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TAX ALERT

Protocol amending India Singapore Double Tax Avoidance Agreement (“Treaty”):

India and Singapore has signed a protocol on 30th December 2016 amending the Double Tax Avoidance Agreement Treaty between them.

The key features of the treaty are enumerated below:

The protocol will come into effect from **1st April 2017**.

Article 13 on Capital Gains:

- A new clause 4A has been inserted whereby capital gain arising from alienation of shares of Indian Company **acquired and held as Investment prior to 1st April 2017** will continue to enjoy resident based taxation.
 - ✓ Accordingly, capital gains arising on account of alienation of shares of an Indian company acquired before 1st April 2017 shall not be affected by this protocol and shall continue to enjoy the exemption from tax in India.
- A new clause 4B has been inserted shifting the taxability of capital gains from resident based to source based taxation. Accordingly, capital gains arising from alienation of shares **acquired on or after 1st April 2017** in a Company which is resident of a contracting state (say India) may be taxed in that State (India).
 - ✓ Accordingly, India will get right to tax capital gain arising on alienation of shares of an Indian Company (acquired on or after 1st April 2017) by a Singapore resident.
- A new clause 4C has been inserted **whereby gain referred to in clause 4B and arising during the period 1st April 2017 to 31st March 2019**, the rate of tax will be limited to **50% of the applicable rate** in the State of Residence of the Company whose share are being alienated. This reduced rate will be subject to fulfillment of conditions specified in newly inserted Article 24A on Limitation of Benefits (LOB).
 - ✓ Accordingly, capital gains arising between 1st April 2017 and 31st March 2019 on alienation of shares of Indian Company by a Singapore resident will be subject to 50% of the applicable tax rate in India.

- The protocol amending the article on capital **gains refers to “Shares”**. Therefore, gains arising from alienation of other securities being mutual funds, debts, debentures, derivative instruments etc., may continue to be exempt from tax in India even if they are acquired on or after 1st April 2017.
- There is no clarity on taxability of **quasi debt instruments** which are purchased prior to 1st April 2017 but converted after that date. The question is as to whether the date of acquisition of original instrument or the date of conversion that will be taken into consideration.

Article 24A on Limitation of Benefit (LOB):

- A new Article 24A has been inserted whereby it is stated that a resident of a contracting state shall not be entitled to benefit of Article 13(4A) and Article 13(4C) as stated above, if its affairs are arranged with the **primary purpose to take advantage of the benefit** of the said Articles 13(4A) and 13(4C). It is also provided that where legal entities not having any bonafide business activities shall also be treated as entities existing with the primary purpose to take advantage of these articles.
- Further, the treaty benefits under Article 13(4A) and 13(4C) will be denied to a shell/conduit Company. A shell/conduit Company is any legal entity with **negligible or nil business operations or with no real and continuous business activities** in that contracting state.
- The article also provides that a resident of a contracting state shall be deemed to be a shell/conduit Company if the expenditure on operations in that contracting state is less than **Singapore \$ 200,000 or INR 50,00,000**, as the case may be:
 - i. In respect of Article 13(4A) for each of the 12 month periods in the immediately preceding period of 24 months from the date on which the gain arises and
 - ii. In respect of Article 13(4C), immediately preceding period of 12 months from the date on which the gain arises.
- However it is also stated that a resident of a contracting state shall not be deemed to be a shell/conduit Company if it is listed on **recognised stock exchange** of the contracting state.

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