India – 2018 Developments for Foreign Investors

April 19, 2018

Over the past 12 months, India has witnessed a wave of changes of interest to foreign investors, including amendments to international tax treaties, the new bankruptcy and goods and services tax regimes, and a significant emphasis on improving the ease of doing business in India. In addition, 2018 started on a positive note for foreign investors as the Indian government liberalised restrictions on foreign investment in a range of sectors including single brand retail, construction and development, and civil aviation. Against this backdrop, India's latest union budget proposals, as the last central budget presented by the Nadendra Modi-led government before the country's general elections in 2019, are focused heavily on the domestic audience. Nevertheless, the recent budget proposed a few key changes important to foreign investors, which are summarized in this update.

- ***Capital Gains Tax.*** The proposed budget eliminates the exemption from tax for the sale on a stock exchange of securities held for more than one year. As a result, long-term capital gains realized on or after April 1, 2018 would be subject to a 10% tax rate. The proposal provides a limited grandfathering rule for shares acquired before February 1, 2018 and disposed of after March 31, 2018. In such cases, any gains accrued up to January 31, 2018 would be exempt from thetax. Investors with substantial gains accruing since January 1, 2018 should consider strategies to mitigate this tax expense.

  Such strategies have been limited by recent amendments to tax treaties that previously allowed foreign portfolio investors to benefit from an exemption from capital gain tax for investments in listed and unlisted shares in India that were held through entities domiciled in Mauritius, Singapore or Cyprus. Although a few treaty jurisdictions, including the Netherlands, retain an exemption for capital gains, foreign investors would need to qualify for the benefits of those treaties and also contend with India's domestic general anti-avoidance rules ("GAAR").

- ***Crypto-Currencies.*** Echoing multiple statements made by the Reserve Bank of India, the Finance Minister of India recently declared that the government does not consider crypto-currencies as legal tender, and that it will take all measures to eliminate the use of crypto-assets.

- ***Defence Policy.*** The Indian government has increased its defence budget by 7.81% for the 2018-19 fiscal year. On the private investment side, the Finance Minister announced the development of two defence industrial production corridors in India. A new industry-friendly Defence Production Policy 2018 is also in the pipeline and is expected to promote local production. These changes are expected to boost manufacturing and enhance production capabilities in the defence sector.

- ***Artificial Intelligence.*** In order to encourage research and development in robotics, artificial intelligence and digital manufacturing, the Indian government has doubled its fund allocation to the Digital India program, a recent government initiative to improve Indian public services through information technology.

More policy changes are expected in the coming months with the implementation of the foreign investment reforms announced earlier this year and the encouragement of foreign investment in Air India, the Indian state-owned airline.

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Please note that this firm does not practice Indian law, and that this update is based on information that has been published in the press and from other sources in the public domain.

Please do not hesitate to contact us with any questions.

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