



CBDT clarifies on the India-UK tax treaty benefits available to the UK partnership firms

In February 2014, the protocol¹ to the India-UK tax treaty (the tax treaty) amended the definition of the term 'person' to delete the exclusion of the UK partnership firms. Further, the term 'resident' was amended to include partnership firms, estate or trusts as resident of a contracting state to the extent the income of such partnership firms, estate or trust is subject to the tax in that state as the income of a resident, either in its hands or in the hands of its partners or beneficiaries. Certain apprehensions that the term 'person' in the tax treaty does not specifically include partnerships have been brought to the notice of the Central Board of Direct Taxes (CBDT). Accordingly, clarity was sought from the CBDT on whether the provisions of the tax treaty were applicable to a partnership firm.

Recently, the CBDT has clarified² that the provisions of the tax treaty would be applicable to a partnership that is a resident of either India or the UK, to the extent that the income derived by such partnerships, estate or trust is subject to tax in that state as the income of a resident, either in its own hands or in the hands of its partners or beneficiaries.

Our comments

The availability of a tax treaty benefit to a partnership firm has been a matter of debate before the Indian courts. In case of Linklaters LLP³, the Mumbai Tribunal held that even though a UK partnership firm is treated as a transparent entity and is not taxed in the UK in the capacity of an entity as a whole and only the partners are taxed, as long as the entire profits of the partnership firm are taxed in the UK, the partnership firm is eligible to invoke the tax treaty benefits. The Calcutta High Court, in the case of P & O Nedlloyd Ltd. & Ors⁴ held that the tax treaty benefit is available to a UK partnership firm. On the other hand, the Authority for Advance Rulings (AAR) in the case Schellenberg Wittmer⁵ had held that since the partnership firm was not liable to tax in Switzerland, it was not eligible to claim the benefit of the India-Switzerland tax treaty.

On 30 October 2012, a protocol was introduced under the India-UK tax treaty to provide that the tax treaty benefits shall apply to income derived by a partnership firm, to the extent that such income is taxed in the UK in its hands or in the hands of its partners. However, the term 'person' does not specifically include partnerships. Now, the CBDT has

¹ Notification No. 10/2014, dated 10 February 2014

² Circular No. 2/2016, dated 25 February 2016

³ Linklaters LLP v. ITO [2010] 40 SOT 51 (Mum)

⁴ P&O Nedlloyd Limited. v. ADIT [2014] 52 taxmann.com 468 (Cal)

⁵ Schellenberg Wittmer along with its partners [2012] 24 taxmann.com 299 (AAR)

clarified that the benefit of the India-UK tax treaty would be available to UK partnership firm.

The CBDT circular provides clarity on the availability of the India-UK tax treaty benefits to partnership firms. This is a welcome move, and it will reduce litigation in line with the government's intention.



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