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The Government has notified new DTAA and Protocol between India and Malta. The provisions of amended DTAA will be applicable with effect April 1, 2015. The new DTAA expands the scope of 'Permanent Establishment'. Now, insurance Company shall be deemed to have PE in other contracting State if it collects premium in other State through its agents. The new DTAA would reduce tax rate from 15% to 10% on royalties. It has also incorporated a 'Limitation of benefits' clause. An insight into the changes in the new DTAA is as under:

1 **Article 4 – Resident:** As per the existing provision a resident means any person who under the laws of that State is liable to tax therein by reason of his domicile, residence, place of management, etc.

The new article provides that resident does not include any person who is liable to tax in that State in respect of income only from sources in that State.

The term 'resident', as per the new DTAA, will not include a person who is not liable to tax in another State because of his domicile, residence or place of management but because of his income from a source in that State. Thus, foreign diplomats and consular staff who are subject to tax only on domestic-source income in source State shall not be deemed to be residents of that State. Similarly, an offshore company shall not be deemed to be resident of a country if it is not liable to tax on its worldwide income in that country.

2 **Article 5 – Permanent Establishment:** *The new Article has incorporated following additional places in the inclusive definition of a PE*:

i A sales outlet, and

ii A farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on.

The new Article specifies minimum threshold period for service PE. Services provided by an enterprise through employees or other persons will constitute PE only if activities of that nature continue for more than 90 days within twelve months period.

It further provides that an insurance enterprise of contracting State shall (except in regard to re-insurance) be deemed to have PE in the other contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a agent (other than an agent of an independent status).

Article 5 of existing DTAA provides that an enterprise shall be deemed to have PE in other contracting State if substantial equipment is used or installed in a foreign country by or under contract with that enterprise. This provision has been omitted from the new treaty.

3 **Article 7- Business profits:** The existing provision of Article 7 provided that if the enterprise carries on business in the other contracting State through PE situated therein then so much of the profits as are directly or indirectly attributable to PE would be taxable in the other State. It further defines the term 'indirect attribution'. ***However, the revised DTAA excludes cases of indirect attribution from its ambit.***

4 **Article 12- Royalty and FTS:** The existing DTAA provided for tax rate of 15% on royalties if the recipient was beneficial owner of royalties. The ***new DTAA provides for tax rate of 10% on royalties if the beneficial owner of royalties is a resident of other contracting State***.

The old DTAA provided that rendering of technical or consultancy services would be taxable if it satisfied the 'make available' clause. The ***new DTAA has omitted the 'make available' clause from the definition of FTS***.

5 **Article 27- Limitation of benefit ('LOB') clause:** The ***new DTAA has incorporated a LOB clause. The Article on LOB is an anti-abuse provision, which ensures that treaty shopping is not resorted to by unscrupulous businesses. The tax benefits under DTAAs are intended to be extended to genuine business transactions. Sometimes the business transactions are arranged in a particular fashion to abuse the provisions of DTAAs. In order to discourage such type of transactions, anti-abuse provisions in the form of LOB have been inserted in the DTAAs.***

6 **Article 11- Interest:** Paragraph 3 of Article 11 provides for exemption from tax for the interest derived by specified entities. The ***new DTAA includes following entities in list of specified entities under paragraph 3 for tax exemption***:

a Reserve Bank of India;

b The Export-Import Bank of India;

c The National Housing Bank; and

d Central Bank of Malta.

7 **Article 13- Capital Gains:** The existing DTAA provided that gains from alienation of shares of

a company (the assets of which consists wholly or principally of immovable property) may be taxed in the contracting State in which the assets or the principal assets of the Company are situated.

The ***new DTAA provides taxing rights to the State of residence of the company. It provides that gains from alienation of shares of a company (the assets of which consists wholly or principally of immovable property) may be taxed in the State of residence of company***.

8 **Article 14- Independent Personal Services:** The existing DTAA provided that income derived by a resident of contracting State in respect of professional services or other activities of similar nature shall be taxable only in State of residence. It also provided that resident of contracting State may be taxed in source State if his stay in that State exceeded 90 days during fiscal year. The ***new DTAA has increased this period from 90 days to 183 days.***

9 **Protocol:** It provides that Articles 6 to 22 of DTAA shall not apply to following class of persons/companies:

a Any person enjoying a special fiscal treatment under the provisions of Malta Merchant Shipping Act, 1973 to the extent that it is not subject to tax on profits derived from the operation of ships in international traffic; or

b Any company licensed under the Malta Freeport Act of 1989 to the extent that it is not subject to tax on its profits as a result of such license; or

c Any person who enjoys a special fiscal treatment under any law similar to those referred to in (a) or (b) above, enacted in Malta after signing of this agreement.