I N D E X

1. Corporate tax

1.1 Taxation of Fund Managers in India

The current section 9A of the Income-tax Act, 1961 is extremely prescriptive with 13 conditions that need to be fulfilled by the offshore fund, and 4 conditions that need to be fulfilled by the India-based Fund Manager, for the offshore fund to qualify for exemption from a business connection risk and the risk of having a Permanent Establishment (PE) under the Act. The important conditions, which are difficult to fulfil or are open to interpretation and our recommendations thereon are as under:

<table>
<tr><th>Sr. No.</th><th>Issue</th><th>Justification</th></tr>
<tr><td>1</td><td>Taxation of Fund Managers in India</td><td>The current section 9A of the Income-tax Act, 1961 is extremely prescriptive with 13 conditions that need to be fulfilled by the offshore fund, and 4 conditions that need to be fulfilled by the India-based Fund Manager, for the offshore fund to qualify for exemption from a business connection risk and the risk of having a Permanent Establishment (PE) under the Act. The important conditions, which are difficult to fulfil or are open to interpretation and our recommendations thereon are as under:
<table>
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<tr><td>1</td><td>Minimum 25 non-connected persons in each fund</td><td rowspan="2">Mutual funds (including feeder funds) investing in offshore funds to be considered as ‘institutional entity’, thereby entitling a “look-through basis”, prescribed in Rule 10V of the Income-tax Rules
Given that the offshore funds comply with ‘know your customer’ (‘KYC’) as required in the prospectus, no additional documentation should be required to satisfy that the members of the offshore funds are not “connected persons”
These conditions should not be made applicable in the initial year</td></tr>
<tr><td>2</td><td>10 non-connected persons to hold more than 50% fund assets</td></tr>
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					of launch and last year of winding up of the offshore fund
		3	Direct and indirect holding by Indian resident along with connected persons to be less than 5% of the corpus of the fund	*Inclusion of a prospective prohibition in the prospectus of a fund on sale / distribution of the fund units/shares to Indian Resident investors should be sufficient to satisfy this requirement*
		4	No business connection of the offshore fund in India and no person acting on it's behalf	*Suitable clarification/ amendment may be provided that* • *outsourcing a part of the back office / support functions of the fund manager (such as fund administration, fund accounting etc.), to an outsourcing entity in India (which is a group entity of the fund manager), or* • *appointment of banker, custodian or broker in India by the fund or fund manager would not result in non-fulfilment of this condition.*
		5	Remuneration paid to fund manager is i. not less than the arm's length price ii. restricted to maximum of 20% of profits of the fund	*i. It should be clarified that the remuneration would be deemed to be at an arm's length price as long as the fees to be paid by the fund are detailed in the publicly disclosed prospectus.* *ii. The condition of maximum 20% of profits should not be required and should be deleted as it may be contrary to the arm's length price and can mandate the fund manager not to charge any fee in case of loss to the fund.*

1.2 Taxation of income from Securitisation Trusts

As per the Explanation in Chapter XII-EA, CBDT is supposed to prescribe the eligibility conditions for a trust to qualify as a Securitisation Trust. The requirement was originally introduced in 2013/14 and CBDT is yet to prescribe the conditions. This leaves ambiguity about the tax treatment to Securitization Trusts already formed under RBI guidelines as CBDT may prescribe conditions with retrospective effect. Taxation of Securitisation Trusts is currently in dispute. Given the stand taken by the Tax department in previous cases about the nature of a Securitisation Trust, it is important for investors to know the conditions to be fulfilled by a Securitisation Trust to claim benefits of chapter XII-EA of the Income Tax Act 1961.

Further, section 115TCA introduced by the Finance Act, 2016 specifies the provisions on the taxation treatment of investors in a Securitization Trust to increase penetration in the securitization market. However, this cannot be achieved as the current tax provisions lack clarity on the eligibility of a Securitisation Trust to qualify to claim benefits of chapter XII-EA of the Income Tax Act 1961.

Recommendations

We recommend that CBDT should prescribe eligibility conditions for a trust to be qualified as a Securitization Trust or alternately, that this sentence about conditions being prescribed be deleted from the relevant sections of the Income Tax Act.

1.3 Regulatory frame work for launching Alternative Investment Fund schemes

We invite your attention to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2016 and the provisions regarding investment in an AIF scheme (Investment Vehicle) mentioned therein.

As per schedule 11 of the above Regulation, downstream investment by an Investment Vehicle shall be regarded as foreign investment if either the Sponsor or the Manager or the Investment Manager is not Indian 'owned and controlled'. The extent of foreign investment in the corpus of the Investment Vehicle will not be a factor to determine whether downstream investment of the Investment Vehicle concerned is foreign investment or not.

The above RBI notification has an adverse effect on competition and freedom of consumers to select an investment manager of their choice as it by design creates impediments for investment managers with foreign ownership and control participating in the AIF market. While, Indian owned and controlled Asset Management Companies (Investment Managers) have the freedom to launch AIF schemes without restrictions, by virtue of the above regulatory requirement, an AIF scheme launched by an Asset Management Company with foreign ownership shall have to conform to the sectoral caps and conditions / restrictions as per the FDI Policy. This disparity leads to serious

impediments in freedom of trade especially when the universe of customers for both types of AMCs are the same.

Recommendations

We request you to consider resident foreign owned Investment Managers (AMCs) as different from a non-resident foreign owned Investment Managers and as equivalent to an India owned and controlled Investment Manager. It is encouraging to see that the government has already initiated some steps in this direction by amending the Foreign Contribution Regulation Act to exempt the contribution made by a foreign owned Indian company from the definition of foreign source. We request you to exempt AIF schemes launched in India by an existing SEBI registered resident Intermediary (incorporated in India) from the applicability of FDI policy conditions irrespective of the foreign ownership of the respective AMC/Sponsor. Such AIF schemes may be considered a domestic AIF and the investments made by such AIF may be considered as domestic investments for the purpose of downstream investment conditions mentioned in FDI policy.

The Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations may be suitably modified to reflect the above change.

1.4 Sec.195(6) the Income Tax Act, 1961 and Rule 37BB of the Income Tax Rules, 1962

As per Section 195(6), a person responsible for paying any sum to a non-resident individual is required to furnish information in Form 15CA and 15CB (prescribed under Rule 37BB). Mutual Funds make payments of redemption proceeds/ dividends into NRE/ NRO bank accounts of NRI's on a daily basis.

Submission of the prescribed forms on a daily basis is operationally impractical. There is no foreign remittance involved in respect of dividend/ redemption payment. Further, Dividend from Mutual fund units is completely tax free in the hands of the investors. The AIR submitted by Mutual Funds contains transactions of NRI investors as well.

Recommendations

Payments made by Mutual funds which is not chargeable under the provisions of the Income Tax Act should be included in the Specified list under Rule 37BB and the requisite information be permitted to be included in the Annual Information Report (AIR) on an Annual basis.

1.5 Introduction of Debt Linked Savings Schemes (DLSS)

It is proposed that, apart from the existing Equity Linked Savings Scheme (ELSS) available to investors for tax deduction under Section 80C, the benefit be extended to debt oriented mutual fund schemes having underlying investment in debt instruments, with a lock-in period of five years which will be known as DLSS.

Recommendations

Recognizing the need for penetration into the debt markets through mutual funds at low transaction costs and liquidity, there is the need to introduce mutual fund schemes which channelize the retail investor's savings into debt markets by offering tax incentive.

The introduction of DLSS will help small investors participate in debt markets at lower costs and also incur comparatively lower risk as compared to equity markets.

Hence, this will increase the visibility of debt markets in India by allowing larger retail participation in mutual funds through DLSS. This will also bring debt oriented mutual funds on par with tax saver bank fixed deposits, where deduction is available under Section 80C.

This initiative will also bode well with the overall objective of deepening the corporate bond market in India.

1.6 Differentiated Securities Transaction Tax on FPIs in Lieu of Capital Gains Tax on Listed Securities

India is one of the fastest growing economies in the world, projected to grow between 7.4% and 8.5% in 2016.

Increasing the ease of doing business in India, by attracting foreign investment and creating a vibrant Indian economy, is critical to continue this growth trajectory.

To make the Indian capital markets more attractive, and to increase the inflow of foreign investments in India, the need for a predictable tax treatment for transactions on the stock exchanges is of paramount importance.

Capital markets require a very high degree of tax certainty as compared to other industries. Capital markets will operate efficiently only if each and every trade has a predictable result for investors and for the market participants.

Hence, the need to review the existing inefficiencies with respect to taxation of Foreign Portfolio Investors (FPIs).

Globally, most countries do not impose capital gains tax ('CGT') on listed security transactions of foreign investors on their portfolio investments. In fact, no G20 country imposes capital gains tax on portfolio investment.

India is one of the very few countries that imposes CGT on foreign portfolio investments in listed securities (except those held for long term and where securities transaction tax ('STT') has been paid), and even rarer amongst countries that impose both CGT and higher STT, placing them with countries such as Pakistan and Bangladesh (Pakistan and Bangladesh imposes both CGT and STT on FPIs).

Further, current Indian tax framework for FPIs in India is very complex compared to other global markets which make investing into India more onerous relative to other markets:

1. Very complex capital gains tax regime

2. GAAR Uncertainty - currently, there is no clarity on how GAAR will apply to FPIs availing DTAA benefits

3. High Cost of Trading - India is 8th most expensive out of 46 countries in levying market charges (both tax and non-tax).

4. Double Taxation - Imposition of CGT on FPIs results in double taxation to foreign investors.

Recommendations

The Government should therefore consider to replace the CGT earned by FPIs in the Indian capital market with a higher STT.

The imposition of higher STT in lieu of CGT on FPIs dramatically improves the ease of doing business in India and should:

- Provide tax certainty, predictability, and ease of operation so critical to FPIs

- Create a level playing field for all FPIs investing from any jurisdiction

- Free up the resources of the Revenue due to simplification resulting in ease of administration, and allow tax officials to focus on other important areas

- Increase investment flows and liquidity into the Indian capital markets

- Allow corporate India to raise equity resources at higher valuations , lowering funding costs, and improving the Indian economy

- Will provide stability in tax revenue collection as STT is linked to transaction value and not on the income from transaction, i.e. tax revenue will not be impacted even if FPIs incur losses on account of market slowdown or otherwise

- Increase tax revenues significantly

Investment/trading by FPIs constitute a significant part of the turnover on the exchanges and increase in FPI volume would increase the STT revenue significantly.

While India ranks among the top ten by global GDP and total market capitalization, the cash trading volumes/ GDP s at sub 40% in India as compared to 1X-3X in many other markets. Raising

the cash trading volume vs. GDP to a level equal to a Korea (144%) or Taiwan (148%) can triple the STT revenue.

Further, a more liquid and active market will allow Indian corporates to raise equity at higher valuations, provide a means and incentive new companies to list on the exchanges, again raising STT revenue and have a positive multiplier impact on the Indian economy.

1.7 Overhauling tax litigation and administrative process

Currently, a taxpayer has to endure lengthy tax controversies – first to the Commissioner (Appeals), then to the Tribunal and then to the Courts.

- Resolution on each level could take upto 2 years and sometimes even longer, thereby resulting in the issue being litigated for approx. 8 to 10 years.

- The current system of setting high revenue/tax collections targets leads to (a) aggressive tax demands; (b) issuance of incorrect tax demands; (c) tax refunds being delayed / not issued.

Recommendations

Government should consider the following:

- The Government should streamline the tax appeal procedures and make each appellate level a time bound process (similar to DRP). Maximum number of adjournments by either party should also be restricted to two.

- Currently, the option of approaching the DRP is available only in cases involving transfer pricing adjustments or to non-resident taxpayers.

  The Government should allow all taxpayers irrespective of the nature of adjustments to approach the DRP. There could be monetary thresholds, if required (for eg, in case of adjustments are over and above INR 5cr a tax payer can approach DRP).

- Appeals at Commissioner and Tribunal levels should have a fast track option on payment of a higher fee. If required, this fee could be a multiple of the normal fees or the fee can be linked to the tax amount under litigation, subject to a cap, etc.

- The Government should consider increasing the number of Commissioner Appeals, benches at Tribunal and tax benches at High Court for a speedy resolution.

  If required, the additional cost on account of the above can be recovered by increasing the appeal filing fees or the fee can be based as a % of tax amount under litigation (subject to a cap), etc.

- The process of appeal by the Department, with regard to matters decided in favor of the taxpayer, needs to be looked into. The process is largely automatic (subject to a very low monetary threshold).

  This should be amended to include the following: (a) monetary threshold should be increased; (b) a panel of advisors should be appointed to decide whether appeal should be filed; and their decision should be based on a report to be submitted by the jurisdictional tax officer justifying the appeal and the chances of winning.

  This Panel could comprise of 3 Chief Commissioners and for issues above a monetary threshold it could even comprise of external advisors involving eminent people from tax fraternity.

- The Government could consider instituting a mechanism similar to Income Tax Appellate Tribunal at Commissioner Appeal's level whereby appeals for the same taxpayer, involving identical issues in subsequent years, are combined / fast tracked.

- The current incentive/performance evaluation system of tax officers needs to be relooked at. Currently, they are rewarded for aggressive tax demands etc. Instead they should be rewarded on the basis of number of cases decided in favor of Department by the Appellate authorities, increase in tax collections without significant numbers of his orders going to appeal, etc.

- Further, there should be some measures to reduce the quantum of time involved in litigation specifically at Commissioner Appeal and Tribunal level. Also, some steps should be taken to clear the backlog of cases at Commissioner Appeal and Tribunal level.

1.8 Issue and transfer of shares to unrelated third parties

Government had introduced section 56 of the Income tax Act (Act) to enable issue and transfer of shares at fair market value which needs to be computed based on prescribed valuation method.

Application of valuation methods while transacting with third parties creates artificial boundaries and is against the international tax practices.

Recommendations

Government should exempt transactions involving issue / transfer of shares to unrelated third parties from the provisions of section 56 of the Act.

1.9 Buy back of unlisted securities by domestic company

In 2013, Government introduced a new provision levying tax on buy back of shares by closely held domestic entities.

- Buy back tax results in overriding certain tax treaties.

- Very unfair to those companies which undertake buy back purely for commercial reasons.

Recommendations

This provision should be made applicable only to those transactions entered into with intent to avoid tax and not to all transactions of buy back of unlisted shares.

2. Transfer Pricing/ International Tax

2.1 Additions on account of A&M costs

- Since 2009, there have been huge tax demands on Advertising and Marketing spends in India by Foreign MNC's in their tax assessments. Subsidiaries of Foreign MNCs are facing extensive tax litigation in India on the usage of Foreign Brands/Trademarks of their group companies (Under a License from the foreign associated enterprise).

- TPO's are following different practices in making these additions like Bright line test, profit split method in making these additions without giving any regard to the business models of the assesses. They are dis-regarding the basic transfer pricing principles and International TP guidelines on this issue being widely accepted across the world. This has created lot of confusion in the industry and is effecting industry investments into India.

- There have been many decisions on this issue by High courts and tax tribunals which have uphold the broad principles as per the internationally accepted TP guidelines. However instead of accepting this issue and correcting the position the tax department has decided to fight the case further in Supreme Court. Also many tax tribunals are not implementing the broad principles upheld by High courts which are further adding to confusion.

- Many companies have filed Mutual agreement procedure (MAP) with competent authorities of respective countries and Advance pricing agreement (APA) applications on this issue with tax authorities. However these are also not moving due to lack of clear cut internal guidelines on this issue from CBDT.

Recommendations

- It is suggested that CBDT issues clear cut guidelines on this issue which aligns our position on this matter with the generally accepted TP principles acceptable across the world. Accordingly this addition for excessive A&M is possible only in the case of "limited risk distributors" and is not possible in case of manufacturers. The same position is also vetted by Indian chapter to the UN TP guidelines.

- Once these guidelines are issued than it is recommended that tax department withdraws Supreme court/High court petitions which are not in accordance with the same.

- This will help in resolving A&M tax issue for the industry and will help achieve the Government agenda of coming out of mindless litigation and improve the environment of "Make in India".

2.2 Range Concept

During the 2014 Budget speech, Hon'ble Finance Minister proposed introduction of concept of price/ margin range for determining arms' length price (ALP). CBDT has recently notified the rules which are applicable from 1 April 2014.

The primary issues with these rules, for the Financial Services industry, are:

- The rules mandate to use minimum 6 comparable companies for applying the range concept. In the Indian context, due to limitation on the information available on public sources and/or databases, it has been well observed over the years that selecting 6 comparables is quite difficult.

- Arm's length range prescribed is between 35th and 65th percentile.

Generally it is seen that there is no requirement on the minimum number of comparable companies without which range concept can be applied internationally and arm's length range is between 25th and 75th percentile.

Recommendations

The Government should amend the rules such that they are in line with global practice, basically:

- Arm's length range should be between 25th and 75th percentile.

- There should be no minimum threshold for use of Range.

- Clarity may still be needed in certain situations, e.g. where revenue authorities remove comparables from a data set at the time of assessment, reducing an existing set to less than 6, would the arithmetic mean be used instead of range and vice-versa?

2.3 Transfer pricing on issuance of shares to overseas parent

Issuance of shares by a domestic entity to its overseas parent is a capital account transaction and does not result to any income to domestic entity.

Further, recently High Court ruled in favour of Vodafone Group Plc in 2014 stating that transfer pricing is not applicable on issue of shares. The Government has accepted the High Court ruling by not filing an appeal with the Supreme Court and has also issued a specific instruction to tax officers for not litigating on this issue.

Tax officers at the lower level are still challenging the valuation of shares issued by the domestic entity to overseas parent/ group companies leading to unwarranted litigations.

Recommendations

Government should issue specific clarification stating that shares issued to overseas parent/ overseas group companies are not subject to transfer pricing / tax adjustments.

Form 3CEB has a specific clause which requires disclosures in respect of issue of equity shares and thus, casts responsibility on the taxpayer to give appropriate disclosure. The said form may be amended to provide clarity on the issue.

2.4 Domestic transfer pricing – payment to directors

Under domestic transfer pricing provisions, "each" director's remuneration is required to be reported and a TP report to substantiate that the remuneration is at arm's length is required to be maintained.

Directors remuneration is very subjective and varies based on a number of factors.

There is lack of clarity on the method to substantiate the arm's length of director's remuneration but failure to undertake this compliance leads to disallowance, interest and penalties.

Recommendations

- Government should exempt director's remuneration from domestic transfer pricing regulations (at least in entities where the directors are not the promoters and / or shareholders in the entity).

- Alternatively, a circular clarifying the method to be followed to substantiate the arm's length of director's remuneration should be issued.
