



## Tax alert: Limitation of relief article not applicable if income is subject to tax in Singapore on full amount

28 June 2023

The Bombay High Court has rendered its decision that, based on facts, the taxpayer, a Singaporean tax resident, was entitled to the benefit of Article 13(4) of the India-Singapore tax treaty [relating to capital gains] in respect of its capital gains from sale of Indian securities and that the provisions of Article 24 of the India-Singapore tax treaty [relating to limitation of relief] did not apply.

### In a nutshell



Under Article 24 of the India-Singapore tax treaty, the exemption or reduction of tax to be allowed applies only to so much of the income as is remitted to or received in Singapore where the laws in force in Singapore provide that the said income is subject to tax by reference to the amount which is remitted or received in Singapore.



When under the laws in force in Singapore the income is subject to tax by reference to the full amount thereof, whether or not remitted to or received in Singapore, then in that case Article 24(1) of the India-Singapore tax treaty would not apply.



Singapore authorities themselves have certified that the capital gain income would be brought to tax in Singapore without reference to the amount remitted or received in Singapore. Certificates issued by the Singaporean tax authorities would constitute sufficient evidence for accepting the legal position.



Scroll down to read the detailed alert

## Background:

- The taxpayer<sup>1</sup> is a tax resident of Singapore and registered as a Foreign Institutional Investor (FII) in debt segment with the Securities and Exchange Board of India (SEBI).
- During the Financial Year (FY) 2009-10, corresponding to Assessment Year (AY) 2010-11, the taxpayer invested in debt securities in India. The taxpayer filed its return of income for the said year declaring capital gains on the sale of debt instruments and claimed exemption under Article 13(4) of India-Singapore tax treaty [relating to 'Capital Gains'].
- During the course of audit proceedings, the Assessing Officer (AO) enquired with the taxpayer as to why the provisions of Article 24 of India-Singapore tax treaty [relating to 'Limitation of Relief'] would not apply in order to claim the benefit under Article 13 of the India-Singapore tax treaty.
- The taxpayer made following contentions before the AO:
  - Being a FII, the worldwide income of the taxpayer was liable to tax in Singapore.
  - The Singapore Revenue Authority confirmed the taxation on the taxpayer in Singapore vide their certificate.
  - Article 13(4) of India-Singapore tax treaty provides for taxation of capital gain in Singapore and if, the taxpayer was offering its worldwide income for taxation in Singapore then remittance of such income to Singapore had no relevance for the purpose of claiming benefit under the India-Singapore tax treaty.
- The AO rejected the taxpayer's contention on the following grounds:
  - For the taxpayer to get any benefit under the India-Singapore tax treaty, the taxpayer had to fall within the provisions of the India-Singapore tax treaty.
  - Though the provisions of Article 13(4) of the India-Singapore tax treaty allow exemption of capital gains in source country, i.e., India, the provisions of Article 24 of the India-Singapore tax treaty provide for restriction of exemption of such capital gains to the extent of repatriation of such income to other country, i.e., Singapore.
  - Singapore law under section 10(1) relating to charge of income-tax under the Singapore Income Tax Act, revealed that it taxes income on receipt basis of such income in Singapore from outside Singapore.
  - Hence, the taxpayer did not show that repatriation of the capital gains was made to Singapore and in view of Article 24 of India-Singapore tax treaty, the taxpayer was not entitled to the exemption claimed.
- Aggrieved, the taxpayer filed its objections before the Dispute Resolution Panel (DRP) who upheld the AO's action. Aggrieved, the taxpayer filed an appeal before the Income-tax Appellate Tribunal (ITAT) against the AO's final order based on DRP's directions. The ITAT allowed the taxpayer's appeal and held that the taxpayer was entitled to the benefit of Article 13(4) of India-Singapore tax treaty.
- In the course of appellate proceedings, the matter reached before the Bombay High Court (HC).

## Relevant provisions in brief:

Extracts of Article 13 and Article 24 of the India-Singapore tax treaty:

"ARTICLE 13 - Capital Gains-

"...4. Gains derived by a resident of a Contracting State from the alienation of any property other than those mentioned in paragraphs 1, 2 and 3 of this Article shall be taxable only in that State."

---

<sup>1</sup> Commissioner of Income tax (IT)-2, Mumbai vs. Citicorp Investment Bank (Singapore) Ltd [2023] ITA No. 256 of 2018 (Bombay-HC)

## “Article 24 – Limitation of Relief-

1. Where this Agreement provides (with or without other conditions) that income from sources in a Contracting State shall be exempt from tax, or taxed at a reduced rate in that Contracting State and under the laws in force in the other Contracting State the said income is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then the exemption or reduction of tax to be allowed under this Agreement in the first-mentioned Contracting State shall apply to so much of the income as is remitted to or received in that other Contracting State...”

### **Decision of the HC:**

The HC observed that the appeal did not raise any substantial question of law and agreed with the order passed by the ITAT. In this regard, the HC noted/observed as follows:

#### Capital gains exemption under Article 13 of the India-Singapore tax treaty

- Since, in the case under consideration, the property alienated were debt instruments, the taxpayer came under Article 13(4) of India-Singapore tax treaty, which says gains from alienation of any property (debt instrument in this case) shall be taxable only in Singapore, of which the alienator (the taxpayer) is a resident. Therefore, the entire capital gain earned by taxpayer was taxable in Singapore.

#### Limitation under Article 24 of the India-Singapore tax treaty

- Applying the provisions of Article 24 of the India-Singapore tax treaty to the facts of the case under consideration, where:
  - the income from sources in India shall be exempted from tax or taxed at a reduced rate in India and
  - under the laws in force in Singapore the capital gain is subject to tax by reference to the amount thereof which is remitted to or received in Singapore and not by reference to the full amount thereof,then the exemption or reduction of tax to be allowed under this agreement in India shall apply to so much of the income as is remitted to or received in Singapore.
- Therefore, the exemption or reduction of tax to be allowed under the India-Singapore tax treaty in India applied to so much of the income as was remitted to or received in Singapore where the laws in force in Singapore provide that the said income is subject to tax by reference to the amount which is remitted or received in Singapore.
- When under the laws in force in Singapore the income is subject to tax by reference to the full amount thereof, whether or not remitted to or received in Singapore, then in that case Article 24(1) would not apply.

#### Reliance on certificate issued by the Singaporean tax authorities

- The taxpayer had placed on record before the AO a certificate dated 16 April 2012 from the Singaporean tax authorities certifying that the income derived by the taxpayer from buying and selling of Indian debt securities and from foreign exchange transactions in India would be considered under the Singapore Tax Law as accruing in or derived from Singapore and such income would be brought to tax in Singapore without reference to the amount remitted or received in Singapore.
- Therefore, Singapore authorities themselves had certified that the capital gain income would be brought to tax in Singapore without reference to the amount remitted or received in Singapore. The AO could not have come to a conclusion otherwise.
- In an earlier circular<sup>2</sup> issued by the Central Board of Direct Taxes (CBDT), though it applied to India-Mauritius tax treaty with reference to certificate of residence, the purport and principle was clear. Such certificates issued

---

<sup>2</sup> Circular No.789 dated 13<sup>th</sup> April 2000

by the Singaporean tax authorities constituted sufficient evidence for accepting the legal position. The aforesaid view was supported by an earlier ruling<sup>3</sup> of the Madras HC.

In view of the above, the HC upheld the ITAT's order that the taxpayer was entitled to the benefit of Article 13(4) of the India-Singapore tax treaty and that the provisions of Article 24 of the India-Singapore tax treaty did not apply.

#### **Comments:**

The taxability of capital gains of a Singapore tax resident from sale of Indian shares and / or securities in light of the provisions of Article 13 read with Article 24 of the India-Singapore tax treaty, has been subject of litigation.

The Bombay HC, in this ruling, has upheld that that the taxpayer was entitled to the benefit of Article 13(4) of the India-Singapore tax treaty (in respect of capital gains of sale of Indian securities) and that the provisions of Article 24 of the India-Singapore tax treaty did not apply. While holding the same, the HC reiterated the following principles:

- Under Article 24 of the India-Singapore tax treaty, the exemption or reduction of tax to be allowed applies only to so much of the income as is remitted to or received in Singapore where the laws in force in Singapore provide that the said income is subject to tax by reference to the amount which is remitted or received in Singapore.
- When under the laws in force in Singapore, the income is subject to tax by reference to the full amount thereof, whether or not remitted to or received in Singapore, then in that case Article 24(1) of the India-Singapore tax treaty would not apply. Singapore authorities had themselves certified that the capital gain income would be brought to tax in Singapore without reference to the amount remitted or received in Singapore.
- Certificates issued by the Singaporean tax authorities would constitute sufficient evidence for accepting the legal position.

We have provided below link to certain past tax alerts in context of the applicability of limitation of relief article:

1. <https://www2.deloitte.com/content/dam/Deloitte/in/Documents/tax/Global%20Business%20Tax%20Alert/in-tax-gbt-Singapore-tax-resident-shipping-noexp.pdf>
2. <https://www2.deloitte.com/content/dam/Deloitte/in/Documents/tax/Global%20Business%20Tax%20Alert/in-tax-freight-income-not-remitted-to-or-received-in-singapore-taxable-in-india1-noexp.pdf>

Taxpayers with similar facts may evaluate the impact of this ruling, to the specific facts of their cases.

---

<sup>3</sup> Commissioner of Income Tax vs. Lakshmi Textile Exporters Ltd (2001) 245 ITR 521 (Madras HC)



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) for a more detailed description of DTTL and its member firms.

This material and the information contained herein prepared by Deloitte Touche Tohmatsu India LLP (DTTI LLP) is intended to provide general information on a particular subject or subjects and is not an exhaustive treatment of such subject(s). This material contains information sourced from third party sites (external sites).

DTTI LLP is not responsible for any loss whatsoever caused due to reliance placed on information sourced from such external sites. None of DTTI LLP, Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this material, rendering professional advice or services. This information is not intended to be relied upon as the sole basis for any decision which may affect you or your business. Before making any decision or taking any action that might affect your personal finances or business, you should consult a qualified professional adviser.

No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this material.

©2023 Deloitte Touche Tohmatsu India LLP. Member of Deloitte Touche Tohmatsu Limited