KPMG

Tax Alert

ISSUE 04 | **APRIL 2019**

India Tax Update

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

1 Central Board of Direct Taxes in India (CBDT) Clarification Circular - Taxability of income on receipt of shares of an Indian Company and subsequent withdrawal

Section 56(2)(viia) of the Indian Income Tax was introduced in 2010 to provide for taxation of income where a private company or firm receives shares of a private company from a person for no or inadequate consideration (lower than fair market value).

The CBDT has taken note of representations made by various stakeholders that the term 'receives' has a wider meaning and might lead to taxation even in cases of fresh issue of shares (including bonus shares, rights shares, preference shares etc.) In order to clarify this, the CBDT issued a Circular wherein it stated that the provision was introduced as an anti-abuse measure to prevent the practice of transferring the shares of a private company for no or inadequate consideration, and was never meant to apply for the issuing of shares.

Subsequent to the issue of the above Circular, the CBDT withdrew the Circular within four 4 days, citing that the matter in respect to issue of shares is pending before judicial forums and that a comprehensive Circular will be issued post further examination. Further, it clarified that anything mentioned in the aforementioned first Circular should be considered as never expressed by the CBDT and should not be taken into account in any manner.

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

Our Point of View

Section 56(2)(viia) of the Act was introduced under the Indian Tax laws in 2010 as an anti-abuse provision, wherein the recipient of the shares is taxed in case the shares are received for no or inadequate consideration (lower than the Fair Market Value). These provisions also extend to foreign companies, unless these companies have specific protection under the respective tax treaty.

The application of Section 56(2)(viia) to the issue of shares has been under debate, and could have been put to rest by the first circular issued by the CBDT. Since the circular has now been withdrawn, the debate will continue until there is either a judicial precedent on this matter or a fresh circular is issued by the CBDT.

For Singapore residents receiving shares of an Indian Company for no or inadequate consideration, under the India-Singapore Tax Treaty (Tax Treaty), such income may be taxed in India as per the domestic law of India. Hence, Singapore companies should pay specific attention to this aspect at the time of receiving shares (including by way of issue of fresh shares) of an Indian Company.

2 Relaxation and simplification of External Commercial Borrowings (Foreign Loans) framework in India

Reserve Bank of India has recently simplified the External Commercial Borrowings (ECB) framework in India which was hitherto far more restrictive in terms of eligible borrowers/sectors, tenure of loans, end-use of loan proceeds, interest caps etc. Some of the key changes to the ECB framework are as follows:

- Removal of track-based classification and regulations for Rupee Denominated Bonds (Masala Bonds) have been merged. The new framework has been simplified with the following two categories:
  - Foreign currency denominated ECB; and
  - Rupee denominated ECB.
- Masala Bonds are to be covered under the ECB framework and hence, should not be subject to prior approval of Reserve Bank of India.
- Certain hybrid instruments such as optionally-convertible debentures that are presently covered under ECB would be governed by specific Hybrid Instruments Regulations when notified by the Government of India.
- Limited Liability Partnerships are now eligible to avail ECB.
- ECB, which was earlier restricted to a few sectors, has now been extended to all sectors which are eligible to receive Foreign Direct Investments.
- Uniform Minimum Average Maturity Period of three years for all types of ECB except in a few cases.
- Mandatory Hedging requirement for 'Infrastructure space companies'.
- Simplification of reporting requirements.
- Introduction of late submission fees.

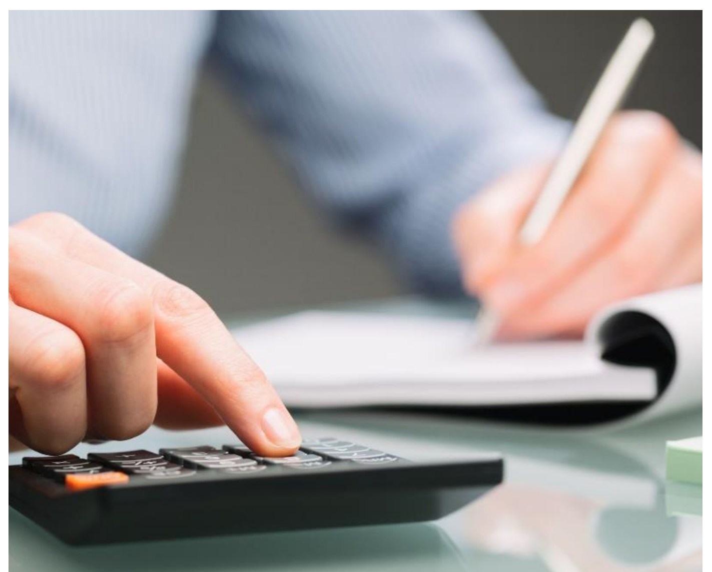
For more information, please read the original alert prepared by KPMG in India.

Our Point of View

Simplification and liberalization of the ECB Framework is a positive development for Singapore-based companies looking at alternate funding options for their Indian Companies. These alternative funding options were earlier very restrictive. The Taxability of Interest Income needs to be evaluated in light of the domestic tax laws of both countries and the Tax Treaty. As per the Indian Income-tax Act, Interest in respect to ECB availed by an Indian Company from a Foreign Company before 1 July 2020 should be subject to a withholding tax rate of 5 percent if certain conditions are fulfilled. This rate is lower as compared to the rate of 15 percent under the Tax Treaty.

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, International Tax
T: +65 6213 2292
E: asanganeria@kpmg.com.sg

Gaurav Tanna
Associate Director, India Desk
T: +65 6507 1588
E: gtanna@kpmg.com.sg

KPMG
16 Raffles Quay #22-00
Hong Leong Building
Singapore 048581
T: +65 6213 3388
F: +65 6220 9419
E: tax@kpmg.com.sg

About Tax Alert

KPMG *Tax Alert* highlights 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.

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

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

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

For more information, please view our tax services page.

kpmg.com.sg/socialmedia

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2019 KPMG Services Pte. Ltd. (Registration No: 200003956G), a Singapore incorporated company and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity.
All rights reserved. Printed in Singapore.