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CHARTERED ACCOUNTANTS

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INTERNATIONAL TAX

ADIT vs. Valentine Maritime– Mauritius, (ITAT Mumbai)

Re: Determination of PE in case of multiple projects. Whether different project sites can be aggregated if they are not interconnected or interrelated?

Facts of the case:

Article 5(2)(i) of the India – Mauritius treaty defines "Permanent Establishment" to include *" a building site or construction or assembly project or supervisory activities in connection therewith,* ***where such site, project or supervisory activity*** *continues for a period of more than nine months."*

The assessee, a Mauritius Company, executed three different contracts in India. Although the period of each contract was less than 90 days, the period for aggregate of all the contracts would exceed 90 days. The question is to determine if the assessee has a PE in India, the period for all the contracts have to be aggregated or individual contract period should be seen.

The Tribunal held that:

Each building site or construction or assembly project or supervisory activities has to be seen on a standalone basis. The activities of a foreign Enterprise on a particular site or project has to be seen and not all the activities as a whole. However, if the different sites or projects are such that they are interconnected or interrelated then their activities have to be aggregated for the purpose of counting the number of days of their activities.

In some of the Treaties like the one with Australia, the relevant PE clause specifically mentions that the all the sites, projects or activities have to be aggregated to determine the threshold limit of duration test. Even for such aggregation, number of days when more than one site or project is under operation on a single day, has to be consider as only one day.

The principal of the duration test applies to each individual site or project has two exceptions. The first is where the assessee has artificially split the contract so as to avoid the duration test. (However the onus to prove that the contracts have been split to avoid the duration test is on the Tax Department and has to be supported by

valid reason.) The second is when the activities are so interconnected or interdependent that they have to be seen as a coherent whole.

In applying this test, it not relevant whether the activities rae carried out for the same principal or different principals. What is relevant is the nature of activities, their interconnection and interrelationship and whether such activities are essentially regarded as a coherent whole in conjunction with each pother.

On the facts of the case, there was no finding that the three contracts were interconnected or interrelated as a coherent whole in conjunction with each other. Therefore the duration of the project cannot be aggregated for the purpose of duration test and ascertaining whether or not there was a PE.

BBC Worldwide Ltd. (UK) V. DDIT, New Delhi

When commission is paid to a dependent agent at Arms Length Price, no further attribution of profits is required in the hands f the assessee.

Facts:

The assessee is a British Company engaged in the business of television, publishing, program licensing etc. The assessees had appointed BBC Worldwide (India) Pvt. Ltd. (ICO), its indirect subsidiary as its authorised agent in India to market and procure orders for the sale of airtime on its news channel.

ICO was paid commission at 15% of the revenue generated by it through the Indian customers.

The assessee claimed that it did not attract any tax liability in India as it has no PE in India and in any case there was no tax attributable to it as the agent in India was adequately remunerated at fair price.

The AO rejected the claim of the assessee and attributed 20% of the advertising revenue generated from India as income attributable to the Dependent Agent PE of the tax payer in India.

The assessee Company's contention before the Delhi Tribunal was:

a) It did not have any Business Connection or a PE in India.

b) In any case the agent was remunerated at fair transfer price and that extinguishes any further charge of taxation in respect of dependent agency PE.

c) Reliance was placed on circular no. 23 of 1969, which states that if the commission paid represents the value of profits attributable to the services, it would prima facie extinguishes the assessment of the foreign principal.

d) Since audited accounts were filed indicating the revenue and expenses of India centric activities, normative attribution of profits cannot be made.

The Delhi Tribunal held that:

- The issue whether there exists any Business Connection or PE was not challenged. This implies that it is an accepted fact that there was no PE of the foreign principal in India.
- The Tribunal confirmed that payment of arms' length price to the agent would extinguish the charge arising on account of presence of dependent agent in India.

- The reliance was placed on the following:

    - Set Satellite Singapore Pte Ltd (Mumbai High Court)
    - Galileo International Inc. (Delhi Tribunal)
    - Circular No. 23 of 1969.

- The CBDT circular no. 742 permitting normative taxation @ 10% of receipts net of commission is not applicable in this case as the applicant Company made available the India-specific accounts which revealed that the tax payer had in fact incurred a loss in the India segment.

Complied by : Malay Damania

INTERNATIONAL FINANCIAL REPORTING STANDARDS

IFRS for SMEs- Summarized Notes

In July 2009, the IASB issued IFRS for Small and Medium-sized Entities (IFRS for SMEs), a self-contained standard of some 230 pages. Its aims are to:

1. Provide a set of standards for entities that are described in various places as private entities, nonpublic entities, small and medium sized entities.

2. Consider the specific needs of these types of entities and develop a set of standards that can be more easily applied by entities with less complex accounting transactions.

In this new standard:

1. A number of the full IFRS principles for recognizing and measuring assets, liabilities, income and expenses have been simplified.

2. topics not relevant to Small and Medium-sized Entities have been omitted, and

3. the number of required disclosures have also been significantly reduced

It is a self-contained standard; it does not require preparers of private entity financial statements to cross-refer to full IFRS, with one notable exception.

IFRS for SMEs is applicable for entities that:

1. do not have public accountability, and

2. publish general purpose financial statements for external users.

An entity is defined as having public accountability if it:

1. Has debt or equity instruments that are traded in a public market or it is in the process of issuing such securities

2. holds assets in a fiduciary capacity for a broad Group of outsiders (banks, broker dealers, pension funds)

The determination of a Small and Medium-sized Entity is based on the nature of the entity, not on its size.

In issuing IFRS for SMEs, the IASB considered the following factors:

1. the level of detail and complexity in the required standards under IFRS,

2. recognizing the difficulties and costs for private companies in preparing fully-compliant IFRS financial statements.

3. recognized that users of private entity financial statements have a different focus from those interested in publicly listed companies.

IFRS for SMEs is therefore an attempt by the IASB to meet users' needs while balancing the costs and benefits to preparers.

First-Time Adoption of IFRS for SMEs

1. IFRS for SMEs requires full retrospective application of IFRS for SMEs effective at the reporting date for an entity's first IFRS for SMEs financial statements.

2. It also requires reconciliations of equity as of the date of transition and end of the latest period presented in accordance with prior GAAP, and profit or loss reported in the latest period presented in accordance with prior GAAP to equity and profit or loss under IFRS for SMEs.

3. An entity must disclose how the transition impacted its financial positions, financial performance and cash flows.

4. Allows certain exceptions to full retrospective application

5. Precludes retrospective changes to previous accounting for the following areas:

Some of the differences between IFRS for SMES and Full IFRS:

Areas	IFRS Full	IFRS for SMEs
Financial Instruments	IAS 39	Section 11 / 12
	Measured at Fair value	Measured at Cost or amortized cost; or Fair value through profit or Loss
		Hedging, Derecognition criteria and other related aspect of full IFRS are simplified.
Intangible Assets (Acquired)	IAS 38	Section 18 & 19
	Carry at cost or revaluation	Carry at cost less depreciation. No option for revaluation
	Capitalize and amortize finite lived intangibles.	Capitalize and amortize all intangibles, including goodwill
	Capitalize and review indefinite lived intangibles, including goodwill for impairment annually.	Amortize on the basis of estimated useful life or max. up to 10 years
	Review finite lived intangibles for impairment on occurrence of triggering event	No annual review of residual values, useful lives or depreciation methods unless there are indications that they have changed.
Intangible Assets (Acquired)	IAS 38	Section 18

Areas	IFRS Full	IFRS for SMEs
Research Cost	Research costs are expensed as incurred;	Expensed immediately
Development cost	development costs are capitalized and amortized only when specific criteria are met	Even if they would have met the full-IFRS requirements for capitalizing development cost, there is no policy choice.
Borrowing Cost	IAS 23	Section 25
	Borrowing costs are capitalized If certain criteria are met.	Borrowing costs are recognized as a period expense immediately.
Property, Plant and Equipment	IAS 16	Section 17
	Choice to adopt cost or revaluation model	Carry at cost less Depreciation
		No option to revalue
		Revaluation under previous GAAP should be taken as cost on first time adoption
		No annual review of residual values, useful lives or depreciation methods unless there are indications that they have changed
Assets held for sale	IFRS 5	Section 17.26
	Requires non-current assets to be classified as held for sale at fair value	No separate classification or measurement rules

Areas	IFRS Full	IFRS for SMEs
		Impairment testing criteria to be applied in case of asset held for sale.
Investment Property	IAS 40	Section 16
	Choice to adopt cost or fair value	Fair value can be adopted only if measured reliably at each reporting date and without undue cost and effort
Defined Benefit Pension Plans	IAS 19	Section 28
	Corridor approach can be adopted i.e. Actuarial Gain or loss can be immediately recognized in Profit and Loss or amortized over the expected remaining working lives of participating employees.	No corridor approach i.e. Actuarial Gain or loss can be immediately recognized in Profit and Loss or other comprehensive income.
Current and Deferred tax	IAS 12	Section 29
	Deferred tax assets are recognized to the extent that it is probable that there will be sufficient future taxable profit to recover the deferred tax asset.	Deferred tax Assets are recognized for all temporary differences along with valuation allowance.
		It also includes the concept of considering the outcome of reviews by tax authorities in assessing the amount of current and deferred taxes.

Areas	**IFRS Full**	**IFRS for SMEs**
Business Combination	IFRS 3	Section 19
	Transaction cost excluded in determination of cost of acquisition.	Transaction cost included in cost of acquisition.
	Contingent purchase price is estimated on acquisition date and included in cost of acquisition.	Contingent purchase price is estimated on acquisition date if probable and reliably measurable and thereafter included in cost of acquisition.
	Subsequent changes in contingent purchase price are recognized in Income statement.	Subsequent changes in contingent purchase price are treated as adjustment to the cost of business combination.
Investment in Joint venture and Associates	IAS 28 and 31	Section 14 & 15
	In case of consolidated financial statements, Proportionate consolidation or Equity method in case of JVS and Equity method in case of Associates	In case of consolidated financial statements, investment in associates/ JVS can be accounted as per: • Cost model or • Fair value model or • Equity method

The IASB has stated that IFRS for SMEs will be amended on a periodic basis (tentatively on a three year cycle) and that entities will have a period of at least one year between when IFRS for SMEs is amended and when the changes will become effective. Until the *IFRS for SMEs* is amended, any changes that the IASB may make or propose with respect to full

* IFRSs do not apply to the *IFRS for SMEs.*

Complied by: Bharat Jain

VALUE ADDED TAX

Procedure for 6(2) transaction under Central Sales Tax Act

Sale in Transit:-

Sale in transit is a sale or purchase effected by transfer of documents of title to the goods when goods are in movement from one state to other state. This is a sale effected u/s 6(2) of Central Sales Tax Act.

Section 6(2) of the CST Act gives exemption to subsequent interstate sale effected by transfer of documents of title to goods when the goods are in movement from one state to another. However such exemption to subsequent inter-state sale is subject to production of Form E-I, as obtained from prior vendor and 'C' form from buyer.

Example:-

A of Mumbai (Maharashtra) has sold goods to B (Ahmedabad). The goods are dispatched by lorry and L.R, is taken out by A where A is Consignor and B is Consignee. If before taking delivery from transporter, B decides to sell his goods to 'C' (M.P.), he can simply endorse the L.R. in name of 'C' and the sale will be complete. This is the second or subsequent interstate sale in the course of same movement. In this case A must have charged 2% CST in his bill. Being a second interstate sale effected by B to C, B is equally liable to pay CST on above transaction. However the intention of the government is not to levy multiple taxes on sale taking place in one course of movement. Therefore the subsequent sale is given exemption. However it is subject to production of given forms. In above example, the sale by B to C will be exempt from CST if B produces before his authority Form E1 issued by A of Mumbai and form 'C' issued by M.P.

Forms required for sale u/s 6(2):-

a) **Form E1:-** The dealer who sells goods in the course of interstate trade or commerce issues form E1 to the buyer of these goods belonging to other state. Form E1 describes the origin of movement of the goods. The dealer issuing form E1 shall fill necessary details including description of goods, quantity of goods, date and number of invoice, L.R. No. etc.

b) **Form C:-** The dealer who sells the goods by effecting a transfer of documents of title to the goods issues form C to the previous seller of these goods. He

also collects the form C from the buyer to whom he has sold the goods by way of transfer of documents of title to the goods.

Dealer should produce following documents at the time of assessment

1) Purchase bill from consigner
2) L.R. Copy
3) Sale Invoice to buyer
4) Form E1 from consigner
5) Form C from buyer

Complied by: Devesh Dubey

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CORPORATE LAW

|| HOW TO DRAFT RESOLUTIONS ||

Resolutions are the decisions of the meetings and it should be so drafted that anybody not present at the meeting or anybody referring it later date will know clearly what the decision was at the meeting without referring to any other document.

Important issues to be taken care of while drafting Resolution:

1. Resolutions should be drafted in clear and precise terms since resolutions are the decisions of the meetings.

2. Show clearly and in distinct terms the Kind of meeting (Board or General) and the Type of resolution (Ordinary, Special, and Simple Majority).

3. Surplus and meaningless words or phrases should not to be included in resolutions.

4. Reference to provisions and sections of the Act, Rules etc. should be made wherever applicable. (Eg: pursuant to Section 25 of the Companies Act, 1956)

5. References to documents should be made wherever applicable. (Eg: draft letter of appointment).

6. Central Government approval, Company Law Board confirmation subject to which resolutions are made, should be clearly mentioned at the early part of resolutions. (Eg: appointment subject to the approval of central Government).

7. The with effect date of resolution must be mentioned.

8. A resolution must confine to one subject matter and two distinct matters should not be covered in one resolution.

9. Where lengthy resolutions have to be approved they should be divided into paragraphs. (Eg. Further Resolved that)

Complied by: Trilochana Thakkar