

Tax Hotline

November 10, 2005

SECOND PROTOCOL TO INDIA-ITALY TAX TREATY

The Union Cabinet gave its approval for signing the second Protocol amending the Double Taxation Avoidance Convention ("DTAC") between India and Italy with a view to boosting trade and investment. The provisions stated in the Protocol would be effective only after the Protocol is signed and notified by both the countries.

Some of the provisions of the proposed Protocol include substitution by Italy of local income tax with a regional tax on productive activities and broadening the scope of Permanent Establishment ("PE") to include rendering of services and insurance. Further, the Protocol inter-alia also deals with reduction in the withholding tax rates for dividends, interest and royalties, and tax treatment of business profits, air transport and shipping.

The main provisions of the Protocol are summarized below:-

(A) ARTICLE 2 (TAXES COVERED):

Italy will substitute the local income tax with IRAP tax (Regional Tax on Productive Activities).

(B) ARTICLE 5 (PERMANENT ESTABLISHMENT):

A new clause has been introduced in paragraph 2 of Article 5 of the DTAC to provide that rendering of service through employees or other personnel will also constitute a PE, if these activities continue for more than six months in any twelve-month period. A separate paragraph to treat an 'insurance enterprise' as having a PE has also been introduced, if it collects premium and insures risks in the other contracting state.

(C) ARTICLE 7 (BUSINESS PROFITS):

Where an enterprise of a contracting state sells goods or merchandise or carries on a business in the other contracting state through a PE, the profits of the PE shall be determined only on the basis of that part of receipts which is attributable to the actual activity of the PE and not on the total amount received by the enterprise.

(D) ARTICLE 8 (AIR TRANSPORT) AND ARTICLE 9 (SHIPPING):

A new provision in Article 8 and Article 9 has been introduced so that profits from the operation of aircrafts or ships in international traffic shall include profits derived from the use or rental of containers if such profits are incidental to the operations in international traffic.

(E) ARTICLE 10 (ASSOCIATED ENTERPRISE):

A new paragraph is proposed to be added so as to facilitate giving benefits of the transfer pricing adjustment carried out by one state in the other state. Such adjustment shall be made in accordance with the Mutual Agreement Procedure provided for by Article 26 of the DTAC and this paragraph (E) of the said proposed Protocol. This would eliminate any discrepancy/ disagreement in regard to the computation of such transfer pricing benefits for adjustment purposes.

(F) ARTICLE 11 (DIVIDENDS), ARTICLE 12 (INTEREST), ARTICLE 13 (FEES FOR TECHNICAL SERVICES AND ROYALTY):

The withholding tax rates are proposed to be brought down to 10 per cent in the case of dividends, interest and fees for technical services. As per the current provisions of the DTAC, the withholding tax rate on dividends, interest and fees for technical services are 15%/ 25%(depending on the level of shareholding), 15% and 20% respectively.

(G) ARTICLE 15 (INDEPENDENT PERSONAL SERVICES) AND ARTICLE 16 (DEPENDENT PERSONAL SERVICES):

It has been provided that the number of days for the purpose of tax residence in the case of personal services shall be an aggregate of 183 days in any twelve-month period commencing or ending in the fiscal year concerned. As per the current provisions of the DTAC, the number of days for the purpose of tax residence in the case of personal services is an aggregate of 183 days in the relevant fiscal year.

(H) ARTICLE 25 (NON-DISCRIMINATION):

The Income Tax Act, 1961 distinguishes between domestic companies and foreign companies and the tax rate applicable to the former is lower. The reason for this variance in tax rates is that a domestic company pays dividends and consequently pays a dividend distribution tax, which a PE of a foreign company is not required to pay. The proposed Protocol clarifies that this difference in tax rates shall not be considered to be discriminatory in terms of the DTAC.

Research Papers

Horizon Technologies

January 21, 2025

Compendium of Research Papers

January 11, 2025

FAQs on Setting Up of Offices in India

December 13, 2024

Research Articles

INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals

January 15, 2025

Key changes to Model Concession Agreements in the Road Sector

January 03, 2025

The Revolution Realized: Bitcoin's Triumph

December 05, 2024

Audio

Securities Market Regulator's Continued Quest Against "Unfiltered" Financial Advice

December 18, 2024

Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

Renewable Roadmap: Budget 2024 and Beyond - Part I

August 26, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

"Investment return is not enough" Nishith Desai with Nikunj Dalmia (ET Now) at FI18 event in Riyadh

October 31, 2024

Analysing SEBI's Consultation Paper

(I) NEW ARTICLE (COLLECTION ASSISTANCE):

A new Article on Collection assistance is proposed to be added in the DTAC as Article 28 to ensure assistance in collection of taxes covered by this Convention by both the contracting states.

-Khushboo Baxi & Nishchal Joshipura

Source: Press Information Bureau, dated November 3, 2005

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishiith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

on Simplification of registration for FPIs

September 26, 2024

Scope of judicial interference and inquiry in an application for appointment of arbitrator under the (Indian) Arbitration and Conciliation Act, 1996

September 22, 2024