



news flash

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INDIA – SINGAPORE ON THE COURSE FOR EFFECTIVE EXCHANGE OF INFORMATION IN TAX MATTERS

The Indian Government, under pressure due to public uproar and criticism by the Supreme Court of India regarding tax evasion and black money stashed abroad, is taking several measures to obtain information for controlling tax evasion and taxing unaccounted income.

One such measure is the introduction of a new section 94A in the Income Tax Act, 1961 with effect from 1 June 2011. This section specifically deals with transactions in relation to the jurisdictions with which India does not have effective mechanism for exchange of information. Such jurisdictions will be notified by the Government. The intent of the section is to obtain information for detecting offshore tax evasion and unaccounted money abroad. The section (a) provides for the application of transfer pricing regulations, (b) imposes higher withholding tax and (c) disallows deductions for payments made or deemed amounts received as income, in case the prescribed information or document is not made available to tax authorities.

In addition to the above, tax information exchange agreements with Bermuda, Bahamas and Isle of Man, have already been signed and notified by India. Similar agreements with Cayman Islands and British Virgin Islands have also been signed by India but are yet to be notified.

As the latest step towards prevention of tax avoidance and evasion, the Government of India and the Government of Singapore have signed a protocol on 24 June 2011 for amending the Double Taxation Avoidance Agreement (“DTAA”) between India and Singapore for the effective exchange of information in tax matters including banking information. This amendment will become effective in India when it is notified by the Government of India in the official gazette.

CURRENT DTAA PROVISION WITH REGARD TO “EXCHANGE OF INFORMATION” WITH SINGAPORE

Currently Article 28 of the DTAA provides for the exchange of information in respect of taxes covered by the DTAA, or of the domestic laws of the Contracting States concerning taxes covered by the DTAA, insofar as such taxation is not contrary to the DTAA, in particular for the prevention of fraud or evasion of such taxes.

The exchange of information or documents may be on a routine basis or by request with reference to particular cases.

There is no obligation on a Contracting State –

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- (a) to carry out administrative measures at variance with the laws or administrative practice of that or of the other Contracting State;
- (b) to supply information or documents which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information or documents which would disclose any trade, business, industrial, commercial or professional secret or trade process or information, the disclosure of which would be contrary to public policy.

(the exclusions set out in (a), (b) and (c) above are hereinafter collectively referred to as the “**Limitations**”).

PROPOSED AMENDMENT IN THE DTAA

The exact text of the protocol has not yet been made public. However, the press release states that the DTAA will be amended to reflect the internationally accepted standard for exchange of information in tax matters. This standard includes the principles incorporated in the new paragraphs 4 and 5 of the OECD Model Article on “Exchange of Information”.

As per the new paragraphs 4 and 5 of OECD Model Article on “Exchange of Information”, if information is requested by a Contracting State in accordance with the Article on exchange of information, then the other State shall use its information gathering measures to obtain the requested information, even though the other State may not need such information for its own tax purposes. This obligation is subject to the Limitations (specified above). However, in no circumstances shall such Limitations be construed to permit the other State to decline exchange of information solely because it has no domestic interest in such information. Further, a Contracting State shall not decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or in a fiduciary capacity or because it relates to ownership interests in a person.

ALMT Remarks

After the proposed DTAA amendments are made effective, the alibi of fiduciary duty or no domestic tax interest would no longer be available for refusing the exchange of information for administration and enforcement of tax laws.

Nevertheless, the effectiveness of the proposed DTAA amendment will depend on the efficiency in implementation and interest of both Contracting States.

Even after the amendment is made effective there will still be certain limitations on exchange of information which would allow a contracting State to deny or limit the exchange of information. For instance, the commentary on the above OECD Model Articles on “Exchange of Information” clarifies that the contracting states are not at liberty to engage in “fishing expeditions” or to request information that is unlikely to be relevant to the tax affairs of the given taxpayer.



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Source: Press release by Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India dated 24 June 2011 no. 402/96/2006-MC (15 of 2011).

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