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Protocol to India-Australia Tax Treaty

The Government of India and the Government of Australia signed a protocol on December 16, 2011, amending the convention entered into between the two countries in 1991 for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. The Protocol provides the following:

- (a) New Articles, namely *Non-Discrimination* and *Assistance in the Collection of Taxes*.
- (b) Amendment to the Articles on Permanent Establishments (PE), Business Profits, Exchange of Information and General Definitions.

The salient features of the Protocol are outlined below

- 1) The Protocol has introduced a definition of the term *National* under Article 3 of the Convention.
- 2) The exclusion of services in the nature of royalty has been eliminated, which has enlarged the scope of services that need to be considered to test the Service PE, which was a departure from most of the tax conventions entered into by India with other countries. However, the threshold has been extended to 183 days within any 12 month period from the existing 90 days. Also, the distinction between associated enterprises and non-associated enterprises has been removed. Furthermore, the threshold was to be examined with respect to the activities carried on for the same or connected projects only.

- 3) A threshold of 90 days in any 12 month period has been prescribed for constituting the PE arising out of carrying on of activities in connection with the exploration for or exploitation of natural resources.
- 4) A threshold of 183 days in any 12-month period has been prescribed to constitute a PE arising due to carrying on of activities of operation of the substantial equipment.
- 5) The Protocol has also eliminated the Force of Attraction rule under Article 7 - Business Profits of the Convention. Thus, profits arising on the sale of goods or other business activities as attributable to the PE may be subject to tax in the PE state.
- 6) A new Article 24A on Non-discrimination has been inserted in line with the international practices and was applicable to all kinds of taxes notwithstanding Article 2 - Taxes Covered and persons, whether or not resident of both or either of the contracting states. Furthermore, this Article shall not apply to any domestic law provisions of the contracting states, which are enshrined to prevent the avoidance or evasion of taxes, to address thin capitalisation and to ensure collection of taxes or to provide tax incentives to eligible taxpayers in respect of research and development expenditure.
- 7) Article 26 on Exchange of information in the Convention has been amended by the protocol in line with the treaties entered into by India with countries including Singapore, Norway, the Netherlands and Nepal. This Article was applicable notwithstanding Article 1 and Article 2 of the Convention and would help the Revenue Authorities of two contracting states to exchange taxpayer information on a wider range of taxes.
- 8) A new Article 26A on Assistance in Collection of Taxes has been inserted to lend assistance to the contracting states in the collection of revenue claims, subject to certain conditions and procedures. This Article was in line with the tax treaties entered into by India with Norway, Nepal, Finland, Luxemburg, Ethiopia and Armenia, among others.
- 9) The protocol shall be effective as given below.
 - a) In the case of Articles on General Definitions, Permanent Establishments, and Business Profits in the Convention, from Financial Year 2014-15 onwards.
 - b) In the case of Articles on Non-Discrimination and Exchange of Information in the Convention, from April 2, 2013.
 - c) In the case of the Article on Assistance in the Collection of Taxes in the Convention, from July 18, 2013.

Conclusion

The Convention, as amended by this Protocol, provides certainty on some aspects for taxpayers seeking to claim the benefits under India-Australia tax treaty. At the same time, it was facilitating the mutual economic cooperation, administration and enforcement of the laws of the Contracting States.

Source: Notification No. 74/2013 (F. No. 503/1/2009-FTD-II) dated 20 September 2013

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