

Did you know?



British
High Commission
New Delhi



Taxability of software and leased line services may increase the cost for availing these from outside India.

Issue 4: Withholding tax issues on software and leased line payments

Finance Act, 2012, had introduced Explanations 4, 5 and 6 to section 9(1) (vi) of the Act with retrospective effect from 1 April 1976 so as to include:

- right of/to use computer software,
- consideration in respect of information or property irrespective of its possession or control or use by the payer or the location such information or property,
- the definition of 'process' to include transmission by satellite, cable or optic fibre.

These amendments are inconsistent with the international understanding of the concept of royalty. Payment for use of off-the shelf software is internationally considered as payment for 'copyrighted article' and not for 'copyright' right. Similarly, fee for satellite transmission is not treated as royalty in most countries.



Impact

The overseas companies may increase the cost of software and leased line services for India, which will increase the cost for Indian entities.

Proposed solution

- Under the domestic law, payment for availing standard facility should not be considered as 'royalty' in cases where the facility is provided as a service. The 'right of disposal' test by user should be retained. Similarly, in the case of software licences, distinction should be made between 'copyright' right and 'copyrighted article'.
- Alternatively, these amendments should be made on prospective basis.
- The tax authorities should not reopen, reassess, rectify and revise the assessments that have been completed and concluded at appellant levels, based on retrospective amendments. In cases where the issues are pending at the appellant stage, they should be decided based on the law prevailing on the date of transaction (and not on the basis of amended provisions). Suitable clarifications to the above effect should be issued.
- In any case, withholding tax should not be considered as being in default in respect of any transactions undertaken before 1 April 2012.

PwC-India British High Commission joint tax project seeks to understand direct tax issues faced by UK-based companies in India