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Global Tax Update

India

Deloitte Tohmatsu Tax Co.

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1. Delhi High Court[1] holds Parliament cannot amend international treaty unilaterally; payment for data transmission services through a transponder is not "royalty" under tax treaties

The issue of taxability of payment for data transmission services by use of transponder has been a matter of debate before the Indian courts.

The Indian courts through various judicial pronouncements had held that unlike the domestic tax laws, under the tax treaty the income from use / right to use a process is considered as royalty only if it is a secret process and in view of this difference in the definition, payment for data transmission services through a transponder would not qualify as royalty income in India after applying the provisions of tax treaty[2]. The Indian government amended[3] the domestic tax provisions by inserting an explanation clarifying that the term "process" includes and always included transmission by satellite irrespective of whether such process was a secret process or not.

The Court in the judgment has held that no amendment to the domestic tax laws can be read in a manner so as to extend in operation to the terms of an international treaty. Where a definition of a term within the tax treaty exists, there is no need to refer the domestic tax laws, especially to deduce the meaning of the definition under the tax treaty and the ultimate taxability of the income under the tax treaty.

The Court held that the Parliament does not have powers to amend tax treaty unilaterally and held that payment for data transmission services through a transponder is not "royalty" under tax treaties. It has provided clarity around the treatment of payments for data transmission services (post the Finance Act, 2012 amendments) where tax treaties are applicable, especially considering that its earlier rulings on taxability of similar payments was rendered prior to these amendments.

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1 In the case of Director of Income-tax v. New Skies Satellite BV ITA 473 & 474/2012, and Director of Income-tax v. Shin Satellite Public Co. Ltd. ITA 500/2012 & ITA 244/2014, C.M. APPL.9724/2014,

2 Under Indian tax laws, provisions of tax treaty if more beneficial will supersede over domestic tax laws

3 Vide Finance Act 2012

2. Consideration paid in excess of net assets taken over under business transfer[4] arrangement could be treated as goodwill and depreciation could be allowed on the same

The Delhi High Court in its ruling[5] has held that the taxpayer was eligible to claim depreciation on goodwill arising on purchase of business as a going concern under a business transfer arrangement.

Deductibility of depreciation on goodwill recognized on acquisition of business, merger, demerger etc. have been matter of debate in India. Lately, certain judgments were announced allowing the depreciation on goodwill arising on account of scheme of amalgamation. This ruling is reinforcing the deductibility of depreciation on goodwill arising on purchase of business under a business transfer arrangement.

3. CBDT[6] directs tax officers to follow prescribed time limit for passing rectification orders

The CBDT has directed the tax authorities to follow the prescribed time limit of 6 months in passing the rectification orders. The CBDT has also directed to pass such orders in writing as mandated under the domestic tax laws[7].

CBDT came across instances where there have been undue delays in passing rectification orders and also the rectification orders were being passed by the tax authorities online without giving copy of the order to the taxpayer concerned. This was causing grievance to the taxpayers as they remained unaware of such orders and were unable to pursue the matter further, either in appeal or rectification, if required. This instruction comes as a relief to the taxpayers.

4. Visa on arrival for Japanese nationals

The Government of India has extended visa on arrival facility to Japanese nationals with effect from 1 March 2016. This facility may be used by Japanese nationals for not only tourism, conference and medical purposes but for business purposes also. This is a short term visa for period not extending 30 days.

For more details about eligibility, procedure for applying visa on arrival, conditions etc. please refer circular no. 467 dated 22 February 2016 issued by the Ministry of Home Affairs (Foreign Division), Government of India.

4 Generally referred to as slump sale in India

5 in Triune Energy Services Private Limited ITA Appeal Nos. 40, 189 of 2015

6 Central Board of Direct Taxes

7 vide Instructions No. 1/2016 and 2/2016, dated 15 February 2016

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