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**NEWSFLASH - KEY CHANGES IN THE NEW PROTOCOL TO AMEND  
INDIA-SINGAPORE TAX TREATY**

THE POWER OF BEING UNDERSTOOD

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## 1.0 Background

- 1.1 Singapore was the largest foreign direct investor into India for the period April 2015 – March 2016 and one of the largest portfolio investors in Indian markets.
- 1.2 In line with the revision to the India-Mauritius tax treaty to phase out capital gains tax exemption, a similar amendment has been made to the India-Singapore tax treaty by signing a Third Protocol on 30 December 2016. The content of which is summarized below.

## 2.0 Key changes in new Protocol to amend the India-Singapore tax treaty

### 2.1 Taxation of capital gains from alienation of “Shares”

'Shares' Acquired:	Tax treatment for gains arising from the alienation of such shares
(a) Before 1 April 2017	<p><b><u>Status quo prevails</u></b></p> <ul style="list-style-type: none"><li>• To remain taxable only in the residence State of the alienator</li><li>• Subject to specified conditions including expenditure on operations of the alienator in its residence State of at least S\$200,000 in Singapore or INR 50 lacs in India, as the case may be, for each of the <b>12-month periods</b> in the immediately preceding period of <b>24 months</b> from the date on which the gains arise</li></ul>
(b) On or after 1 April 2017	<p><b>For gains that arise during the period 1 April 2017 to 31 March 2019</b></p> <ul style="list-style-type: none"><li>• Will be taxable in the State in which the company whose shares are alienated is a resident</li><li>• Tax rate imposed on such gains will be limited to 50% of the tax rate applicable on such gains in the State in which the company whose shares are alienated is resident.</li><li>• Subject to specified conditions including expenditure on operations of the alienator in its residence State of at least S\$200,000 in Singapore or INR 50 lacs in India, as the case may be, for the immediately preceding period of <b>12 months</b> from the date on which the gains arise.</li></ul> <p><b>For gains that arise after 31 March 2019</b></p> <ul style="list-style-type: none"><li>• Will be taxable in the State in which the company whose shares are alienated is resident</li><li>• Capital gains will be taxed at full domestic tax rate.</li></ul>

#### Illustration

Company A is a Singapore tax resident. It acquires shares in an Indian tax-resident company B. Company A meets the specified conditions including the expenditure on operations.

**Scenario 1:** A acquires B's shares before 1 April 2017. When A disposes these shares eventually, the capital gains will not be subject to capital gains tax in India. **This applies irrespective of when the gains arise.**

**Scenario 2:** A acquires B's shares on or after 1 April 2017.

- **Scenario 2A:** When A disposes these shares during the period 1 April 2017 to 31 March 2019, the capital gains arising during this period will be taxed at 50% of India's domestic tax rate.
- **Scenario 2B:** When A disposes these shares on or after 1 April 2019, the capital gains will be taxed at India's full domestic tax rate.

## 2.2 Article 9 on Associated Enterprises

The new Protocol also updates Article 9 on Associated Enterprises to provide for both countries to enter into bilateral discussions for elimination of double taxation arising from transfer pricing or pricing of related party transactions.

## 2.3 New Article 28A- Miscellaneous

The new Protocol introduces a new Article 28A 'Miscellaneous' to provide that India- Singapore tax treaty shall not prevent a Contracting State from applying its domestic law and measures concerning the prevention of tax avoidance or tax evasion.

## 2.4 Entry into force - New Protocol

Each of the Contracting States shall complete the procedures required by its law for the bringing into force of this Protocol and notify the other State about such completion of the procedures.

This Protocol shall enter into force on the date of the later of these notifications. If this Protocol does not enter into force as at 31 March 2017 due to either of the aforesaid notifications remaining pending, this Protocol shall enter into force on 1 April 2017.



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This newsflash is general in nature. In this newsflash, we have summarised the key changes of the Thlrd Protocol amending the tax treaty between the Government of Republic of Singapore and Government of Republic of India on 30 December 2016. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the said notification and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

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