

Double taxation avoidance agreement between India and Cyprus revised

In brief

Marking a culmination of their recent negotiations, the Government of India (GoI) and the Government of Cyprus (GoC), on 18 November 2016, signed a protocol amending the provisions of the double taxation avoidance agreement (tax treaty) between India and Cyprus (India-Cyprus tax treaty). The GoI has issued a press release dated 18 November, 2016 (press release) providing a gist of the key amendments. The fine print of the revised India-Cyprus tax treaty is awaited.

Further, the press release issued by the GoC on 18 November, 2016 provides that Cyprus will not be regarded as a notified jurisdictional area (NJA) under the Income-tax Act, 1961 (the Act) retrospectively from 1 November, 2013. The GoI had indicated such a rescindment in its press releases issued on 01 July, 2016.

In detail

The key amendments to the India-Cyprus tax treaty, as summarised in the press release, are as under:

- Source-based taxation of capital gains arising from alienation (disposal) of shares. In other words, India shall have the right to tax capital gains arising to Cyprus tax residents on transfer of shares of an Indian company;
- Grandfathering of investments undertaken prior to 01 April, 2017;
- Expanding the scope of the term 'permanent establishment' (PE), possibly to introduce the concept of service PE;
- Aligning the rate of tax for royalty under the India-Cyprus tax treaty with the rate under the Act, by reducing it to 10%;
- Assistance between India and Cyprus for collection of taxes;
- Updating the provisions related to exchange of information as per international standards, which will enable exchange of banking information and allow the use of such information for purposes other than taxation (subject to prior approval of competent authorities); and
- Updating other provisions of the India-Cyprus tax treaty in accordance with international standards and India's policy with respect to tax treaties.

PwC comments

The signing of the revised India-Cyprus tax treaty is a welcome step. One would hope that the GoI quickly notifies the rescindment of the notification considering Cyprus as an NJA, which resulted in mandatory levy of withholding tax and applicability of Indian transfer pricing provisions to transactions with Cypriot residents.

While the press release mentions the key amendments, one will have to wait for the fine print of the protocol to examine if there are other amendments to the India-Cyprus tax treaty.

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