

## 1. New Safe Harbour rules notified for Transfer pricing (TP)

To reduce TP disputes, provide certainty, align existing Safe Harbour ('SH') margins with industry standards & enlarge the scope of SH transactions; Central Board of Direct Taxes ('CBDT') has notified New Safe Harbour Rules w.e.f. 1<sup>st</sup> April 2017. Under New Rules, inter alia, a new SH for receipt of low-value adding intragroup services has been introduced & important reductions have been made to existing SH margins for knowledge process outsourcing services, contract R&D services, IT, ITes & certain other eligible transactions specified in the existing SH Rules. Assessee eligible under the present SH regime up to Assessment Year ('AY') 2017-18 shall also have right to choose the safe harbour option most beneficial to them. For details kindly refer link:

[www.incometaxindia.gov.in/communications/notification/notification46\\_2017.pdf](http://www.incometaxindia.gov.in/communications/notification/notification46_2017.pdf)

## 2. India has signed Multilateral Instrument (MLI) on BEPS

Over 65 countries, including India have signed MLI on BEPS that will amend thousands of bilateral tax treaties, with a view to implement OECD BEPS Action Plans. Multilateral Convention is an outcome of the OECD / G20 Project to tackle Base Erosion & Profit Shifting (BEPS) i.e., tax planning strategies that exploit gaps & mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid. MLI will not function in the same way as an amending protocol to a single existing treaty, which would directly amend the text of the Covered Tax Agreement. Instead, it will be applied alongside existing tax treaties, modifying their application in order to implement the BEPS measures. For details kindly refer link:

<http://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/631/Press-Release-India-Signs-Multilateral-Convention-Implement-Tax-Treaty-7-06-2017.pdf>

## 3. Rules notified for imputing interest income for Secondary Adjustments under TP

Finance Act, 2017 (FA 2017) had brought a new section 92CE in the Income-tax Act, 1961 ('IT Act') to provide for secondary TP adjustment where excess money lying with the Associated Enterprise as result of primary adjustment ('PA') under TP is not repatriated back to India. It shall apply to Primary Adjustments exceeding INR 10 Million in respect of Assessment Year 2017-18 and onwards.

Under the new Rule 10CB notified for computation of interest pursuant to secondary adjustments, the repatriation shall be done within 90 days from the prescribed time and if not repatriated then imputed interest shall be computed based on State Bank of India's marginal cost of funds plus 325 basis points or 6 months LIBOR plus 300 bps depending upon

the currency in which the international transaction has been undertaken. For details kindly refer link:

[http://www.incometaxindia.gov.in/communications/notification/notification52\\_2017.pdf](http://www.incometaxindia.gov.in/communications/notification/notification52_2017.pdf)

#### **4. Draft Notification on PoEM for foreign companies**

CBDT has issued draft notification under section 115JH of the IT Act specifying tax consequences in respect of foreign company said to be resident on account of its place of effective management (PoEM) in India. Draft notification proposes exception, modification & adaptation subject to which, provisions of the IT Act relating to computation of total income, treatment of unabsorbed depreciation, set off or carry forward & set off of losses, collection & recovery and special provisions relating to avoidance of tax shall apply to such Foreign Company. For details kindly refer link: <http://www.incometaxindia.gov.in/news/draft-notification-exception-15-6-2017.pdf>

#### **5. Notification regarding Long Term Capital gains exemption as amended by Finance Act 2017**

FA 2017 brought an amendment to section 10(38) of the IT Act to provide that exemption of Long Term Capital Gains ('LTCG') arising on transfer of equity shares acquired or on after 1<sup>st</sup> October, 2004 shall be available only if apart from other existing conditions, the acquisition of share is also charged to Securities Transaction Tax ('STT').

Now CBDT has notified exceptional transactions on which the long term capital gains exemption on sale of equity shares shall still be available even if STT was not charged on acquisition on or after 1<sup>st</sup> October 2004 as per the recently amended section 10(38) of IT Act. These include, inter alia, shares acquired under ESOP, shares acquired by Non-residents under FDI Regulations, etc. For details kindly refer link: [http://www.incometaxindia.gov.in/communications/notification/notification43\\_2017.pdf](http://www.incometaxindia.gov.in/communications/notification/notification43_2017.pdf)

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