KPMG

Tax Alert

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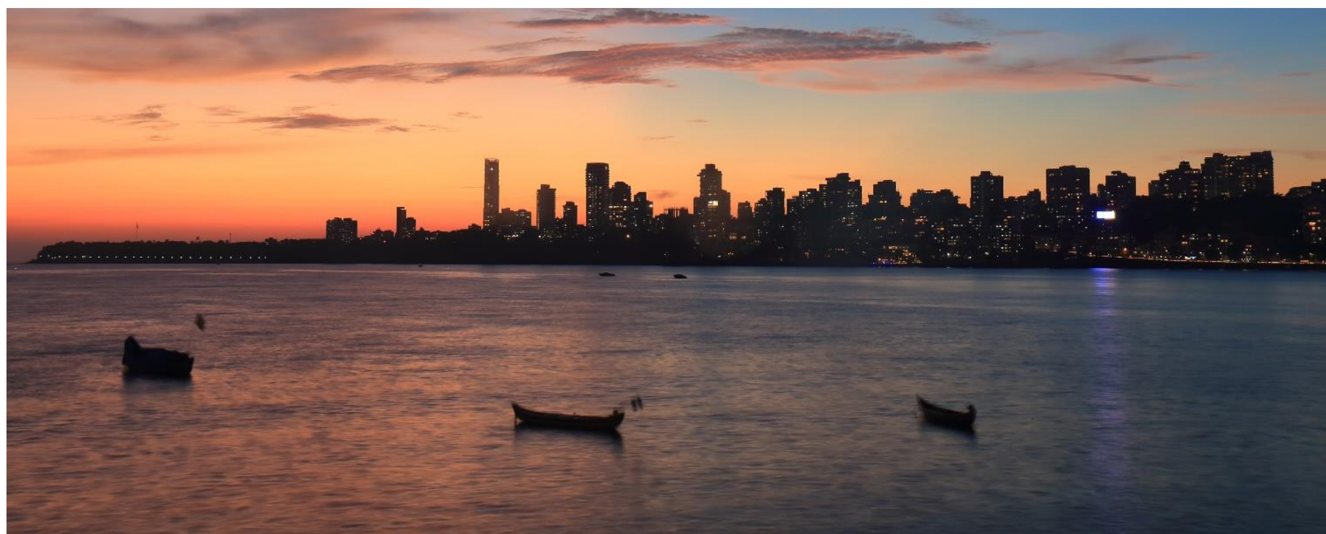
India Tax Update



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

1. Central Board of Direct Taxes in India (CBDT) issued guidance on confidentiality and appropriate use of CBC reports

Country by Country (CBC) Reporting is one of the minimum standards within the BEPS Action Plan, to be implemented by all jurisdictions that are members of the Organisation for Economic Co-operation and Development (OECD) Inclusive Framework on BEPS, including India. The objective of the CBC Report is to increase transparency and provide tax administrators useful information to identify cases of BEPS. However, it drew concerns about the possibility of inappropriate use and confidentiality of information furnished in CBC Reports. Taking this concern into account, the implementation of BEPS Action Plan 13 was made subject to a peer review. The objective of this review was to ensure timely and consistent implementation as well as confidentiality and appropriate use of CBC Reports.

The first annual peer review report published by OECD recommended India to take steps to ensure that the appropriate use condition is met ahead of the first exchange of CBC Report which was expected from September 2018.

To meet this minimum standard, CBDT recently issued guidance around maintaining confidentiality as well as prescribing a framework to monitor, control and review the appropriate use of information received by CBC Reports. The guidance is broadly consistent with OECD Guidelines and some of the key points are highlighted below:

- Access to the CBC Reports will be available only to Competent Authority of India and Director General of Income Tax (Risk Assessment). The Jurisdictional Transfer Pricing Officer will have access only if the constituent entity is selected for audit based on risk assessment.
- The Jurisdictional Transfer Pricing Officer can use CBCs for three purposes only, namely high-level transfer pricing risks assessments and planning audit, assessment of other BEPS related risks and Economic & Statistical Analysis.

The guidelines also provide for other situations such as inappropriate use of CBC, confidentiality and monitoring, control and review.

For more details, read the alert prepared by KPMG in India.

Our point of view

Many companies would have already submitted their CBC Report in Singapore or in their respective jurisdictions. The exchange of such CBC Reports between the countries has already commenced in some cases or is likely to start soon. It is imperative to review the CBC Report submitted along with the local filings in each of the countries to ensure consistent approach and avoid unwarranted tax disputes, particularly for highly litigious countries like India.

2. Limitation of Relief provisions under Article 24 of the India-Singapore Tax Treaty do not apply to capital gains

Article 24 of India-Singapore Tax Treaty (Tax Treaty) provides for Limitation of Relief (LOR) under Tax Treaty. This article states that the exemption or reduction of tax in India under the Tax Treaty shall be allowed to the extent of income remitted to or received in Singapore if the following two conditions are fulfilled:

i. income from sources in India is exempted from tax or taxed at a reduced rate under the treaty in India; and

ii. the amount remitted / received in Singapore is taxable in Singapore only to the extent of remittance or receipt in Singapore.

The Mumbai Bench of Income-tax Appellate Tribunal recently held that provisions of Article 24 of the Tax Treaty do not apply to capital gains derived from sale of shares, debt instruments and derivatives of Indian Companies as such gains are taxable in Singapore under the Tax Treaty. The reasons laid down by the tribunal for this are that for LOR to apply, the income derived from India should be exempted or taxed at a reduced rate in India. However, the capital gains tax provision under Article 13(4) of the Tax Treaty states that gains derived by a resident of Singapore shall be taxable in Singapore and thus, it is not an exemption provision.

For more information about the tax ruling, read the alert prepared by KPMG in India.

Our point of view

The applicability of the LOR clause under the Tax Treaty vis-à-vis Capital Gains has been under much debate. This ruling provides clarity that LOR does not apply to Capital Gains Article under the Tax Treaty where the gains are taxable in Singapore.

The principles emerging from this decision could be relevant to Singapore companies in respect to gains on sale of instruments other than shares, and on sale of Indian shares acquired before 1 April 2017.

3. Foreign Companies may attract penalties and prosecution proceedings for non-filing of tax returns in India

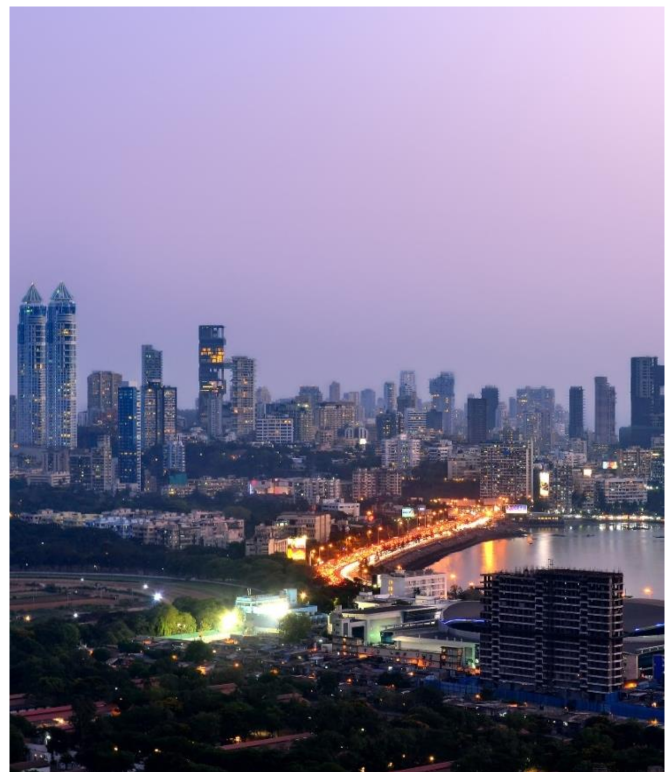
Under the Indian Income Tax Act, 1961, a Foreign Company is required to file a tax return in India if it has India sourced income or its income has nexus with India. Earlier, a minimal penalty was levied on failure to file a tax return in India.

The Finance Acts of 2016, 2017 and 2018, introduced a series of provisions for levy of penalty for under-reporting and misreporting of income with effect from 1 April 2017. The penalty in such instances could be a sum equal to 50 percent to 200 percent of the amount of tax payable. It also rationalised provisions relating to prosecution which will be initiated on person who willfully fails to file a tax return within the due date. In the case of companies (including foreign companies), the principal officer (namely Director) could be liable for prosecution proceedings.

Please click here for more information.

Our point of view

India has over the last few years introduced stricter penal provisions to ensure compliance / tax filings including for Foreign Companies earning India sourced income. It is important for Singapore companies to file tax returns in India if they earn any India sourced income like Royalty, Fees for Technical Services etc. This is irrespective of whether such income is taxable or not and whether the taxes have been withheld or not in India.



4. CBDT releases the second Advance Pricing Agreement (APA) annual report

The CBDT recently released the second annual report on India's APA Programme (the Report) highlighting the progress made in Financial Year (FY) 2017-18, marking completion of 6 years of the APA Programme in India. The Report highlights a significant increase in the APA filings during the FY 2017-18 as compared to FY 2016-17 and tax payers' increased preference for Bilateral APA.

The Report also highlights that the services sector accounts for about 70 percent of the APAs signed by India, with Information Technology, Banking & Finance, Pharmaceuticals and Industrial Manufacture being the leading industries.

In terms of services, IT enabled Services and Software Development are the dominant transactions for APAs. Advertising & Marketing spends and merchanting trade are the emerging ones for APAs. As per the Report, Transactional Net Margin Method was the most popular method used in majority of APAs

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

Our point of view

Transfer Pricing has been evolving globally and is one of the most disputed tax topics in India. APA has proven to be an effective way of addressing the Transfer Pricing litigation as it provides certainty for 9 years (5 years forward and 4 years roll-back). The Report reflects the success which the Indian APA Programme has been having in recent years.

In terms of Singapore, Bilateral APA route has opened up from 1 April 2017 with the change in the Tax Treaty. Bilateral APA route could be used by Singapore based companies as an effective mechanism to address Transfer Pricing disputes in India with involvement of the Inland Revenue Authority of Singapore.

5. Liberalisation of the External Commercial Borrowings (ECB) Norms in India

The Reserve Bank of India has recently released a circular liberalising the ECB norms in India. According to the circular, the minimum average maturity period of 3 years for ECB has been reduced to 1 year for companies in manufacturing sector for ECB up to USD 50 million.

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

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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Ranked Tier 1 Firm in Singapore – World Tax, World Transfer Pricing and Tax Transactional 2018, *International Tax Review*

Asia Tax Firm of the Year – Asia Tax Awards 2016, 2017 & 2018, *International Tax Review*

National Transfer Pricing Firm of the Year and National Tax Disputes & Litigation Firm of the Year – Asia Tax Awards 2018, *International Tax Review*

Best Advisor in Real Estate Tax Globally – Real Estate Awards 2017, *EuroMoney*

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