

# Global Tax Update

## India

Deloitte Tohmatsu Tax Co.

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### 1. Reimbursements to overseas entity under secondment agreement not liable to tax

A High Court<sup>1</sup> in India has ruled that reimbursement of salary costs to the overseas companies under a secondment agreement would not be subject to withholding taxes in India.

An Indian company entered into an agreement with its shareholder ('secondment agreement') whereby it was provided personnel to carry out the functions in the area of management, setting up of business, property selection and business operations, etc.

In accordance with the terms of the secondment agreement, the Indian Company remitted certain amount to the overseas shareholder towards salary cost of the seconded employees. No taxes were withheld from such payments

Tax authorities took a view that the payment made to overseas shareholder is in the nature of Fee for Technical Services ('FTS') and the Indian company has defaulted in not withholding any tax in India on such payments<sup>2</sup>.

The Indian company contended that amount paid was a pure reimbursement of salary cost and is not an income in the hands of the overseas recipient.

While treaty benefits were also available, it was important to note that the Court held that even under the Indian domestic tax laws, if the payment is only reimbursement of expenses, the same cannot be regarded as income in the hands of the recipient.

The Court concluded that since the entire amount of salary received by the employees has been subjected to tax in India at the highest average rate of tax, there is no question of any default on the part of the Indian Company.

### 2. Quoting of Aadhaar in tax returns not mandatory for non-Indian citizens and non-residents – notification issued

Recent amendments to the domestic tax laws<sup>3</sup> require every person who is eligible to obtain Aadhaar number:

- To quote the Aadhaar number in the income tax return to be filed on or after July 1, 2017;
- To communicate the Aadhaar number to the prescribed authority in respect of Permanent Account Number ('PAN') allotted as on July 1, 2017;

If an individual fails to link the Aadhaar number with PAN, the PAN so allotted shall be deemed to be invalid and would be treated as not having applied for PAN. The amendment also provided that a certain class of people may be exempt from the above provisions. The ministry of finance has now issued a notification<sup>4</sup> providing for the exemptions as well as a press release<sup>4</sup> on the process for linking PAN with Aadhaar.

The notification provides that quoting of Aadhaar number or the enrolment ID shall not apply to an individual who is:

- residing in the states of Assam, Jammu and Kashmir and Meghalaya;
- a non-resident as per the Income-tax Act, 1961;
- of the age of eighty years or more at any time during the previous year;
- not a citizen of India.

1 Addl. Director of Income Tax v. M/s. Marks & Spencer Reliance India Pvt. Ltd. [TS-178-HC-2017 (Bom)]

2 Under the Indian domestic tax laws, the payer of any sum to non-resident recipient is required to withhold taxes at applicable rates if that sum is chargeable to tax in India.

3 Income tax Act, 1961

4 [Gazette Notification Number - S.O. 1513\(E\) released by the Ministry of Finance dated May 11, 2017 and Press Release by CBDT dated 11th May, 2017](#)

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