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19th July, 2016

Mr. Rajat Bansal, IRS,
Joint Secretary, FT&TR-II,
Central Board of Direct Taxes, Department of Revenue,
Ministry of Finance, Government of India,
Room No. 804, 8th Floor, C-Wing,
Hudco Vishala Building, Bhikaji Cama Palace,
New Delhi – 110066,
India.

Hon'ble Joint Secretary,

Re: Representation on Renegotiation of Double Taxation Avoidance Agreement between India and Singapore

At the outset, we would like to congratulate the Indian Government for successfully renegotiating the Double Taxation Avoidance Agreements between: (i) India and Mauritius ('India Mauritius Treaty'); and (ii) India and Cyprus ('India Cyprus Treaty'). We also appreciate the decision to provide clarity to the investor community by grandfathering investments made on or before 31 March, 2017. This has re-enforced the Indian Government's commitment to introduce a consistent tax legislation with prospective applicability.

Similar capital gains tax exemption provided under the Double Taxation Avoidance Agreement between India and Singapore ('India Singapore Treaty') was introduced as co-terminus with the exemption in respect of shares under the India Mauritius Treaty. With the withdrawal of exemption under the India Mauritius treaty, concerns are raised by the investor community regarding the impact on the tax treatment for Singapore residents. However, the Indian Government has allayed the speculations by indicating the India Singapore Treaty will be shortly renegotiated to address these issues.

Singapore, with its stringent governance framework coupled with the robust checks and balances stipulated in the India Singapore Treaty, is a highly regulated jurisdiction. Accordingly, any amendments need to flow from this fundamental framework.

In the enclosed memorandum we have provided our thoughts on the proposed renegotiation of India Singapore Treaty, which we believe will go a long way in providing an unambiguous tax regime for investors and cater to India's investment needs.

C-7, PASCHIMI MARG, VASANT VIHAR, NEW DELHI-110057, +91 (11) 41730003, 46160389, info@ivca.in
CIN: U74900DL2010NPL198236, www.ivca.in

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An invitation to the industry players and regulatory bodies of specific sectors of India to provide their input and comments before initiating renegotiation process of India Singapore Treaty will be very much appreciated by foreign investors.

We request you to kindly consider our recommendations and afford us ,,,mn an opportunity of a personal meeting to present our views.

We shall be glad to provide you any additional information that you may require.

Yours sincerely,

For **Indian Private Equity & Venture Capital Association of India (IVCA)**

Arvind Mathur

President IVCA

+91 9818934615

MEMORANDUM

Renegotiation of Double Taxation Avoidance Agreement between India and Singapore

The Mauritius – Singapore link

1. The erstwhile India Mauritius treaty came into force in 1983, and provided that capital gains earned by a Mauritius resident upon disposal of assets in India, including shares of an Indian company should not be taxable in India.

   However, to address certain issues arising in the Mauritius tax treaty, a protocol to amend the treaty was signed by India and Mauritius on 10 May, 2016. In this connection, the Press Release of the even date, issued by the Central Board of Direct Taxes (CBDT) states that:

   > *"The Protocol will tackle the long pending issues of **treaty abuse** and **round tripping** of funds attributed to the India-Mauritius treaty, curb revenue loss, prevent double non-taxation, streamline the flow of investment and stimulate the flow of exchange of information between India and Mauritius."*

2. In 2005, Singapore and India had signed the Comprehensive Economic Cooperation Agreement (CECA). One of the objectives of the CECA was to establish a transparent, predictable and facilitative investment regime, and as a part of this larger plan of facilitating investments between India and Singapore, changes to the India-Singapore treaty were brought about *vide* the Protocol in the year 2005. An extract of the Information Kit of the CECA is as follows:

   > *"An Avoidance of Double Taxation Agreement ("DTA") provides for avoidance of double taxation of income earned in one Contracting State by a resident of the other and makes clear the taxing rights between the two Contracting States. The DTA thus helps to facilitate the flow of trade, investments, technical know-how and expertise between the two Contracting States by eliminating double taxation of income.*

> *Singapore and India have agreed on a protocol to improve the existing DTA, which was signed in January 1994. The main improvement to the DTA is that the tax residents will enjoy CGT exemption on investments in India. ..."*

Accordingly, the capital gains tax exemption was introduced in the Singapore treaty. However, the exemption has a sunset until the time the capital gains tax exemption in respect of shares of an Indian resident company survives under the India Mauritius Treaty.

The capital gains tax exemption was brought in along with other measures, like robust Limitation of Benefits (LOB) Article and framework for information exchange, to deter treaty abuse by foreign investors. Consequently, Singapore as a jurisdiction does not encounter similar allegations for treaty abuse and round-tripping and accordingly is required to be considered in a different perspective.

<u>Singapore – A Stringent Regulator</u>

3. It is not appropriate to put Singapore on the same pedestal as Mauritius and Cyprus. Some of India's concerns with Mauritius and Cyprus include round tripping of funds, tax evasion, tax avoidance and transparency. Unlike Mauritius or Cyprus, Singapore has stringent and robust regulatory and tax regime, which allays India's apprehensions:

- As on date there are certain tax treaties signed by India which provide for capital gains tax exemption. While few treaties provide for conditions subject to which the exemption is available, there are others which do not have any conditions attached to the benefit. It is worthwhile to note that none of the treaties (which provide for exemption in India) have substance based (LOB) tests incorporated, as is currently provided under India Singapore treaty. Singapore stands out from the rest, warranting a differential treatment.

- Regarding India's concern on Base Erosion and Profit Shifting (BEPS), it is pertinent to note that Singapore is supportive of the BEPS initiative of OECD. For example, Singapore has a requirement to comply with transfer pricing methodologies and the arm's length principle.

Singapore offers tax incentives only to companies with substantial operations in Singapore. Specifically for funds, in order to qualify for tax exemption, there are conditions to be met which include the fund to be managed by a Singapore fund management company, with a minimum level of investment professionals based in Singapore, minimum threshold expenditure requirements and so on. Compliance of these conditions are regularly monitored by the Singapore authorities.

- Singapore Government has a significant focus on Anti-Money laundering (AML) and Countering the Financing of Terrorism (CFT) and has adopted several measures to combat ML / TF threats, including tough licensing and comprehensive reporting requirements, strict AML/CFT regulations, provide assistance to other jurisdictions, rigorously implement and contribute to the development of international standards.

  In view of this, financial institutions operating in Singapore are required to put in place robust controls to detect and deter the flow of illicit funds through Singapore's financial system. Such controls include the need for financial institutions to identify and know their customers (including beneficial owners), to conduct regular account reviews, and to monitor and report any suspicious transaction

- As an additional safeguard, India can consider requesting Singapore its first bilateral Common Reporting Standards (CRS) agreement to India, which will facilitate automatic exchange (with the Indian authorities) of information regarding Indian tax residents investing in / through Singapore.

All things equal, without the capital gains tax exemption, if Singapore is treated at par with other jurisdictions, the foreign investments may flow through jurisdictions with lenient regulatory regime and thereby may not address India's aforementioned concerns.

India Today

4. India, as an emerging market, has been looking at avenues to increase inbound investments. Towards this, the Government has, over time, liberalized the rules for foreign investments, and eased out policies for conducting business in and managing investments from India. For instance, introducing more instruments that can be used

to invest into India, easing / removing sectoral caps in a number of sectors introducing Real Estate Investment Trust and Infrastructure Investment Trust regimes for investment in real estate and infrastructure sectors, allowing foreign investments in Alternative Investment Funds, relaxation of External Commercial Borrowings' conditions for rupee borrowings, introduction of rupee denominated Masala Bonds etc.

5. In its bid to bring about radical change in the socio-economic landscape of the country, the Government has proactively introduced innovative policy initiatives like 'Make in India', 'Digital India', 'Skill India', 'Start up India', 'Smart City', 'Swacch Bharat Abhiyan' etc. However, these laudable ideas require investments for implementation.

   India is in dire need of enormous funding to capitalize on its true potential. For instance, as per World Bank's recent report, India reached a 10 year low in infrastructure investment. This concern was recently reiterated by the Honorable Finance Minister, Mr. Arun Jaitley when he mentioned that India needs over USD 1.5 trillion over the next decade to fill up the infrastructure gap.

The domestic market is not sufficient to cater to India's capital need and it has to tap the foreign investment route.

Foreign Investment

6. Global investors with diversified portfolios have pre-determined percentage allocations for emerging markets. The jurisdictions grouped within this segment compete for the maximum share of this allocated capital. The Government may need to be mindful of whether the withdrawal of capital gains tax exemption could make investments into other emerging markets more attractive on a post-tax return basis. Some of the comparable jurisdictions such as China, Russia, and South Africa impose lesser capital gains tax rate or provide exemptions for trading in listed shares (including short-term), which could lead to a reconsideration for at least liquid trading.

7. It is a "must have" for the global investor to have an offshore base for investing in India (and as for that matter any country). It may not be entirely accurate to assume that the global investors are ready to come directly in India (again for that matter

many other countries). India needs a strategic "offshore base" for attracting and pooling inbound investments.

8. The return on investment (ROI) from India for a foreign investor, amongst others, is impacted by three factors: (i) the gross returns earned form the Indian investment; (ii) tax outflow in India on such returns; and (iii) strength of the Indian rupee. In the last 5 years, on an annual basis, the Indian rupee has witnessed a depreciating trend. This coupled with a withdrawal of capital gains tax exemption will dampen the ROIs from India.

   Cognizance also needs to be taken of the Brexit impact. The global investor community is jolted by UK's unexpected exit and are evaluating its adverse after effects. In an impending scenario of cautious and selective investments, the Indian Government may need to reconsider the modes and manners to incentivize the tepid investment inflows.

<u>Singapore Connect</u>

9. Singapore is a reputable financial center and regional headquarters of MNCs, having easy access to capital from global markets. It offers a vibrant ecosystem for sourcing capital, making deals and hiring talent.

   - The capital gains tax exemption combined with other CECA measures paved way to Singapore becoming, the second largest foreign investor in India with 16% of the cumulative FDI in India (April 2000 to March 2016) being routed through Singapore. In 2015-16, Singapore overtook Mauritius as the largest source of FDI into India accounting for about 37% of total FDI inflows for the year.

   - Globally Singapore is our 10th largest trade partner. In 2014-15, the bilateral trade stood at US$ 17.1 billion. Further, Singapore is among India's largest trade and investment partner in Association of Southeast Asian Nations (ASEAN) and accounted for 22% of India's overall trade with ASEAN in 2014-15.

- In addition to CECA, the conclusion of ASEAN-INDIA Free Trade Agreement (AIFTA) in Trades in Goods (TIG) in 2009 helped in boosting India's economic and commercial ties with Singapore.

- On the occasion of Honorable Prime Minister Narendra Modi's visit to Singapore, a Joint Declaration on Strategic Partnership between India and Singapore was announced on November 24, 2015 to reiterate the commitment of both the Governments to elevate their bilateral ties to a Strategic Partnership (a framework to contribute to greater regional stability and growth, deepen existing areas of cooperation and catalyse new ones).

- Combined with an enabling environment, strong air connectivity and the presence of a large Indian community, Singapore has emerged as an offshore logistics and financial hub for Indian corporate houses. About 6,000 Indian companies are estimated to be registered in Singapore.

- Nine Indian banks operate in Singapore - Bank of India, Indian Overseas Bank, UCO Bank, Indian Bank, Axis Bank, State Bank of India, ICICI, EXIM Bank and Bank of Baroda – tapping the Singapore's capital markets.

10. Singapore's role in serving regional and international investors is cemented due to robust infrastructure for asset management industry, strategic geographical location in Asia, availability of talent pool, and investors' confidence and comfort in Singapore as a global financial hub.

    Singapore is a part of the ASEAN Fund Passport regime, intends to join the Asia Region Funds Passport (ARFS) and is in the process of rolling out Open Ended Investment Company (OEIC) Framework. These measures provide a great boost to raise global and

    regional capital in Singapore for investments outside Singapore. For instance, 81% of the total Asset Under Management (AUM) in Singapore are sourced from outside Singapore.

    India has and should continue to capitalize on Singapore's access to global capital and distribution network. Indian companies are increasingly using Singapore for raising funds, particularly for global operations. For public sector units opting for disinvestment through IPO/FPO, Singapore is an attractive destination for pre market discussion as well as road shows during IPO/FPO.

Singapore scores very high on economic and business indicators. It enjoys strong diplomatic/foreign relations in the region and the world at large, which basically backs its position as strategic hub. Singapore can serve as the "offshore base" for India with Singapore domiciled funds enhancing the fund raising capability of India focused funds.

There is a strong investment manager community in Singapore. Investment houses have spent a lot of money and effort in setting up fund platforms and investment management companies in Singapore during the last five years. Moreover, the role of this concentrated investment managers community in marketing India to foreign investors is critical.

Summary

11. The Indian economy has the inherent strength and ability to attract foreign investment. However, it may be prudent to consider the consequences of withdrawal of capital gains tax exemption from the India Singapore treaty:

- The capital gains treaty exemption was one of the four key components of CECA. Removing one of the elements makes the CECA less comprehensive and affects the collaborative spirit shared between the two countries today.

- Considering the general cautious capital inflows on account of the global turmoil and the ever increasing investment needs of India, the withdrawal of exemption may be counterintuitive at this juncture.

- Tax cost is one of the key factors impacting investment decision. Withdrawal of capital gains treaty exemption could impact the ROI of foreign investors and make other emerging markets more remunerative on a post-tax basis. This may somewhat

- undo the untiring efforts of the Indian Government to make India an attractive investment destination

- Taking away the treaty benefit would result in disintegration of the India focused investment manager community in Singapore, which may have an adverse impact on foreign investments in India.

Humble Request

It is widely anticipated that in the impending India Singapore Treaty negotiation, in terms of grandfathering and capital gains tax treatment, Singapore will be bought at par with Mauritius.

However, given the above basis / rationale, the industry prays that the Indian Government consider the following key requests (presented in order of preference):

Preference	Request
1	Delinking the India Singapore treaty with the India Mauritius treaty, and thereby continue with the capital gains tax exemption
2	Retention of capital gains tax exemption with enhanced Limitation on Benefits (LOB) clause.
3	Retention of capital gains tax exemption but introduce a levy of Securities Transaction Tax (STT) on unlisted shares transactions.
4	Retain capital gains tax beneficial treatment, with a perpetual lower tax rate of 5% on long term capital gains realized on transfer of shares of an Indian company.
5	Provide capital gains tax exemption for transfer of shares of an Indian company from a Singapore resident to any person other than a person resident in India.
In all the above scenarios, parity with Mauritius on rate of interest withholding (7.5%) in India.	

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