

# FAQs on Share Buybacks

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## Background

One of the significant proposals under the Finance Bill 2024, as [passed by the Lok Sabha](#) on 7th August, 2024, drawing the attention of companies is the taxability of share buy-backs. The Finance Bill not only shifts the tax incidence from the hands of the company to the shareholders, it puts a tax on the entire buy-back consideration received, thereby, taxing the capital too with the profits distribution. Consequently, there will be a capital loss in the hands of the recipient shareholders. Detailed discussion on the tax law changes pertaining to the proposal in the Budget relating to buy-back can be read in this article - [Bye bye to Share Buybacks](#).

As the tax law changes on buy-back are applicable from 1st October, 2024, companies have a two-months' timeline to come up with buy-back offers under the existing tax regime. These FAQs aim at helping companies.

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## Applicable Laws

Buy-back of shares is primarily governed by the following applicable laws:

- Section 68 of the Companies Act, 2013 (“CA, 2013”) read with Rule 17 of Companies (Share Capital and Debentures) Rules, 2014 - for buy-back of shares and other specified securities
- Section 67(1) of CA, 2013 - providing restriction on buy-back of shares without effecting reduction in share capital, and sec. 66 relating to reduction of capital.
- [SEBI \(Buy-back of Securities\) Regulations, 2018](#) (“Buy-back Regulations”) - for buy-back of listed shares and listed specified securities
- Section 115QA read with Section 10(34A) and Section 46A of the Income Tax Act, 1961 - for buy-back offers prior to 1st October, 2024
- Section 2(22)(f) read with Section 46A and Section 57 of the Income Tax Act, 1961 - for amount received pursuant to buy-back on or after 1st October, 2024

## Meaning, scope of applicability

### 1. What is buy-back? How is it different from redemption of a redeemable security?

Buy back refers to the voluntary process of repurchase of securities from the existing shareholders, for the purpose of their cancellation by the company, in compliance with the conditions as prescribed u/s 68 of CA, 2013.

Redemption of a security, on the other hand, refers to a mandatory repayment of the principal amount at predetermined terms and conditions.

### 2. Which securities can be bought back by a company?

Section 68 of CA, 2013 as well as SEBI Buy-back Regulations apply to buy-back of “shares” and other “specified securities”.

“Specified securities” include employee stock options. The Central Govt has the power to notify other securities too; further the Buy-back Regulations specify that shares carrying “superior voting rights” are also covered (see below).

### 3. Whether the term “shares” include preference shares of the company?

Buy-back, as opposed to redemption, is a repayment of permanent capital of the company. As such, for the purpose of buy-back, the term “shares” does not include redeemable preference shares.

However, compulsorily convertible preference shares (CCPS) are irredeemable and hence, a part of the permanent capital, and as such, should be covered under section 68 of CA, 2013.

Further, an explanation to Reg 3 of the Buy-back Regulations specifies that equity shares having superior voting rights are also covered within the meaning of “shares”.

**4. What is the meaning of “specified securities” in the context of buy-back?**

The definition of “specified securities”, as provided u/s 68 of CA, 2013 as well as the Buy-back Regulations, is an inclusive one. The definition reads as follows:

*‘specified securities’ includes employees’ stock option or other securities as may be notified by the Central Government from time to time.*

No security has been notified under the same.

Note that the section uses the term “shares”, which covers preference shares also. Hence, preference shares may also technically be bought back before their scheduled maturity. However, the better course of action in that case would either be to use the power, if contained in the terms of issue, to prepone the date of redemption, or to vary the terms of issue and go for a preponed redemption.

**5. What all actions are not treated as buy-back of securities?**

Here are some examples:

- (a) Any redemption of a redeemable security;
- (b) Any acquisition of its own shares by a company, say, pursuant to a scheme of arrangement (for instance, the merger of a company holding the transferee company’s shares, with a clause in the scheme saying that such shares shall not be cancelled but will be sold);
- (c) Any acquisition or buy-back of the company’s own shares by an ESOP trust, standing as a fiduciary for employees, though with money funded by the company.

**6. In case of a company with unlimited liability, are the provisions for buy-back applicable?**

Section 67 containing a prohibition of buy-back of shares is applicable only to a limited company. The capital in case of unlimited companies is flexible. Hence, unlimited companies may buy-back shares, similar to an open-ended mutual fund.

**6A. Whether listed entities are required to comply with the provisions of section 68 of CA and rules thereof?**

Section 68 of CA is applicable to buy-back of shares by both unlisted and listed companies. However, Rule 17 of the SCD Rules is not applicable to buy-back offers by listed companies [Section 68(2)(f) and (g) of CA, 2013].

**7. Can a company withdraw the offer of buy-back?**

A company cannot withdraw a buy-back offer once announced to the shareholders. Further, in case of a listed company, Reg 24(i)(d) of Buy-back Regulations provides that such an offer cannot be withdrawn once the draft letter of offer is filed with SEBI or public announcement of the buy-back offer is made.

## Modes of Buy-back

**8. What are the methods by which a company can buy-back its shares or other specified securities?**

Section 68(5) of CA, 2013 prescribes the following methods for buy-back:

- (a) from the existing shareholders or security holders on a proportionate basis;
  - (b) from the open market;
  - (c) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.
- Option (b) is available only in case of a listed company.

**9. What are the modes in which an open market buy-back can be undertaken?**

Reg 4(iv)(b) of the Buy-back Regulations provides the following methods of buy-back from the open market through,

- (i) book-building process, and
- (ii) stock exchange.

The stock exchange method may be available only upto 31st March, 2025, and the maximum quantum of buy-back through such route cannot exceed 5% of the paid-up capital and free reserves of the company on a standalone or consolidated basis - whichever is lower.

**10. Can a company give a buy-back offer to a selected group of persons ?**

The provisions of CA provide for the condition of proportionality, w.r.t. a buy-back offer. However, the proportionality has to be ensured for holders of the same class of securities, and not all shareholders.

Note that in case of listed companies, buy-back of shares from the open market is permitted upto 31st March, 2025.

Further, in case of unlisted companies, if a buy-back offer is made proportionally to all shareholders, but accepted only by some, the company may obviously proceed to buy-back the shares only from the shareholders tendering the shares for buy-back.

**11. Can a company buy-back shares through separately negotiated deals?**

In terms of Reg 4(vi) of Buy-back Regulations, listed companies are not allowed to buyback shares through negotiated deals or private arrangements, whether on or off the stock exchange.

**12. Can a company buy-back locked-in/ non-transferable securities?**

Shares or other specified securities subjected to lock-in/ transfer restrictions cannot be bought back till the pendency of lock-in/ transfer restrictions.

**13. A company decides to purchase its own shares through its subsidiary company. Can it do so?**

No, the company cannot proceed with the same. Section 70(1) of CA, 2013 prohibits any company from buying back its own shares or other specified securities directly or indirectly, through any subsidiary company and investment company, including its own subsidiary companies.

**14. Is there a contradiction between Section 67(1) and Section 68?**

Section 67(1) prohibits purchase of own shares by a company, unless the same results in a reduction of share capital of the company, in accordance with the provisions of CA, 2013. The intent of section 67(1) is that a company should not hold treasury shares.

Section 68 of CA, 2013, on the other hand, provides a means to effect reduction of share capital without attracting the compliance with the provisions of section 66 of CA on reduction of capital. The same, ultimately, results in an extinguishment of shares bought back, thereby resulting in a reduction of share capital.

Hence, there is no contradiction between the two sections.

#### **15. Can a designated person tender shares for buy-back while in possession of UPSI?**

Reg 5(viii) of Buy-back Regulations prohibits insiders to deal in the securities of a company based on UPSI relating to buy-back. Further, pursuant to the general prohibition on trading while in possession of UPSI, in terms of Reg 4 of PIT Regulations, a DP cannot tender his shares for buy-back while in possession of UPSI. Hence, “designated persons”, meaning persons designated as such for insider trading regulations, will have to adhere to the restrictions above.

### Purpose of buy-back

#### **16. Why do companies do buy-back?**

A company may opt for buy-back for a variety of reasons, viz.,

- for distribution of accumulated profits to shareholders
- for scaling down of operations by paying off equity shareholders
- for providing selective exit opportunity to certain shareholders (that is, a buyback is offered to all, but only accepted by some outgoing shareholders)
- pursuant to put options given to strategic or private equity investors
- as a mode of redemption of compulsorily convertible securities such as CCDs or CCPS

#### **17. Can a company take the route of buy-back for delisting the securities?**

As per Regulation 4(v) of Buy-back Regulations, a company listed on a stock exchange shall not buy-back its shares or other specified securities so as to delist its shares or other specified securities from the stock exchange.

### Conditions for buy-back

#### **18. What are the conditions that a company needs to satisfy before undertaking buy-back?**

The following pre-conditions are required to be satisfied for making an offer for buy-back:

- a. The Articles of Association of the company must authorise buy-back.
- b. The shares or other specified securities for buy-back must be fully paid up.
- c. At least 1 year should have expired from the preceding buy-back offer.

#### **19. How is the 1 year gap between two buy-back offers calculated?**

The language referred to in section 68 of CA, 2013 refers to “*the date of closure of the preceding buyback offer*”, whereas, the Buy-back Regulations refer to “*the date of expiry of buyback period of the preceding buyback offer*”.

Buy-back period is defined to be a period from the date of board/ shareholders’ resolution approving buy-back till the payment of consideration to the shareholders. On the other hand, closure of buy-back offer refers to the last date available to the shareholders for tendering their shares for buy-back.

For instance, assume that a buy-back offer closes on 20th August, 2024, being the last day to tender shares for buy-back. Now, under the tender offer method for listed entities, the consideration against the securities accepted for buy-back are required to be paid within 5 working days of closure of the offer, i.e., by 27th August, 2024 in the instant case.

Therefore, in this case, the 1-year period is to be counted as follows:

- for an unlisted company - 1 year from closure of buy-back offer, i.e., 21st August, 2025
- for a listed company - 1 year from expiry of buy-back period, i.e., 28th August, 2025.

**20. What are the defaults/ non-compliances that make a company ineligible for undertaking buy-back?**

In terms of section 70 of CA, 2013 and Reg 4(x) of Buy-back Regulations, a company is prohibited from undertaking buy-back in the following cases:

- Default in either of the following:
  - Repayment of deposits or payment of interest thereon,
  - Redemption of debentures or preference shares,
  - Payment of dividend to any shareholder,
  - Repayment of term loan or interest thereon to any financial institution or banking company
- Non-compliance with the provisions of sections 92 (annual return), 123 (declaration of dividend), 127 (failure to pay dividends) and section 129 (financial statements) of CA, 2013

**21. What is the look-back period w.r.t. default in payment/ repayment obligations?**

The look-back period for the default is 3 years. That is to say, a company is eligible to undertake buy-back if the default has been remedied and a period of 3 years has lapsed after such default has been made good.

**22. Are there any conditions on maximum leverage limit that a company may employ in undertaking buy-back?**

Leverage limit would mean the use of borrowed funds to buy back the shares of the company. In order to ensure that leverage limits are not exploited, companies are required to ensure that the post buy-back debt-equity ratio does not exceed 2:1, that is to say, the total secured and unsecured debts of the company should not exceed twice of the paid-up capital and free reserves of the company.

**23. Whether the leverage limit (post buy-back debt-equity ratio) is the same in case of financial sector entities?**

For government companies that are registered as NBFCs or HFCs with RBI, MCA *vide* [order dated 10th March, 2016](#), provides that the post buy-back debt-equity ratio can go upto 6:1. Notably, most NBFCs/HFCs have high levels of leverage, given the nature of their business. Hence, most of them do not qualify the eligibility conditions of buy-back.

**24. What are the *ex post* conditions that a company needs to satisfy after buy-back?**

- a. The post buy-back debt-equity ratio cannot exceed 2:1.
- b. No offer for buy-back shall be made within a period of 1 year from the date of the closure of the preceding offer of buy-back.
- c. The company shall not make a further issue and allotment of the same kind of securities as bought back within a period of 6 months, except by bonus issue or for discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debenture into equity shares.



**25. What are the sources from which the company may do a buy-back?**

As per sec. 68(1) of the CA, 2013 and Reg 4(viii) of Buy-back Regulations, buy-back may be done through the following sources:

- (a) free reserves;
- (b) the securities premium account; or
- (c) the proceeds of the issue of any shares or other specified securities

In our view, the word “free reserves” should be interpreted to include accumulated surplus profits as well.

Further, the “proceeds of the issue” implies that the issue of shares or other specified securities should have been done before the buy-back.

**26. Whether proceeds of issuance of shares of the same class can be used for buy-back?**

No. The same is specifically prohibited by a proviso to section 68(1) of CA, 2013.

For instance, a company may buy back its equity shares against proceeds raised through issuance of preference shares, but not through proceeds from the issuance of equity shares of the same class.

**27. Buy-back will require liquidity. Do the references to the sources of buy-back mean that the company must be having surplus liquidity, or it has to make a specific issue of securities for the purpose of buy-back?**

No. The sources of buy-back in the provision refer to only adequacy of the sources. The actual sources of liquidity may be out of the company’s own treasury management.

### The buy-back offer

**28. What is the provision relating to the period for which the offer of buy-back shall be open?**

Rule 17(5) of the SCD Rules require a buy-back offer to be open for minimum 15 days and maximum 30 days from dispatch of offer letter. In case all the members agree, the offer period can be reduced to less than fifteen days.

For timelines pertaining to tender offer and book-building process for listed companies, see relevant heads below.

**29. What is the timeline for extinguishing and physically destroying the shares or securities so bought back? Is it relevant in case the shares and securities are in demat mode?**

As per Section 68(7) of CA, a company is required to extinguish and physically destroy the shares or securities within seven days of completion of buy-back. Also refer to the timelines for tender offer and book-building for listed companies in respective heads below.

If the securities are in demat mode, this requirement may be ignored.

**30. When is the letter of offer to be dispatched to the shareholders under CA, 2013?**

The letter of offer is to be dispatched to the shareholders or security holders within twenty days of filing the same with the RoC.

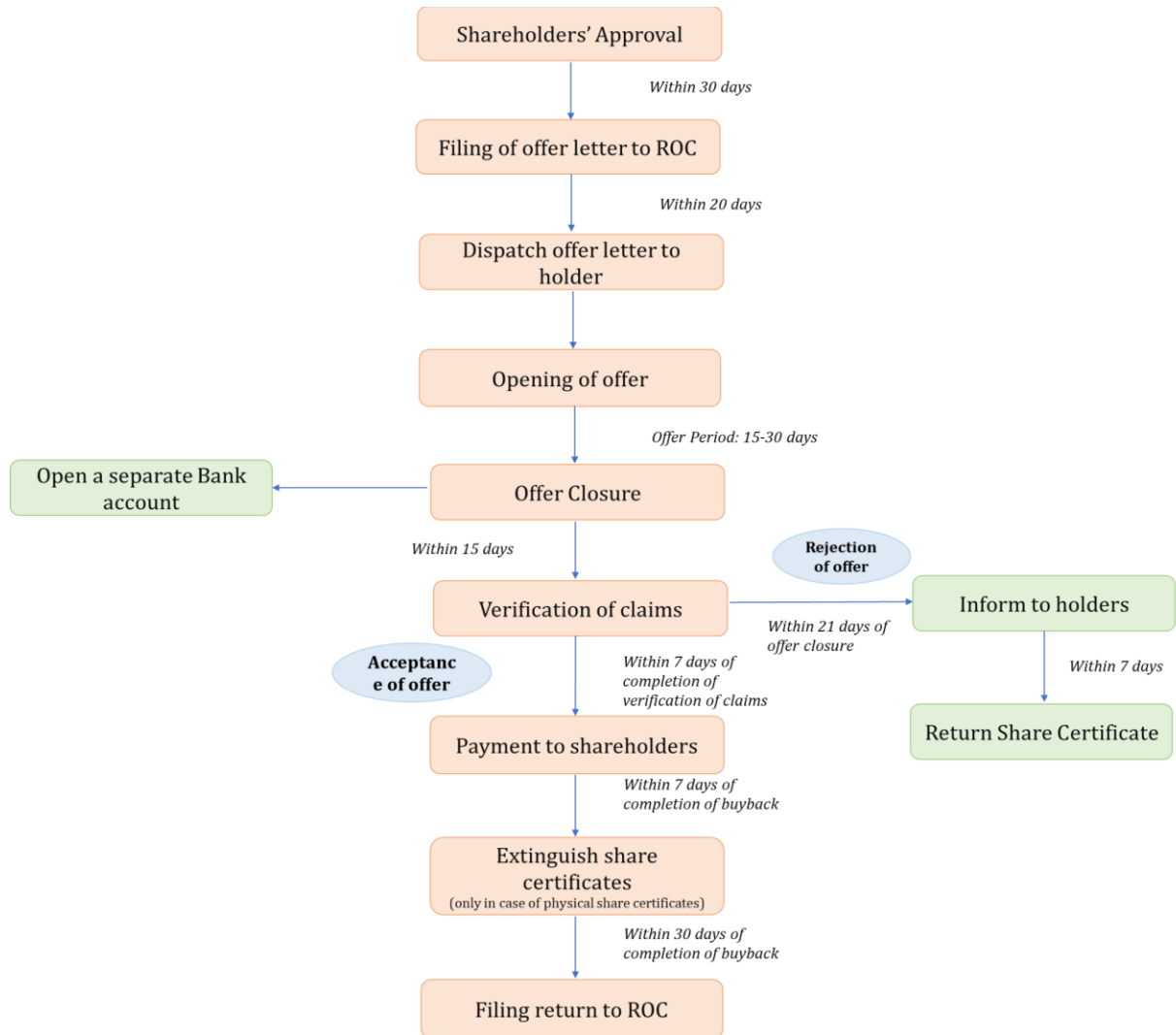
**31. By when is the Company required to complete the verification of the offer and communicate rejection if required under CA, 2013?**

The company is required to complete the verifications of the offers received within fifteen days from the date of closure of the offer. In case of rejection of offer, the company is required to inform

the shareholder within twenty one days from the date of closure of the offer and is required to return the share certificate within seven days.

**32. What is the timeline for making cash payment upon acceptance of the offer under CA, 2013?**

The company is required to make cash payments to the shareholders within seven days of completion of verification of offers.



*Timelines for buyback offer under CA*

**Quantum of Buy-back**

**33. What is the maximum quantum upto which shares can be bought back?**

The maximum quantum upto which shares can be bought back has to be determined on the basis of the following conditions cumulatively:

- a. The maximum buy-back amount cannot exceed 25% of the paid-up share capital and free reserves;
- b. Further, the maximum equity shares that can be bought back in a financial year should not exceed 25% of the total paid-up equity capital in that financial year;

- c. The post buy-back debt equity ratio should not be in excess of 2:1 (6:1 in case of govt. co NBFCs).

If we break down the above stated limits, it is pertinent to note that it provides for the following checks on the limits: (1) the maximum funds that can be utilised for buy-back; (2) the maximum no. of equity shares that can be bought back in any financial year and (3) minimum equity that the company is required to maintain in comparison to the debt post completion of buy-back.

**34. Whether the limits differ in case of a listed company?**

In case of a listed company, the maximum funds that can be utilized is to be derived on the basis of the lower of the standalone and consolidated financial statements of the company.

Further, the post buy-back debt-equity ratio is based on additional conditions (see below).

**35. How is the post buy-back debt-equity ratio calculated in case of a listed company?**

For a listed company, the post buy-back debt-equity ratio is to be calculated on the basis of the lower of the limit under the standalone and the consolidated financial statements.

In computation of the figures on the consolidated basis, the following is to be considered:

- The financial statements of all such subsidiaries that are NBFCs or HFCs are excluded
- The debt-equity ratio of each of such subsidiaries shall not exceed 6:1 on a standalone basis.

**36. Whether the limits are to be taken as at the end of the previous financial year or any other time?**

The buy-back computations are required to be made on the basis of paid up capital and free reserves. The rules specify that the financial statements based on which the buy-back computation is done should not be more than six months old.

As regards debt/equity ratio, the same is to be checked on a post-buyback basis, and therefore, should ideally be checked as per the position of debt and equity post buy-back of shares.

**37. What if the buy-back exceeds the limits above?**

A buy-back offer in excess of the limits as specified in section 68 will attract the provisions of reduction of share capital u/s 66 of CA, 2013.

Further, the violation of any provisions contained in section 68 of CA, 2013 or Buy-back Regulations attract fine on the company as well as the officers-in-default in terms of Section 68(11) of CA, 2013, being a minimum of Rs. 1 lac to a maximum of Rs. 3 lacs.

## Authority for buy-back

**38. What are the approvals required for buy-back?**

Depending on the quantum of buy-back, the following approvals are required:

- Board resolution - upto 10% of total paid-up equity share capital and free reserves,
- Shareholders' approval through special resolution - beyond the limit of 10% , but within the limit of 25% as discussed separately herein.

**39. Whether the limits are required to be checked on the basis of standalone financial statements or consolidated financial statements?**

Section 68 of CA, 2013 does not refer to either “standalone” or “consolidated”, and hence, the limits are to be checked on a standalone basis.

Further, in case of listed entities, proviso to clause (b) of Reg 5 of Buy-back Regulations specifies that the 10% limit is based on the **lower** of the standalone or the consolidated financial statements. Therefore, the thresholds that would attract shareholders’ approval will be lower in case the company has higher losses on a consolidated basis, resulting in a lower consolidated net worth as compared to the standalone basis.

**40. What is the validity of a resolution passed for the purpose of buy-back?**

A buy-back offer by a company, whether listed or unlisted, is required to be completed within 1 year from the date of passing of board resolution/ special resolution, as applicable.

**41. Whether additional approvals are required in case of buy-back of shares by a listed entity?**

In case of a listed entity, prior consent of the lenders are required in case of a breach of any covenants with such lender.

## Buy-back price

**42. How is the buy-back price to be determined for an unlisted company?**

CA, 2013 does not prescribe the manner in which the buy-back price is to be determined, however, the buy-back price along with the basis of arriving at the buy-back price is required to be disclosed to the shareholders, while seeking approval for buy-back.

In our view, an action for buy-back is to release the value of the shares to the outgoing shareholders. Hence, the value should be the fair value of the shares. Please also see discussion on sec. 56 (2) (x) of the IT Act below.

**43. How is buy-back price determined in case of a listed company?**

In case of buy-back by way of book building process, in terms of Reg. 22B of the SEBI Buy-back Regulations, the company is required to disclose the maximum buy-back price and the buy-back price upon the price discovered through the bids received from the shareholders within the price range. The price at which 100% of the buy-back size is reached is considered to be the buy-back price and shares or other specified securities tendered at or below the buy-back price is accepted at the buy-back price and in proportion to the size of the bids received.

In case of buy-back through stock exchange, it is subject to the restrictions on placement of bids, price and volume as specified by SEBI. In terms of Reg 19 of the Buy-back Regulations read with the [Operational Guidelines](#), the company cannot purchase more than 25% of the average daily trading volume (in value) of its shares or other specified securities in the ten trading days preceding the day in which such purchases are made. Further, it cannot place bids in the pre-open market, the first 30 minutes and the last 30 minutes of the regular trading session. The company’s purchase order price is required to be within the range of  $\pm 1\%$  from the last traded price

**44. Can the buy-back price be modified once the same has been approved?**

In case of listed companies, Buy-back Regulations permit to increase buy-back price, in case of tender offer, up to 1 working day prior to record date, subject to decreasing the number of securities proposed to be bought back so that overall buy-back size remains unchanged.

**45. Can buyback be made at a price less than the fair value of the shares?**

Pursuant to the provisions of section 56(2)(x)(c) of the Income Tax Act, where any person receives any property other than immovable property, (a) without consideration, the aggregate fair market value of which exceeds Rs. 50,000, the whole of the aggregate fair market value of such property; (b) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding Rs. 50,000, the aggregate fair market value of such property as exceeds such consideration shall be taxed under the head “Income from other sources”.

However, here it is pertinent to mention that ITAT Mumbai in the matter of *Vora Financial Services Private Limited v ACIT*<sup>1</sup> held a contradictory view wherein while evaluating the applicability of section 56(2)(viiia) [*Section 56(2)(viiia) has been superseded by section 56(2)(x) with effect from April 1, 2017*] which provides that in case of receipt of shares for a consideration below fair market value, the excess of fair market value over the consideration is subject to tax in the hands of the recipient (subject to certain exceptions), ITAT Mumbai held that section 56(2)(viiia) will be applicable only where the shares become ‘property’ of the recipient. However, in case of buy-back, the company purchases its own shares which are extinguished within the timeline prescribed in law and hence, the said test of becoming “property” fails in this case.

**46. Can buy-back be made at a price greater than the fair value of the shares?**

Usually, any buy-back should be at fair value.

**Buy-back of vested, unexercised ESOPs**

**47. Whether buy-back of stock options are covered by section 68 of CA, 2013?**

Employees’ stock options are covered within the meaning of “specified securities” under section 68 of CA, 2013, and hence, covered.

**48. Whether options granted but remaining unvested can be bought back?**

Unless an option is vested, an employee is not entitled to any rights and benefits out of the options, and hence, unvested options are not bought back by a company.

**49. Whether vested options can be bought back prior to exercise?**

Vested options result in providing an option to the employees to receive shares of the company, and hence, vested options can be bought back prior to exercise to give an exit opportunity to the employees, primarily, in unlisted companies and to prevent dilution of shareholding of existing shareholders.

**50. Whether ESOP can be granted during the buy-back period?**

SEBI in an informal guidance in the matter of [Infosys Limited](#) stated that as per regulation 24(i)(b) of the Buy-back Regulations, a company cannot issue any shares or specified securities including

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<sup>1</sup> ITA No. 532/Mum/2018

by way of bonus till the date of expiry of buy-back period for the offer made under the Buy-back Regulations.

The above regulation does not prohibit the company to issue stock options grant letters to employees during the buy-back period. However, the stock options would vest after the conclusion of the buy-back period.

**51. When ESOP are granted during the buy-back period, the minimum vesting period of one year as per reg 18(1) of SBEB Regulations will be counted from which date?**

SEBI in an informal guidance in the matter of [Infosys Limited](#) stated that when grant letters are issued during the buy-back period, the minimum vesting period of one year will start from the date of grant letters.

**Tender offer by listed companies**

**52. What is the maximum quantum of shares that can be bought back by a listed company through tender offer?**

Refer under [Quantum of Buy-back](#)

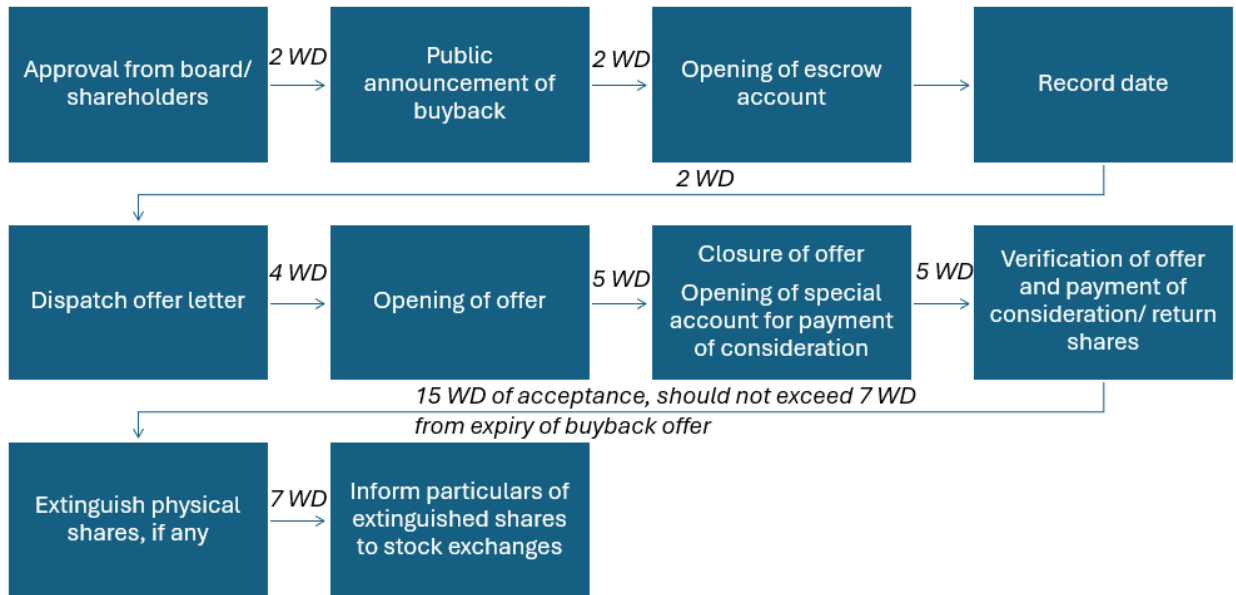
**53. Is the company required to reserve any portion of the offer for a particular category of shareholders?**

A listed company is required to reserve **higher** of - (a) 15% of the no. of securities required to be reserved, or (b) no. of securities entitled as per their shareholding, for small shareholders.

“Small shareholder” shall mean a shareholder holding shares or specified securities of a market value (closing price on the SE recording highest trading volume) not exceeding Rs. 2 lacs on the record date.

**54. What are the timelines for a buy-back offer through a tender offer?**

The timelines are briefly given below:



Additionally, there are various reporting and disclosure requirements, as discussed below.

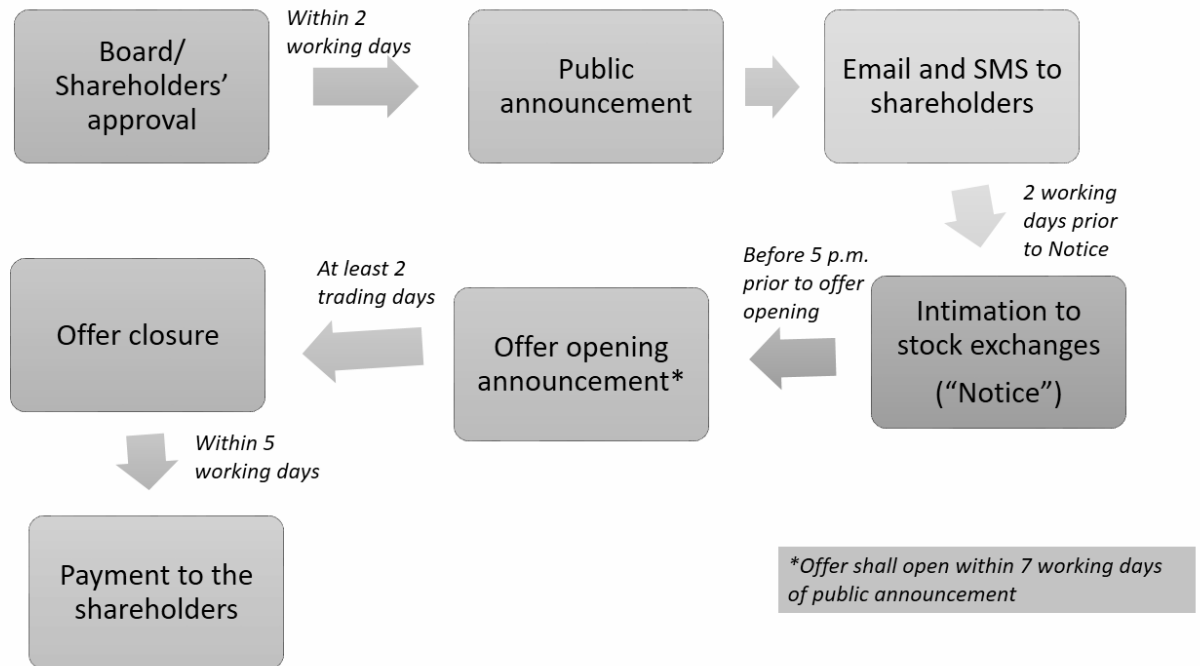
## Buy-back from open market

### 55. What are the conditions applicable to buy-back through book building?

- At least 75% of the earmarked amount is required to be mandatorily utilised in buy-back, within minimum 40% during the first half of the buy-back period.
- Promoters along with their associates shall not be allowed to participate.

### 56. What is the procedure for buy-back of shares through book building?

The process for buy-back through book building is briefly captured below:



### 57. What are the conditions applicable to buy-back through stock exchange?

- Shall be made only through stock exchanges having nation-wide trading terminals
- Shall not be made from promoters and persons in control of the company
- Shall be made only through order matching platform
- Shall be undertaken only with respect to frequently traded shares
- A maximum of 5% of paid up share capital and free reserves can be utilised
- Additional restrictions are specified through [Operational Guidance](#) on the same.

## Reporting and disclosure requirements

### 57A. What disclosures are required to be made in the explanatory statement to the notice calling shareholders' meeting?

The disclosures required to be made in the explanatory statement to the notice calling general meeting are as below:

- (i) Disclosure as per Section 68(3) of CA, 2013;
- (ii) Disclosures as per Rule 17(1) of SCD Rules (*for unlisted companies*);
- (iii) Disclosures as per Schedule I of Buy-back Regulations (*for listed companies*);

**57B. Are there any additional disclosure requirements for listed entities in case of buy-back through tender offer?**

For buy-back through tender offer, the following additional disclosures are required to be made by listed entities:

- (a) the maximum price at which the buy-back of shares or other specified securities shall be made and whether the board of directors of the company is being authorised at the general meeting to determine subsequently the specific price at which the buy-back may be made at the appropriate time;
- (b) if the promoter intends to offer his shares or other specified securities, the quantum of shares or other specified securities proposed to be tendered and the details of their transactions and their holdings for the last six months prior to the passing of the special resolution for buy-back including information of number of shares or other specified securities acquired, the price and the date of acquisition.

**57C. What confirmations are required in the statutory auditor's report to be obtained for buy-back?**

As per Rule 17(n) of SCD Rules, the following confirmations are required in the statutory auditor's report:

- (a) they have inquired into the company's state of affairs;
- (b) the amount of the permissible capital payment for the securities, in their view is properly determined;
- (c) that the audited accounts on the basis of which calculation of the buy-back is done is not more than six months old from the date of offer document; and
- (d) the board of directors have formed the opinion on reasonable grounds that the company, having regard to its state of affairs, shall not be rendered insolvent within a period of one year from that date.

**58. Which returns are required to be filed with ROC w.r.t. a buy-back offer?**

The following web forms are required to be filed with ROC:

<b>Name of the form</b>	<b>Purpose</b>	<b>Timeline</b>
MGT-14	Filing of Board Resolution (not applicable in case of private companies and where the buy-back size is more than 10% of the paid up equity capital and free reserves)	within 30 days from the date of passing of Board resolution
MGT-14	Filing of Special Resolution	within 30 days from the date of passing of Special resolution
SH-8	Letter of offer	Before the circulation of letter of offer for buy-back to the shareholders



SH-9	Declaration of Solvency	Before the circulation of letter of offer for buy-back to the shareholders
SH-11	Return in respect of buy-back of securities along with the Certificate of compliance in respect of buy-back of securities signed by two Directors of the Company including the Managing Director of the Company	within 30 days from the date of completion of buy-back

**59. Is a company required to give prior intimation of the board meeting in which the proposal for buy-back is to be placed?**

Yes, as per Regulation 29(1)(b) of the Listing Regulations, 2015, the listed entity shall give prior intimation of at least 2 working days in advance, excluding the date of the intimation and date of the meeting.

**59A. What are the stages of buy-back that require intimation under reg. 30 of the Listing Regulations?**

Stage of buy-back	Timeline u/r 30
Outcome of the Meeting of board where buy back proposal was discussed.  <i>(if BB quantum &gt; 10% of the total paid-up equity capital and free reserves of the company, then intimation will also cover the details of the meeting of shareholders wherein approval of members will be taken)</i>	Within 30 minutes from conclusion of meeting  To be accompanied by details prescribed in Annexure 18 of the Master Circular on Listing Regulations.
Issuance of notice to shareholders for meeting wherein buy back will be approved. <i>(applicable only if BB &gt; 10%)</i>	Within 12 hours of sending notice to shareholders
Any further, communication in relation to the buy-back.	Within 12 hours

**60. Which information is required to be filed with SEBI and stock exchanges in case of listed companies as per SEBI Buy-back Regulations?**

The following are required to be filed with SEBI and the stock exchanges:

<b>Relevant Regulation</b>	<b>Documents to be filed</b>	<b>Timelines</b>
<b>General compliances applicable for all the modes of Buy-back</b>		
5(vii)	Board resolution authorising buy-back (where special resolution is not required)	Within 2 working days from the date of passing of resolution
5(v)	Special resolution authorising buy-back (where applicable)	Within 7 working days from the date of passing of resolution
7(ii), 16(iv), 22A	Pre-buy-back public announcement	Simultaneously publication in the newspaper
24(iv)	The particulars of the extinguished and destroyed security certificates	7 working days of the extinguishment and destruction of the certificates To be filed only with Stock exchange
24(vi)	Post buy-back public announcement	After the publication in the newspapers
25(x)	Final report of Buy-back	within 15 working days from the date of expiry of the buy-back period To be filed only with SEBI
<b>Buy-back through Open Offer</b>		
8 (i) (a) &(aa)	Letter of offer along with Compliance certificate by Merchant Banker	Within 2 working days from the record date To be filed only with SEBI
11	Compliance Certificate which is duly certified and verified by: <ul style="list-style-type: none"> <li>a. the registrar and whenever there is no registrar, by the merchant banker;</li> <li>b. two directors of the company, one of whom shall be a managing director, where there is one; and</li> <li>c. the secretarial auditor of the company</li> </ul>	7 working days of the extinguishment and destruction of the certificates To be filed only with SEBI
<b>Buy-back from the open market through stock exchange</b>		
18(i)	Daily reporting of the bought-back shares or other specified securities	On a Daily basis during the offer period To be filed only with Stock exchange

<b>Relevant Regulation</b>	<b>Documents to be filed</b>	<b>Timelines</b>
21	Compliance Certificate which is duly certified and verified by: <ul style="list-style-type: none"> <li>a. the registrar and whenever there is no registrar, by the merchant banker;</li> <li>b. two directors of the company, one of whom shall be a managing director, where there is one; and</li> <li>c. the secretarial auditor of the company</li> </ul>	7 working days of the extinguishment and destruction of the certificates To be filed only with SEBI
<b>Buy-back from the open market through book building</b>		
23	Compliance Certificate which is duly certified and verified by: <ul style="list-style-type: none"> <li>a. the registrar and whenever there is no registrar, by the merchant banker;</li> <li>b. two directors of the company, one of whom shall be a managing director, where there is one; and</li> <li>c. the secretarial auditor of the company</li> </ul>	7 working days of the extinguishment and destruction of the certificates To be filed only with SEBI

### Remittance of buy-back price

**61. A listed company decides to pay the consideration for its buy-back scheme by way other than cash. Can the company pay so?**

No, Rule 17 of SCD Rules as well as Regulation 24(i)(c) of Buy-back Regulations mandates the company to pay the consideration only by way of cash. In other words, buy-back in kind is not permitted.

**62. What is the time period within which the consideration is required to be remitted to the shareholders?**

CA, 2013 requires the consideration to be remitted to the shareholders whose offer has been accepted within 7 days from the completion of the verification of the offer.

Further, in case of listed entities, Regulation 10 (ii) of the Buy-back Regulations requires the consideration to be remitted within 5 working days from the closure of the offer.

**63. What proportion of buy-back consideration is required to be earmarked in an escrow account for listed companies?**

As per Regulation 9 (xi)(b) of the Buy-back Regulations, the consideration to be put in the escrow account will be as follows:

<b>Consideration payable</b>	<b>Amount to be credited in the escrow account</b>
Less than or equal to 100 crores	25% of the consideration payable

More than 100 crores	<ul style="list-style-type: none"> <li>● 25% of the consideration payable</li> <li>● 10% on the consideration payable over 100 crores</li> </ul>
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**64. What is the timeline within which funds are required to be deposited into an escrow account?**

The funds have to be deposited in the escrow account within within two working days of the public announcement of buy-back offer as per Regulation 9(ix)(a) of the Buy-back Regulations

**65. What are the forms in which an escrow account can be maintained?**

Regulation 9(xi)(c) of the Buy-back Regulations permits the escrow account to consist of:

- cash including bank deposits in any scheduled commercial bank;
- bank guarantee of scheduled commercial bank in favour of the merchant banker;
- deposit of frequently traded and freely transferable equity shares or other freely transferable securities or government securities;
- units of mutual funds invested in gilt funds and overnight schemes;
- combination of above.

**66. Whether the buy-back consideration is paid to the shareholders through the escrow account?**

No. The Company is required to open a special account with Registered Banker to an issue after the closure of the offer. Subsequently, the Company has to deposit the entire consideration payable in the bank account which would include ninety percent of the amount lying in the escrow account and the payment to the shareholders will be made from such a special account.

**66A. Whether escrow account requirements are applicable to unlisted companies too?**

An unlisted company is not required to maintain a deposit in an escrow account. However, a separate bank account is required to be opened immediately after the closure of the offer, in which the entire buy-back consideration is deposited for payment to the shareholders.

**Scope of income-tax provision, sec. 2 (22) (f) vs sec 68**

**67. Are all the situations where sec. 68 of the CA apply covered by sec. 2 (22) (f)?**

S. 2(22)(f) of the Income Tax Act reads as follows:

*any payment by a company on purchase of its own shares from a shareholder in accordance with the provisions of section 68 of the Companies Act, 2013.*

This has can be broken down into the following parts:

- (a) The payment must be made by a company on purchase of its own shares
- (b) The purchase of shares must happen in accordance with the provisions of section 68 of the Companies Act 2013

Even though reference has been made to section 68 of the Companies Act, interestingly, there is a disconnect between the two sections. While section 2(22)(f) of IT Act refers to buy-back of **shares** only, section 68 of the CA 2013 deals with buy-back of shares and other specified securities.

Therefore, any instrument which is not a **share** of the company, but being bought back in accordance with section 68 of the CA 2013 will not fall under the purview of deemed dividend.

Therefore, in light of the above, we have examined the applicability of this section 2(22)(f) on buy-back of various securities:

<b>Nature of instrument</b>	<b>Whether covered under s. 68 of the CA 2013</b>	<b>Whether covered under s. 2(22)(f) of the IT Act</b>
Equity	Yes	Yes
CCPS	Yes	Yes
CCDs	No	No
ESOPs	Yes	No
Warrants	No	No

**68. What is the implication if there are securities not covered by sec. 2 (22) (f) of the IT Act but covered by sec. 68 of CA, 2013?**

If the securities are not covered under s. 2(22)(f), and the securities are held by the investors as a capital asset, then such buy-back should be treated as transfer in the hands of the shareholders, and accordingly be subjected to capital gains tax.

### Tax provisions up to 1st Oct 2024

**69. Under IT provisions, as applicable till 30th Sept., 2024, who pays tax on the buy-back, at what rate, and on what base?**

Pursuant to the Finance Act, 2024, the new tax provisions in relation to the buy-back taxation shall be effective from 1st October, 2024. As per the buy-back tax regime up to 30th September, 2024, the tax implications are as follows:

**In the hands of company:**

- a. The distributable income i.e, consideration paid on buy-back less consideration received on issuance shall be taxed in the hands of the company tax at an effective rate of **23.296%** (i.e. 20% + 12% surcharge + 4% health & education cess) pursuant to Section 115QA of the Income Tax Act.
- b. For the purpose of computing the consideration received on issuance of shares, rule 40BB(2) clarifies that it also includes premium amount, if any.

**In the hands of shareholders:**

While section 46A of the Income Tax Act provides that in case of purchase of own securities by a company, the difference between the cost of acquisition and the value of consideration received by the shareholder, will be deemed to be the capital gains arising to such shareholder, however, if we refer to section 10 (34A), it provides that the income arising on account of buy-back is not included in the income of the shareholder.

Hence, the only incidence for taxation will be on the company under section 115QA as discussed above.

**70. What is the taxability in the hands of the shareholder? Does the shareholder pay tax on capital gains?**

No, as the income is exempt in terms of sec. 10 (34A) for such buy-backs as are covered by sec. 115QA.

### Tax provisions from 1st Oct 2024

**71. What amendments have been notified pursuant to the Finance Act, 2024 in relation to taxation in case of share buy-backs?**

Following are the amendments that have been introduced in relation to buy-back taxation (applicable from 1st October, 2024):

1. Under section 2(22), a subsection (f) has been inserted which implies that any payment by a company on purchase of its own shares from a shareholder in accordance with the provisions of section 68 of the Companies Act, 2013 shall be treated as deemed dividend in the hands of the shareholder concerned;
2. A proviso has been inserted under section 10(34A) stating that the exemption for shareholders on income derived from buy-backs will no longer apply to buy-backs conducted on or after October 1, 2024;
3. A proviso has been inserted under section 46A which implies that where a shareholder receives any consideration u/s 2(22)(f) from any company, in respect of any buy-back of shares, that takes place on or after the 1st day of October, 2024, then for the purposes of computing capital gains, the value of consideration received by the shareholder shall be deemed to be nil;
4. A proviso has been inserted in Section 115QA of the Income Tax Act. This proviso states that the provisions of Section 115QA(1), which deals with the tax implications on the companies doing buy-backs, will not apply to any buy-back of shares that take place on or after 1st October, 2024.

If we break down the above stated provisions, following can be concluded with respect to taxation in case of share buy-backs<sup>2</sup>:

**a. In the hands of the company concerned:**

- i. There shall be no tax implications in the hands of the company concerned on account of the non-applicability of section 115QA(1) wef. 1st October, 2024

**b. In the hands of the shareholder concerned:**

- i. On account of the insertion of sec 2(22)(f), the full consideration received by the shareholders shall be treated as deemed dividend and shall be taxed at the applicable slab rates;
- ii. There shall be no exemption on the consideration received on share buy-back because of non-applicability of section 10(34A) wef. 1st October, 2024;

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<sup>2</sup> Also see our article titled "[Bye bye to Share Buybacks](#)"

- iii. For the purpose of calculating capital gains/ losses u/s 46A, the consideration received by shareholders for these shares shall be deemed as nil. This shall result in a capital loss equal to the total amount originally paid by the shareholder for acquiring the shares.
- iv. The capital loss referred to in clause (iii) above, in accordance with the provisions of section 74 of the Income Tax Act, can be carried forward and set off for up to 8 AYs immediately following the AY in which the loss occurs. The ability to carry forward and set off will be subject to the usual rules applicable in case of intra-head and inter-head set off in case of capital losses.

**72. Regarding taxation for shareholders under the new buy-back tax regime:**

**a. What is the applicable tax rate?**

With the inclusion of clause (f) u/s 2(22), the consideration received by a shareholder from a buy-back shall be treated as deemed dividend and hence taxed as such in the hands of the shareholder concerned at the applicable slab rates<sup>3</sup>.

**b. How will the capital loss be utilised? Is there a time limit?**

Refer response to query above, with effect from 1st October, 2024, the consideration received by shareholders for these shares shall be deemed as nil. This shall result in a capital loss equal to the total amount originally paid by the shareholder for acquiring the shares. Pursuant to the provisions of section 74 of the Income Tax Act, the capital losses can be carried forward up to 8 AYs immediately succeeding the AY in which such loss occurs and may be adjusted against capital gains occurring during the said period.

**c. Is there an obligation to deduct TDS on the buy-back consideration paid to shareholders?**

TDS as applicable on dividends will apply in this case as well. As per section 194, where the dividend paid is more than Rs. 5000, TDS has to be deducted at the rate of 10% at the time of making the payment or credit, whichever is earlier.

**73. The applicability of the regime, as amended by Finance Act 2024, is based on what date?**

There are several milestones in the buy-back arrangement like taking requisite approvals of the Board and shareholders, issuance of the letter of offer, acceptance of offer of the shareholders, payment of buy-back consideration, filing of requisite forms with ROC, submission of the intimations of the stock exchange etc. In this context, a crucial question arises regarding the cut-off date for the applicability of the new buy-back tax regime.

Now, if we look at the provisions of the charging section i.e., section 2(22)(f), it provides as follows:

*(f) any payment by a company on purchase of its own shares from a shareholder in accordance with the provisions of section 68 of the Companies Act, 2013.*

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<sup>3</sup> The concept of dividend distribution tax u/s 115-O of the Income Tax Act was omitted *vide* Finance Act, 2020. Hence, with effect from 1st April, 2020, any dividend received by a shareholder is taxed in their respective hands at the applicable tax slabs.

Therefore, the cut-off date for the applicability of the new buy-back tax regime should be the date on which the consideration is paid or deemed to have been paid.