

# TAX FLASH NEWS

13 April 2022

## Australia agrees to amend its domestic tax law to stop taxation of offshore income of Indian firms providing technical services to Australian clients

### Executive summary

Indian information technology service companies have received unfavourable decisions from litigation in Australia regarding the taxation of services provided to Australian clients by their employees based in India. The Indian companies argued that such services should not be taxable in Australia as those services were not sourced in Australia and were not royalties under the domestic tax law of Australia. In *Satyam Computer Services Limited (now Tech Mahindra Limited)*<sup>1</sup> the full Federal court of Australia held that payments received by an Indian company from its Australian resident clients were considered to have an Australian source by application of Article 23 (source) and were a royalty in accordance with Article 12(3)(g) [royalty] of the Australia-India tax treaty.

### Development

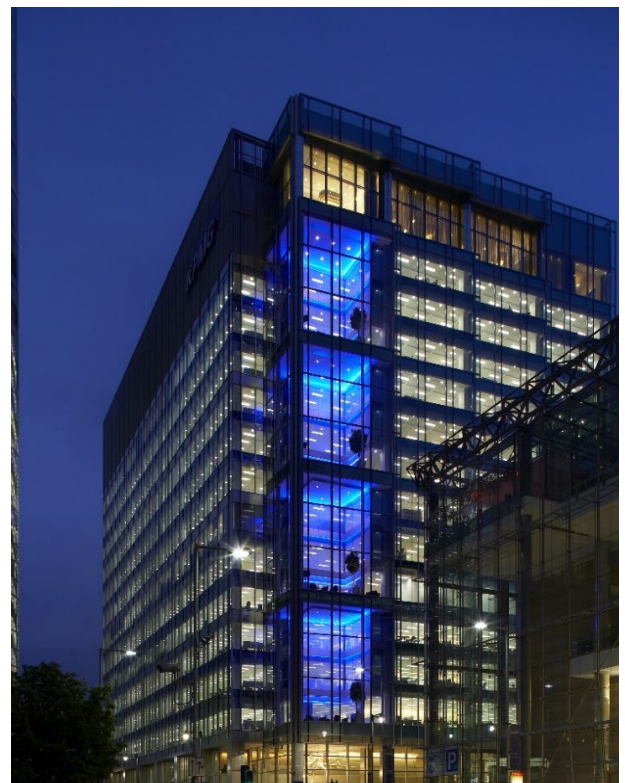
On 2 April 2022, India and Australia signed an Economic Co-operation and Trade Agreement (the Agreement) in which Australia has agreed to stop the taxation of offshore income of Indian firms providing technical services to Australia. In connection with signing of this Agreement, the following understanding between the Government of Australia and the Government of India was documented by way of a side letter:<sup>2</sup>

- The Government of Australia has agreed to amend Australian domestic taxation law to stop the taxation of offshore income of Indian firms providing technical services to Australia; and
- Australia will implement the amendments to its domestic taxation legislation in a similar time period as the Agreement.

The proposed amendments will come into effect on the date the Agreement enters into force and shall constitute an integral part of the Agreement.

### Our comments

The recent decisions of the Australian courts in *Satyam* and *Tech Mahindra*<sup>3</sup> have adversely impacted several Indian engineering, software and other Indian companies providing technical services from India to their Australian clients. The Agreement should provide welcome relief from royalty withholding tax for those Indian companies providing services to Australian clients. The Agreement seems to propose a prospective change in the domestic law of Australia and which would help Indian companies providing services to Australian clients going forward.



<sup>1</sup> *Satyam Computer Services Limited v FC of T* [2018] FCAFC 172 (Full Court of the Australian Federal Court)

<sup>2</sup> Press Release dated 2 April 2022; Letter of Australian Government dated 2 April 2022; Letter of Indian Government dated 2 April 2022 – Taxsutra.com

<sup>3</sup> *Tech Mahindra Limited v FC of T* [2015] FCA 1082

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