Qualification of Taxable Entities & Treaty Protection – Issues for Panel Discussion

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PRAMOD KUMAR, ITAT MEMBER
GAUTAM DOSHI, ADAG
GAUTAM NAYAK, CNK & ASSOCIATES LLP

JUDICIAL DECISIONS

•Linklaters LLP (ITAT Mumbai) 40 SOT 51 •A.P. Moller (ITAT Mumbai) 64 SOT 147	vs.	Schellenberg Wittmer (AAR) 210 Taxman 319
Non Resident Partnership firm (fiscally transparent) would be eligible to the treaty benefits		Non Resident Partnership firm (fiscally transparent) would not be eligible to the treaty benefits

- P & O Nedlloyd 369 ITR 282 (Calcutta)

Issue 1

- Out of the 6 approaches commented upon to resolve the conflict of entity qualification, which approach should India adopt to solve its problems?

Issue 2

- An alternative approach - without MFN clause, can India adopt a unilateral clause for its treaties?
  - Can the meaning of the term '**<u>liable to tax</u>**' be notified u/s 90(3)?
    - The Notification can adopt the language from the India-UK or India-USA DTAA

- What would be the impact?

Issue 3

- Should the US system of check-the-box election (‘election system’) – option to be treated as transparent or opaque – be adopted by India for Indian MNCs?

- Would it be advantageous to Indian MNCs?

Issue 4

- Can the meaning of the term '**income tax paid**' be notified to include underlying tax credit in foreign countries?

Issue 5

- Is DDT a creditable tax?
  - Who suffers the DDT?
    - Company vs. Shareholder? Who should get the credit?

Issue 6

- In case of specific trusts, can beneficiary avail the treaty benefits?

Issue 7

- In case of discretionary trusts, can the beneficiaries avail the treaty benefits on income distributed in the year in which income arises?
  - Kamalini Khatau, Jyotendrasinhji, Estate of Late HMM Vikramsinghji of Gondal – SC
- Does the position change, if the income is distributed after a few years from the year in which the income arises?