

Taxation on overseas transfers - clarifications in the context of Foreign Portfolio Investors

Background

The Indian income-tax law incorporates provisions to tax overseas transfers i.e. transfers of shares or interest in an offshore entity where the value of such shares or interest is substantially derived from assets located in India. These provisions are subject to thresholds in the form of value of India assets being at least 50% of the value of all assets of the offshore entity and exceeding INR 100 million. There are carve outs for small shareholders holding less than 5% of the voting power/share capital/interest in the offshore entity.

The above overseas transfer provisions ('the Provisions') were introduced in the backdrop of transfers of controlling interest in Indian entities. Several representations were filed with the Central Board of Direct Taxes ('the Board') on the remit of these Provisions in the context of Foreign Portfolio Investors ('FPIs'). The Board had constituted a Working Group to examine the issues raised by various stakeholders.

Clarifications

The Board has now issued a [notification](#) (F. No. 500/43/2012-FT&TR) clarifying the applicability of the Provisions in the context of FPIs. In summary, the following has been clarified:-

- The Provisions apply to investors in FPIs even though FPIs may be mainly portfolio investors and not strategic investors.
- Redemption of units/shares by investors in FPIs could fall within the ambit of the Provisions.
- The Provisions apply to, amongst others, Master Feeder structures, nominee-distributor structures, India focussed sub-Funds and listed Funds, where the thresholds discussed above are met.
- The Provisions apply to investors at the time of merger of offshore Funds and internal restructuring of such Funds.
- The Provisions apply subject to carve-out for small shareholders discussed above.
- Other provisions in the income-tax law such as withholding obligation on the payer apply as per law.

We are analysing the clarifications in greater detail and will revert with a more detailed alert shortly.

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