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. Amendments to the announcements made during India Budget 2018

The Indian Government presented the Union Budget 2018-19 on 1 February 2018. The budget received final presidential assent on 29 March 2018 after few changes which were proposed in the Lower House of the Indian Parliament. Some of the key amendments are as follows:

- It was proposed to incorporate the concept of 'Significant Economic Presence' in an attempt to widen the tax base for emerging business models such as digitized businesses. It is now provided that transactions / activities shall constitute Significant Economic Presence in India, whether or not the agreement for such transactions / activities is entered in India.
- It was proposed to tax long term capital gains at the rate of 10 percent arising from the transfer of listed equity shares / units of equity oriented mutual funds / business trusts without the indexation benefit. It is now provided that the benefit of indexation will be available in specified cases where shares are not listed on 31 January 2018 but are listed on the date of transfer.
- Requirement to have a Permanent Account Number (PAN) in India for every financial transaction of INR 250,000 or more is now restricted to Indian resident non-individual persons.

For more amendments and detailed report read the alert prepared by KPMG in India.

Our point of view

As highlighted in our earlier India Alert (click here to read), changes with respect to Significant Economic Presence should not have any immediate impact on the transactions from a Singapore perspective, as these are protected under the Singapore-India tax treaty.

Changes with respect to the PAN is a major relief for non-resident / foreign companies entering into any financial transaction in India, as the ambit of the earlier proposed amendment was quite wide. With such a wide ambit, all foreign companies having any transactions over INR 250,000 would have been required to obtain a tax registration in India and required to undertake consequential compliance requirements in India.

2. India signs a Tax Treaty with Hong Kong

India and Hong Kong Special Administrative Region of People's Republic of China (Hong Kong) recently signed a tax treaty. The tax treaty should stimulate the flow of investment, technology and personnel from India to Hong Kong and vice versa, prevent double taxation and provide for the exchange of information between the two states. It will improve transparency in tax matters and will help to curb tax evasion and tax avoidance.

Some of the key highlights of the tax treaty are as follows:

- Service Permanent Establishment (PE) to be constituted if the activities continue for a period of more than 183 days within any 12 months period
- Dividend to be taxed at a beneficial rate at 5 percent and interest at 10 percent
- Sourced-based taxation of capital gains on the alienation of shares
- Treaty provides for time bound Mutual Agreement Procedure
- Limitation of Benefits clause also includes the applicability of domestic anti-avoidance provisions
- Liberal use of the Principle Purpose Test in respect of the overall Treaty and passive income streams in particular

For more information read the alert prepared by KPMG in India.

3. Services provided by the seconded employees of a foreign company to its subsidiary in India do not result in PE

Income-tax Appellate Tribunal (the Tribunal) in the case of Samsung Electronics Company Ltd. held that the services provided by the seconded employees of a foreign company to its subsidiary in India do not result in a PE in India. The Tribunal held that the expatriate employees are only discharging functions of a subsidiary towards the holding company, for the benefit of the business of the subsidiary. This is to make the Global Business Management (GBM) understand the priorities and preferences of the Indian customers by providing India-specific information to GBM which in turn then carries out research and development to develop India-specific products.

Please click here for more information.

Our point of view

Secondment of employees to India and its related taxation for the home country employer has been a subject matter of litigation in India for a long time. There are several aspects which have been highlighted by various judicial precedents. These include points like a lien on employment, control over the seconded employee and so on. One needs to give a careful consideration while planning a secondment of employees to India, including the review of secondment agreements, employment contracts, roles / responsibilities etc. from a tax perspective. More importantly, this needs a greater scrutiny for secondments from Singapore, mainly due to the short threshold for constituting a service PE of 90 days for unrelated parties / 30 days for related parties under the Singapore-India tax treaty.

4. India notifies the cross border merger regulations under the Foreign Exchange Regulations

The Indian Ministry of Corporate Affairs had issued a notification under Section 234 of the Companies Act 2013 facilitating the cross border merger / amalgamation / arrangement between Indian and foreign companies which came into force with effect from 13 April 2017. One of the conditions for a cross border merger under the Companies Act is to obtain a prior approval from the Reserve Bank of India.

The Reserve Bank of India has recently issued a notification in respect of the Foreign Exchange Management (Cross Border Merger) regulations, 2018. As per the provisions of the regulation, any cross border transaction would deem to have prior approval of the Reserve Bank subject to the transaction being in compliance with the conditions laid down by these regulations.

For more information read the alert prepared by KPMG in India.

Our point of view

These changes are likely to encourage a lot of multinational companies to actively consider cross border merger as one of the options for streamlining / aligning the corporate / group structure. The amendment of Section 212 of the Singapore Companies Act, effective from 1 July 2015 should also be evaluated for the purpose of cross border mergers from a Singapore perspective.

5. Foreign Investment Reporting – Single Master Form

The Reserve Bank of India has recently issued a circular to introduce a Single Master Form, which would provide a facility for reporting foreign investments in an Indian entity, including investments in an Investment Vehicle. The objective is to integrate the current reporting requirements for various foreign investment structures in India.

Prior to the implementation of the Single Master Form, the Indian Entity will be required to fill an Entity Master Form to provide details of all foreign investments in the entity. This data needs to be filled on the Reserve Bank of India website from 28 June 2018 to 12 July 2018. Indian entities not complying with this will not be able to receive any foreign investment in India and would be considered as non-compliance subject to a penalty.

For more information read the alert prepared by KPMG in India.

Our point of view

Considering that the window for Entity Master Filing is open for a limited period of 15 days and non-compliance has severe implications, it is imperative to ensure a timely compliance with this requirement.

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.

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