

## Tax Alert | Delivering clarity

25 October 2019

### Delhi High Court admits the appeal of the life insurance company on whether transfer pricing provisions are applicable

Issue relating to applicability of transfer pricing provisions to an insurance company governed by a prescribed mode of computation of income, admitted by Delhi Court

On 20 September 2019, the Delhi High Court<sup>1</sup> admitted the taxpayer's appeal on applicability of transfer pricing provisions to a life insurance business which is governed by specific mode of computation of income under section 44 of the Act, read with the First Schedule to the Act.

#### Facts of the case

- The taxpayer, a joint venture between Max India Ltd. and New York Life International, LLC (NYLI) was engaged in the life insurance business and computed its income under section 44 read with First Schedule to the Act.
- Section 44 of the Act begins with a non-obstante clause and provides that profits and gains of an insurance business shall be computed in accordance with the rules contained in the First Schedule. Part A of the First Schedule deals with computation of profits of life insurance business<sup>2</sup>, Part B deals with computation of profits and gains of other insurance business.
- The tax officer made reference to the Transfer Pricing officer (TPO) for determining the ALP of the reported international transactions.
- The taxpayer entered into agreements with NYLI for obtaining various forms of short-term consultancy and assistance, the services to be rendered by the employees of NYLI and the remuneration was fixed. The taxpayer furnished comparability of rates under the Comparable Uncontrolled Price (CUP) method and claimed that its international transaction was at arm's length.
- The TPO did not accept the application of CUP as the most appropriate method as the consulting firms whose rates were cited in the TP study report, were only quotations and not actual rates, and hence not prices of uncontrolled transactions, thereby making a transfer pricing addition.
- The CIT(A) deleted the transfer pricing addition by holding that it was a case of receiving consultancy services and not secondment of employees on short assignments.
- Before the ITAT, one of submissions of the taxpayer was that the provisions of section 92 of the Act, determining the ALP of the international transaction, cannot be invoked by the tax officer for making the transfer pricing addition, since the taxpayer was engaged in the insurance business and its income was computed in accordance with section 44 read with the First Schedule.

---

<sup>1</sup> Max New York Life Insurance Company Ltd. v. ACIT (ITA 818/2019)

<sup>2</sup> The profits and gains of life insurance business shall be taken to be the annual average of the surplus arrived at by adjusting the surplus or deficit disclosed by the actuarial valuation made in accordance with the Insurance Act, 1938 (4 of 1938), in respect of the last inter-valuation period ending before the commencement of the assessment year, so as to exclude from it any surplus or deficit included therein which was made in any earlier inter-valuation period.

## Decision of the ITAT

- The ITAT<sup>3</sup> held that section 44 starts with a *non-obstante* clause *qua* the computation of income chargeable under the head 'interest on securities', income from house property', 'Capital Gains' or 'Income from other sources' etc. and that profits and gains of insurance business shall be computed in accordance with the rules contained in the First Schedule.
- The profits and gains of any business of insurance shall be computed in accordance with the First Schedule to the Act and the mandate of the First Schedule shall have an overriding effect over the provisions contained under the various heads relating to computation of income.
- The computation of income under each head of income is separately enclosed under Chapter IV, which contains not only the charging but also the computation provisions.
- Section 92, which is placed in a separate Chapter, (Chapter X), with the marginal note i.e. 'Computation of income from international transaction having regard to arm's length price', is the first section of the Chapter X. Section 92 shows that it is in addition to and distinct from the regular computational provisions contained in different parts of Chapter IV.
- For a company carrying on insurance business, section 44 simply substitutes the computation of income under specific heads and it has no role in respect of computation of determination of ALP of an international transaction under section 92.
- In section 44, the non-obstante clause has been inserted *qua* 'computation of income chargeable under the head 'Interest on securities', etc. and the legislature did not make all the provisions of the Act, including section 92, inapplicable for insurance companies.
- The ITAT held that the provisions of section 92 should apply to the taxpayer carrying on insurance business and that a two-staged computation is required to be prepared:
  - Firstly, by computing income under section 44 read with First Schedule in disregard to the provisions relating to computation of income under the specific heads of Chapter IV,
  - Secondly, by computing income in terms of section 92 by making addition on account of transfer pricing adjustment, if warranted.

## Decision of the Delhi High Court

The Delhi High court admitted the appeal on the applicability of transfer pricing provisions contained in chapter X of the Act to insurance business which are governed by provisions of section 44 read with the First Schedule of the Act for the purpose of computing its income.

## Our Comments

Section 44 read with the First Schedule of the I-T Act deals with method of computation of profit and gains of the insurance business. This is a special provision for the insurance business. The First Schedule to the Act provides that the profits and gains of life insurance business shall be taken with reference to the actuarial valuation and no adjustment, either addition or deduction, has been provided in Part A unlike computation of profits for general insurance business in Part B which are subject to adjustments.

Chapter X of the Act deals with 'computation of income from international transactions having regard to arm's length price'. This chapter does not expressly exclude insurance business; rather it gives a method for computation for determining arm's length price of international transactions

---

<sup>3</sup> ACIT (CLTU) v. Max New York Life Insurance company Ltd. (2017) 86 taxmann.com 239 (Delhi – Trib.)

between Associated Enterprises. The CBDT Circular 14 of 2001 mentions that that the transfer pricing regulations have been introduced to curb tax avoidance by abuse of transfer pricing. The taxpayer's appeal is scheduled for hearing on 22 April 2020 before the Delhi High Court.



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) for a more detailed description of DTTL and its member firms.

This material and the information contained herein prepared by Deloitte Touche Tohmatsu India LLP (DTTI LLP) is intended to provide general information on a particular subject or subjects and is not an exhaustive treatment of such subject(s). This material contains information sourced from third party sites (external sites).

DTTI LLP is not responsible for any loss whatsoever caused due to reliance placed on information sourced from such external sites. None of DTTI LLP, Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this material, rendering professional advice or services. This information is not intended to be relied upon as the sole basis for any decision which may affect you or your business. Before making any decision or taking any action that might affect your personal finances or business, you should consult a qualified professional adviser.

No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this material.

©2019 Deloitte Touche Tohmatsu India LLP. Member of Deloitte Touche Tohmatsu Limited