



## Global Business Tax Alert Sharp Insights

### MAT not applicable to FIIs / FPIs

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# Synopsis

The Government today accepted the recommendations of the A. P. Shah Committee which had recommended that Minimum Alternate Tax (MAT) should not be applicable to Foreign Institutional investors (FIIs) or Foreign Portfolio Investors (FPIs) even for the period before April 1, 2015.

## Background

- In the Budget 2015, the Government had amended the Indian income Tax law clarifying that MAT provisions would not be applicable to capital gains and interest income earned by FIIs / FPIs from April 1, 2015.
- Since, the Budget amendment was effective prospectively from April 1, 2015, tax officers had interpreted that MAT should apply for prior years and therefore raised tax demands for the financial year 2011-12 and also re-opened assessments for prior years with a view to apply MAT. FIIs / FPIs filed appeal against such orders.
- Representations were made to the Government by various stakeholders to provide clarity that MAT is not applicable to FIIs / FPIs even for the period prior to April 1, 2015.
- Acceding to representations, a high level committee was set up by the Government under the chairmanship of Justice (Retd.) A. P. Shah to examine applicability of MAT provisions to FIIs / FPIs prior to April 1, 2015.
- The Committee invited comments from various stakeholders on the issue. Deloitte made a detailed representation to the Committee including a personal meeting to explain why MAT should not apply to FIIs / FPIs.

# Committee recommendations

- 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.
- A brief summary of the recommendations are as follows:
  - a) The legislative intention of MAT provisions is not to apply MAT to FIIs / FPIs.
  - b) The definition of “company” in MAT provisions should be given contextual meaning implying that “company” should mean those entities that are required to file accounts in India in terms of Section 591 to 594 of Indian Companies Act, 1956.
  - c) FIIs normally do not have an office / employees in India and their Indian activities are carried out by independent agents in India. Accordingly, FIIs / FPIs are ordinarily not covered under Section 591 to 594 of Indian Companies Act, 1956.
  - d) As FIIs / FPIs are not required to maintain accounts under Section 591 to 594 of Indian Companies Act, 1956, the book profit computation mechanism under MAT provisions fails and therefore FIIs / FPIs cannot be taxed under MAT provisions.
  - e) FIIs / FPIs should only be taxed under Section 115AD of the Income Tax Act, 1961 which is a self-contained code for taxation of FIIs / FPIs and not in terms of MAT provisions which provides for higher tax rate.
  - f) The amendment made in 2015 budget to exclude FIIs / FPIs from MAT provisions was only clarificatory in nature but not a special exemption given to FIIs / FPIs as claimed by tax officers. Being a clarificatory amendment, the prospective nature of amendment cannot be used to apply a different interpretation for the period prior to April 1, 2015.
  - g) The ruling of Authority of Advance Ruling (AAR) in the case of Castleton Investments Ltd relied upon by tax authorities to raise tax demands on FIIs / FPIs is incorrect.
  - h) Since last 19 years, FIIs / FPIs have been taxed in accordance with Section 115AD of the Income Tax Act and not under MAT provisions. The action of tax authorities to levy MAT on FIIs / FPIs is extremely late in the day and while such action is on the basis of AAR ruling in case of Castleton Investments Ltd, the committee believes this ruling to be completely wrong.

# Next steps

At a Press Conference held today, the Finance Minister has confirmed that the Government has accepted the Committee report and the next steps are expected to be as follows:

- A circular will be issued to field officers to drop MAT proceedings already initiated and not to raise any new MAT demands on FIIs / FPIs.
- An amendment will be made in the Income Tax law clarifying non-applicability of MAT provisions to FIIs / FPIs for the period before April 1, 2015.

# Comments

The recommendations of the Committee as well as the Government's decision to accept the recommendations in entirety would bring a sigh of relief to FIIs / FPIs.

However, since clarity has been provided only for FIIs / FPIs, uncertainty remains for other foreign investors including Private Equity and Venture Capital investors who make investments under the Foreign Direct Investment route. It will be interesting to see how the Supreme Court (while hearing the Castleton case on September 29, 2015) considers the recommendations of the Committee and rules on applicability of MAT to foreign companies generally.

**Source:** <http://finmin.nic.in/reports/ReportonApplicabilityofMinimumAlternateTax%20onFIIsFPIs.pdf>.

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