

# Global Tax Update

## India

Deloitte Tohmatsu Tax Co.

May 2018

### 1. Indian Government notifies<sup>1</sup> the Payment of Gratuity (Amendment) Act, 2018; Gratuity ceiling raised to INR 2 million

At present, private sector employees covered under the Payment of Gratuity Act, 1972 (the Act) with five or more years of continuous service, are eligible for gratuity computed as per the provisions of the Act, subject to ceiling of INR 1 million upon retirement, resignation or on superannuation.

Considering inflation and wage increases, the government introduced the Payment of Gratuity (Amendment) Bill, 2018 in the Parliament, empowering the government to notify (i) the maternity leave period eligible for computing continuous service period; and (ii) the maximum amount of gratuity payable to employees.

The said Bill has received the Presidential assent and became a law effective March 29, 2018. The central government has notified key changes in the Act effective from March 29, 2018. The key changes are as under:

- The maximum amount of gratuity payable to an employee under the Act has been increased from INR 1 million to INR 2 million.
- The period of maternity leave of 26 weeks shall be considered for the purpose of computing continuous service as against current 12 weeks, in the case of women employees. This is in line with the Maternity Benefit (Amendment) Act, 2017.

### 2. No Permanent Establishment (PE) exposure for foreign company on secondment of employees<sup>2</sup>

The Tribunal held that although there was a continuous communication between expatriates and the foreign company, the entire facts need to be considered to conclude existence of a PE in India.

The communication between the secondees and the foreign company covered information on the designs / preference of India consumers, stock status, market strategies etc. This information was to help the foreign company to make decisions on designing products based on market preference etc., which were expected to benefit the Indian entity in turn.

The Tribunal held that the expatriates, through communication with foreign company, were only discharging their function as employees of the Indian company and were not conducting any business of the foreign company in India. Hence, there was no PE of the foreign company in India the Tribunal ruled.

Even if it is considered that the foreign company is rendering services to the Indian entity through seconded employees, it will not result in existence of service PE in the absence of Service PE clause in the DTAA<sup>3</sup>.

While the question of whether secondment of employees triggers a PE exposure continues to be a litigated matter, this decision is definitely welcome. Considering the specific facts, the Tribunal has emphasized that

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1 Published in The Gazette of India Notification S.O.1419( E ) dated 29th March 2018 Notification S.O.1420( E ) dated 29th March 2018 Notification S.O.1421( E ) dated 29th March 2018

2 Samsung Electronic case – Delhi Income-tax Appellate Tribunal (ITAT)

3 India – Korea Double Tax Avoidance Agreement

mere deputation of employees to Indian subsidiary will not constitute a PE as long as the Indian entity is the ultimate beneficiary of the services rendered by expatriates.

Please note that the decision is based on facts. Please contact tax experts before relying on the above decision.

### 3. Goods and Service tax developments

#### (1) No E-Way Bill in five union territories:

The Indian Government, on the recommendations of GST Council has notified that irrespective of the value of the consignment, NO EWAY BILL shall be required to be generated where the movement of goods commences and terminates within the respective Union Territories of

- Andaman and Nicobar Islands<sup>4</sup>
- Chandigarh<sup>5</sup>
- Dadra and Nagar Haveli<sup>6</sup>
- Daman and Diu<sup>7</sup>
- Lakshadweep<sup>8</sup>

#### (2) Extension of due date:

Sr. No.	Criteria	Description	Due date
1	Aggregate Turnover up to INR 15 million <sup>9</sup>	Furnish details of outward supply in Form GSTR1 for April to June 2018 (Quarterly basis)	31 <sup>st</sup> July,2018
2	Aggregate Turnover more than INR 15 million <sup>10</sup>	Furnish details of outward supply in Form GSTR1 (Monthly basis)	For month of April : 31 <sup>st</sup> May, 2018 For month of May : 10 <sup>th</sup> June, 2018 For month of June : 10 <sup>th</sup> July, 2018
3	Extension of due date for filing return by Input Service Distributor <sup>11</sup>	To furnish the details in GSTR 6 from July 2017 to April 2018	31 <sup>st</sup> May,2018

### 4. Clarification on clubbing of investment limits of foreign government/ foreign government related entities – Foreign Portfolio Investments (FPI) update

SEBI<sup>12</sup> vide its circular<sup>13</sup>, has clarified that foreign government/ foreign government entities investing from the same foreign jurisdiction will be considered as a single FPI for the purpose of determining their investment threshold limit. The combined holding of the aforesaid entities from the same jurisdiction shall be below ten percent of the total paid up capital. Further, it has been clarified that in case where Government of India enters into agreement or treaties with other sovereign government and where such agreements or treaties specifically recognize certain entities to be distinct and separate, SEBI may, during the validity of such agreements or treaties, recognize them as such, subject to conditions as may be specified by it.

4 Notification No. 2/2018 Union Territory Tax dated 31st March, 2018

5 Notification No. 3/2018 Union Territory Tax dated 31st March, 2018

6 Notification No. 4/2018 Union Territory Tax dated 31st March, 2018

7 Notification No. 5/2018 Union Territory Tax dated 31st March, 2018

8 Notification No. 6/2018 Union Territory Tax dated 31st March, 2018

9 Notification No. 17/2018 Central Tax dated 28th March, 2018

10 Notification No.18/2018 Central Tax dated 28th March, 2018

11 Notification No.19/2018 Central Tax dated 28th March, 2018

12 Securities Exchange Board of India

13 dated 10th April 2018

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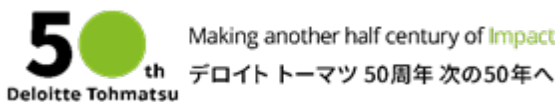
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