

Cyprus Notified as a notified Jurisdictional Area Under Section 94a of the Income-Tax Act, 1961 ; All Parties to the Transaction with a Person in Cyprus shall be Treated as Associated Enterprises and the Transaction shall be Treated as an International Transaction Resulting in Application of Transfer-Pricing Regulations Including Maintenance of Documentations

Section 94A was introduced in the Income-tax Act, 1961, through the Finance Act, 2011, in respect of transactions with persons located in notified jurisdictional area as an anti-avoidance measure. As per section 94A, the Central Government may, having regard to the lack of effective exchange of information with any country or territory outside India, specify the said country or territory as a notified jurisdictional area in relation to transactions entered into by any assessee. The rules under section 94A were notified as Income-tax (8th Amendment) Rule, 2013, through S.O. 1856 (E) dated 26th June, 2013, by inserting Rule 21AC and Form 10FC in the Income-tax Rule, 1962.

India and Cyprus have entered into an agreement for avoidance of double taxation of income and prevention of fiscal evasion which is in force since 21st December, 1994. Both the Contracting States under this agreement have a legal obligation to exchange such information as is necessary for carrying out the provisions of the agreement or of domestic laws of the Contracting States, in particular for the prevention of fraud or evasion of taxes.

Since Cyprus has not been providing the information requested by the Indian tax authorities under the exchange of information provisions of the agreement, it has been decided to notify Cyprus as a notified jurisdictional area under section 94A of the Income-tax Act, 1961 through Notification No. 86/2013 dated 1st November, 2013 published in Official Gazette through SO 4625 GI/13.

The implications of such a Notification are summarized as under:

- If an assessee enters into a transaction with a person in Cyprus, then all the parties to the transaction shall be treated as associated enterprises and the transaction shall be treated as an international transaction resulting in application of transfer-pricing regulations including maintenance of documentations [Section 94A(2)].
- No deduction in respect of any payment made to any financial institution in Cyprus shall be allowed unless the assessee furnishes an authorization allowing for seeking relevant information from the said financial institution [Section 94A(3)(a) read with Rule 21AC and Form 10FC].
- No deduction in respect of any other expenditure or allowance arising from the transaction with a person located in Cyprus shall be allowed unless the assessee maintains and furnishes the prescribed information [Section 94A(3)(b) read with Rule 21AC].
- If any sum is received from a person located in Cyprus, then the onus is on the assessee to satisfactorily explain the source of such money in the hands of such person or in the hands of the beneficial owner, and in case of his failure to do so, the amount shall be deemed to be the income of the assessee [Section 94A(4)].

- Any payment made to a person located in Cyprus shall be liable for withholding tax at 30 per cent or a rate prescribed in Act, whichever is higher [Section 94A(5)].