

# CORPORATE UPDATE

## DIRECT TAX

### INTERNATIONAL TAXATION

#### I. Tax Tribunal holds that guarantee fee charged by the parent entity is in the nature of Other Income rather than Interest, Fee For Technical Services (FTS) or Business Income

*Johnson Matthey Public Ltd. Company v. DCIT (Int. Tax) [2017] 88 taxmann.com 127 (Delhi Tribunal)*

Recently, the Tax Tribunal, Delhi Bench held that guarantee fee charged by the UK parent entity from its Indian subsidiaries should be characterized as 'Other Income' and does not fall under the definition of interest as provided by Article 12(5) of the DTAA.

Johnson Matthey Public Ltd. Company (JM Plc), a company incorporated in UK, provided guarantees to HSBC and Citibank, on a global basis outside India, including guarantee for the credit facilities extended to two of its subsidiaries in India. While filing its return of income in India, guarantee fee charged by JM Plc from the Indian subsidiaries, was offered to tax as interest @ 15% in terms Article 12(5) of the DTAA. However, the tax officer, pursuant to directions from the Dispute Resolution Panel (DRP), held such guarantee fee to be taxable in India @ 40% as 'Other Income' in terms of Article 23 of the DTAA.

Aggrieved by the order of the tax officer, JM Plc preferred an appeal before the Tax Tribunal wherein it was held as under:

- The Tax Tribunal highlighted that the act of the subsidiary in availing the loan in India has given JM Plc the occasion to charge the guarantee fee. Accordingly, it was held that income was accrued to JM Plc in India in terms Section 5(2) of the Income-tax Act.
- It was held by the Tax Tribunal that guarantee fee charged by JM Plc cannot be categorized as 'Interest' for the purpose of Article 12 of the DTAA. It was highlighted that the term 'Interest' indicates the payments made pursuant

## IN THIS ISSUE

### DIRECT TAX

#### INTERNATIONAL TAXATION

1. Tax Tribunal holds that guarantee fee charged by the parent entity is in the nature of Other Income rather than Interest, Fee For Technical Services (FTS) or Business Income

#### TRANSFER PRICING

1. Royalty for use of 'Dabur' brand upheld to be charged at the rate of 0.75 percent from foreign subsidiary

### INDIRECT TAX

1. Goods and Service Tax

### CORPORATE LAW

1. Companies (Amendment) Act, 2017 receives presidential assent

to a loan transaction. However, payment or re-payment pursuant to any loan to be qualified as "interest", necessarily has to be within the context of loan and shall relate to the parties, privy to such contract. In the instant case, JM Plc is a stranger to the privity of loan transaction between the banks and Indian subsidiaries. Accordingly, it was held that definition of interest provided under Article 12 of the DTAA does not stand extended to the payment of guarantee commission received by the JM Plc in India;

- Furthermore, it was held by the Tax Tribunal that global corporate guarantee that was entered into by the assessee is only for the limited purpose of securing loans to its subsidiaries and is not a regular business transaction. Accordingly, it was held that the corporate/bank guarantee recharge cannot be regarded as business profit in terms of Article 7 of the India - UK DTAA;
- As regards 'Fee for Technical Services' it was held that such payment does not relate to the tendering of any technical or consultancy service and does not satisfy the make available clause as provided under Article 13 of the DTAA. Accordingly, such guarantee charge cannot be taxed as FTS in India;
- Furthermore, since guarantee fee charged from the Indian subsidiaries is not dealt by any other Article of the DTAA, the same should be covered within the ambit of other income under Article 23 of the DTAA;

Therefore, the guarantee fee charged by a foreign parent entity, for providing guarantee to banks to extend credit facilities to its subsidiary in India, must be characterized as income from other sources.

Furthermore, in the context of instant case, Article 23(3) of the India - UK DTAA provides the right of taxation of such income, to the source state. Accordingly, such guarantee fee charged by JM Plc was held to be liable for tax in India @ 40% in terms of the provisions of the Act.

However in case of certain other DTAA's, right to tax over the Other Income (which is not dealt by any other article of such DTAA) lies with the resident state, and as such guarantee fee being characterized as other income may not be liable for tax in India under the provisions of such DTAA's.

*(Contributed by: Mr. Anuj Mathur/ Ms. Purnima Bajaj)*

## **TRANSFER PRICING**

### **I. Royalty for use of 'Dabur' brand upheld to be charged at the rate of 0.75 percent from foreign subsidiary**

#### **Dabur India Limited v. Pr. CIT [TS-979-HC-2017(Del)]**

In a recent case of Dabur India Limited ("Dabur India"), the Hon'ble High Court of Delhi ("HC") affirmed Tax Tribunal's decision that royalty for brand 'Dabur' should continue to be charged from its foreign subsidiary in Dubai at the rate of 0.75%, dismissing the appeal filed by the assessee.

On the facts of the case, the assessee, Dabur India used to provide technical know-how and use of its brand name "Dabur" by a UAE based unrelated entity Redrock under an agreement. Subsequently, Redrock became 100% subsidiary of the assessee and its name was changed to Dabur International Ltd., after such change it ceased to pay royalty to the assessee.

During the transfer pricing assessment proceedings for AY 2006-07, the transfer pricing officer, considering the agreement as was entered between the assessee and Redrock, computed royalty chargeable from Dabur International Ltd. at 4%. The TPO, in doing so, clubbed the rates of royalty at 3% being the royalty as was payable on items manufactured with the support and technical know-how of the assessee and at 1% of the products manufactured, without the support of the assessee but marketed under the "Dabur brand". Accordingly, transfer pricing adjustment was made. In appeal, CIT(A) reduced royalty rate to 2% taking the average of the two categories of transactions.

The assessee filed an appeal before the Tax Tribunal, which noted that during the relevant year the foreign subsidiary had manufactured FMCG products which were different from the Indian products having different raw material and medium used in the manufacture. However, the Tax Tribunal noted that the brand name of the assessee was being used by its foreign subsidiary. Accordingly, the Tax Tribunal reduced the royalty rate to 0.75%.

The assessee thereafter filed an appeal before HC and contended that absence of consideration for the use of the Dabur brand cannot amount to an international transaction. Further, assessee urged that for making any lawful adjustments, the tax authorities cannot necessarily consider the history of the assessment of a party as constituting a comparable.

Rejecting assessee's submission, HC stated that accepting the argument of the assessee would imply that the omission by a party to indicate, an initial income, which was concededly being shown in the past as an international transaction, cannot be scrutinized at all. The HC further stated that the assessee was only to explain why its foreign subsidiary was permitted to use the Dabur brand without consideration as royalty was charged in the past years. Thus, the HC found no infirmity with the order of Tax Tribunal and dismissed assessee's appeal, thus upholding inclusion of royalty at 0.75% for use of brand name.

*(Contributed by: Ms. Shweta Kapoor)*

## **INDIRECT TAX**

### **GOODS AND SERVICE TAX (GST)**

Some of the key developments during the month of December, 2017 have been highlighted herein below:

#### **I. Changes in Return filing dates**

- Vide Notification No.67/2017-Central Tax, dated 21st December, 2017, due date of filling GST ITC-01, for the Month of July to November, 2017 have been extended from 31st October, 2017 to 31st January, 2018. Earlier due date of filling the same for the period July to September, 2017 was 31st October, 2017.

- Vide Notification No.68/2017-Central Tax, dated 21st December, 2017, due date of filling GSTR-5 return for non-resident taxable person for the month of July to December, 2017 have been extended from 11th December, 2017 to 31st January, 2018.
- Vide Notification No.69/2017-Central Tax, dated 21st December, 2017, due date of filling GSTR-5A return for online information and database access or retrieval services from a place outside India to a non-taxable online recipient is 31st January, 2018.
- Vide Notification No.71/2017-Central Tax, dated 29st December, 2017, due dates for filling GSTR-1 on quarterly basis for registered persons having an aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year is tabulated as under:

S.No	Quarter for which the details in FORM GSTR-1 to be furnished	Time period for furnishing the details in FORM GSTR-1
1.	October - December, 2017	15th February, 2018
2.	January - March, 2018	30th April, 2018

- Vide Notification No.72/2017-Central Tax, dated 29st December, 2017, due dates for filling GSTR-1 on monthly basis for registered persons having an aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year is tabulated as under:

S.No	Months for which the details in FORM GSTR-1 are furnished	Time period for furnishing the details in FORM GSTR-1
1.	December, 2017	10th February, 2018
2.	January, 2018	10th March, 2018
3.	February, 2018	10th April, 2018
4.	March, 2018	10th May, 2018

## II. Other Changes

- Vide Notification No.73/2017-Central Tax, dated 29st December, 2017- It has been provided that any registered person fail to furnish return in FORM GSTR-4 (taxpayers opting Composition scheme) within due date, late fee in excess of twenty five rupees for every day during which such failure continues has been waived.

Further, where the total amount of tax payable in the said return was nil, the late fee shall be reduced to INR 10 towards CGST & SGST each.

- Vide Notification No.74/2017-Central Tax, dated 29th December, 2017- Concept of E-way Bill shall be applicable w.e.f. 1st February, 2018.
- Vide Notification No.01/2018-Central Tax, dated 01st January, 2018, the Taxpayers who are Manufacturers and opted to pay under opting composition scheme are required to pay tax at the rate of 1% of the turnover amount instead of 2% prescribed earlier. Furthermore, it has been clarified that turnover means turnover of taxable supplies of goods.

*(Contributed by: Mr.Shashank Goel/Mr.Karan Chandna)*

## **CORPORATE LAW**

### **I. Companies (Amendment) Act, 2017:**

The Companies (Amendment) Act, 2017 has received the assent of the President on 3rd January, 2018 and it shall come into force on such date as the Central Government may by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of the Act. Earlier, the Bill was passed by the Rajya Sabha on 19th Dec, 2017 and by Lok Sabha on 27th July, 2017.

Details of the amendments as contained in the Amendment Act have already been commented upon in the relevant Bill, in the Corporate Update issued for October, 2017.

No change has been noticed from the provisions as comment in the Bill and the Act.

# IMPORTANT DATES TO REMEMBER

Particulars	Date
Deposit of TDS for the month of January, 2018	Feb 07, 2018
Date of deposit and filing of GSTR-3B for the month of December, 2017	Jan 20, 2018

For further information, please contact:

**Mr. C. S. Mathur**

Tel: 91-11-47102200 Email: [csm@mpco.in](mailto:csm@mpco.in)

**Mr. Vikas Vig**

Tel: 91-11-47103300 Email: [vvig@mpco.in](mailto:vvig@mpco.in)

**Ms. Surbhi Vig Anand**

Tel: 91-11-47102250 Email: [surbhivig@mpco.in](mailto:surbhivig@mpco.in)

**Main Office**

New Delhi  
1 A-D, Vandhna  
11, Tolstoy  
Marg  
New Delhi-110  
001

**MPC & CO  
LLP**

Pune  
Vadodara

**Associates**

Ahmedabad  
Bangalore  
Chennai  
Hyderabad  
Mumbai

## DISCLAIMER

The contents of this document are for information purposes and general guidance only and do not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice.

No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication and Mohinder Puri & Co. disclaims all responsibility for any loss or damage caused by errors/ omissions whether arising from negligence, accident or any other cause to any person acting or refraining from action as a result of any material in this publication.