

Government withdraws retrospective taxation of indirect transfers

Background

The Finance Act, 2012 amended deeming provisions [Section 9] of the Income-tax Act, 1961 (the Act) to provide that gains arising from sale of shares of a foreign company would be taxable in India if such shares, directly or indirectly, derive their value substantially from the assets located in India (hereinafter referred to as the indirect transfer provisions). These provisions were introduced with retrospective effect from 1 April 1962.

Retrospective taxation of indirect transfers withdrawn

The Taxation Laws (Amendment) Act, 2021 (the Amendment Act), which has been enacted on **13 August 2021**, withdraws the retrospective applicability of the indirect transfer provisions. The said provisions shall accordingly not apply to indirect transfers made **before 28 May 2012** (i.e. the date on which the Finance Bill, 2012 received President's assent).

The Amendment Act provides that:

- No tax demand shall be raised in future on the basis of the retrospective amendment for any indirect transfer, if the transaction was undertaken before 28 May 2012.
- The demand raised for indirect transfers made before 28 May 2012 shall be nullified on fulfilment of specified conditions. Amount paid by taxpayers (if any) in such cases shall be refunded without interest.

Specified conditions

The specified conditions are as follows:

- The taxpayer shall withdraw or furnish an undertaking for withdrawal of any appeal before an appellate forum or a writ petition before the High Court or the Supreme Court, in a manner to be prescribed.
- The taxpayer shall either withdraw or submit an undertaking to withdraw any proceeding for arbitration, conciliation or mediation, under any law for the time being in force or under any agreement entered into by India with any other country or territory outside India, whether for protection of investment or otherwise, in manner to be prescribed.
- The taxpayer shall furnish an undertaking waiving his right, whether direct or indirect, to seek or pursue any remedy or any claim in relation to the said income which may be otherwise available under any other law for the time being in force for protection of investment or otherwise.
- The taxpayer shall fulfill such other conditions as may be prescribed.

Our comments

This amendment is a welcome move and highlights government's resolve of improving the ease of doing business in India. It will lead to renewed investor confidence and play an important role in attracting foreign investment in the country.