

India rescinds notification treating Cyprus as 'Notified Jurisdictional Area' with retrospective effect

In brief

In order to remove the ambiguity around the retrospective application of rescission of Cyprus' status as a Notified Jurisdictional Area [NJA (for details refer our email below)], the Government of India (GoI) has issued another notification no. 119 dated 16 December 2016¹ amending the text of its earlier notification no. 114 dated 14 December 2016² as follows:

"In exercise of the powers conferred by sub section (1) of section 94A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby rescinds the notification of the GoI in the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, number 86 of 2013 published in the Gazette of India, Part II, section 3, sub-section (ii) vide S.O. 3307(E) dated 1 November 2013, except as respects things done or omitted to be done before such rescission, with effect from the date of publication of ~~this~~ the notification in the Official Gazette."

As a result, the rescission of notification no. 86 of 2013 is now applicable with retrospective effect. In other words, removal of Cyprus as a NJA is effective from 01 November 2013.

¹ Corrigendum Notification No. 119 of 2016 dated 16 December 2016

² Notification No. 114 of 2016 dated 14 December 2016

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India rescinds notification treating Cyprus as 'Notified Jurisdictional Area'

In brief

The Government of India (GoI) *vide* notification¹ dated 14 December 2016 (Recent Notification) has rescinded its earlier notification² which had notified Cyprus as a Notified Jurisdictional Area (NJA) under section 94A of the Income-tax Act, 1961 (Act).

This news alert summarises the impact of the Recent Notification.

In detail

On 01 November 2013, the Central Board of Direct Taxes invoked the provisions of section 94A of the Act and notified Cyprus as an NJA owing to inadequate exchange of information by Cyprus tax authorities.

On 01 July 2016, GoI issued a [press release](#) that negotiation on the revision of India-Cyprus tax treaty (Cyprus tax treaty) between both the countries has been completed with –

- Rights to source based taxation of capital gains and grandfathering of investments made prior to 01 April 2017.
- India considering the removal of Cyprus from the list of NJAs under the Act retrospectively and initiating necessary procedures.

On 18 November, 2016, GoI issued a [press release](#) announcing the signing of the revised Cyprus tax treaty. Subsequent to this notification, Government of Cyprus released the text of the revised Cyprus tax treaty.

GoI *vide* its recent notification has rescinded the earlier notification resulting in Cyprus not being a NJA under the Act. The recent notification also states that things done or omitted to be done before such rescission shall be an exception.

On 16 December 2016, GoI has issued another [press release](#) confirming completion of internal procedures to amend the Cyprus tax treaty. In this press release, GoI has also stated that Cyprus' status as an NJA under section 94A of the Act has been rescinded with effect from 01 November 2013.

The following paragraphs summarise the impact of the recent notification:

- Deeming fiction provided in section 94A to deem Cyprus tax residents or a person located in Cyprus as an associated enterprise and any transactions with them as an international transaction will no longer be applicable.
- Claim for deduction of any expenditure/ allowance arising on account of transactions with Cypriot tax resident or a person located in Cyprus would now be allowable under general provisions of the Act without documentation requirements³ prescribed under section 94A of the Act.
- Consequent to the recent notification, any taxable income accruing/ arising to a Cypriot tax resident or a person located in Cyprus would now be subject to the withholding tax rates prescribed under the Act or the revised Cyprus tax treaty (as and when India notifies the same), whichever is beneficial to the taxpayer.

To illustrate, payments made to Cyprus tax residents or persons located in Cyprus would be subject to withholding tax as follows:

- Royalties/ fees for technical services, earlier liable to withholding under section 94A at the rate of 30%, would now be liable to withholding at 10% under the Act.
- Interest income, earlier liable to withholding under section 94A at the rate of 30%, would now be liable to withholding at 10% under the Cyprus tax treaty or at an applicable lower rate under the Act, whichever is beneficial.

Way forward

This is a long awaited and significant development between India and Cyprus and resets the tax position for various transactions on par with other jurisdictions.

While the Press Release dated 01 July 2016 from GoI states that the rescission is retrospective, the language in the recent notification stating that the rescission will be effective from the date of publication of the recent notification in the official Gazette suggests that the change in status is only prospective.

Considering the pain of higher withholding and increased levels of scrutiny that investors from Cyprus and companies receiving investments from Cyprus have faced, a specific clarification that the rescission is with effect from 01 November 2013, which is in line with GoI's press releases, would help in avoiding any continuing ambiguity.

¹ Notification No. 114 of 2016 published in official gazette

² Notification No. 86 of 2013 dated 01 November 2013 published in official gazette

³ Rule 21AB of the Income Tax Rules, 1962 read with Form 10FC

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