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Global Tax Update

India

Deloitte Tohmatsu Tax Co.

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1. Waiver of loan liability is not taxable

The Supreme Court of India in one of its judgement[1] has held that waiver of loan, used for acquisition of capital assets, by the creditors does not result in either any benefit arising from business or profession[2] or cessation of trading liability[3] in the hands of the debtor. Therefore, it held that, based on the facts of the case, such receipt in the hands of the debtor is not taxable.

While this is a positive development, we request business groups to consult tax experts for any decision making relating to these matters as they are fact specific.

2. Discounts are tax deductible

The Tribunal[4] held that discount offered to retailers is allowable as revenue expenditure. It further held that the discount offered cannot be construed as an expenditure incurred for acquiring/ creating brand/ intangible without bringing any appropriate evidence on record.

3. Transfer of a capital asset to a step-down wholly-owned subsidiary not taxable

The Tribunal[5] held that the transfer of a capital asset by a parent company to its step-down wholly owned subsidiary is a transfer exempt from capital gains tax under the provisions[6] of the Income tax Act, 1961 (Act). The Act provides that any transfer of a capital asset by a company to its subsidiary company would be not regarded as transfer for capital gain purposes, if

- the parent company or its nominees hold the whole of the share capital of the subsidiary company, and
- the subsidiary company is an Indian company.

The Tribunal observed that a Bombay High Court, in another case, had held that the term “subsidiary” is not defined in the Act, and therefore, relying on the principles emanating from the Supreme Court rulings in the case of Howrah Trading Co. Ltd. vs CIT [1959] 36 ITR 215 (SC) and CIT vs Swadeshi Match Co. [1983] 139 ITR 833 (SC), held that the meaning of “subsidiary” under the prevailing Company Law (which includes a step-down wholly owned subsidiary) could be imported into the Act.

4. Investment by Foreign Portfolio Investors (FPI) in Debt

The Reserve Bank of India[7], has increased the debt investment limits[8] for FPIs. With the view of bringing efficiency in the investment process and promote investment in debt securities, RBI[9] has issued a revised regulations for FPI investment in debt

1 93 taxmann.com 32 (SC) - Mahindra and Mahindra Ltd

2 Under section 28(iv) of the Income-tax Act, 1961

3 Under section 41 of the Income-tax Act, 1961

4 Bangalore Income tax Appellate Tribunal

5 The Kolkata Tribunal in the case of Emami Infrastructure Ltd vs ITO [2018] 91 taxmann.com 62

6 section 47(iv)

7 vide circular dated 6 April 2018 - RBI/ 2017-18/ 150 A.P (DIR Series) Circular No. 22

8 The aggregate limit (central government securities, state development loans and corporate bonds) was revised from existing limit of INR 5458.23 billion to INR 5946 billion for the period April 2018 to September 2018 and INR 6499 billion for the period October 2018 to March 2019

9 vide circular dated 27 April 2018 (RBI/2017-18/168 A.P (DIR Series) Circular No.24) and 1 May 2018 (RBI/ 2017-18/ 170 A.P (DIR Series) Circular No.26)

securities. The key changes introduced by the RBI in the revised framework are as follows:

Investment limits:

- The limit on aggregate FPI investments in a central government security has been increased from 20% of the outstanding stock of that security to 30%.
- Concentration limit has been introduced by virtue of which investment by single FPI as well as related FPI[10] shall not exceed 15% of prevailing investment limit in Government securities (G-sec), State Development Loans (SDL) and corporate debt securities, in case of long term FPIs[11]. Further the aforesaid limit for other FPIs has been restricted to 10% in all the aforesaid categories of debt instruments.
- Investment by a single FPI as well as by all related FPIs should not exceed 50% of any single issue of corporate bond. In case this limit is exceeded, there should be no further investment by such FPI until the investments are less than the 50% limit.
- Investments made by an FPI in corporate bonds of an Indian company as well as related entities of such company shall not exceed 20% of the total corporate bond portfolio of the FPI. Further, the restriction will be continuously monitored on securities (in category of G-Sec, SDL and corporate bonds) with less than one year residual maturity.

b) Maturity

- The existing condition of minimum residual maturity of 3 years has been withdrawn for investment in G-Secs and SDLs.
- FPIs are now permitted to invest in corporate bonds with minimum residual maturity of more than 1 year instead of 3 years, as was previously allowed.
- RBI has clarified that FPIs can now invest in Treasury Bills (T-Bills) issued by the central government.
- The existing auction mechanism (which is triggered after aggregate FPI investments reach 90% of the limits) will be discontinued with effect from 1 June 2018, and the limits would henceforth be monitored on an online basis by the Clearing Corporation of India Ltd.
- FPIs are specifically prohibited to invest in partly paid instruments.

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10 The term related FPI refers to all FPIs registered by a non-resident entity.

11 Long term FPIs include Sovereign wealth funds, multilateral agencies, endowment funds, insurance funds, pension funds and foreign central banks.

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