



Global Business Tax Alert Sharp Insights

Income from distribution of
news and information not
taxable in India

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The Mumbai Tribunal in its judgment in the case of Reuters Ltd. v DCIT (63 taxmann.com 115) (assessee) has held that distribution fees received by the assessee from its distributor in India Reuters India Private Limited (RIPL) from distribution of news and financial information is not taxable in India as the assessee neither had dependent agent permanent establishment (Agency PE) nor Service permanent establishment (Service PE) in India. Therefore, distribution fee received by assessee was not taxable in India.

The assessee, a tax resident of United Kingdom, is in the business of providing worldwide news and financial information products (Reuter products). The assessee provides Reuters products to its subsidiary RIPL which in turn distributes the products to subscribers in India independently in its own name. For this purpose, the assessee had entered into a distribution agreement with RIPL. Separately, the assessee had deputed one of its employees to serve as Bureau Chief in India for RIPL.

The Assessing Officer (AO) taxed distribution fees @ 20% on gross basis under section 44D read with section 115A of the Income-tax Act. Against the order of the AO, the assessee filed objections before the Dispute Resolution Panel (DRP).

The DRP held that the assessee has an Agency PE in India as RIPL did business exclusively for the assessee and had authority to market assessee's products in India. The DRP further held that by virtue of deployment of the employee, the assessee has created service PE in India. Accordingly, the position of the AO was confirmed by the DRP. The assessee thereafter preferred an appeal before the Tribunal.

The Tribunal considered various clauses of distribution agreement and noted that RIPL did not have authority to negotiate and conclude contracts on behalf of the assessee. RIPL had entered into independent contracts with third party subscribers in India and did not act as an agent of the assessee. Substantial income of RIPL was earned from third party customers and no commission was received by it from the assessee under the distribution agreement. RIPL did not act wholly on behalf of the assessee as it was entering into contracts with subscribers in India independently. RIPL supplied news and information to the assessee on principal-to-principal basis. The Tribunal therefore held that RIPL did not constitute Agency PE in India. Separately, the assessee had deputed one of its employees to serve as Bureau Chief in India for RIPL. The AO held that by virtue of deployment of the employee, the assessee has created Service PE in India. The Tribunal noted that the said employee was responsible for co-ordinating the efforts of the reporting staff to investigate and cover stories for dissemination of news to printing and media outlets. His functions and duties had nothing to do with the

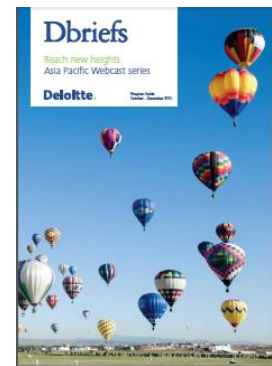
distribution agreement. The employee did not furnish services to RIPL leading to earning of distribution fees to the assessee. Therefore, the Tribunal held that employee deputed as Bureau chief did not create Service PE in India.

Upcoming Dbriefs – Register

BEPS: Implementation of Transfer Pricing Changes (Part 2: India and Southeast Asia)

On 8 December 2015 from 11:30 AM to 12:30 PM IST

As the OECD / G20 BEPS project has moved into the implementation phase, we will provide an update of domestic legislative activities and timelines to incorporate the various BEPS transfer pricing changes into specific domestic tax regimes. We will also cover harmonization efforts for transfer pricing documentation rules and requirements from local perspectives. In this Part 2 webcast, our focus will be on India and Southeast Asia. For more information, visit the [Dbriefs](#) page



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