

Instruction No. 18 /2015

**F. No.153 /12/2015-TPL
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Direct Taxes)
(TPL Division)**

New Delhi, the 23rd December, 2015

Subject: Applicability of Minimum Alternate Tax (MAT) on foreign companies for the period prior to 1.04.2015-reg

On the issue of applicability of Minimum Alternate Tax (MAT) under section 115JB of the Income Tax Act, 1961 ('the Act') on Foreign Institutional Investors (FIIs)/Foreign Portfolio Investors (FPIs), the Board had issued Instruction No.9 dated 02/09/2015 informing the field authorities that the Government has accepted the recommendation of the Committee on Direct Tax Matters that Section 115JB be amended to clarify the inapplicability of MAT to FIIs/FPIs having no permanent establishment/ place of business in India and decided to carry out appropriate amendment to this effect. In view of this, the field authorities were advised to keep in abeyance, for the time being, the pending assessment proceedings in cases of FIIs/FPIs involving the said issue. It was also advised that the recovery of outstanding demands, if any, in such cases may not be pursued.

2. The Government had, subsequently, considered the broader issue of applicability of section 115JB of the Act to foreign companies which do not have a place of business/permanent establishment in India. A Press Release dated 24.09.2015 was issued conveying the decision of the Government on inapplicability of MAT on foreign companies in certain cases. Subsequently, the Government conveyed its intention of abiding by the decision contained in the aforesaid Press Release to the Supreme Court in the case of Castleton Investment Ltd. The Supreme Court disposed of the case based on the commitment made by the Government.

3. In view of the decision as reflected in the Press Release dated 24.09.2015 and the commitment made by the Government before the Supreme Court, it is hereby reiterated that with effect from 01.04.2001, **the provisions of section 115JB shall not be applicable to a foreign company (including an FII/FPI) if —**

(i) the foreign company is a resident of a country with which India has a Double Taxation Avoidance Agreement and such foreign company does not have a permanent establishment in accordance with the provisions of the relevant Double Taxation Avoidance Agreement, or

(ii) the foreign company is a resident of a country with which India does not have a Double Taxation Avoidance Agreement and such foreign company is not required to seek registration under section 592 of the Companies Act, 1956 or section 380 of the Companies Act, 2013.

An appropriate amendment to the Income-tax Act in this regard shall be undertaken through Finance Bill, 2016.

4. In view of the above and the fact that Government's commitment to abide by its decision as contained in para 3 above has been taken into account by the Supreme Court while disposing of the Civil Appeal No. 4559/2013 in the case of Castleton Investment Ltd., the field authorities are hereby advised that pending assessments involving applicability of MAT on foreign companies (including FIs/FPIs) should be completed in accordance with the decision of the Government as reflected in para 3 above.

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(Pravin Rawal)
Director

Copy to:-

1. PS to FM/ OSD to FM/ OSD to MoS(R).
2. PS to Secretary (Revenue).
3. The Chairperson, Members and all other officers in CBDT of the rank of Under Secretary and above.
4. All Pr. Chief Commissioners/ Pr. Director General of Income-tax - with a request to circulate amongst all officers in their regions/ charges.
5. Pr. DGIT (Systems)/ Pr. DGIT (Vigilance)/ Pr. DGIT (Admn.)/ Pr. DG (NADT)/ Pr. DGIT (L&R).
6. Media Co-ordinator and Official spokesperson of CBDT.
7. Web manager for posting on the departmental website.

(Pravin Rawal)
Director