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Consideration received for access to reports prepared based on publicly available information is not taxable as royalty

The Mumbai Bench of the Indian Income-tax Appellate Tribunal (ITAT), rendered its decision that consideration received for granting online link to access reports (prepared based on information available in public domain), is not taxable as royalty as per the provisions of Article 12(3) of the India-Switzerland tax treaty

Facts of the case:

- The taxpayer¹ is a company incorporated and fiscally domiciled in Switzerland. The taxpayer is engaged in providing market research reports on the pharmaceutical sector to its customers at predetermined subscription prices.

The taxpayer collects, processes and utilises the data and information, particularly in the field of medicine and pharmaceuticals, for the delivery of reports through online IMS knowledge link.

- The taxpayer enters into agreements with its customers for providing the review reports (IMS reports), setting out the details of modules required to be accessed by the customers and the consideration for such services.

The IMS reports, based on module selected by the customers, are statistical database compilations, providing geo-economical data about a pharma molecule, providing insight into the connected issues relating to information and developments.

The licence access is a non-exclusive and non-transferable right.

- The taxpayer did not offer to tax in India, the consideration received from its customers for allowing the non-exclusive, non-transferable access to the database and IMS reports.
- During the audit proceedings for the Financial Year (FY) 2012-13, corresponding to Assessment Year (AY) 2013-14, the Assessing Officer ('AO') relying on the case of the Karnataka High Court² held that the consideration was taxable as royalty under the provisions of the Income-tax Act, 1961 ('ITA') as well as under the provisions of India-Swiss tax treaty.
- On appeal, the Commissioner of Income-tax Appeals [CIT(A)] upheld the order of AO.
- Aggrieved by the CIT(A)'s order, the taxpayer filed an appeal before the Mumbai Bench of the Income-tax Appellate Tribunal (ITAT).

¹ IMS AG (Now known as Iqvia AG) v. DCIT(IT) ITA No. 6445 / Mum / 2016 (Mumbai ITAT)

² CIT v. Wipro Ltd. [2011] 203 Taxman 621 (Kar. HC)

Decision of the ITAT:

- The ITAT noted that the jurisdictional High Court³ had affirmed the decision of the Authority of Advance Rulings⁴ (AAR) holding that, consideration for sale of business information reports (BIRs) did not qualify as royalty as per the provisions of Article 13(3) of the India-Spain tax treaty. The finding of the AAR as approved by the jurisdictional HC was on the following basis:
 - The BIRs were a standardised product of the taxpayer, which provided factual information (available in public domain) on various aspects such as the existence, operation, financial condition, etc.
 - The BIRs were accessible by any subscriber on payment of requisite price with regular internet access for which no particular hardware or software was required.
 - The copyright in the BIRs was neither licensed nor assigned by the taxpayer to its customers.
 - The transaction of sale of BIRs was similar to sale of a book, which did not involve any transfer of intellectual property or a book.
- Considering that the text of Article 12(3) of the India-Switzerland tax treaty was same as that of Article 13(3) of the India-Spain tax treaty, the ITAT held that the findings of the jurisdictional High Court⁵ were applicable in the current case for determining taxability of royalty.
- The ITAT following the decision of jurisdictional High Court⁵ held that the consideration received by the taxpayer for providing access link for IMS reports to its clients was not taxable as royalty as per the provisions of Article 12(3) of the India-Switzerland tax treaty.

Comments:

The ruling reaffirms the principle that consideration received for providing non-exclusive and non-transferrable online access to reports (prepared based on information available in public domain and without any transfer of copyright), are not taxable as royalty under Article 12(3) of the India-Switzerland tax treaty.

³ DIT(IT) v. Dun & Bradstreet Information Services India Pvt. Ltd. [2012] 20 taxmann.com 695 (Bombay HC)

⁴ Dun & Bradstreet Espana, S.A., In re. [2005] 272 ITR 99 (AAR)

⁵ DIT(IT) v. Dun & Bradstreet Information Services India Pvt. Ltd. [2012] 20 taxmann.com 695 (Bombay HC)



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