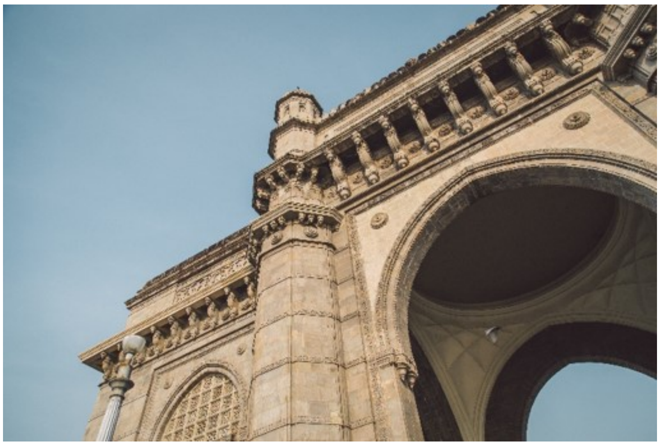
KPMG

Tax Alert

ISSUE 23 | **AUGUST 2016**

India Tax update



In this alert, we have provided a summary of key tax updates in India.

1. Draft rules for determination of distributed income with respect to buy-back of shares of an Indian Company

In case of buy-back of shares of an unlisted Indian company, an additional income tax at the rate of 20 percent of the 'distributed income' is levied on the Indian company. Distributed income is defined as consideration paid by the Indian company on buy-back of shares as reduced by the amount which was received by the company for issue of such shares.

There are different situations in which shares can be issued for e.g. shares issued in different tranches, for different consideration, at different point of time or may have been issued in lieu of existing shares of another company under amalgamation, merger or demerger.

The Central Board of Direct Taxes (CBDT) in India has now issued draft rules to prescribe the methodology for determination of the amount received by the Indian companies under different circumstances.

Shareholders (resident/ non-resident) contemplating exit from Indian unlisted companies by way of buy-back of shares, would be affected by these draft rules. The amount on which the 20 percent tax will be levied by the Indian company would be determined by these draft rules.

Read the article.

2. Proposal to amend the India-Cyprus tax treaty

An official level meeting between India and Cyprus took place in New Delhi on 28 and 29 June 2016, to finalise the new India Cyprus Double Taxation Avoidance Agreement, wherein all pending issues, including taxation of capital gains, were discussed, and in-principle agreement was reached on all pending issues. It was agreed to provide for source based taxation of capital gains on transfer of shares. However, a grandfathering clause would be provided for investments made prior to 1.4.2017, in respect of which capital gains would be taxed in the country of which taxpayer is a resident. These provisional agreements will now be placed before the Cabinet for its approval, subsequent to which the new tax treaty can be signed by the two countries.

Both sides also discussed the issue of notification of Cyprus under section 94A of Income-tax Act, 1961. It was agreed that India will consider rescinding the said notification with effect from 1st November, 2013, and will be initiating the process for the same.

Based on the press statements by senior government officials of India, the provisions of the tax treaties with Netherlands and Singapore (specifically the capital gains article) are slated to be amended next. Investor community in Singapore are keenly tracking this development in India. They hope that the capital gains tax exemption, reduced withholding tax rate on interest income, etc. may be retained or at least amended in line with the recent protocol to the India-Mauritius tax treaty. This should ensure that Singapore continue to play a crucial role in India's much needed development.

Read the article.

3. Rules for computation of fair market value and reporting requirements in relation to indirect transfer provisions

The indirect transfer tax provisions were introduced in 2012 with retrospective effect from 1 April 1962, after the Vodafone ruling by the Supreme Court of India. This indirect transfer tax provision seek to tax transfer of shares or interest in a foreign entity which derives its value substantially from Indian assets.

The share or interest is said to derive its value substantially from assets located in India if the fair market value (FMV) of assets located in India comprise of at least 50 percent of the FMV of total assets of the company or entity.

CBDT has now notified rules to provide the mechanism to compute the FMV in different scenarios and reporting requirements:

i. Computation of FMV of Indian company or entity;
ii. Computation of FMV of all the assets of a foreign company or entity; and
iii. Reporting requirements by the Indian company or entity.

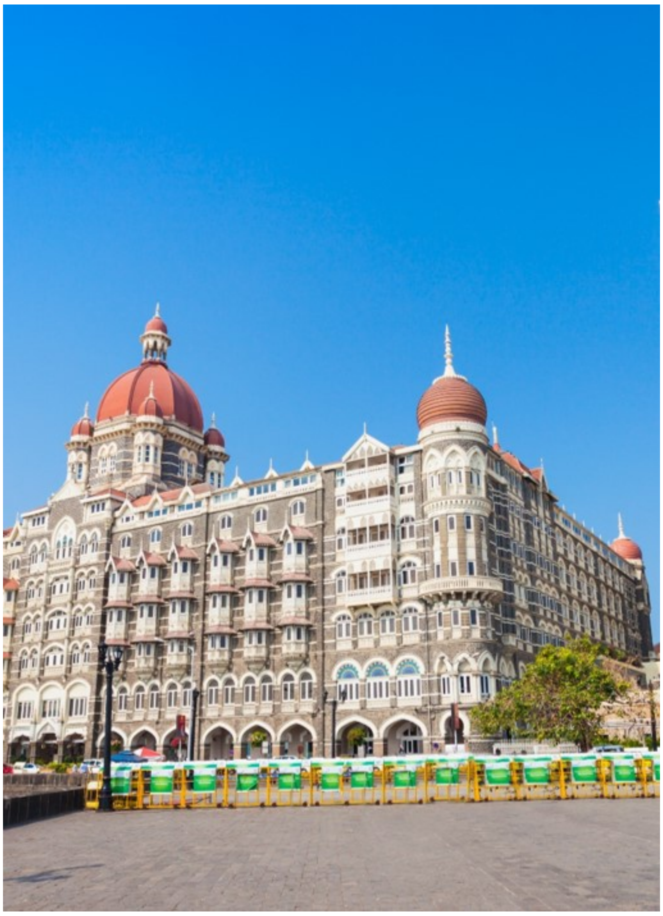
Foreign entity transferring shares / interest in another foreign entity, which derives its value substantially from Indian assets, will have to be mindful of the aforesaid rules to determine if the indirect transfer tax provisions in India are triggered.

Read the article.

4. Rules with respect to non-furnishing of PAN by non-residents and furnishing of alternative documents

The tax authorities in India have clarified that, in the case of a non-resident, who do not have a permanent account number (PAN), the provisions of higher rate of tax under Section 206AA of the Indian Income-tax Act, 1961 shall not apply in respect of payments in the nature of interest, royalty, fees for technical services and payments on transfer of any capital asset, if the deductee furnishes the following details and documents to the deductor:

i. Name, email id, contact number;
ii. Address in the country outside India of which the deductee is a resident;
iii. Certificate of his being resident in any country outside India from the government of that country, if its law provides for the issuance of such certificate; and
iv. Tax Identification Number of the deductee in the country of residence

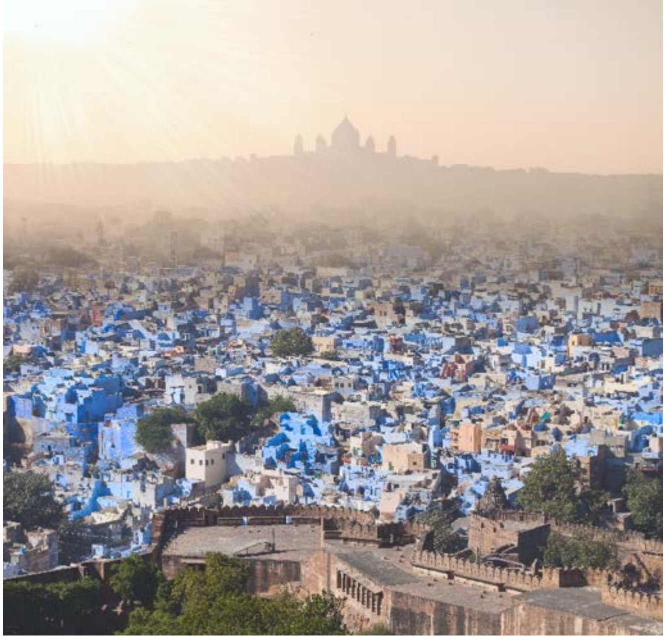


Also, where a foreign company is required to obtain a PAN in India, it could now be done electronically by making a paperless application. As per the existing procedure to obtain a PAN, the applicant is required to fill-up the application form online through portals of PAN Service providers. After verification and online payment, the print out of the application form is required to be submitted to the nearest PAN Service provider's office for processing and issuance of PAN Card. This process generally takes 10 to 15 days for allotment of PAN. Similarly, Tax Deduction Account Number (TAN) application process also takes 10 to 15 days for allotment of TAN.

In order to reduce the aforesaid time period and for fast-tracking the allotment of PAN and TAN, the CBDT in India has issued a press release introducing the Digital Signature Certificate (DSC) based application procedure to company applicants on the portals of PAN Service providers. As per the new process, PAN and TAN will be allotted within one day after completion of the valid online application.

The above measures will help in reducing the time and saving the cost of taxpayers. Further, it will provide ease of doing businesses in India.

Read the article and the follow-up article.



How we can help

As a committed tax advisor to our clients, we welcome any opportunity to discuss the relevance of the above matters to your business.

Contact us

Tay Hong Beng
Head of Tax
T: +65 6213 2565
E: hongbengtay@kpmg.com.sg

Ajay Kumar Sanganeria
Partner, Tax
T: +65 6213 2292
E: asanganeria@kpmg.com.sg

Umang Daiya
Director, India Tax Desk
T: +65 6213 2957
E: umangdaiya@kpmg.com.sg

KPMG
16 Raffles Quay
#22-00 Hong Leong Building
Singapore 048581
T: +65 6213 3388
F: +65 6227 1297
E: tax@kpmg.com.sg

Find out more about our services at **kpmg.com.sg**

Asia Tax Firm of the Year; Asia International Tax Firm; Asia Indirect Tax Firm; Asia Global Executive Mobility Firm and National Firm for Transfer Pricing in Singapore – ITR Asia Tax Awards 2016.

Ranked Tier 1 Firm for Tax Advisory - International Tax Review 2016.

For more details of our Tax services, please click here.

About Tax Alert

KPMG's Tax Alerts highlight the latest tax developments, impending change to laws or regulations, current practices and potential problem areas that may impact your company. As certain issues discussed herein are time sensitive it is advisable to make plans accordingly.

"Tax Alert" is issued exclusively for the information of clients and staff of KPMG Services Pte. Ltd. and should not be used or relied upon as a substitute for detailed advice or a basis for formulating business decisions.

kpmg.com/socialmedia