

India International Tax Updates

The Indian regulatory scenario has evolved manifold in response to many influences namely globalisation, technology, political and economic conditions.

The latest principle updates of Indian International tax structure can be briefly enumerated as follows:

International Tax:

- Long awaited justice A P Shah recommendation has been finally accepted by the government which clarifies ***inapplicability of Minimum Alternate Tax (MAT) to Foreign Institutional Investors(FIIs) and Foreign Portfolio Investors(FPIs)*** and has decided to make an appropriate amendment in the Income tax Act, 1961. By this very amendment, the government proposes to clarify that MAT provisions will not be applicable to FIIs/FPIs not having place of business/Permanent Establishment (PE) in India. The Committee has suggested that a Circular may be issued clarifying the said amendment.
- The recent judgement pronounced by ITAT Chennai in the case of ***Assistant Commissioner of Income tax(ACIT) Vs MM Forgings Ltd.***, states that there shall be ***no Withholding tax on Foreign agency commission as revenue failed to prove that expenses were taxable in India.***
- The recent judgement pronounced by ITAT Chennai in the case of ***Mc Kinsey & Company INC Italy Vs ADIT*** states that in view of Mutual Agreement proceedings settled between Government of India and Government of U.S.A, ***strategic consultancy services provided by assessee to its clients could not be held as Fees for technical services/Fees for included services under Article 12 of Indo-US Double taxation avoidance agreements (DTAA).***
- There is a landmark judgment for Oil and Gas industry as there has been a significant amount of litigation on the claim of Section 44BB of the Income tax act made by the Non resident service providers. The Supreme Court has laid down an important principle that ***if the services***

are inextricability linked with prospecting, extraction or production of mineral oil in India, then income arising therefrom is covered by section 44BB of the act rather than 44DD of the act.

- Recently introduced The Black Money (Undisclosed Foreign Income and assets) and Imposition of tax act, 2015, popularly called the “anti black money law” has been in limelight lately. In addition to applicability of such law to Indian residents, this ***law also applies to expatriates who by virtue of their presence in India acquire the status of Non -residents subject to certain conditions.***

Transfer Pricing

- As per the recent judgement pronounced by ITAT Delhi in the case of **Agnity India Technologies (P) Ltd Vs DCIT**, it has been held that ***Company providing low risk captive software services cannot be compared to high risk bearing companies.***
- As per the recent judgement pronounced by ITAT Pune in the case of **Dover India (P) Ltd. Vs DCIT**, it has been held that ***company providing consultancy services to financial institutions both within India and outside India cannot be compared to a company providing market support services.***
- As per the recent judgement pronounced by ITAT Delhi in the case of **JCB India Ltd. Vs ACIT**, it has been held that company ***which had suffered losses due to change in government’s policy, retrenchment of employees and other extra ordinary factors could not be selected as comparable for computing arms length price(ALP).***
- As per the recent judgement pronounced by ITAT Delhi in the case of **Perfetti Van Melle India (P) Ltd. Vs DCIT** it has been held that ***Transfer pricing Officer(TPO) could not make addition to assessee’s ALP in respect of AMP expenses incurred on behalf of associated enterprise(AE), by working out non-routine AMP expenses on basis of bright line test.***

- Central Board of Direct taxes (CBDT), government of India recently **signed 2 more Advance pricing agreements (APA)** one related to captive service development and the other relating to international transaction of an Indian headquartered MNC with overseas subsidiaries.
- CBDT signs its first unilateral rollback advance pricing agreement with a US Multinational company. As per recently introduced APA roll back scheme, APA is applicable to prior 4 years and future 5 years.
- In the recent High Court judgement of Vodafone and Shell, it has been held that issuing share capital to Associated enterprises(AE) at less than fair market value or Arms length price does not give rise to deemed loan to AE and no adjustment can be made with respect to such loan or deemed interest imputation on such deemed loan.