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## India clarifies tax residency certificate requirements included in recent Budget proposals

March 4, 2013

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### ***In brief***

The Indian Budget for 2013-2014, presented in Parliament on February 28, proposed an amendment that would change the evidence required to prove tax residency. Under the proposal tax residency certificates are still considered essential to grant treaty benefits, but they would no longer constitute sufficient evidence in isolation. [\(See Asia Pacific Tax NewsAlert Indian budget proposal retains indirect transfer tax rules but defers GAAR until 2015, February 28, 2013\).](#)

Shortly after the budget proposals were announced and following concerns expressed by various stakeholders, the Central Board of Direct Taxes clarified, on March 1, 2013, that the proposed amendment was not intended to question tax residency certificates.

This newsalert summarizes the government's position on tax residency certificates in the context of treaty claims with India and the impact of this clarification to foreign investors.

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### ***In detail***

The Indian government amended its domestic tax law in 2012 to require tax residency certificates that provide specific details before it would grant tax treaty benefits.<sup>1</sup> This concerned

taxpayers since many countries issue residency certificates in different formats and they may not contain the details requested by the Indian government.

The recent budget proposals announced on February 28, 2013 contained an amendment whereby tax residency certificates alone would not be

sufficient evidence of tax residency. The amendment concerned foreign investors as it appeared to empower the Indian tax authorities to question and potentially disregard tax residency certificates, thereby denying tax treaty benefits. The amendment was also viewed as effectively overruling Circular 789,<sup>2</sup> which provided that a valid tax residency certificate furnished by Mauritius companies will be regarded as sufficient evidence of tax residency.

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<sup>1</sup> The Indian government requires inclusion of these items in a tax residency certificate:

- a) name of the taxpayer
- b) status of the taxpayer (individual, company, firm, etc.)
- c) nationality (for individuals) or country of incorporation / registration (for others)
- d) tax identification number (or other unique identification

- number) of the taxpayer in the country of residence
- e) residential status for tax purposes
- f) period for which the certificate is applicable
- g) address of the applicant for the period.

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<sup>2</sup> Circular Number 789 dated April 13, 2000 issued by the Central Board of Direct Taxes.

In order to address the concerns expressed by various stakeholders, the Central Board of Direct Taxes issued a press release on March 1, 2013 clarifying that the proposed amendment's intent is not to question tax residency certificates. The press release states that a tax residency certificate will be accepted as evidence of tax residency. In addition, the press release clarifies that the Indian revenue authorities will not further question the residency status of an

entity once it produces a tax residency certificate.

Specifically, in the case of Mauritius, the press release states that the Circular will continue to apply, pending ongoing discussions between the governments of the two countries.

Furthermore, the press release indicates that the clarifications noted above will be incorporated into the legislation prior to the Budget's final enactment.

### ***The takeaway***

While foreign investors should appreciate the government's clarifying announcement to respect tax residency certificates, they should still consider the practical issue of obtaining certificates that include the Indian government's requirements.

### ***Let's talk***

For a deeper discussion of how this issue might affect your business, please contact:

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