IFA News Letter
India Branch - Western Chapter

Volume No 1 / 2 - July – September 2012

Chairman Speaks

As we move deeper into this financial year it is becoming increasingly clear that the developments surrounding International Tax is one of the few key factors having a clear impact on business & investments in India, and in particular on the perception of foreign investors doing business in India. The pace of developments in the meantime continues which is probably most visibly evident in the context of GAAR.

Thanks to the overwhelming support from all, the two day International Tax conference on 6 & 7 July in Mumbai was extremely well received. The deliberations were extremely stimulating & enriching and we are indeed grateful to all the eminent speakers for having shared their rich practical experience with us.

As we move forward in our endeavour to achieve thought leadership, I would request each one of you to send us your thoughts, ideas & suggestions which would help us serve you better.

Inside this Issue

Hearty Congratulations!!!

On 21st April 2012, the Executive Board of Central IFA, Netherlands unanimously nominated Mr. Porus F Kaka from India as the next Worldwide President of the International Fiscal Association. Mr. Kaka is the first person from Asia to receive this prestigious recognition. Upon confirmation by the general assembly Mr. Kaka will be President Elect till the end of the Copenhagen Congress in 2013 when his term will begin. One of his first duties will be as President of IFA at the Mumbai Congress in 2014.

On 6th July 2012, the Executive Committee of India Branch unanimously elected Mr. Sushil Lakhani as the Chairman and Mr. Rahul Garg as Vice Chairman of the India Branch.

Courts Speak

I. Indian Rulings

Siddharth Banwat, Tirthesh Bagadiya
Chartered Accountants

1. Roxar Maximum Reservoir Performance WLL (AAR[1])

A composite contract for installation & commissioning cannot be split so as to exempt the profits from offshore supply of goods

The Applicant had a contract with ONGC for "services for supply, installation and commissioning of 36 manometer gauges" for enabling the latter in its Indian operations. The AAR held that though in **Ishikawajima-Harima Heavy Industries Company Ltd. vs. DIT**, the Supreme Court had adopted a dissecting approach for a composite contract, this cannot be followed in view of the verdict in **Vodafone International Holdings vs. UOI (SC)** where it was held that a transaction had to be "looked at and not looked through" and seen as a whole. A contract for sale of goods differs from a contract for installation and commissioning of a project. The tests relevant for considering where the title to the equipment passed would not be relevant while construing the terms of a supply and erection contract.

2. DIT vs Guy Carpenter & Co Ltd (Delhi High Court[2])

Commission/brokerage received by an international reinsurance broker not taxable as 'fees for technical services' under Article 13 of India-UK DTAA; To "make available" technical knowledge, mere provision of service is not enough, the payer must be enabled to perform the service himself

The assessee, a UK based reinsurance broker, received commission from several Indian insurance companies for arranging reinsurance contracts. The Assessing Officer ('AO') held that the commission was assessable to tax in India as 'fees for technical services' ('FTS') u/s 9(1)(vii) of the Indian Income Tax Act, 1961 ('Act') read with Article 13 of the India-UK tax treaty. The Tribunal held that in order to fit the terminology "make available" in Article 13, mere provision of technical services is not enough but the technical knowledge must remain with the payer, and he must be equipped to independently perform the technical function himself without the help of the service provider. The High Court held that the Tribunal's conclusions are based on an assessment of the factual matrix and does not give rise to a substantial question of law.

3. EKL Appliances Ltd (Delhi High Court[3])

Transfer Pricing: TPO cannot examine the necessity of, or rewrite, the transaction; OECD Guidelines be relied upon as they have been recognized in India's tax jurisprudence

The assessee entered into an agreement pursuant to which it paid brand fee/ royalty to an associated enterprise. The Transfer Pricing Officer ('TPO') disallowed the payment on the ground that as the assessee was regularly incurring huge losses, the know-how/ brand had not benefited the assessee and so the payment was not justified. The High Court held that the "transfer pricing guidelines" by OECD make it clear that barring exceptional cases, tax administration cannot disregard the actual transaction or substitute other transactions for them. Further examination of a controlled transaction should ordinarily be based on transaction as they have been actually undertaken by the associated enterprises. The guidelines discourage re-structuring of legitimate business transactions except in particular scenarios such as where (i) the economic substance of a transaction differs from its form and (ii) the form and substance of the transaction are the same but arrangements made in relation to the transaction, viewed in their totality, differ from those which would have been adopted by independent enterprises behaving in a commercially rational manner. The OECD guidelines should be taken as a valid input because, in a different form, they have been recognized in India's tax jurisprudence. It is well settled that the revenue cannot dictate to the assessee as to how he should conduct his business. Even Rule 10B does not authorize disallowance of expenditure on the ground that it was not necessary or prudent.

[1] TS-301-AAR-2012
[2] ITA No.202/2012
[3] ITA Nos. 1068/2011& ITA Nos. 1070/2011

The court held that, even on merits the disallowance of the entire brand fee/ royalty payment was not warranted. The assessee has furnished copious material and valid reasons as to why it was suffering losses continuously.

4. Armayesh Global vs ACIT (Mum[4])

Payment made to overseas commission agent – whether managerial fees or not

The taxpayer was using the services of an overseas commission agent for executing export sales in several other countries. The agent was paid commission only on actual export sales executed for customers routed through it, without deduction of tax at source. The Tribunal held that the overseas agent did not render any service in India and had no Permanent Establishment in India. The orders were sent directly by the foreign purchasers and the payment for export was received by the taxpayer in foreign currency directly from foreign purchasers and the commission was paid to the overseas agent thereafter as a percentage of sales in terms of the agency agreement. The payment made to overseas agent was not for any technical / managerial services. Therefore, no part of the commission paid to the overseas agent could be said to be chargeable in India and therefore, no disallowance of such expenditure was called for.

5. DDIT vs M/s Sumitomo Mitsui Banking Corporation(Mumbai ITAT - SB[5])

While interest paid by PE of foreign bank to H.O. is deductible in hands of PE, same interest is not taxable in hands of H.O.

The assessee, a Japanese bank, carrying on business through a PE in India, paid interest to its Head Office & other branches.

The Tribunal held that in view of all the facts of the case and the legal position mandating from the interpretation of the relevant provisions of domestic law as well as that of the treaty, although interest paid to the head office of the assessee bank by its Indian branch which constitutes its PE in India is not deductible as expenditure under the domestic law being payment to self, the same is deductible while determining the profit attributable to the PE which is taxable in India as per the provisions of Article 7 of the tax treaty read with paragraph 8 of the protocol. The said interest, however, cannot be taxed in India in the hands of assessee bank, being payment to self which cannot give rise to income that is taxable in India as per the domestic law. Even otherwise, there is no express provision contained in the relevant tax treaty which is contrary to the domestic law in India on this issue. This position applicable in the case of interest paid by Indian branch of a foreign bank to its Head Office equally holds good for the payment of interest made by the Indian branch of a foreign bank to its branch offices abroad as the same stands on the same footing.

[4] ITA No. 8822/Mum/2010
[5] ITA No. 5402/Mum/2006, 5458/Mum/2006, 3211/Mum/2007

II. Overseas Rulings

Isha Sekhri, Saurabh Arora
Chartered Accountants

1. CSARS vs Tradehold Ltd (Supreme Court of South Africa) [6]

Article 13(4) of South Africa-Luxembourg Tax Treaty includes within its ambit capital gains derived from the alienation of all property including deemed disposal of assets

Tradehold Ltd ('Tradehold'), a listed company resident in South Africa ('SA') had only one significant asset, ie investment in local subsidiary company. The Double Tax Agreement ('DTA') between South Africa and Luxembourg deemed a company resident in both countries to be resident exclusively in the country where the effective management ('POEM') of that company is located. In 2002, the effective management of Tradehold was migrated to Luxembourg. However, as per the Domestic Tax Laws provided that a Company would be resident in SA by virtue of its incorporation in SA. In 2003, the definition of 'resident' was amended to exclude persons deemed to be exclusively resident in another country by virtue of a DTA. This amendment combined with the DTA resulted in Tradehold becoming exclusively resident in Luxembourg and ceasing to be resident in South Africa.

The Commissioner contended that on ceasing to be resident, Tradehold deemed to have disposed of its investment in its subsidiary resulting in capital gains. Article 13(4) of the DTA provides that gains from alienation of property other than that referred to in earlier paragraphs shall be taxable only in the State of residence. The Commissioner's argument was that Article 13(4) of the DTA did not include deemed disposals since alienation refers to an actual disposal and not a fictional / deemed disposal.

[6] 2012 ZASCA 61

The Court found that the term 'alienation' should be given a wide meaning and should be interpreted having regard to the purpose of the DTA. It applies to capital gains that arise from both actual and deemed alienation / disposal of property.

2. Spanish Case Law on PE, Spanish Central Tax Court (Name not available since the Spanish Courts do not provide the names)

A Multinational Group ('MNE Group') manufactured goods outside of Spain and sold them in Spain and intended for the Spanish Subsidiary ('S Co') to act as commission agent for an Irish Principal Selling Company ('I Co' or 'Taxpayer') such that I Co would engage in sales and marketing activity.

Based on operational realities, the Spanish Central Tax Court ('SCTC') determined that S Co created a PE for I Co in Spain under two theories:

A. I Co had a fixed place of business in Spain because the operational facilities and the business activities of S Co were performed in Spain. The marketing and sales activities carried out in Spain by S Co were substantial in nature, and not merely preparatory or auxiliary and hence attributed certain activities to the PE. The SCTC noted that until 1995, the sales and marketing activities were performed directly by S Co, but thereafter such responsibilities were transferred to I Co at which time S Co became a commission agent. While there was a change in form, there were no substantial changes in the substance of the operations of the group and a number of facts including lack of clarity on which company employed staff, contracted with certain clients, commercial documentation, invoicing, identity of the provider of products or services and bank accounts being comingled etc, reinforced their conclusion.

B. Alternatively, the SCTC determined that the existence of a PE could be established because S Co was sufficiently empowered to sign contracts in the name and on behalf of I Co acting as a dependent agent under the Tax Treaty. That dependency was not limited to accessory activities, it was a stable relationship, and I Co was the only client of Spanish Co.

The SCTC allocated all of I Co's sales in Spain to its PE in Spain for purposes of calculating the taxable base of its Spanish income tax liability and specifically, ruled that the sales made through I Co's website were includible in the Spanish taxable base. Although the website server was not located in Spain, the SCTC held that Spain had entered into a reservation with respect to that article of the Model Convention.

3. Fundy Settlement v. Canada (also known as St. Michael Trust Corp. and Garron Family Trust)[7]

The Supreme Court held that two Barbados trusts with Canadian beneficiaries are resident in Canada because the trusts' central management and control is in Canada, although the trustee resides in Barbados.

A Barbados corporation was the trustee of two trusts, having Canadian resident beneficiaries. The trusts disposed of shares they owned in two Ontario corporations. The purchaser withheld tax from capital gains of the trust on the sale of the shares. The trusts sought the refund of taxes withheld based on an exemption from Canadian capital gains tax under the Canada-Barbados tax treaty [Paragraph 13(4) where tax would only be payable in the country in which the seller was resident]. The Revenue decided against the taxpayers, finding that the two trusts were resident in Canada because their central management and control was in Canada.

The Court found that based on many similarities between a trust and a corporation, applying the central management and control test in determining the residence of a trust could be justifiable. Accordingly for tax purposes, the residence of a trust should be determined based on where the central management and control of the trust actually resides. The residence of the trust is not always that of the trustee. The Court found that the trusts are resident in Canada, since the central management and control of the trusts was exercised by the main beneficiaries, who are resident in Canada. Further, the Court found that the trustees played a limited role in the functioning of the Trust.

[7] 2012 SCC 14

International Tax Updates – India and Global

I. India

1. India has signed a revised tax treaty with Kingdom of Norway on February 2, 2011 and notified the same on June 19, 2012. The revised tax treaty is applicable to income arising in FY 2012-13 and onwards. The treaty provides for exchange of information between the two nations including banking data. Further as per the Limitation of Benefit (LOB) clause, the treaty benefit would be denied if the main purpose of the transaction or creation or existence of residence is to avail the treaty benefit.

2. India has signed a revised tax treaty with Nepal on November 27, 2011 and notified the same on June 12, 2012. As per the revised treaty, Article related to Exchange of information has been revised on similar lines to the treaty with Norway. Further, the revised treaty seeks to expand the scope of agency permanent establishment ('PE') and reduce the threshold period for formation of service PE to 90 days. Further as per the Limitation of Benefit (LOB) clause, the treaty benefit would be denied if the main purpose of the transaction or creation or existence of residence is to avail the treaty benefit.

3. India and Bahrain signed a Tax Information Exchange Agreement on June 1, 2012. The agreement seeks to incorporate provisions for effective exchange of information, including banking information between the tax authorities of the two countries.

4. India and Netherlands have signed the protocol to amend Article 26 of the Indo-Netherlands DTAA to bring it in line with the international standards & facilitate exchange of tax and banking related information.

5. India has notified amendments to Article 11 of the India-Japan DTAA. As per Article 11(3), interest arising in India and derived by Central Bank or any financial institution wholly owned by Government of Japan, is not taxable in India. The amendment is effective from April 1, 2012.
   (Source for points 1 to 5: Notification No. 19/2012 [F. NO. 506/69/81-FTD.1] dated May 24, 2012)

6. Mutual Agreement between India and Swiss Confederation has been signed for Liberal Interpretation of Identity Requirements for Providing Information under the tax treaty.
   (Source: PIB Press Release dated 30th April, 2012)

7. The Government of India has signed on 3rd Day of November, 2011 a Tax Exchange Information Agreement with the Government of Jersey. The same has been notified on 10th Day of July, 2012 and shall come into force on 8th Day of May, 2012.
   (Source: Notification No. 26/2012 [F. No. 503/6/2008-FTD-I])

8. India has signed a tax treaty with Tanzania on May 27, 2011 and notified the same on February 16, 2012. It shall come into force on April 1, 2012.
   (Source: Notification No.8/2012-FT&TR-II[F.NO.503/02/2005-FTD-II]/S.O. NO.303(E)

9. India has signed a revised tax treaty with Malaysia on May 9, 2012.

II. Global

1. OECD Issues Draft Guidelines Pertaining to Intangibles

OECD has released a discussion draft clarifying issues specific to intangibles involving multinational enterprises. The OECD issued the interim draft after consulting with the

business community, in order to invite public comment from all stakeholders involved by September 14, 2012.

2. The EU and double non taxation

On 29 February 2012, the European Commission announced that it commenced a fact-finding public consultation in order to establish evidence concerning double non-taxation ('DNT'), both within the EU and in relation to non-EU countries. The Consultation Paper lists a number of ways to tackle cases of DNT such as legislative approaches (unilaterally, bilaterally or through EU directives), increased information exchange and/or exchange of best practices.

3. UK releases consultation Document on GAAR

The HMRC has released a Consultation Document on GAAR with comments invited till 14 September 2012. The intention is that GAAR should only apply to artificial and abusive arrangements and should, therefore, protect "the centre ground of tax planning" and will not affect HMRC's right or ability to challenge the effectiveness of avoidance schemes using normal procedures, such as technical challenges and targeted anti avoidance rules.

4. Australia - Transfer pricing law changes introduced

On 24 May 2012, Cross-Border Transfer Pricing Bill 2012 was introduced. The new transfer pricing rules will apply to transactions with treaty countries for income years starting on or after 1 July 2004. The changes are intended to 'clarify' and confirm the Australian Taxation Office's long standing and highly controversial view that Australia's tax treaties provide a separate and unconstrained taxing power.

5. Australia - Consultation on potential thin capitalization changes recommended

A list of potential thin capitalization changes was made public in the Business Tax Working Group's final report on the tax treatment of losses released on 13 April 2012.

6. Australia releases Guide on for Taxpayers "Investigating tax effective arrangements"

The Australian Tax Office has issued a comprehensive guide explaining what constitutes a tax avoidance scheme. It is pointed out that a tax planning arrangement that goes beyond the policy intent of the law and involve deliberate approaches to exploit the tax system is a tax avoidance scheme. It is emphasized that these schemes are not limited to the 'too good to be true' type of arrangement but can be more sophisticated. Examples are given of typical "tax avoidance schemes" which fall foul of the law. For more information, please visit:

http://www.itatonline.org/info/index.php/what-is-a-tax-avoidance-scheme-aus-tax-office-explains-law/

7. Tax Treaty signed between Mauritius and Kenya

On 7 May 2012, Mauritius signed a tax treaty and an Investment Promotion & Protection Agreement with Kenya.

Experts Speak

Advance Rulings – Recent Trends

Naveen Aggarwal, Naveen Kumar Gupta, Shrey Khanna
Senior Tax Professionals

"The tax each individual is bound to pay ought to be certain, and not arbitrary." These words were immortalised in the 1700s by Adam Smith in his *magnum opus* - 'The Wealth of Nations'. Today, this maxim of taxation (one of Smith's four others) is as relevant for legislators and administrators as it was three centuries ago. This is because disputes between taxpayers and tax authorities have been increasing with over Rs. 4.36 lakh crore of income taxes locked in dispute in about 259,000 cases as on 31 December 2011[8].

Evolution

About nineteen years have passed since the concept of advance rulings was first introduced by Finance Act 1993 when it was applicable only to non-residents. The law was subsequently amended in 1998, 2000 and 2003 to include within its ambit public sector companies and transactions undertaken or proposed to be undertaken by a resident with a non-resident. Since then, only Finance Act 2012 has amended these provisions to include from 1 April 2013 a determination on whether an arrangement proposed to be undertaken by a resident / non resident is an impermissible avoidance arrangement under General Anti Avoidance Rules ('GAAR').

Decisiveness

One of the primary reasons for approaching the Authority for Advance Rulings ('AAR') is the certainty of its decision. The letter of the law is clear in as much as Section 245S of the Income-tax Act, 1961 ('the Act') provides for an advance ruling to be binding on the applicant, as well as the tax authorities, in relation to the specific facts and circumstances of the transaction, on which the ruling is sought. Also the absence of an appellate procedure against advance rulings in the Act reinforces the finality intended by legislators.

Yet, a recent trend of challenging AAR decisions is emerging. Applicants as well as tax authorities are relying on certain provisions in the Indian Constitution to approach High Courts and the Supreme Court[9] on grounds of irreparable loss and injury resulting from an infringement of their rights.

This trend seems to have begun when a French bank[10] challenged the order of the AAR before the Supreme Court in 2001. In an unexpected twist to the tale, the case ended with the AAR application finally being withdrawn, but the trend continued with the filing of special leave petitions by tax authorities in the case of Morgan Stanley and more recently, in E*Trade Mauritius.

Not to be outdone, even taxpayers began approaching the Apex Court in cases such as Ishikawajima-Harima Heavy Industries Ltd and Foster's Australia Ltd. More recently, a host of cases[11] came up for hearing at the Supreme Court on 16 April 2012 and while the proceedings continue, there are high expectations that the Supreme Court will decide on the finality of advance rulings once proceedings conclude.

While there is a school of thought gaining ground that one level of appeal is necessary against AAR decisions so that any patent infirmity in the orders can be addressed; for the moment all eyes are on the Apex Court.

Restrictions on hearing certain matters

Alongside the restrictions imposed on applicants desirous of obtaining a ruling, the AAR is not permitted to adjudicate on matters enumerated in Section 245R of the Act. These comprise matters already pending before income tax authorities, relating to transactions designed *prima facie* to avoid tax and matters involving determination of fair market

[8] Finance Minister's Speech at the 28th Annual Conference of Chief Commissioners and Director Generals of Income Tax at http://pib.nic.in/newsite/erelease.aspx?relid=84806

[9] Article 226 (writ petition before High Courts) and Article 136 (special leave petition before Supreme Court)

[10] Société Générale vs CIT [251 ITR 657] (SC)

[11] Columbia Sportswear, Amiantit International Holding Ltd, E*Trade Mauritius, International Hotel Licensing Company, Honeywell Technologies, Seagate Singapore, Compagnie Financière Hamon, Cairn UK Holdings Ltd, Royal Bank of Canada, Hyosung Corporation and UAE Exchange Centre (Source: http://causelists.nic.in/scnew/archive/2012/apr/om16042012)

value of any property. While positions on many of these issues were seemingly conclusive, recent decisions of the AAR have unsettled this position. Take for instance, the meaning of the word, 'already pending' – a concept whose purpose is to avoid duplication of proceedings under law in order to prevent taxpayers from obtaining potentially conflicting decisions from different authorities on the same matter. So far the accepted position was that unless the tax authorities have questioned the taxpayer's return of income, the matter was not considered to be 'pending'. However, a recent AAR decision[12] has widened 'already pending' to include even those situations where applicants have filed the return of income - a view diametrically opposite from some of the AAR's earlier decisions[13].

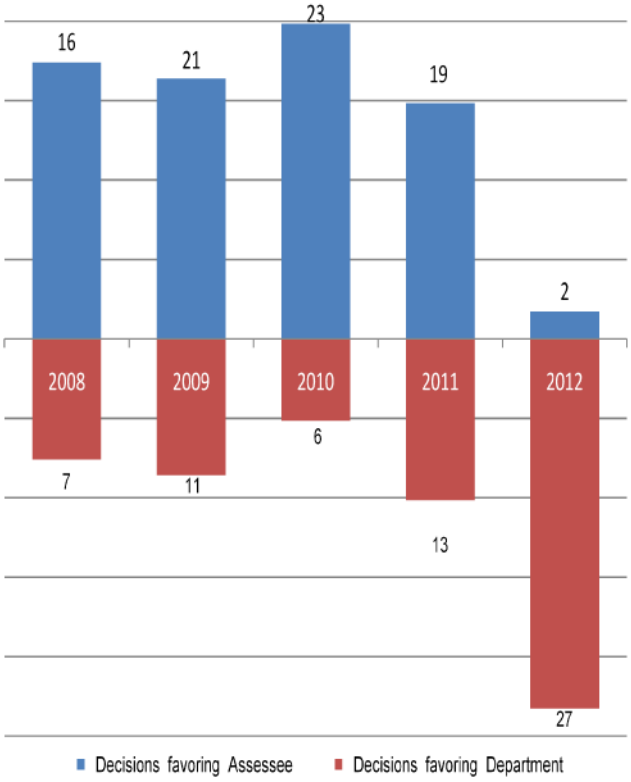
What concerns taxpayers is that going forward; such interpretations would put severe restrictions on non residents to obtain advance rulings where they have already filed their return of income.

Dealing with vexatious issues

Taxation, especially international taxation is never short of disputes. In fact with the increasing complexity of business, the list of issues is only rising. Adding to this list is a set of decisions by the AAR where ironically, the 'look at' test (prescribed by the Supreme Court in its recent verdict in Vodafone) has been applied to rule against taxpayers. Consider the case of Z Mauritius, where sale of compulsorily convertible debentures was re-characterised as interest income taxable under both the domestic law and tax treaty. Another recent trend relates to decisions[14] in the Engineering, Procurement and Construction (EPC) sector, where offshore supplies in composite contracts for installing and commissioning turnkey projects was held to be taxable in India - a significant departure from one of the landmark decisions of the Supreme Court on this subject[15].

No discussion on vexatious issues is complete without reference to the controversy around software taxation. Apart from the large number of conflicting decisions on this subject by different benches of Tribunals (and now even High Courts), recent decisions of the AAR have further complicated matters. Consider the facts of Acclerys K.K.[16] where the applicant was selling software products to end-users through an independent re-seller - facts that were similar to those in Dassault Systems K.K.[17] Notwithstanding the similarity in facts (and even the tax treaty involved), the AAR took two completely divergent views, characterising payments in the former to be taxable as royalty as against non-taxable business income in the latter.

One look at the figure below and a sharp decline in decisions favouring the applicant from 2011 onwards is evident.



Source: Decisions uploaded on http://www.aarrulings.in as on 26 June 2012

As shown in the table below, the AAR has adjudicated in favour of applicants on a number of critical issues in the recent past - such as benefit under the 'Most Favoured Nation' clause in tax treaties[18], share transfer under business re-organisation at nil consideration[19] and even availability of Mauritius treaty benefits[20].

[12] SEPCOIII Electric Power Construction Corporation [AAR No. 1009 of 2010] dated 25 August 2011
[13] Monte Harris vs. CIT [218 ITR 413] (AAR); Jagtar Singh Purewal vs. CIT [213 ITR 512] (AAR)
[14] Linde AG [AAR No. 962 of 2010], Alstom Transport SA [AAR No. 958 of 2010]
[15] Ishikawajima-Harima Heavy Industries Ltd vs. DIT [288 ITR 408] (SC)
[16] AAR No. 989 of 2010
[17] AAR No. 821 of 2009
[18] Poonawalla Aviation Private Ltd [AAR No. 953 of 2010]
[19] Goodyear Tire and Rubber Company
[20] Ardex Investment Mauritius Ltd [AAR No. 866 of 2010]

Significant issues adjudicated by AAR in the last 18 months (January 2011 to June 2012)		
Issues	**In favour of Assessee**	**In favour of Revenue**
Taxability as fees for technical services	2	8
Admissibility of application for advance ruling	-	9
Taxability as royalty (including software)	-	7
Taxation of EPC contracts	3	4
Capital gains (including benefit under India-Mauritius treaty)	3	3
Taxability of income from exploration of mineral oil	6	-
Permanent Establishment	1	2
Applicability of Most Favoured Nation clause in treaties	2	-

Source: Decisions uploaded on http://www.aarrulings.in as on 26 June 2012

What the future holds

With the Direct Taxes Code 2010 ('DTC') slated to come into force from 1 April 2013, certain changes are proposed in the provisions of AAR. Broadly speaking, these changes are in the nature of fine-tuning the AAR's machinery in order to enable it to expeditiously dispose applications. DTC proposes to introduce a fourth member (Vice-Chairperson) – a retired High Court judge and constitute multiple benches in different locations, as against the singular bench functioning in New Delhi. While public sector companies are now specifically included, enabling provisions have been put in place to keep the door open for residents to seek an advance ruling. Needless to say these provisions are a step in the right direction, however one will need to keep a close watch on how they are implemented.

Need for certainty

Tax laws are fraught with uncertainty - an inevitable outcome of diverse interpretations arising from inherent complexities in the legislation. The AAR can feel satisfied that when juxtaposed to taxpayers' experience with the Dispute Resolution Panel (DRP), its institution has fared much better. However, the past one year has witnessed many changes not just in the economic environment, but also in the AAR's views on several matters.

Trends such as – departing from earlier decisions, decline in success rate for applicants and a surge of upward appeals to High Courts and Supreme Court, have made taxpayers and tax advisors alike, anxious. This new found unpredictability in the AAR has culminated into a groundswell of unease that needs to be urgently addressed.

From the above trends, it may appear to many that even the AAR has become unpredictable and inconsistent. One hopes that these wrinkles are only temporary and get ironed out in the course of time.

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IFA – Quarter Gone By

6 – 7 July 2012 – Conference on International Tax – The Emerging Landscape

The Conference focused on following key components that covered international taxation: (i) Advance Pricing Arrangement; (ii) General Anti Avoidance Rules; (iii) United Nations Model; (iv) Transfer Pricing (TP); and (v) Other Recent Developments in International Taxation. Eminent speakers from India & abroad, senior tax professionals, senior tax directors from industry and senior Revenue officials shared their knowledge and experience on the above topics.

11 May 2012 – Study Circle Meeting – 'Taxability of Sale of Computer Software as Royalty'

In continuation of the first study circle meeting the second session of the study circle meeting was held in light of Finance Act 2012 and aspects which could not be covered in earlier meeting due to paucity of time.

19 June 2012 – YIN International Tax webinar

The YIN Central Committee held a webinar which covered:

- Vodafone case (India)
- Velcro case (Canada)
- UK and Indian GAAR
- Latest developments in Germany

The webinar was hosted by Nishith Desai Associates India and co-sponsored by the Western Region Chapter of IFA India branch.

Your feedback / suggestions are welcome. Please write at **ifaindiabranch@gmail.com**

Mr. Pranav Sayta, Mr. Porus Kaka, Mr. G E Veerabhadrappa, Hon'ble Justice Dr D Y Chandrachud, Mr. Kuntal Dave

Mr. Dale Hill, Ms. Monique Van Herksen, Mr. Porus Kaka, Mr. Sobhan Kar, Mr. Vishweshwar Mudigonda – Speakers on APA

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