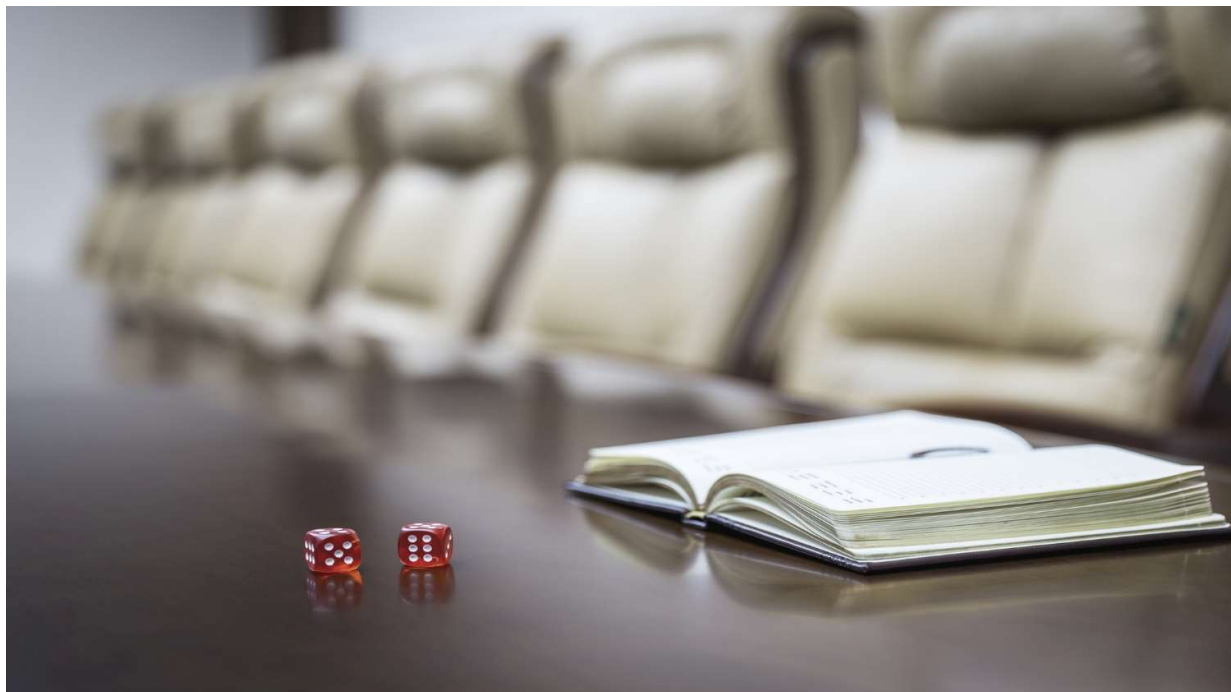

Notification of Cyprus as a 'Notified Jurisdictional Area' under section 94A of the Income Tax Act, 1961 rescinded

16 December 2016

**Background**

In November 2013, the Government of India issued Notification No. 86/2013 (2013 Notification) classifying Cyprus as a 'Notified Jurisdictional Area' (NJA) on the ground that it was not providing information requested by the Income-tax Department under the exchange of information provisions in the India-Cyprus tax treaty. This had several implications under section 94A of Income-tax Act, 1961 (the Act), which included the applicability of transfer pricing provisions in respect of transactions with persons in Cyprus, a higher withholding tax of 30% and the imposition of additional conditions for availing deductions in respect of payments made to persons in Cyprus.

Notification No. 86/2013 rescinded

The 2013 Notification has been rescinded by Notification No. 114/2016 (2016 Notification) issued by Central Board of Direct Taxes on 14 December 2016. The 2016 Notification states that 2013 Notification stands rescinded with effect from the date of publication of 2016 Notification in the Official Gazette, except as respects things done or omitted to be done before such rescission.

This rescission comes in the backdrop of the recent renegotiation of the India-Cyprus tax treaty, which inter alia eliminates the capital gains exemption available in respect of shares (with a grandfathering for pre-April 2017 investments). Other changes include a reduction of the withholding tax rate on Royalties and Fees for Technical

Services to 10% from 15%, the inclusion of a Service Permanent Establishment clause and provisions relating to assistance in the collection from taxes.

In July 2016, a press release issued by the Central Board of Direct Taxes in connection with the re-negotiation of the India-Cyprus tax treaty stated that India would consider rescinding the notification of Cyprus under section 94A of the Act with effect from 1 November 2013. A press release issued today in connection with 2016 Notification also states that the notification of Cyprus under section 94A has been rescinded with effect from 1 November 2013.

This indicates that the intent of the Government is to rescind the notification of Cyprus with retrospective effect. However, having regard to the language used in the 2016 Notification (specifically the reference to 2016 Notification having effect from the date of its publication in the Official Gazette, and the saving of past acts and omissions), further clarifications on this issue may be required.

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