Tax Hotline

May 17, 2002

INDIA ENTERS INTO A TAX TREATY WITH IRELAND

India has recently entered into a Double Taxation Avoidance Agreement ("the treaty") with Ireland. This treaty has come into force, in case of India, from April 1, 2002 and in case of Ireland, for the purposes of income tax and capital gains, from April 6, 2002 and for the purpose of corporation tax from January 1, 2002.

As per the provisions of the treaty, incomes in the nature of dividend, interest, royalty and fees for technical services ("FTS") would be taxable at the rate of 10% in the country of source.

Article 11 of the treaty, which provides for a 10% withholding tax rate on interest payments exempts interest paid to certain financial institutions in India.

Ireland has agreed to allow an underlying tax credit for the corporate taxes payable on profits of the Indian companies out of which dividends are paid to Irish residents. However, an equivalent credit for underlying taxes shall not be allowed in India for Irish taxes paid.

Though the treaty contains a standard non-discrimination Article, however, as agreed under the protocol, India reserves the right to charge a permanent establishment of an Irish company in India, at a rate of tax (currently 42% for foreign companies) which is higher than that imposed on the profits of a similar Indian company (currently 36.75%). Interestingly, the Indian Income Tax Act was amended last year, with retrospective effect from April 1, 1962 to provide that subjecting foreign companies to a higher rate of tax than the Indian companies will not constitute discriminatory.

Source: Volume 254 of Income Tax Reports, Pg. 245 [254 ITR 245 [2002)]

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