

Tax Insights

24 January 2023

Taxability of uplinking and playout services denied as royalty and FTS respectively – Delhi bench of the Tribunal

In brief

The Delhi bench of the Income-tax Appellate Tribunal (Tribunal)¹ held that the receipts from Disaster Recovery Uplinking Services (uplinking services), which primarily involves a process wherein signals are taken from the transmission equipment and sent to the satellite for broadcasting, cannot be categorised as royalty for the use or right to use of a process under Article 12 of the India-Singapore Double Taxation Avoidance Agreement (DTAA). It also held that Disaster Recovery Playout Services (playout services), which merely involves the provision of uninterrupted availability of the playout service at a pre-determined level, are not in the nature of fees for technical services (FTS) as they do not make available any technical knowledge, experience, skill, know how, or process or consist of the development and transfer of any technical plan or technical design. Accordingly, the Tribunal directed to delete the additions made by the Tax Officer (TO).

In detail

Facts and issue

- The appellant, being a tax resident of Singapore, was primarily engaged in the business of providing broadcasters with state-of-art media technology solutions. The appellant offers a wide spectrum of satellite-based telecommunication services to media and entertainment businesses under the license from the Info-Communications Development Authority of Singapore. The appellant provides such services using its equipment outside India.
- During the course of assessment proceedings, the TO noticed that the appellant had receipts from India, *inter alia* from uplinking services and playout services.
- The TO noted that the nature of the uplinking services of the appellant was nothing but part of a process wherein signals are taken from the transmission equipment and sent to the satellite for broadcasting them to cable operators or direct-to-home operators and accordingly taxed the same as royalty under section 9(1)(vi) of the Income-tax Act, 1961 (the Act).
- In respect of playout services, the appellant contended that such services involve scheduling of content received from the customer as per their specifications for playout and are immediately activated only in the

¹ ITA No. 702/DEL/2021 [AY 2017-18]

eventuality that the main transmission equipment becomes unavailable or non-functional. However, the TO held that playout services are of managerial nature and are covered within the ambit of FTS under section 9(1)(vii) of the Act as well as Article 12(4) of the DTAA.

Appellant's contentions

The uplinking services were provided through the equipment installed outside India and do not grant any right to use any equipment or process and hence are not taxable in India. With respect to the playout services, it was contended that the transmission equipment installed at the teleport facility of the appellant at Singapore is kept preconfigured and in readiness. If the main uplink and transmission equipment become unavailable or non-functional, the uplink at the Singapore facility immediately gets activated. It was explained that the customers of the appellant were neither in possession of any equipment nor had any control over the equipment used by the appellant for providing uplinking and playout services to its customers. Accordingly, the appellant submitted that the receipts are not chargeable to tax as royalty or FTS under the DTAA.

Tribunal's ruling and observations

Whether receipt from uplinking services construe royalty as per Article 12(3) of the DTAA?

- The appellant is responsible for maintaining the continuity of the service using its own equipment and facilities, since the possession and control of equipment is with the appellant. It is merely making an entrepreneurial use of its own equipment to provide services and it cannot be said that customers have a right to use the process, if any, involved or applied by the appellant in its capacity as a service provider.
- The term 'process', as contemplated under the definition of royalty, has rather been used in the context of know-how and intellectual property. The Tribunal was of the view that royalty in relation to 'use of a process' envisages that the payer must use the 'process' on its own and bear the risk of its exploitation.
- The customers are not granted the use of or the right to use any process by the appellant during the course of providing various satellite-based telecommunication services, which means that the customers are merely availing a service from the appellant and are not bearing any risk with respect to the exploitation of the appellant's equipment involved in the provision of such service.
- Various satellite-based telecommunication services nowhere envisage granting the use of, or the right to use any technology or process to the customers.
- It was held that there is no 'know how' or 'intellectual property' involved in the provision of such services by the appellant. Accordingly, the amount received by the appellant from its customers in India as consideration for the provision of a service cannot be characterised as royalty for the use or right to use of a process.

Whether receipt from playout services can be considered as FTS under Article 12(4) of the DTAA?

- Playout services merely involve the provision of uninterrupted availability of the playout service at a pre-determined level. Such services are nothing but the broadcasting and/ or transmission of channels by the appellant for its customers, without any involvement in decision making with respect to the playlists and the content being broadcasted.
- In light of the following observations and other court decisions², the Tribunal held that playout services are not in the nature of FTS as envisaged under Article 12(4)(b) of the DTAA:
 - Such services were provided to the customers through its facility in Singapore. The customers were neither provided with any technology knowledge, experience, skill, know-how or processes nor did the services consist of the development and transfer of any technical plan or technical design as envisaged under Article 12(4)(b) of the DTAA.
 - Such services are not in the nature of FTS as envisaged under Article 12(4)(a) of the DTAA as they are not ancillary or subsidiary to uplinking and allied services.

² CIT v. De Beers India Private Limited [2012] 346 ITR 467 (Karnataka), DIT v. Guy Carpenter & Co. [2012] 346 ITR 504 (Delhi), Atos Information Technology Singapore Pte Limited v. Dy. CIT (ITA Nos. 7144/MUM/17 and 5744/MUM/18)

The takeaways

This is a relevant ruling for taxpayers providing various satellite-based telecommunication services such as space segment capacity services, downlinking and distribution services, and digital news gathering services. This Tribunal ruling, taking reference of the other rulings, explains that royalty in relation to 'use of a process' envisages that the payer must use the 'process' on its own and bear the risk of its exploitation. 'Know how' or 'intellectual property' should be involved in the provision of various satellite-based telecommunication services to classify the receipts as royalty. Moreover, it may be relevant to note that the services which merely involve the provision of uninterrupted facility at a predetermined level and without providing the customers with technology knowledge may not be taxable as FTS.

About PwC

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 156 countries with over 295,000 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.

PwC refers to the PwC network and/or one or more of its member firms, each of which is a separate legal entity. Please see www.pwc.com/structure for further details.

© 2023 PwC. All rights reserved.

Follow us on

[Facebook](#), [LinkedIn](#), [Twitter](#) and [YouTube](#).

pwc.in

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.

©2023 PricewaterhouseCoopers Private Limited. All rights reserved.