

Tax Hotline

October 05, 2005

INDIAN GOVERNMENT TO RE-EXAMINE TAX IMPACT ON FII'S INVESTMENT INCOME IN INDIA

The Indian government is set to take a fresh look into the existing tax treatment of the income of foreign institutional investors ("FIIs") operating through sub-accounts. The review will be conducted by an internal sub-group set up by the Central Board of Direct Taxes ("CBDT").

This review has been proposed in light of a number of FIIs having approached the Authority for Advance Ruling ("AAR"), following the ruling in the case of a US based fund, namely, Fidelity Advisor Series VIII, wherein the AAR held that the trading income of Fidelity Advisor Series VIII from Indian securities would be classified as "business income" and not as "capital gains" thereby not being subject to tax in India in the absence of a permanent establishment ("PE") in India. The new advance ruling applications are filed by several FIIs to determine the tax treatment of their income from investments in securities, in the hope to get exemption from short-term capital gains tax. Currently, short-term capital gains from sale of listed securities are taxed at 10%.

Fidelity Advisor Series VIII had approached the AAR to specifically determine whether gains accruing from trading in Indian securities would be treated as "business income or capital gains". The AAR, took into consideration various factors including the frequency and magnitude of purchase and sale of securities, and held that the gains on sale of securities were in the nature of "business income" which would not be subject to tax in India in the absence of a PE in India.

The internal sub-group set up by the CBDT will examine if there is a case for treating income accruing to FIIs operating through sub-accounts as "business income". The business income of an FII can be taxed in India only if it has a PE in India. It is interesting to note that the Comptroller and Auditor General of India had earlier this year recommended to the Indian government that the income of FIIs from trading in Indian securities should be treated as business income. It has also asked the CBDT to clarify whether sub account arrangements would constitute PE in India.

However, a policy change, if at all, to the existing tax treatment will have to wait till the above proposal has been approved by the Parliament and if it does undergo a change, then capital flows could surge from destinations other than Mauritius or Singapore.

-Bijal Ajinkya & Khushboo Baxi

Source: [The Economic Times dated October 5, 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 Nishith 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.

Research Papers

Medical Device Industry in India

April 28, 2025

Clinical Trials and Biomedical Research in India

April 22, 2025

Structuring Platform Investments in India For Foreign Investors

March 31, 2025

Research Articles

2025 Watchlist: Life Sciences Sector India

April 04, 2025

Re-Evaluating Press Note 3 Of 2020: Should India's Land Borders Still Define Foreign Investment Boundaries?

February 04, 2025

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

January 15, 2025

Audio

CCI's Deal Value Test

February 22, 2025

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

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

[Click here to view Hotline archives.](#)

Video

Vyapak Desai speaking on the danger of deepfakes | Legally Speaking with Tarun Nangia | NewsX

April 01, 2025

**Vaibhav Parikh, Partner, Nishith
Desai Associate on Tech, M&A, and
Ease of Doing Business**

March 19, 2025

**SIAC 2025 Rules: Key changes &
Implications**

February 18, 2025
