

Do shares come under the ambit of 'goods'?

Clarity from the tax department is needed on TDS implications on transactions in unlisted shares and securities

● TAX TALK

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IMPOSITION OF LIABILITY to deduct tax on purchase of goods with effect from July 1, 2021 has witnessed firms going back to the drawing board to underpin their obligations by discerning the interplay between applicability of tax deduction (TDS) provisions on purchase of goods, inserted by Union Budget 2021 and tax collection (TCS) provisions on sale of goods inserted earlier vide Finance Act 2020.

One of the questions that have landed tax deductors in a quandary is whether these provisions should be tested for transactions in shares and securities. This is due to absence of definition of the term 'goods' in Income Tax Act. While the Sale of Goods Act, 1932 (SOGA) defines 'goods' to include stocks and shares within its genre, a matching definition in Central Goods and Services Tax Act 2017 (CGSTA) excludes securities from its ambit.

Courts have laid that expressions defined in one statute do not afford a guide to construction of same expressions in another statute, unless both statutes are pari material legislations; i.e., both statutes deal with similar matters. CGSTA and ITA being taxing statutes, could be arguably considered as pari material legislations.

Adopting the definition under CGSTA, one could aver that shares should be in the nature of marketable securities. As a corollary, only listed shares are sought to be

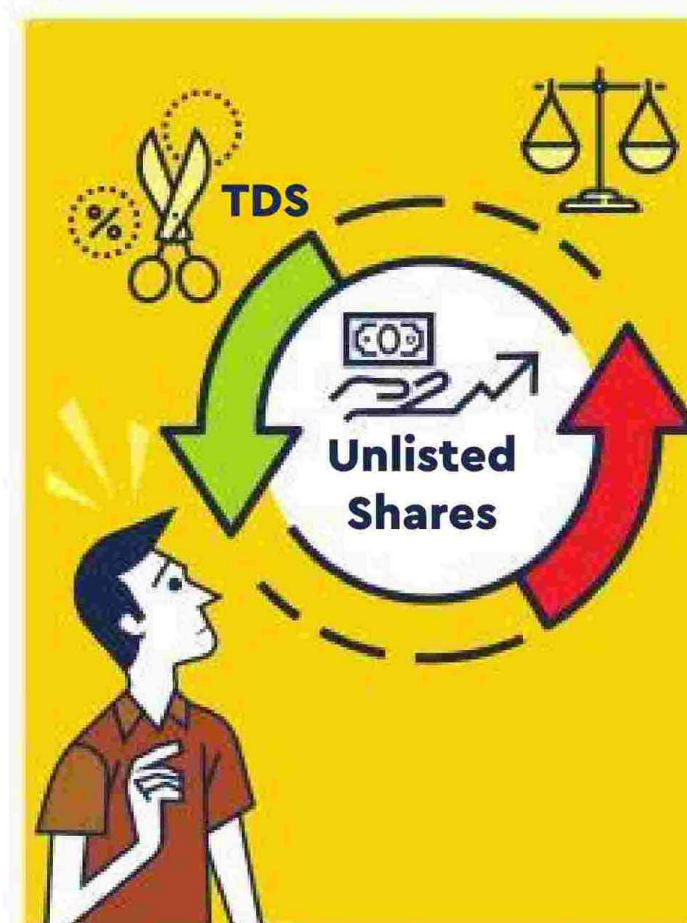


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excluded from the definition of goods. The above argument may not hold in light of Supreme Court ruling in the cases of Sahara and Bhagwati Developers that anything saleable or freely transferable without any statutory prohibits, is marketable. Therefore, both listed and unlisted shares would get excluded from the realm of goods. ITA itself in certain sections treats

goods and securities differently and therefore, in absence of a specific definition in ITA, goods could be construed to exclude securities, whether listed or unlisted.

Clarification needed

Applying definition under SOGA read with recently issued CBDT Circular No 13 of 2021 and Circular No 17 of 2020 may, however, lead to a differing view. The Circulars observed that in trading exchanges, there is no one-to-one contract between buyers and sellers and clarified that TDS/TCS provisions would not apply to transactions in securities traded through recognised stock exchanges (RSE). The circulars may be indicative of a construct that 'goods' includes shares with a specific exclusion for securities traded on RSE. This interpretation is echoed by the rationale of issuing the clarification.

Given the dissonance in views, these provisions have become an area of analysis by transaction experts while determining TDS implications on transactions in unlisted shares, which may necessitate a specific clarification from the authorities.

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