Tax Alert

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India Tax Update

In this issue, we have provided a summary of key tax and regulatory changes in India.

1. Central Board of Direct Taxes clarifies that indirect transfer provisions shall not apply to a non-resident on account of redemption or buy-back of its share or interest held indirectly in specified funds

Provisions relating to tax on indirect transfer were introduced in India in 2012. The provisions provided that where there is a transfer of shares or interest of a foreign company or entity, whose value is derived substantially from assets located in India, income arising to a non-resident from such transfer should be taxable in India.

Concerns had been expressed by investment funds, including private equity funds and venture capital funds that on account of indirect transfer provisions, non-resident funds investing in India set-up with multi-tier structures suffer multiple tax on the same income at the time of subsequent redemption or buy-back.

The Finance Budget in February 2017 amended the indirect transfer provisions whereby Category I and Category II Foreign Portfolio Investors have been exempted from applicability of indirect transfer provisions.

The Central Board of Direct Taxes (CBDT) has further issued a Circular on 7 November 2017 clarifying that the provisions of indirect transfer shall not apply to income accruing or arising to a non-resident on account of redemption or buy-back of its share or interest indirectly in the Venture Capital Company or Venture Capital Fund.

However, this would be subject to income accruing or arising from or in consequence of transfer of shares or securities held in India by these funds; and such income is chargeable to tax in India. There are additional points to be considered which you may access here.

2. Final rules on Master File and Country by Country reporting released by the Indian Government

On 31 October 2017, CBDT has released the Final Rules on Master File and Country by Country reporting (CbCR) in respect of an International Group.

These rules lay down the thresholds for applicability, timelines, requirements and procedures in relation to Master File and also requisite details / procedures for CbCR filing.

The rules provides dual monetary thresholds for maintenance of the Master File as under:

- Consolidated group revenue of the 'International Group' for the accounting year exceeds INR 500 Crore (equivalent to approximately USD 77Mn) and
- Aggregate value of international transaction:
  a) During the accounting year, as per books of accounts exceeds INR 50 crore (equivalent to approximately USD 7.7Mn) or
  b) In respect of purchase, sale, lease or use of intangible property during the accounting year, as per the books of accounts exceeds INR 10 Crore (equivalent to approximately USD 1.5Mn)

The due date for filing the Master File is 31 March 2018 for Financial Year 2016-17 and for subsequent years it should be filed on or before the due date for filing of Return of Income (i.e. 30 November).

The threshold provided for filing of CbCR or CbCR notification is consolidated group revenue of INR 5,500 Crore (equivalent to approximately USD 846 Mn).

This is in line with the threshold prescribed by the OECD and would consider the consolidated group revenue of the preceding accounting year.

For Financial Year 2016-17, the due date of filing CbCR is 31 March 2018 and for CbCR notification is 31 January 2018. For subsequent years it should be filed on or before the due date for filing of Return of Income (i.e. 30 November).

Please click here for more information.

3. Reserve Bank of India (RBI) circular shifting the Rupee Denominated Bonds (Masala Bonds) from the overall limit for FPI investments in corporate bonds

The current limit for investment by Foreign Portfolio Investors in corporate bonds is INR 244,323 Crore (equivalent to approximately USD 37,625 Mn). This included Masala Bonds which currently stand at INR 44,001 Crore (equivalent to approximately USD 6,776 million).

As per the recent RBI circular, Masala Bonds will no longer form part of the limit of FDI investments in corporate bonds from 3 October 2017. This would result in release of INR 44,001 Crore for FPI investment in corporate bonds and would be available over two quarters as under:

- From 3 October 2017 – INR 27,000 Crore of which INR 9,500 crore would be reserved for investment by Long term FPIs in Infrastructure
- From 1 January 2018 – Additional INR 17,001 Crore of which INR 9,500 crore would be reserved for investment by Long term FPIs in Infrastructure

Please click here to read the RBI circular.

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.

About Tax Alert

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