

# Credit for foreign taxes withheld is available, even if no return filed overseas but income can be shown to be taxable in that country

July 30, 2018

## In brief

In a recent ruling,<sup>1</sup> the Delhi bench of the Income-tax Appellate Tribunal (Tribunal) held that a resident taxpayer is eligible to claim the credit of the taxes withheld outside India on foreign-sourced income, subject to substantiation of the provisions under which the said taxes were withheld.

## In detail

### Facts

- The taxpayer was a resident in India. It had advanced a certain amount to its wholly owned subsidiary in USA (S Co.).
- The taxpayer, *inter alia*, earned interest income on the above advances. The said interest was remitted by S Co. after withholding taxes at 15%, as per Article 11 of the double taxation avoidance agreement between India and USA (tax treaty).
- The taxpayer offered such interest income to tax in India and claimed credit of taxes withheld by its subsidiary under Article 25<sup>2</sup> of the tax treaty, in its return of income.

- The tax officer (TO) denied the credit of taxes withheld in USA.
- The Commissioner of Income tax (Appeals) (CIT (A)) upheld the TO's order. The aggrieved taxpayer filed an appeal before the Tribunal.

### Issue before the Tribunal

- Whether the taxpayer was allowed to claim credit of taxes withheld by its subsidiary in USA, even if no return of income has been filed in USA.

### Tribunal ruling

- The Tribunal observed that TO denied the credit mainly on the following grounds:
  - The taxpayer had not filed its return of income in USA to claim

- the refund of taxes withheld in USA;
- The tax treaty does not enable the resident country to grant credit of the tax withheld in the source country when the income was not taxable in the source country, as it was not a case of double taxation;
- CIT(A) alleged that interest paid by S Co. was actually an expenditure for S Co. and therefore, the question of same being taxable in USA did not arise;
- The taxpayer had failed to prove that under which provision the taxes were withheld by the S Co. in USA.

<sup>1</sup> ITA Nos. 201,202,203,204&205/ Del/ 2015

<sup>2</sup> This article provides that if a resident of India derives any income that may be taxed in the US, then India shall allow the deduction of the amount of taxes paid in the US, from the tax on income of the resident. However, such deduction would be restricted to the proportionate Indian tax paid on such income

- Tribunal analysed the provisions of the India US tax treaty and inferred that Article 11 of the tax treaty empowers S. Co to withhold taxes at the rate specified in the said Article.
- Paragraph 2 of Article 25 of the tax treaty clearly provides that if a resident of India derives income which *may be taxed* in USA, then India has to grant credit of taxes withheld in USA.
- It was not in dispute that tax had been deducted by the S. Co in USA on the interest income earned by the taxpayer. The issue was with respect to the provision under

which such amount of interest paid by the S. Co to the taxpayer was liable for tax under the laws of USA. Hence, the withholding tax certificate issued by S. Co perhaps will provide those details.

- The case was remanded back to the TO for the limited purpose of examination of the withholding tax certificate or any other substantiating document.
- It was further directed that the taxpayer should be allowed the credit of the taxes withheld in USA, if the taxpayer furnished the withholding tax certificate and substantiate that the taxes

were withheld in USA in accordance with the laws of USA.

### ***The takeaways***

The decision emphasises the need and maintenance of documentation substantiating the claim of credit of taxes withheld outside India. It is also pertinent to note that Rule 128 of the Income-tax Rules, 1962 stipulates the requirement of documentation for granting credit of taxes withheld outside India.

### ***Let's talk***

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

## Our Offices

### Ahmedabad

1701, 17th Floor, Shapath V,  
Opp. Karnavati Club,  
S G Highway,  
Ahmedabad – 380051  
Gujarat  
+91-79 3091 7000

### Hyderabad

Plot no. 77/A, 8-2-624/A/1, 4th  
Floor, Road No. 10, Banjara Hills,  
Hyderabad – 500034,  
Telangana  
+91-40 44246000

### Gurgaon

Building No. 10, Tower - C  
17th & 18th Floor,  
DLF Cyber City,  
Gurgaon – 122002  
Haryana  
+91-124 330 6000

### Bengaluru

6th Floor  
Millenia Tower 'D'  
1 & 2, Murphy Road, Ulsoor,  
Bengaluru – 560 008  
Karnataka  
+91-80 4079 7000

### Kolkata

56 & 57, Block DN.  
Ground Floor, A- Wing  
Sector - V, Salt Lake  
Kolkata – 700 091,  
West Bengal  
+91-033 2357 9101/  
4400 1111

### Pune

7th Floor, Tower A - Wing 1,  
Business Bay, Airport Road,  
Yerwada, Pune – 411 006  
Maharashtra  
+91-20 4100 4444

### Chennai

8th Floor  
Prestige Palladium Bayan  
129-140 Greams Road  
Chennai – 600 006  
Tamil Nadu  
+91 44 4228 5000

### Mumbai

PwC House  
Plot No. 18A,  
Guru Nanak Road(Station Road),  
Bandra (West), Mumbai – 400 050  
Maharashtra  
+91-22 6689 1000

### For more information

Contact us at  
[pwctr.knowledgemanagement@in.pwc.com](mailto:pwctr.knowledgemanagement@in.pwc.com)

## About PwC

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 158 countries with more than 236,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at [www.pwc.com](http://www.pwc.com)

In India, PwC has offices in these cities: Ahmedabad, Bangalore, Chennai, Delhi NCR, Hyderabad, Jamshedpur, Kolkata, Mumbai and Pune. For more information about PwC India's service offerings, visit [www.pwc.com/in](http://www.pwc.com/in)

PwC refers to the PwC International network and/or one or more of its member firms, each of which is a separate, independent and distinct legal entity. Please see [www.pwc.com/structure](http://www.pwc.com/structure) for further details.

©2018 PwC. All rights reserved

## Follow us on:



For private circulation only

This publication has been prepared for general guidance on matters of interest only, and does 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, to the extent permitted by law, PwCPL, its members, employees and agents accept no liability, and disclaim all responsibility, for the consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it. Without prior permission of PwCPL, this publication may not be quoted in whole or in part or otherwise referred to in any documents.

© 2018 PricewaterhouseCoopers Private Limited. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers Private Limited (a limited liability company in India having Corporate Identity Number or CIN : U74140WB1983PTC036093), which is a member firm of PricewaterhouseCoopers International Limited (PwCIL), each member firm of which is a separate legal entity.