



Global Tax Update

India

Deloitte Tohmatsu Tax Co.

September 2015

1. Minimum Alternate Tax (MAT) not applicable to Foreign Institutional Investors / Foreign Portfolio Investors¹ (FIIs/ FPIs)

The Indian Government has accepted the recommendations of the A. P. Shah Committee which recommended that MAT should not be applicable to FIIs or FPIs even for the period before 1 April 2015.

For the benefit of the readers, a brief background of the issue is provided below:

- As per the provisions of India tax law, a company is liable to pay taxes on higher of the taxes computed under the normal provisions at the rate of 30%² and the MAT provisions at the rate of 18.5%.
- The MAT provisions do not provide clear guidance on applicability of MAT provisions to foreign entities. There have been conflicting views on applicability of the MAT provisions in case of foreign entities.
- In the Budget 2015 (in February 2015), Government clarified that MAT provisions would not be applicable to capital gains and interest income earned by FIIs / FPIs from

¹ Source: CBDT Notification dated 11th May 2015, FTS No.96370/2015

² In the case of domestic companies. In the case of foreign companies, the tax rate is 40%. The tax is then increased by applicable surcharge and education cess.

April 1, 2015. Since the Budget amendment was effective prospectively from April 1, 2015, Indian tax officers had interpreted that MAT should apply for prior years and therefore raised tax demands.

- Government constituted AP Shah Committee on May 20, 2015 to evaluate the applicability of MAT provisions to FIIs/ FPIs for the period prior to April 1, 2015 and to provide their independent recommendations to the Indian Government expeditiously.
- The Committee submitted its final report to the Government on August 25, 2015 recommending that MAT should not apply to FIIs / FPIs for the period prior to April 1, 2015.
- The Finance Minister confirmed that the next steps are expected to be as follows:
 - A circular will be issued to field officers to drop proceedings already initiated and not to raise any new MAT demands on FIIs / FPIs.
 - An amendment will be made in the tax law clarifying non-applicability of MAT provisions to FIIs / FPIs for the period before April 1, 2015.

Further, the Central Board of Direct Taxes (CBDT) issued an internal instruction³ to tax officers asking them to keep all proceedings concerning levy of MAT on FIIs and FPIs on hold.

³ Instruction No. 9/2015 dated 2 September 2015

The Government has also restricted tax authorities from taking coercive action for recovering tax demands relating to MAT in the cases of FIIs and FPIs.

2. Additional clarifications issued for the Black Money Act

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (BMA) received the assent of the President of India on 26 May 2015. With this, BMA has become applicable from 1 July 2015.

BMA, inter alia, levies tax on undisclosed assets held abroad by a person who is a resident in India (whether citizen of India or not) at the rate of 30 percent of the value of such assets, provides for a penalty equal to 90 percent of the value of such asset, and also provides for rigorous imprisonment of three to ten years for willful attempt to evade tax in relation to a undisclosed foreign income or asset.

Government has provided one time opportunity to persons having undisclosed foreign assets and income to declare the same by 30 September 2015 and pay taxes thereon by 31 December 2015. This one time opportunity is provided by way of Tax Compliance Scheme (TC Scheme).

Since the law is new and the provisions of the law are untested, the tax payers and advisors have requested for certain clarifications relating to compliances under BMA. In this regard, the Government issued one set of clarifications in the form of FAQs vide Circular⁴ on matters relating to the valuation methodologies, TC scheme etc. These have been summarised in our July 2015 edition of the newsletter.

The government has issued further FAQs⁵ in respect of the declarations to be made under the BMA. Certain key clarifications have been

summarised below:

1. Declarations made relating to undisclosed foreign assets and income will be kept confidential.
2. Conditions relaxed for those who cannot get bank statements of their foreign accounts, saying “best estimate” declarations would be accepted with a rider that a penalty would follow if disclosures were incomplete;
3. Declaration required for accretions to pension account in the form of interest, dividend, capital gain, etc. chargeable to tax from the year the person becomes a resident. Disclosure of pension account as a foreign asset also required;
4. Pension received in a foreign bank account required to be declared from the year the person becomes a resident. No foreign tax credit allowed;
5. A resident employer paying salary in a foreign bank account chargeable to tax without deducting tax will be liable for interest and penalty under the tax laws even if the employee has declared the undisclosed account comprising such salary;
6. The value to be declared for a foreign bank account shall be all credits in the bank account representing unreported taxable income from the date the person becomes a resident. For valuing a bank account, reduction in the value due to withdrawals made for acquiring a new asset or deposit in another bank account is allowed. The amount deposited in the other bank account or value of the new asset will be considered separately;
7. The declarant is required to provide a broad computation while declaring a bank account where its value is different from the sum of all credits in the account (e.g. where shares

4 Circular No. 13/ 2015 dated 6 July 2015

5 Vide Circular dated 3 September 2015 – Circular No. 15/ 2015

are purchased using funds from the account);

8. Only proportionate value of an immovable property outside India to be declared to the extent of funding from undisclosed income (excluding proportion funded by mortgage). However, where mortgage payments are also made out of a bank account comprising of undisclosed income, such bank account is also required to be declared;
9. An e-wallet/virtual card online account maintained on a website hosted in a foreign country which has been funded by undisclosed income will have to be valued on the same basis as prescribed for a bank account;
10. Declaration can be made by a person who has funded an undisclosed foreign property held in the name of his spouse. Immunity will be granted to both;
11. The bank account of an individual's spouse/child entirely funded by the individual is not required to be declared except where it consists of any accretions or consideration for supply of goods/services.

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