

# Benefit of India-UK tax treaty to UK Partnerships clarified

March 5, 2016

## In brief

In the light of the amended protocol to the India-UK tax treaty (notified in February 2014), the CBDT has clarified that the benefits of the India-UK tax treaty would be applicable to a partnership, estate or trust that is a resident of India or UK. The benefits will, however, be limited to the extent that the income derived by such partnership, estate or trust is subject to tax in that State as the income of a resident, either in its own hands or in the hands of its partners or beneficiaries.

## In detail

An amending protocol to the India-UK tax treaty was notified in February 2014 with effect from 27 December 2013. As per the protocol, the definition of the term, 'person' was amended to remove the exclusion for partnerships. Further, the term 'resident' was amended to include partnerships, estate or trusts as resident of a Contracting State to the extent the income of such partnership, estate or trust is subject to the tax in the Contracting State as the income of a resident, either in its hands or in the hands of partners or beneficiaries.

The CBDT has acknowledged that even after the amended protocol, there have been apprehensions that the term, 'person' does not specifically include partnerships. Accordingly, further clarity had been sought from the CBDT on whether the provisions of the India-UK tax treaty were applicable to a partnership. The CBDT has accordingly clarified that the provisions of

the India-UK tax treaty would be applicable to a partnership that is a resident of either India or UK, to the extent that the income derived by such partnership, estate or trust is subject to tax in that State as the income of a resident, either in its own hands or in the hands of its partners or beneficiaries.

## The takeaways

- Whether a UK partnership has access to the India-UK tax treaty has been a subject matter of debate and litigation in Indian courts.
- The debate existed since the definition of the term 'person' under the India-UK tax treaty did not include UK partnerships since such partnerships are considered as fiscally transparent entities under the UK laws.
- Although the Courts in the case of Linklaters LLP<sup>1</sup> and P&O Nedlloyd Limited<sup>2</sup> did grant benefit to the UK partnerships, the tax officers at the time of assessment continued to

disallow the benefits to UK partnerships.

- Accordingly, the CBDT Circular, which is binding on tax authorities, will help provide certainty and hence, reduce litigation.
- The Finance Minister in his recent Budget Speech stated, "Litigation is a scourge for a tax-friendly regime...". This Circular adds to the list of clarificatory Circulars issued by the CBDT recently, which seems to be in line with the Finance Minister's intention to reduce litigation.

## Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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<sup>1</sup> Linklaters LLP v. ITO [2011] 9 ITR(T) 217 (Mumbai)

<sup>2</sup> P&O Nedlloyd Limited. v. ADIT [2014] 52 taxmann.com 468 (Calcutta)

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