Singapore | Tax | 4 January 2017

Amendments to Double Taxation Avoidance Agreement
India & Singapore sign Third Protocol

Key changes & Deloitte's views

On 30 December 2016, India and Singapore announced the amendment of the Double Tax Avoidance Agreement (DTAA) via a Third Protocol which was signed on the same date. This was very much expected ever since India amended the tax treaty with Mauritius earlier in April 2016 and then subsequently the tax treaty with Cyprus in November 2016.

The Third Protocol amends the India – Singapore DTAA and will take effect no later than 1 April 2017 to provide for source based taxation of capital gains arising from transfer of shares in a company. As per the Protocol, all investments in shares made prior to 1 April 2017 have been grandfathered and any gains on sale of shares acquired prior to 1 April 2017 will be taxable only in Singapore if certain prescribed conditions are satisfied and would not be taxable in India.

With respect to shares which are acquired post 1 April 2017 and sold before 31 March 2019, there would be a capital gains tax payable in India. The capital gains tax would be 50% of the applicable tax rate. Currently, the capital gains tax rate in India is 10% for long term capital gains arising on the sale of shares of unlisted companies and 30% for short term capital gains (short term being shares of an unlisted company which are held for less than 24 months). Again, this would be applicable only if the conditions prescribed in the Limitation of Benefits clause are satisfied. Any capital gains arising from sale of shares acquired post 1 April 2017 and sold after 1 April 2019 would be taxable in India at the applicable tax rates.

In addition, the Third Protocol inserts Article 9(2) of the OECD Model Convention into the DTAA. The new paragraph which has been added in Article 9 of the existing DTAA between India – Singapore which would facilitate bilateral Advance Pricing Arrangements (APAs) between the two countries and eliminate double taxation arising from adjustments made pursuant to Transfer Pricing or related party transactions.

Although the amendment of the India – Singapore treaty was widely anticipated, the general expectation and perception of the investor community was that India would accord a more beneficial treatment of capital gains to Singaporean investors given that Singapore is India's larger trading partner (vis-à-vis Mauritius and Cyprus). There was also an expectation that capital gains derived by small investors i.e. those holding less than 10% of the capital in a company would be exempted from Indian capital gains tax. The absence of such a treatment is disappointing.

Find out more

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