

TAX: Direct Tax Code

A. Income of foreign companies to be taxed in India

Controlled Foreign Company (“CFC”) means an unlisted foreign company which satisfies following conditions:

- a. Indian resident, individually or collectively, exercise control.
- b. Resident of a territory with lower rate of tax.
- c. Not engaged in active trade or business.

Controlled by Indian residents mean:

- a. Indian resident, individually or collectively, posses or entitled to acquire shares carrying not less than 50% of voting rights or capital of the company.
- b. Indian resident entitled to secure that 50% of the assets or income of the company shall be applied for its benefit.

- c. Indian resident, due to contractual relationship, exercise dominant influence on the company.
- d. Indian resident has sufficient votes to exert decisive influence in the board meetings of the company.

The “attributable income” of the CFC shall be included in the gross residuary income of the Indian resident and charged to tax in India. The income “attributable income” is to be determined as per formulae provided in the code, which is dependent on various factors provided therein.

B. Income on Sale of Shares of a Foreign Company, which holds assets in India, is to be taxed in India.

Section 5(4)(g) of the Direct Tax Code, 2010 provides that income from transfer of any shares or interest in a foreign company situated outside India, which holds assets in India shall

be taxable in India, if at any time during 12 months preceding such transfer, the Fair Market Value of the assets in India is at least 50 percent of the fair market value of all assets owned by the company.

Section 5(6) further provides that the capital gains arising in India shall be calculated as per the following formula.

$$\text{Capital Gains} = A * (B/C)$$

Where

A = Income from such transfer in accordance with the provisions of this code as if the transfer was effected in India.

B = Fair Market value of the assets in India, owned directly or indirectly, by the company.

C = Fair Market Value of all assets owned by the company.

C. Minimum Alternate Tax

Where the normal income-tax payable for a financial year by a company is less than the tax on book profit, the book profit shall be deemed to be the total income of the company for such financial year and it shall be liable to (Minimum Alternate Tax or "MAT") income-tax on such total income at the rate 20%.

- Book profit shall be calculated as per the formulae provided in the Code and certified by a qualified Chartered Accountant.
- The credit of MAT, paid over and above the normal income tax payable, shall be carried forward for a period of 15 years.
- The outstanding MAT credit can be utilized for payment of income tax to the extent of the excess of the normal income-tax over the tax on book profit.

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