

Minimum Alternate Tax (MAT) on FPI



Minimum Alternate Tax ('MAT')

As per the Indian tax law, long term capital gains are exempt from tax and short term capital gains are taxable at 15% if the shares have been traded on the stock exchange. Interest received by Foreign Portfolio Investors ('FPIs') from investment in Government securities and rupee denominated corporate bonds is subject to a concessional tax rate of 5%, subject to the fulfilment of certain conditions.

Recently, in a few corporate FPI cases, the Indian Revenue issued show cause notices to the tax payers, during the course of the tax audit for FY12, on why tax should not be levied as per the MAT. As per the relevant provisions, corporations that pay tax which in aggregate is less than 18.5% of their book profits have to pay a minimum tax of 18.5% of their book profits.

A large number of FPIs, as well as industry bodies, took up this issue with the Finance Minister before the tax audit was finalised. Pursuant to the representations made, the Finance Bill 2015 has amended the MAT provisions to exclude capital gains earned by FPIs from the ambit of MAT. However, these provisions are proposed to be effective from 1 April 2015 only.

The Indian Revenue is therefore taking a position that MAT applies to corporate FPIs on all income (including capital gains) up to 31 March 2015 and to all income (other than capital gains) from 1 April 2015 onwards. Audit for FY12 has been completed on this basis. Notices are also being issued for past years which extend up to 7 past years.

The action of the Indian Revenue has been a matter of huge concern to the foreign investors and many of them are considering disputing this levy at an appropriate forum.

The levy of MAT on FPIs has also received wide coverage in local and overseas media. In recent media interviews, the Finance Minister appeared to justify the levy of MAT for past years on FPIs and seemed to have left the issue to be decided by the courts.

Way forward:

The FPIs have the following course of action which they may adopt :

- a) Approach the Dispute Resolution Panel (DRP) against the draft orders or appeal before the Commissioner of Income Tax (Appeals) [CIT(A)] against the final order.
- b) In case of an adverse DRP or CIT(A) order, appeal to the Income-tax Appellate Tribunal (ITAT). A decision by the ITAT may take another 2-3 years from the date of filing the appeal.
- c) In case of adverse decision at the ITAT level, prefer an appeal before the High Court and thereafter, before the Supreme Court. It may take 5-7 years for High Court to dispose the matter and 8-10 years by the Supreme Court.
- d) Where past cases are being re-opened, FPIs can move the High Court by way of a Writ Petition.
- e) Represent to the Prime Minister and seek his intervention.

In case you need any further information please feel free to contact us.

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