX ACT, 1961 READ WITH RULES THEREOF ("THE ACT")

A. KEY TAXATION ASPECTS APPLICABLE TO THE COMPANY[1] -

Taxability of Life Insurance Companies under the Act

Section 44 of the Act read with Rule 2 of the First Schedule thereto, lays down the manner of determination of the taxable income from life insurance business. Generally, the computation of the profits of any business is in accordance with the provisions contained in sections 28 to 43B of the Act. However, section 44 of the Act provides for a specific exception in the case of the business of insurance, whereby the provisions of sections 28 to 43B do not apply for computing the income of an insurance company.

Provisions of Minimum Alternate Tax (MAT) under the Act

The provisions of Minimum Alternate Tax (MAT) under Section 115JB are not applicable to any income accruing or arising to a company from the life insurance business.

Concessional tax rate under section 115B of the Act

The income of a life insurance company is so computed as per the provisions of section 44 read with Rule 2 of First Schedule of the Act and is taxable at the rate of 12.5% (plus applicable surcharge and education cess, if any) as per section 115B of the Act.

Applicability of Income Computation and Disclosure Standard (ICDS)

Central Board of Direct Taxes ("CBDT") vide its clarification dated 23 March 2017 has clarified that ICDS provisions are not applicable to Life Insurance companies as Schedule I of the Act contain specific provisions for Insurance business. The relevant extract of the circular is reproduced herein below:

"the general provisions of ICDS shall apply to all persons unless there are sector specific provisions contained in the ICDS or the Act. For example, ICDS VIII contains specific provisions for banks and certain financial institutions and schedule I of the Act contains specific provisions for the Insurance business"

Income from Pension Business

The Company is entitled to claim an exemption under section 10(23AAB) of the Act in respect of the Income earned from pension business subject to satisfaction of the conditions as stipulated therein.

Income from trust invested in SPV distributed by way of dividend

The company is entitled to claim exemption of any distributed income, referred to in section 115UA, received by a unit holder from the business trust u/s 10(23FD), but it should not be an income as referred to in 10(*23FC*)(a) or10 (23FC)(b) (in a case where the special purpose vehicle has exercised the option under section 115BAA) or 10(*23FCA*).

As per provisions of section 115UA, any income distributed by a business trust to its unit holders shall be deemed to be of the same nature and in the same proportion in the hands of the unit holder as it had been received by, or accrued to, the business trust. Subject to the provisions of section 111A and section 112, the total income of a business trust shall be charged to tax at the maximum marginal rate. If in any previous year, the distributed income or any part thereof received by a unit holder from the business trust is income as referred to in 10(*23FC*)(a) or10 (23FC)(b) then, such distributed income or part thereof shall be deemed to be income of such unit holder and shall be charged to tax as income of the previous year.

Life insurance companies are governed by specific tax regime and the schedule related thereto under Income-Tax Act, 1961 as aforesaid. For the purpose of this statement, we have incorporated only specific sections directly related to life insurance companies.

Deduction in respect of dividend payment

The company is entitled to claim deduction u/s 80M of an amount equal to income by way of dividends received from such other domestic company or foreign company or business trust as does not exceed the amount of dividend distributed by it on or before the due date. "Due date" means the date one month prior to the date for furnishing the return of income under sub-section (1) of section 139.

Deduction in respect of employment of new employees

The company is entitled to claim deduction u/s 80JJAA of an amount equal to thirty per cent of additional employee cost incurred *(subject to conditions as specified)* in the course of business in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

No deduction of tax at source on dividend paid to Life Insurance companies

The provisions of withholding tax on dividend Income received are not applicable to life insurance companies in respect of any shares owned by it or in which it has full beneficial interest as per the exception provided under section 194 of the Act.

No deduction of tax at source on interest Income paid to Life Insurance companies

The provisions of withholding tax on interest on securities received are not applicable to life insurance companies in respect of any securities owned by it or in which it has full beneficial interest as per the exception provided under section 193 of the Act.

Deduction u/s 80LA in respect of certain incomes of International Financial Services Centre

The company is entitled to a deduction of income earned from Unit in IFSC (Gift City Branch), from such income, of an amount equal to one hundred per cent of such income for any ten consecutive assessment years, at the option of the company, out of fifteen years, beginning with the assessment year relevant to the previous year in which the permission/registration under SEBI Act, IFSC act has been obtained.

Carry forward and set off of losses

As per the provisions of section 72(1) of the Act, if the net result of the computation of Income from business is a loss to the Company, not being the loss arising out of speculative business, such loss can be set off against any other income and the balance loss, if any, can be carried forward for eight consecutive assessment years immediately succeeding the assessment year for which the loss was first computed and shall be set off against business income.

B. KEY TAXATION ASPECTS APPLICABLE TO THE SHAREHOLDERS OF THE COMPANY UNDER THE ACT

I. *Resident Shareholders*

a) Dividend Income

Any Income by way of dividend referred to section 115-O of the Act i.e. dividend declared, distributed or paid by domestic companies on or after 1 April, 2020 received on the investment made by investor/shareholder in the company is taxable in the hands of Investors/shareholders.

b) Characterization of gains/losses arising from sale/transfer of shares

The characterization of gains/losses, arising from sale/transfer of shares as business income or capital gains would depend upon on the nature of holding and various other factors.

The Government vide its circulars has clarified that in order to provide tax certainty to the assessee along with numerous jurisprudences that income arising from transfer of shares and securities, would be taxed under the head "Capital Gains" unless the shareholder itself treats these as stock-in-trade and income arising from transfer thereof as its business income

c) Capital Asset

Capital assets are to be categorized into short-term capital assets and long-term capital assets based on the period of holding. Equity Shares listed on a recognized stock exchange in India held by an assessee for more than 12 months, immediately preceding the date of transfer, are considered to be long-term capital assets. Capital gains arising from the transfer of such long term capital assets are termed as Long- Term Capital Gains (LTCG).

Short Term Capital Gains (STCG) means capital gains arising from the transfer of equity shares listed on a recognized stock exchange in India held for less than 12 months, immediately preceding the date of transfer.

d) Computation of Capital gain

As per Section 48 of the Act, in order to arrive at the quantum of capital gains, the following amounts would be deductible from the full value of consideration:

i. Cost of acquisition/ improvement of the shares as adjusted by the cost inflation index notified by the Central Government depending upon the nature of capital assets.

ii. Expenditure incurred wholly and exclusively in connection with the transfer of shares.

e) Exemption of Capital gain

Long-term capital gains arising from transfer of long- term capital asset referred to in section 112A of the Act will be liable to tax at the rate of 12.5% on such income exceeding Rs. 1.25 lakh.

f) Taxability of Capital Gains

Tax on Short Term Capital gains

Section 111A of the Act provides for rate of tax@ 20% in respect of short term capital gains (provided the short-term capital gains exceed the basic threshold limit of exemption, where applicable) arising from the transfer of a short term capital asset (i.e. capital asset held for the period of less than 12 months) being an Equity Share in a company or a unit of an equity oriented fund wherein STT is paid on both acquisition and transfer.

In the case of resident individuals/HUF, if the basic exemption limit is not fully exhausted by other income, then short-term capital gain will be reduced by unexhausted basic exemption limit and the balance would be taxed at 20 percent.

Where the gross total income of an assessee includes any short-term capital gains as referred to in sub- section (1) of Section 111A, the deduction under Chapter VI-A shall be allowed from the gross total income as reduced by such capital gains.

If the provisions of section 111A of the Act are not applicable, then the STCG would be taxed at the normal rate of tax (plus applicable surcharge and education if any) applicable to resident investor

Tax on Long Term Capital gains

Long term capital gains arising from transfer of listed securities, shall be taxed @12.5%

Section 112A of the Act provides for concessional rate of tax with effect from April 1, 2019 (i.e. Assessment Year 2019-20) updated via Finance Act, 2024. Any income, exceeding Rs.1,25,000 arising from the transfer of a long term capital asset (i.e. capital asset held for the period of 12 months or more) being an Equity Share in a company or a unit of an equity

oriented fund wherein Securities Transaction Tax ('STT') is paid on both acquisition and transfer, income tax is charged at a rate of 12.5% without giving effect to indexation.

No withholding tax/deduction at source is applicable on income arising by way of capital gains to a resident shareholder on a transfer of shares of an Indian company.

g) Carry forward and set off of capital gain losses

As per section 70 of the Act, Short Term Capital Loss computed for the given year is allowed to be set off against STCG as well as LTCG computed for the said year. The balance loss, which is not set off, is allowed to be carried forward for subsequent eight assessment years for being set off against subsequent years' STCG as well as LTCG, in terms of section 74 of the Act. As per section 70 of the Act, LTCL computed for a given year is allowed to be set off only against the LTCG. The balance loss, which is not set off, is allowed to be carried forward for the subsequent eight assessment years for being set off only against subsequent years' LTCG, in terms of section 74 of the Act. A person is eligible to carry forward and set off the losses if he/ she has duly filed the return of income within the applicable due date prescribed under the Act.

h) Exemptions from Long Term Capital Gains

Section 54E of the Act exempts long-term capital gains on transfer of Long term capital asset if the gains are invested in "specified assets" (i.e., units of notified fund) within six months from the date of transfer. The investment in specified assets should be held for 3 years.

Section 54F of the Act exempts long-term capital gains on transfer of any long term capital asset except residential house property, held by an individual or HUF, if the net consideration is utilized to purchase/ construct a residential house within specified timelines. The term "net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

i) Deduction on account of STT paid

In terms of section 36(1)(xv) of the Act, the STT paid by the shareholder in respect of the taxable securities transactions entered into in the course of his business of transactions/trading in shares would be eligible for deduction from the amount of income chargeable under the head "Profit and gains of business or profession" if income arising from taxable securities transaction is included in such income.

However, no deduction will be allowed in computing the income chargeable to tax as capital gains of such amount paid on account of STT.

No tax is deductible at source from income by way of capital gains arising to a resident shareholder under the present provisions of the Act.

j) Taxability of property received without adequate consideration

Under section 56(2)(x) of the Act and subject to exceptions provided therein, if any person receives from any person, any property, including, inter alia, shares of a company, without consideration or for inadequate consideration, the following shall be treated as 'Income from other sources' in the hands of the recipient:

i. where the shares are received without consideration, aggregate Fair Market Value ("FMV") exceeds Rs.50,000/-, the whole FMV;

ii. where the shares are received for a consideration less than FMV but exceeding Rs. 50,000/-, the aggregate FMV in excess of the consideration paid.

II. *Rule 11UA of the Income-tax Rules, 1962 ("the Rules") provides for the method for determination of the FMV of various properties. Non-Resident Shareholders*

a) Dividend Income

Any Income by way of dividend referred to section 115-O of the Act i.e. dividend declared, distributed or paid by domestic companies on or after 1 April, 2020 received on the investment made by investor/shareholder in the company is taxable in the hands of Investors/shareholders.

b) Special scheme of taxation for Non-resident Indian

A special scheme of taxation applies in case of Non-Resident Indian ('NRI') in respect of income/LTCG from investment in "specified foreign exchange assets" as defined under Chapter XIIA (Special provisions relating to certain incomes of non-resident) of the Act. Key provisions of the scheme are as under:

NRI is defined to mean an individual being a citizen of India or a person of Indian origin who is not a resident as per the Act. A person is deemed to be of Indian origin if he, or either of his parents or any of his grandparents, were born in undivided India.

As per the provisions of section 115E of the Act, Long-term Capital Gains (LTCG) arising on account of transfer of specified asset which *inter alia* includes shares of an Indian company is taxable at the rate of 12.5% without any indexation benefit.

LTCG arising on transfer of a foreign exchange asset is tax exempt as per the provisions of section 115F of the Act if the net consideration from such transfer is reinvested in specified assets or in savings certificates referred to in section 10(4B) of the Act subject to the conditions prescribed therein.

In terms of section 115G of the Act, NRIs are not obliged to file a return of income under section 139(1) of the Act, if their only source of income is income from investments or long-term capital gains or both, provided adequate tax has been deducted at source from such income as per Chapter XVII-B of the Act.

Section 115-I of the Act allows NRIs to elect not to be governed by the scheme (Chapter XIIA - Special provisions relating to certain incomes of non-resident) for any assessment

year by furnishing their return of income for that year under section 139 of the Act and declaring the choice made in such return and accordingly they would be taxed in that assessment year in accordance with the regular tax provisions.

Under the provisions of section 115H of the Act, where a person is a NRI in any previous year, become assessable as a resident in India with respect to total income of any subsequent year, he may furnish a declaration in writing, to the assessing officer, along with his copy of return of Income filed under section 139 of the Act for the assessment year, in which he becomes first assessable as a resident to the effect of the provisions of Chapter XII-A shall continue to apply to him in relation to the investment income derived from specified assets for that year and subsequent years until such assets are transferred or converted into money.

c) Taxability of Capital gains

Taxation of Long-Term Capital Gains chargeable to STT

LTCG arising on transfer of listed shares or units of equity oriented mutual funds or units of business trusts by introduction of section 112A in the Act and provided that long-term capital gains arising from transfer of long term capital asset referred to in section 112A of the Act will be liable to tax at the rate of 12.5% on such income exceeding Rs. 1.25 lakh, as amended under Finance Act, 2024.

As per section 112A of the Act, the concessional rate of 12.5% (plus applicable surcharge and health and education cess) shall be available only if STT has been paid on both acquisition and transfer in case of equity shares and STT has been paid on transfer in case of units of equity-oriented mutual funds or units of business trust.

As per section 48 of the Act, the benefit of indexation and foreign currency fluctuations would not be available. No deduction under Chapter VIA of the Act shall be allowed from such capital gains.

Taxation of Short -Term Capital Gains chargeable to STT

As per section 111A of the Act, STCG arising on transfer of equity share or units of an equity oriented fund or units of a business trust would be taxable at a rate of 20% (plus applicable surcharge and health and education cess) where such transaction of sale is entered on a recognized stock exchange in India and is chargeable to STT. Further, as per second proviso to section 111A of the Act, the requirement of a transfer being chargeable to STT is not applicable to:

i. transactions undertaken on a recognized stock exchange located in International Financial Services Centre; and

ii. the consideration for such transactions is payable in foreign currency

STCG arising from transfer of capital assets, other than those covered by section 111A of the Act, would be subject to tax as calculated under the normal provisions of the Act. No deduction under Chapter VIA of the Act shall be allowed from such STCG.

d) Carry forward and set off of capital gain losses

As per section 70 of the Act, Short Term Capital Loss computed for the given year is allowed to be set off against STCG as well as LTCG computed for the said year. The balance loss, which is not set off, is allowed to be carried forward for subsequent eight assessment years for being set off against subsequent years' STCG as well as LTCG, in terms of section 74 of the Act. As per section 70 of the Act, LTCL computed for a given year is allowed to be set off only against the LTCG. The balance loss, which is not set off, is allowed to be carried forward for subsequent eight assessment years for being set off only against subsequent years' LTCG, in terms of section 74 of the Act. A person is eligible to carry forward and set off the losses if he/ she has duly filed the return of income within the applicable due date prescribed under the Act.

e) Deduction on account of STT paid

In terms of section 36(1)(xv) of the Act, the STT paid by the shareholder in respect of the taxable securities transactions entered into in the course of his business of transactions/trading in shares would be eligible for deduction from the amount of income chargeable under the head "Profit and gains of business or profession" if income arising from taxable securities transaction is included in such income.

However, no deduction will be allowed in computing the income chargeable to tax as capital gains of such amount paid on account of STT.

No tax is deductible at source from income by way of capital gains arising to a resident shareholder under the present provisions of the Act.

f) Exemptions from Long Term Capital Gains

Section 54E of the Act exempts long-term capital gains on transfer of any long term capital asset if the gains are invested in "specified assets" (i.e., units of notified fund) within six months from the date of transfer. The investment in specified assets should be held for 3 years.

Section 54F of the Act exempts long-term capital gains on transfer of any long term capital asset except residential house property, held by an individual or HUF, if the net consideration is utilized to purchase/ construct a residential house within specified timelines. The term "net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

g) Additional tax benefit available to Non-Resident shareholders

Section 90(2) of the Act allows non-resident shareholders to opt to be taxed in India as per the provisions of the Act or the double taxation avoidance agreement ('DTAA') or tax treaty entered into by the Government of India with the country of residence of the non-resident

shareholder, whichever is more beneficial subject to fulfilment of conditions as provided under the relevant provisions of Act and Rules therein.

Section 90(4) of the Act provides that a taxpayer, not being a resident, to whom a DTAA applies, shall not be entitled to claim any relief under such DTAA unless a certificate of it being a resident in a country outside India is obtained by it from the Government of that country.

Further, section 90(5) of the Act, provides that a taxpayer to whom a DTAA applies, as referred to in section 90(4) of the Act, shall provide such other documents and information, as may be prescribed. A taxpayer would be required to furnish Form No 10F, where the required information is not explicitly mentioned in the aforementioned certificate of residency and the taxpayer is required to keep and maintain such documents as are necessary to substantiate the information provided.

Section 90(2A) of the Act provides that notwithstanding anything contained in section 90(2) of the Act, the provisions of Chapter X-A shall apply to the taxpayer, even if such provisions are not beneficial to the taxpayer.

Claiming of beneficial tax rate under the DTAA could also be subject to General Anti-Avoidance Rule. Chapter X-A of the Act, effective from 1 April 2017, allows the Indian Revenue authorities to declare an arrangement entered into by a taxpayer as an impermissible avoidance arrangement, subject to specified terms and conditions therein and determine tax consequences as appropriate, including denial of tax benefits as per the provisions of a DTAA.

Further, Rule 10U of the Income-tax Rules, 1962 (Rules) provides that the provisions of Chapter X-A of the Act shall not apply to inter-alia income accruing or arising to, or deemed to accrue or arise to, or received or deemed to be received by, any person from transfer of investments made before 1 April 2017 by such person.

Further, any income by way of capital gains payable to non-residents (other than capital gains payable to an FII/FPI) may be subject to withholding tax in accordance with the provisions of the Act or under the relevant DTAA, whichever is beneficial to such non-resident unless such non-resident has obtained a lower withholding tax certificate from the tax authorities.

(Vide Notification No. 03/2022 dated July 16, 2022 issued by CBDT, non-resident tax payer is required to electronically furnish specific information in specified form i.e. Form 10F to avail DTAA benefits.)

III. *Foreign Institutional Investors ("FII")/Foreign Portfolio Investors ("FPI")*

As per section 2(14) of the Act, securities held by a FPI registered in accordance with the SEBI Regulations for FPIs would be in the nature of "capital asset". Consequently, the income arising to a FPI from transactions in securities are treated as capital gains.

The CBDT has issued a Notification No. 9 dated 22 January 2014 which provides that Foreign Portfolio Investors (FPI) registered under SEBI (Foreign Portfolio Investors) Regulations, 2014 shall be treated as FII for the purpose of Section 115AD of the Act. Further, the SEBI (Foreign Portfolio Investors) Regulations, 2014 has been replaced by the SEBI (Foreign Portfolio Investors) Regulations, 2019.

As per provisions of Section 115AD of the Act, capital gains arising from transfer of securities would be taxable as follows:

i. Long Term Capital Gains (LTCG) on sale of Equity shares:

LTCG exceeding one lakh and twenty five thousand rupees to the extent arising on transfer of these securities is taxable at 12.5%, provided such transfer is chargeable to STT. Further, to avail such concessional rate of tax, STT should also have been paid on acquisition, unless the securities have been acquired through a mode, notified as not requiring to fulfil the pre-condition of chargeability to STT.

LTCG, other than above, arising on account of sale of equity shares is taxable at the rate of 12.5% without indexation benefit.

ii. Short Term Capital Gains (STCG) on sale of Equity shares:

Section 111A of the Act provides for concessional rate of tax @ 20% in respect of short term capital gains (provided the short-term capital gains exceed the basic threshold limit of exemption, where applicable) arising from the transfer of a short term capital asset (i.e. capital asset held for the period of less than 12 months) being an Equity Share in a company or a unit of an equity oriented fund wherein STT is paid on both acquisition and transfer.

STCG, other than above, arising on account of sale of equity shares is taxable at the rate of 30 percent.

**The above rates of tax are excluding applicable surcharge and education cess, if any.*

As per section 196D of the Act, no deduction of tax shall be made from any income, by way of capital gains arising from the transfer of securities referred to in section 115AD, payable to foreign institutional investor.

In accordance with the provisions of section 90 of the Act, FIIs/FPIs being non-residents will be entitled to choose the provisions of the Act or the provisions of tax treaty entered into by India with other foreign countries, whichever is more beneficial, while deciding taxability in India, subject to, furnishing of certain documents as prescribed under the provisions of the Act read with Rules therein.

IV. *Venture Capital Companies/Funds under the Act*

As per the provisions of section 10(23FB) of the Act, all venture capital companies/funds registered with Securities and Exchange Board of India ("SEBI"), subject to the conditions

specified, are eligible for exemption from income tax on any income from investment in a venture capital undertaking.

The term "Investment Fund" has been defined under clause (a) of Explanation 1 of section 115UB of the Act means any fund established or incorporated in India in the form of a trust or a company or limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or Category II Alternate Investment Fund and is regulated under SEBI (Alternate Investment Fund) Regulations, 2012 made under the SEBI Act, 1992.

Chapter XII-FB of the Act provides for special taxation regime for Category I and Category II Alternate Investment Fund referred to as "Investment Fund" as per clause (a) of Explanation 1 to section 115UB of the Act. Further, the said Act has inserted section 10(23FBA) of the Act which provides that income of any investment fund other than income chargeable under the head "Profits and Gains of business or profession" shall be exempt from tax.

V. *Tax benefits available to Specified Fund {Specified Fund as defined under section 10(4D) of the Act}*

Section 10(4D) of the Act provides tax exemption in relation to any income accrued/ arisen/ received by a Specified Fund from specified sources to the extent such income is attributable to the units held by the non-residents.

For the purpose of said section a Specified Fund means a fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate, located in the IFSC, which has been granted registration as a Category III AIF under the SEBI AIF regulations or IFSCA Act of which all the units other than unit held by a sponsor or manager are held by ***non-resident or***. Finance Act 2022, substituted the term ***non-resident or*** as follows:

*"non-resident **provided** that the condition specified in this item shall not apply where any unit holder or holders, being non-resident during the previous year when such unit or units were issued, becomes resident under clause (1) or clause (1A) of section 6 in any previous year subsequent to that year, if the aggregate value and number of the units held by such resident unit holder or holders do not exceed five per cent of the total units issued and fulfil such other conditions as may be prescribed;*

Further, vide notification 64/2022 dated 16 June 2022, CBDT notified other conditions for Specified Fund in relation to the section 10(4D) of the Act by inserting Rule 21AIA as follows:

"(a) the unit holder of the specified fund, other than the sponsor or manager of such fund, who becomes a resident under clause (1) or clause (1A) of section 6 of the Act during any previous year subsequent to the previous year in which such unit or units were issued, shall cease to be a unit holder of such specified fund within a period of three months from the end of the previous year in which he becomes a resident;"

The income of Specified Funds is taxable for the year beginning April 1, 2020, to the extent attributable to units held by Non-Resident (not being a permanent establishment of a non-resident in India), and in accordance with and subject to the provisions of section 115AD of the Act, as under:

a. The interest income earned are chargeable to tax at the rate of 10%

b. Long term capital gains on transfer of debentures to the specified extent are taxable at 10% (benefit of provisions of the first proviso of section 48 of the Act will not apply); and

c. Short-term capital gains are taxable at 30%.

VI. *Mutual Fund under the Act*

All mutual funds registered under Securities and Exchange Board of India or set up by public sector banks or public financial institutions or authorized by the Reserve Bank of India are exempt from tax on all their income.

As per the provisions of section 10(23D) of the Act, all mutual funds set up by public sector banks or public sector financial institutions or Mutual Fund registered under Securities and Exchange Board of India ("SEBI") or Mutual Fund authorized by Reserve Bank of India ("RBI"), subject to the conditions specified, are eligible for exemption from income tax, including income from investment in the shares of the company.

VII. *General Anti-Avoidance Rule ("GAAR")*

As per the provisions of Chapter XA of the Act, General Anti-avoidance Rule may be invoked notwithstanding anything contained in the Act. By this Rule, any arrangement entered into by a taxpayer where the main purpose of the arrangement is to obtain a tax benefit may be declared as a Impermissible avoidance agreement as defined in that Chapter and consequence would be inter alia of tax benefit, with effect from 1 April, 2017.

CBDT Vide Notification No. 49/2016 dated 22 June, 2016 clarified on the applicability of GAAR that provides GAAR is not applicable to any income accruing or arising to, or deemed to accrue or arise to or received or deemed to be received by any person from transfer of investment or transactions made prior to 1 April, 2017. Further, GAAR provisions are applicable to any arrangement that is entered into for an impermissible transaction, for obtaining benefit on or after 1 April, 2017.

CBDT Vide Circular dated 27 January, 2017 expressed clarity on the applicability of GAAR providing monetary limit of INR 30 million which is per transaction/arrangement beyond which the transaction may be considered as impermissible and attract GAAR provisions.

Relaxation of GAAR in situation where a transaction is permitted or ruled by the Authority for Advance Ruling for a particular transaction of the applicant, satisfaction of commercial

substance would not invoke GAAR provisions and GAAR provisions cannot be invoked automatically but can be initiated only for cases through an Approving Panel headed by a judge of High Court etc.

VIII. *Multilateral Convention to implement Tax Treaty related measures to prevent Base Erosion and Profit Sharing ("MLI")*

The Organisation of Economic Co-operation and Development ("OECD") released the MLI. The MLI, amongst others, includes a "principal purpose test", wherein DTAA benefits can be denied if one of the principal purpose of an arrangement or a transaction was to, directly or indirectly, obtain tax benefit. India has been an active participant in the entire discussion and its involvement in the BEPS project has been intensive. In a ceremony held in Paris on 7 June 2017, various countries including India, signed the MLI.

On 25 June, 2019, India has deposited the Instrument of Ratification to OECD, Paris along with its Final Position in terms of Covered Tax Agreements (CTAs), Reservations, Options and Notifications under the MLI, as a result of which MLI will enter into force for India on 1st day of October, 2019 and its provisions will have effect on India's DTAAs from FY 2020-21 onwards.

IX. *Requirement to furnish PAN for withholding tax/ filing return of Income under the Act*

Section 139A (5A) requires every person from whom income tax has been deducted at source under chapter XVII – B of the Act to furnish his PAN to the person responsible for deduction of tax at source under domestic laws.

a) <u>Section 206AA of the Act</u>

Section 206AA of the Act requires every person entitled to receive any sum, on which tax is deductible under Chapter XVIIB ('deductee') to furnish his PAN to the deductor, failing which tax shall be deducted at the higher of the following rates:

- at the rate specified in the relevant provision of the Act; or
- at the rate or rates in force; or
- at the rate of twenty per cent.

A declaration under Section 197A (1) or 197A (1A) or 197A (1C) of the Act, shall not be valid unless the person furnishes his PAN in such declaration and the deductor is required to deduct tax as per above-mentioned para in such a case.

Where a wrong PAN is provided, it will be regarded as non-furnishing of PAN for the purpose of section 206AA of the Act.

As per Rule 37BC the Rules, the higher rate under section 206AA shall not apply to a non- resident, not being a company, or to a foreign company, in respect of payment of interest, if the non-resident deductee furnishes the prescribed details inter alia TRC and Tax Identification Number (TIN).

X. *Provisions of tax on gift of shares under the Act*

In order to prevent the practice of receiving sum of money or the property including shares or securities without consideration or for an inadequate consideration, the provisions under section 56(2) of the Act has been prescribed and according to which receipt of sum of money or the property by any person without consideration or for an inadequate consideration in excess of INR 50,000 shall be chargeable to tax in the hands of the recipient under the head "Income from Other Sources" unless it is a gift from relatives as defined under section 56(2)(x) of the Act.