



Global Tax Update

India

Deloitte Tohmatsu Tax Co.

February 2016

1. Delhi High Court holds¹ that advertising, marketing and promotion (AMP) activity is not an international transaction

Tax authorities had made transfer pricing adjustment alleging that excess advertising, marketing and promotion (“AMP”) expenditure incurred by the Indian company vis-à-vis the comparable companies had created marketing intangible for its associated enterprise (“AE”), S company, for which it should have received arm’s length compensation from company S.

The High Court held that the alleged excess AMP expenditure incurred by the Indian Company cannot be regarded as an international transaction in the absence of any agreement or arrangement between the company and its AE. The High Court also held that the AMP expenditure incurred by the Indian Company benefited the Company itself in terms of its increased market share in India and year on year growth of its turnover. The High Court further held that the quantitative approach adopted by the tax authorities for determining the existence of an international transaction based on excess AMP expenditure was not in accordance with the Indian transfer pricing

regulations. Any benefit received by company S is only incidental. Further, the Court also held that the extent to which AMP spend of Indian Company has given rise to the benefit of brand is a complex exercise and cannot be ascertained in the absence of clear guidelines by the statute.

2. Electronic filing² of first appeal before Commissioner of Income-tax (Appeals) (CIT (A))³

As another significant step towards digitization and simplification of tax procedures in India, electronic filing of appeal before Commissioner of Income-tax (“CIT (A)”) is being made mandatory for taxpayers who are required to file the return of income electronically.

Electronic filing of appeal along with the documents relied upon before CIT (A) is expected to remove human interface, reduce paperwork and decrease the transaction cost for the taxpayer. It may also ensure consistent and error free service as validations will be inbuilt resulting in fewer deficient appeals. Online filing may also facilitate fixation of hearing of appeals electronically. With these changes, the burden of compliance on the taxpayers in appellate proceedings will be significantly reduced.

¹ Delhi High Court, ITA No. 110/ 2014 and ITA No. 710/ 2015; dated 11 December, 2015

² Press release dated 30.12.2015 by Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes (CBDT)

³ First appellate authority before whom an appeal can be preferred by the taxpayer against the assessment orders of the tax authorities

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