Tax Hotline

October 27, 2004

NEW TAX TREATY BETWEEN INDIA AND MALAYSIA NOTIFIED

India has recently renegotiated its Double Taxation Avoidance Agreement ("**Treaty**") with Malaysia. The same has been notified on October 12, 2004. This Treaty will come into force, in the case of India, from April 1, 2004 and in the case of Malaysia, for the purposes of Income tax, from January 1, 2004. The earlier treaty between India and Malaysia will cease to have effect from the date this Treaty becomes effective.

As per the provisions of the Treaty, incomes in the nature of dividend, interest, royalty and fees for technical services would be subject to a maximum withholding tax at the rate of 10% in the country of source, if the recipient is the beneficial owner of the same. Interestingly, there is no specific article covering income in the nature of capital gains.

The previous treaty did not deal with 'Other Income'. Article 22 - 'Other Income' of the Treaty states that items of income, which are not expressly mentioned in the other articles of the Treaty and derived by a resident of a contracting 'State', will be taxable only in that 'State'. It then reverts to the 'source rule' stating that if such income is derived from sources in the other contracting 'State', it may also be taxed in that other 'State'.

Underlying tax credit will be available in Malaysia for corporate taxes paid in India whereas India will not grant any underlying tax credit for the corporate tax paid in Malaysia.

Source: Notification No. G.S.R. 667(E); 257/2004 dated October 12, 2004

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