

# Global Tax Update

## India

Deloitte Tohmatsu Tax Co.

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### India Tax Update: Recent Court Rulings etc.

#### 1. Each project site is separate for determining installation, supervisory permanent establishment (PE)<sup>1</sup>

The Tribunal<sup>2</sup> held that for determining installation or supervisory PE status, under Article 5(3) and Article 5(4) of the India-Singapore tax treaty, each project site will be considered as a separate project. The taxpayer did not have a PE in India as each project site did not exceed the threshold limit of 183 days.

Few other principles were established in the ruling, the same have been summarised below:

- Merely because installation and commissioning services were provided by the same subcontractor or some of the personnel engaged in both the projects were common, it cannot be concluded that both projects were one and single.
- Article 5(3) and 5(4) of the India-Singapore tax treaty refers to 'a' building site or construction, installation or assembly project continuing for a period of more than 183 days in any financial years. Use of the proposition 'a' denotes singular form.
- Article 5(3) and 5(4) of the India-Singapore tax treaty does not use words that could either implicitly or explicitly, bring the provisions up on par with similar provisions in the India-Australia or India-Italy or India-USA treaties (where, treaty provisions explicitly provide that a building site of construction, installation or assembly project, together with other such site projects or activities, would constitute PE if they continue for a specific period). Thus, in the absence of any such express provision in India-Singapore treaty, words used in other treaties could not be imported. India-Singapore tax treaty is similar to the India-Japan tax treaty.

For more details, please refer this link

[Tax alert : Each project site is separate for determining installation supervisory PE](#) (Deloitte India website)

#### 2. Central Board of Direct Taxes (CBDT) amends rules in relation to allotment, quoting of Permanent Account Number (PAN – India tax registration number)

The CBDT vide Notification No. 88/2023 dated 10 October 2023, has amended rules in relation to allotment and quoting of PAN pertaining to certain transactions.

A non-resident taxpayer is required to obtain a tax residency certificate ('TRC') issued by the Country of tax residence to avail the benefit of Double Taxation Avoidance Agreement ('DTAA' / 'Treaty') between India and the relevant country. Additionally, the non-resident taxpayer is also required to furnish declaration in Form 10F, if the TRC obtained by the taxpayer does not contain any of the prescribed information like status (company, firm, etc.) of the taxpayer; nationality, country of incorporation, tax identification number (TIN) or unique number (where TIN is not available) of taxpayer in the country of his/its residence; period for which TRC is applicable; address of taxpayer outside India, etc.

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<sup>1</sup> Planetcast International Pte. Ltd. vs ACIT [ITA Nos 1831, 1832/Del/2022 & 451/Del/2023] (Delhi ITAT)

<sup>2</sup> Income-tax Appellate Tribunal- Delhi

On 16 July 2022, the CBDT issued a notification, which mandated a list of forms to be furnished electronically by taxpayers, which inter alia also included Form 10F. Thus, non-resident taxpayers needed to submit Form 10F electronically to claim relief under the applicable DTAA entered with India.

Subsequently, on 12 December 2022, the CBDT issued notification providing partial exemption from electronic filing of Form 10F as per which:

- Non-resident taxpayers who are not having PAN and not required to have PAN as per the relevant provisions of the Income-tax Act, 1961 ('ITA') read with Rules were exempted from mandatory electronic filing of Form 10F till 31 March 2023. However, such taxpayers were to comply with statutory compliance of filing Form 10F till 31 March 2023 in manual form
- On 28 March 2023, the partial relaxation was extended vide notification till 30 September 2023.

However, considering the difficulties faced by the non-resident taxpayers not having PAN in India, the CBDT has now introduced a functionality for registering as "Non-Residents not holding and not required to have PAN" through which non-residents can generate Form 10F without obtaining PAN in India. However, the said facility is available only if the non-resident is not technically required to obtain PAN in India.

For more details, please refer this link

[Tax alert : CBDT amends rules in relation to allotment, quoting of PAN](#) (Deloitte India website)

### 3. CBDT prescribes final rules for valuation of unquoted equity, compulsory convertible preference shares

CBDT vide notification dated 25 September 2023, has amended valuation rules<sup>3</sup> for computation of fair market value of unquoted equity shares and compulsory convertible preference shares (CCPS) for the purposes of section 56(2)(viib) of the Income-tax Act, 1961 (ITA). The valuation rules are now applicable to both resident and non-resident taxpayers (post amendments to the ITA vide Budget 2023).

Section 56(2)(viib) of the ITA provides for taxation of consideration received (on issuance of certain shares at premium) in excess of fair market value of such shares.

The key highlights of the changes are:

- In addition to the two methods for valuation of shares that are already prescribed, namely, Discounted Cash Flow (DCF) and Net Asset Value (NAV) method, available to residents, five more valuation methods have been made available for non-resident investors, namely, Comparable Company Multiple Method, Probability Weighted Expected Return Method, Option Pricing Method, Milestone Analysis Method, Replacement Cost Method.
- Where any consideration is received for issue of shares from any non-resident entity notified by the Central Government, the price of the equity shares corresponding to such consideration may be taken as the FMV of the equity shares for resident and non-resident investors, subject to the following:
  - To the extent the consideration from such FMV does not exceed the aggregate consideration that is received from the notified entity, and
  - The consideration has been received by the company from the notified entity within a period of ninety days before or after the date of issue of shares which are the subject matter of valuation.
- On similar lines, price matching for resident and non-resident investors would be available with reference to investment by Venture Capital Funds or Specified Funds.
- Valuation methods for calculating the FMV of Compulsorily Convertible Preference Shares (CCPS) have also been provided.
- A safe harbor of 10% variation in value has been provided

For more details, please refer this link

[Tax alert : CBDT prescribes final rules for valuation of unquoted equity, CCPS](#) (Deloitte India website)

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<sup>3</sup> Rule 11UA of the Income-tax Rules, 1962

#### 4. Reasons behind recent flurry of Goods and Services Tax (GST) notices

During the month of September 2023, taxpayers have been issued multiple GST notices for recovery of the alleged shortfall in payment of GST, for reversal of input tax credit or for recovery of erroneous refunds. The notices cover multiple issues such as mismatch of output GST liability, input tax credit (ITC), reversals of ITC relating to exempt supplies, etc. Notices also being issued on matters involving interpretation of legal provisions, pronouncement of rulings by the Supreme Court, High Courts, Advance Ruling Authorities etc., thereby impacting industries widely.

In respect of the multiple notices being issued as detailed above, certain issues are required to be considered, they have been summarized below:

- **Important to track the notices:** Continuous checking of the GST Network (GSTN) portal to trace any new notices uploaded to ensure that response is filed without any delay, and that the notices/ replies are uploaded on to correct Tab on the GSTN portal
- **Maintain repository of documents:** Repository of documents relating to demand notices/ orders etc. such as agreements, credit notes, manual invoices if any, other declarations, correspondences received from tax authorities etc.
- **Proactive engagement with the jurisdictional officers:** Engage with jurisdictional authorities to understand the broad approach being followed
- **Audit readiness exercises:** Companies should undertake audit readiness exercises / mock audits and take corrective actions, on a proactive basis
- **Appropriate dispute resolution strategy:** In addition to the reply to the notices and adjudication process, focus is also needed on the appellate process/ options, including preparing the appeal for Tribunal (to file as soon as the appeals are accepted), possibility of filing writ petitions before jurisdictional High Court, etc.

The timelines for issuing GST notices has put companies on alert. With multiple notices, short response deadlines, and potential financial consequences, it is crucial for companies to be prepared. By establishing efficient tracking systems, proactive engagement with tax authorities, businesses can navigate these challenges and mitigate the impact on their operations and finances. In these uncertain times, preparedness and timely action are key to protecting the interests of companies operating in the complex landscape of GST compliance.

For more details, please refer this link

[Tax alert : Reasons behind recent flurry of GST notices and what next](#) (Deloitte India website)

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