INTERNATIONAL TAXATION- NEWSLETTER

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LUTHRA & LUTHRA

CHARTERED ACCOUNTANTS

HIGHLIGHTS

- Revised OECD guidelines highlighting major changes in CBC Reporting
- Updates on filing of Form 3CEFA
- Discussion on revised comparable toolkit issued by PCT
- Major impacts of IND AS on Transfer Pricing reporting
- Discussion and analysis of the Bombay High Court decision in case of CIT Vs JSH (Mauritius) Limited
- Discussion and analysis of the landmark ruling in the case of Chevron Australia Holdings Pty. Ltd

WHAT'S INSIDE

NEWS HIGHLIGHTS

TAXATION OF OFFSHORE INVESTMENT FUNDS IN INDIA-SHR

Section 9A of the Income Tax Act encapsulates safe harbor provisions whereby an eligible investment fund shall not be regarded as having business connection in India merely because of an eligible fund manager undertaking the management activities on its behalf is located in India.

The notification has come into effect from 3 August 2017 wherein it has relaxed the eligibility conditions as mentioned in clauses (e), (f) and (g) of Sec. 9A(3) of the Act for not constituting a business connection in India in case of an investment fund set up by a Category I or Category II FPI registered under the Indian SEBI (Foreign Portfolio Investors) Regulations (2014). Further 121 countries and territories have been notified under clause (b) of Sec. 9A(3) of the Act which includes jurisdictions like Mauritius, Singapore, Switzerland and the Netherlands but does not include Hong Kong.

INDIAN/GLOBAL UPDATES

CBDT AMENDS FORM NO. 3CEFA RELATED TO APPLICATION FOR OPTING FOR SAFE HARBOUR

As per the 2013 Rules, Safe harbour i.e. minimum revenue/margin has been prescribed for certain sectors/transactions implying that if an eligible assessee is earning not less than specified revenue/margins in respect of its transactions with its related parties (being non-residents), no further income shall be imputed to it by virtue of application of TP regulations.

Transactions such as software development services, IT enabled services, KPOs, loan to 100% overseas subsidiaries, corporate guarantee for wholly owned subsidiary etc were recognized as eligible international transactions under the rules. The assessee who wants to avail the benefit of the rules is required to make an application giving necessary details of transactions to the appropriate authority before due date for filing return of income for the relevant year.

For exercising this option for Safe Harbour the assessee shall furnish a Form 3CEFA to the Assessing Officer on or before the due date for furnishing the return of income for the relevant AY (in case the option is exercised only for that AY) or the first of the AYs in case the option is exercised for more than one AY. The Central Board of Direct Taxes (CBDT) has notified the revised form 3CEFA issued dated 7 June 2017 vide CBDT Notification 62/2017 incorporating some necessary amendments in the rules issued by the Board in the year 2013 which are applicable w.e.f. from 1st April 2017.

Key Changes in Form 3CEFA

Following items has been added in Form 3CEFA under the heading "Eligible International Transaction"

- Employee cost in relation to operating expense in respect of provision of Knowledge Processing outsourcing services (KPO).
- Currency of denomination of the amount of loan for each loan transaction has been added in respect of Intra Group loans.

  Whether credit rating of AE has been done? If yes, then the credit rating rank and the name of the credit rating agency has also to be mentioned.
- New category on eligible transaction in respect of low value-adding intra-group services.

Guidance on the implementation of country-by-country (CbC) reporting BEPS Action 13

The OECD released additional guidance under BEPS inclusive framework relating to implementation of the CbC reporting measures under BEPS Action 13. The motive behind introduction of these additional guidance is to tackle the international tax profit shifting and tax base erosion by enhancing transparency for tax administrations by providing them with adequate information so that they can conduct proper TP risk assessments and examinations.

The additional guidance deals with the following issues:-

- definition of the items to be reported in the template for the CbC report
- the entities to be reported in the CbC report
- the filing obligation for the CbC report
- the sharing mechanism for the CbC report (EOI, surrogate filing and local filing)

New issues addressed in the additional guidelines

Whether to report aggregated data or consolidated data per jurisdiction in the CRC Report?

The Action 13 Report and the model legislation contemplate that reporting will occur on an aggregate basis at a jurisdictional level. Accordingly the data should be reported on an aggregated basis regardless of whether the transactions are cross-border or within the jurisdiction or between related parties or unrelated parties.

This guidance will be particularly relevant for the columns on related party revenues and total revenues. An MNE Group may use the notes section in Table 3 to explain the data if it wishes to do so.

Where the jurisdiction of the ultimate parent entity has a system of taxation for corporate groups which includes consolidated reporting for tax purposes and the consolidation eliminates intra-group transactions at the level of individual line items then that jurisdiction may allow taxpayers an option to complete the CbC report by using consolidated data at the jurisdictional level as long as the consolidated data are reported for each jurisdiction in Table 1 of the CbC report and consolidation is used consistently over the years. The taxpayers choosing this option should use the wording mentioned in Table 3 (or in local language) and should specify the columns in Table 1 in which the consolidated data is different than if the aggregated data were reported.

How to treat an entity owned and/or operated by more than one unrelated MNE Groups?

The treatment of an entity for CbC reporting purposes should follow the accounting treatment.

In the case of an entity which is owned and/or operated by more than one unrelated MNE Groups then the treatment of the entity for CbC reporting purposes should be determined under the accounting rules applicable to each of the unrelated MNE Groups separately.

If the applicable accounting rules require an entity to be consolidated into the consolidated financial statements of an MNE Group then the entity would be considered as a Constituent Entity of that group under Article 1.4 of the Model Legislation. Accordingly the financial data of such an entity should be reported in the CbC report of the MNE Group. This applies to entities included in the MNE Group's consolidated financial statements using either full consolidation or pro rata consolidation.

If an entity is not required to be consolidated under applicable accounting rules then the entity would not be considered a Constituent Entity and accordingly the financial data of such an entity would not be reported in the CbC Report. Therefore an entity included in the MNE Group's consolidated financial statements under equity accounting rules would not be a constituent entity.

Toolkit for addressing difficulties in Accessing the Comparables Data

The Platform for Collaboration on Tax (PCT) is a joint initiative of the International Monetary Fund (IMF), Organisation for Economic Co-operation and Development (OECD), United Nations (UN), and World Bank Group – published its Toolkit on June 22 for Addressing Difficulties in Accessing Comparables Data for TP Analysis. PCT has released a toolkit to help developing countries address the lack of comparables for transfer pricing analysis and better understand mineral product pricing practices.

The toolkit was developed as part of the G20 Development Working Group mandate given to International Organizations under the BEPS project to help protect developing countries from base eroding payments.

This initiative of releasing toolkit was undertaken mainly to tackle the issue majorly faced by the developing countries in relation to the selection of the comparables in a TP benchmarking study.

OBJECTIVES OF THE TOOLKIT

- The main objective of introducing toolkit was to assist developing countries in overcoming a lack of data on reliable comparables
- Help developing countries address the capacity limitations to design or administer tax systems and to build tax systems that can apply independently and monitor the principles of the BEPS project,
- Protect the tax bases of these countries from perceived inappropriate tax planning by multinational corporations.

CONTENTS OF THE TOOLKIT

Broadly toolkit for the comparables can be classified into four categories which are as follows:-

Part I: Introduction - Addressing the Difficulties in Performing Comparability Analysis

Part II: Issues Arising When Conducting a Comparability Analysis

Part III: Approaches to Apply Internationally Accepted Principles In The Absence of Comparables

Part IV: Summary, Conclusions, and Recommendations for Further Work

Other major highlights of the Toolkit were on the introduction of sixth or other Method, adoption of Safe Harbour and illustrative approach in comparable selection in Mineral Industry.

Comments:

The introduction of the toolkit set an example wherein developing countries are tremendously attempting to preserve their tax base from the hands of the MNE's. The global collaborations like G20, OECD, World Bank are continuously helping out developing nations to implement the BEPS and globally protect the interest of the tax authorities.

IMPACT OF IND AS ON TRANSFER PRICING

The Ministry of Corporate Affairs (MCA) on 16 February 2015 issued IND AS (Indian Accounting Standards) comprising 40 accounting standards that are largely in line with International Financial Reporting Standards (IFRS). Further, there are certain significant deviations from IFRS which have been made optional to facilitate a smooth transition from AS to Ind AS.

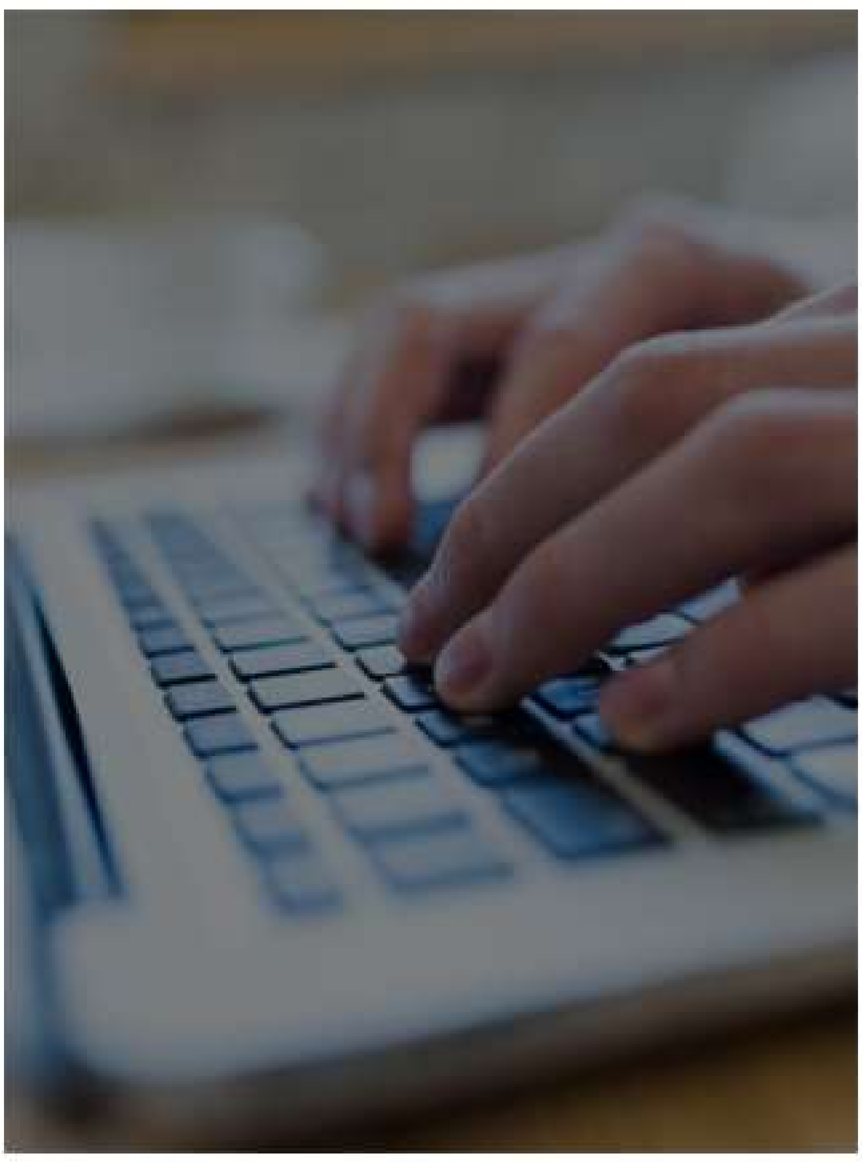
IMPLEMENTATION ROADMAP FOR IND AS

Phase I of IND AS is applicable with effect from 1st April 2016(with 1st April 2015 as the transition date) to the companies having net worth of equal to or more than INR 500 crore. Further, Phase II of IND AS is applicable from 1st April, 2017(with 1st April, 2016 as the transition date) to the companies having net worth of equal to or more than INR 250 crore.

THE MAJOR PRINCIPLES OF IND AS

- Fair value based measurement including for revenue arrangements, financial instruments, Property, Plant Equipment (PPE) etc.
- Focuses on substance over legal form.

IND AS introduces significant differences from the requirements of existing Indian Generally Accepted Accounting Principles (AS) in areas such as revenue recognition, property, plant and equipment, financial instruments, business combinations, consolidation, etc.



IMPACT ON TP

The major impact on transition of companies from AS to IND AS shall be on benchmarking process carried out for the purpose of selection of comparables for the FY 2016-17 onwards. The financial data without adjustments may not reflect the correct range/arm's length price. Hence the implications of the convergence process on TP planning and analysis needs to be examined and appropriate steps have to be taken to minimize the differences arising due to the same. It would be difficult to even out the differences in comparable companies financial data where some comparables follow AS and others follow IND AS. Though this difference can be ascertained only in the first year of adoption of IND AS due to availability of com parable data for previous year but in the subsequent years even this information would not be available.

MAJOR IMPACT DUE TO ACCOUNTING DIFFERENCES

- Revenue recognition

AS- 9	IND AS 18	IMPACT ON TP
Requires revenue to be recognised at the nominal amount of consideration receivable.	Requires the revenue to be measured at fair value of the consideration received or receivable.	Thorough analysis to access TP treatment for revenue as operating/ non-operating and thus margins of comparables following AS and IND AS shall vary widely.
No treatment has been provided in relation to extended warranty.	Income related to extended warranty shall be recognised proportionately over the period where services are actually rendered	This will lead to deferment of sales and thus lead to reduction in the operating margins in first year but the impact may even out over the term of the agreement
Requires recognition of revenue using completed Service Contract method or proportionate completion method.	Requires recognition of revenue using percentage of completion method only	There will be difference in the value of services charged to P/L a/c by companies and the margin percentage would undergo a change under IND AS.

IND AS will also have significant impact on TP provisions as reporting of transactions in Form 3CEB on fair value or realized value will always differ and will have to be analyzed.

Also the question arises as to whether revenue is to be reported in Form 3CEB shall be the present value of future cash inflows or contractual value as the

Form 3CEB requires the value to be reported as per books of accounts.

In case of multiple element arrangements, no specific guidance is provided in AS however, IND AS 18 provides that actual contract price recorded shall be allocated to each element proportionately on the basis of fair value of each component of the transaction. Here question arises as to whether cumulative amount is to be reported in Form 3CEB or the transactions are to be categorized and reported individually.

- Property, Plant and Equipment

AS 6 & 10	IND AS 16	IMPACT ON TP
Does not deal with dismantling, removal and restoration cost of asset.	The cost of major inspection, dismantling, removing the item and restoring the site should be capitalized.	This shall result in substantial increase in the cost of the asset and the depreciation charged on the asset shall increase resulting in higher operating expense and decrease in the operating margin of the company/ comparable following IND AS.
It does not require the adoption of fair value basis valuation of assets	Revaluation of the asset should be made with reference to the fair value of the asset or its carrying value for the entire class of PPE.	There is difference in policies adopted by the comparables and may pose difficulties in selection of comparability analysis.
PPE is measured at historical cost.	The cost of an item of PPE is the cash price equivalent on the recognition date. If payment is deferred beyond normal credit terms, the difference between the cash price equivalent and the total payment is recognised as interest over the period of credit unless such interest is capitalised in accordance with IND AS 16.	Capitalization of interest will lead to increase in the value of assets thereby increasing operating expense in the form of depreciation and decrease in the operating margin of the company/comparables.

Though the Income Tax provisions provide for adjustments to eliminate these accounting differences still there shall be an impact on the selection of comparables along with practical difficulties in its financial analysis which needs to be reviewed.

- Financial Instruments :

IND AS has prescribed re-characterisation of financial instruments such as redeemable preference shares, perpetual debentures, etc., in certain circumstances. Reclassification of these financial instruments on the basis of actual economic nature as equity or debt shall impact classification of revenue/expenses as interest or dividend. For example in case redeemable preference shares, it shall now be characterized as debt under IND AS rather than preference share capital. Also whether in case a financial instrument which has been characterized as debt the notional interest associated with it shall impact the deductibility criteria given under thin capitalization (u/s 94B). In case of guarantee given by parent to any group company, no amount may be charged from group entity but for the purpose of IND AS the notional income shall be reported at the prevailing interest rates. The reporting of this transaction in Form 3CEB along with guarantee commission needs to be analysed.

The proportion of debt and equity in the capital structure and the impact of re characterisation of financial instruments as per IND AS from a GAAR perspective will need to be reviewed. The rationale for corporate guarantee with nil guarantee fee and interest free loan/concessional interest bearing loans needs to be documented.

- Related Parties

AS- 18	IND AS 24	IMPACT ON TP
Includes clarifications primarily with regard to control, substantial interest and significant influence.	There is no such clarification and allows the standard to deal with the same.	The concept of control under IND AS will require qualitative judgment because of lack of "bright lines" and should be carefully considered to determine the coverage of related parties and necessary TP compliances under the IT Act.
Co-venturers or co-associates are not related to each others.	There is extended coverage in case of joint ventures. Two entities are related to each other in both their financial statements, if they are either co venturers or one is a venturer and the other is an associate.	This would increase the scope of related parties and cover more entities under CBC reporting and may also increase the sales of group which would exceed the threshold limit for preparing CBCR. Reporting of various entities in CbCR should be aligned with IND AS after due analysis.

The evaluation of AE relationship from the perspective of control under IND AS and the constituent entities reported in the CbC report will be required to be reviewed.

- Valuation of Inventory

AS- 2	IND AS 2	IMPACT ON TP
No provision for subsequent recognition of cost of inventory.	Deals with the subsequent recognition of cost/carrying amount of inventories as an expense	This would lead to change in the operating margin of the company as the classification of expenses will differ under IND AS and AS.

Comments:

In light of the various issues resulting due to change to IND AS, the companies should familiarize themselves with the key differences and the areas which will impact adopting of IND AS and should understand the implications of the transition to IND AS which will have a significant impact from the TP perspective. The companies will have to align substance and transparency across tax and accounting and should establish a system to review and address such issues.

There would be an impact on pricing agreed in the APA and change in transfer price as a result of transitioning to Ind AS which needs to be reviewed

Further the selection of the comparables in transition period will be a tough task for the companies as there will be significant differences in the Operating Margin of a company with that of the comparables and thus here would be a need for making adjustments while conducting TP pricing benchmarking analysis using external comparables along with review of functional and economic analysis along with intercompany agreements to reflect the substance of the transaction.

BOMBAY HIGH COURT – CIT VS JSH (MAURITIUS) LIMITED

The Hon'ble Bombay High Court (HC) upheld the decision of the Authority for Advance Rulings (AAR) wherein a Mauritian entity was entitled to avail the beneficial provisions of the India Mauritius Tax Treaty (Treaty) in relation to capital gains arising from the sale of shares of an Indian company.

FACTS OF THE CASE

JSH (Mauritius) Limited (JSH Ltd) was engaged in business of investment and financing activities having no permanent establishment or business presence in India. JSH Ltd was incorporated in Mauritius on 4th April 1996 and is a resident as per Section 6 of the Income Tax Act, 1961. Tax Residency certificate (TRC) has been issued by The Mauritius Revenue Authority evidencing that it is a tax resident in Mauritius.

In June 1996 JSH Ltd had made investment in shares of Tata Industries Limited (TIL) after obtaining approval from the Government (including approval from The Department of Industrial Policy & Promotion in May 1996) and the shares were transferred in June 2009. The entire sale proceeds were reinvested by JSH Ltd. in another Tata group Company (Tata Power Limited) in July 2009.

JSH Ltd had approached the AAR to ascertain whether it was entitled to beneficial provisions (namely, Article 13(4)) of the Treaty in relation to sale of TIL shares in order to be exempt from paying any capital gains tax in India. The AAR ruled in favour of JSH Ltd and observed that it was not a 'shell company' and held that the transaction was not designed to avoid tax. Aggrieved by the decision of the AAR, the Income Tax Department (Revenue) filed the present writ petition before the HC.

REVENUE'S ARGUMENTS

The Revenue contented on the taxability of capital gain arising from the sale of TIL shares on the following basis

- No commercial substance: JSH Ltd had never incurred expenses of wages, salaries of staff, electricity, other charges etc., and its only income and expense (apart from the profits from the sale of shares of TIL) were on account of interest received from or paid to its group entities.
- JSH Ltd is a 'shell company' and 'fly-by-night' Company: As JSH Ltd had been incorporated only to take advantage of the Treaty. It had mentioned that at the time of investment Jardine Matheson Bermuda was the only as the investor. He was in fact the beneficial owner of the TIL shares since JSH Ltd had not nominated anyone on the Board of Directors (Board) of TIL and in fact, certain employees of Jardine Matheson Bermuda were appointed as directors on TIL's Board.

JSH LTD'S ARGUMENTS

The following were the key arguments of JSH Ltd before the HC:

- Bona fide and Residence of JSH Ltd : JSH Ltd had reiterated its long-term investment in TIL, after due approval from the Indian regulator, its valid GBL-1 and TRC granted by Mauritian authorities and income tax returns filed in Mauritius and was a Mauritian 'resident' for the purposes of the Treaty and thus is squarely entitled to Treaty benefits.
- Exemption from Capital Gains Tax in India & Legality of Treaty shopping: JSH Ltd substantiated its claim to avail Treaty benefits by placing reliance on Union of India v.Azadi Bachao Andolan [[2003] 132 Taxman 373 (SC)] and circulars issued by the Central Board of Direct Taxes. The circulars unequivocally provide that taxation of capital gains arising to a resident of Mauritius would be taxable in Mauritius and that a TRC would constitute sufficient evidence of residence, respectively.

The HC noted that the long period of holding TIL shares and reinvesting the proceeds in another Indian company suggested the bona fide of JSH Ltd. Further held that since the AAR did not rule that JSH Ltd is a 'fly-by-night' company, alleging prima facie tax avoidance at a later stage was unwarranted. Thus the capital gain in respect of transfer of shares of an Indian company by a Mauritian company is not taxable in India under the Indian Mauritius tax treaty.

Comments:

It may be noted that the India-Mauritius DTAA has been amended vide CBDT Notification dated 10 August 2016. As per the amended India-

Mauritius DTAA, gains arising to a Mauritian company from alienation of shares in an Indian company up to 31 March 2019 shall be taxable at a lower rate (i.e. 50% of the tax rate applicable in India on such gains) if these shares are acquired on or after 1 April 2017. This benefit of lower rate of taxation is subject to the fulfilment of conditions in Limitation of Benefits Article of the amended India-Mauritius DTAA.

This decision of the Bombay HC could be relied on in the case of pending litigations on the eligibility of relief under the Capital Gains Article of the India-Mauritius DTAA for alienation of shares, which were acquired in an Indian company by a Mauritian company before 1 April 2017 and is in line with several previous decisions of various courts where treaty eligibility of a Mauritius company that has been upheld based on a valid TRC (absence of any Indian business presence)

However it may be difficult to follow this decision of the Bombay High Court for shares acquired in an Indian company by a Mauritian company on or after 1 April 2017 since independent fulfilment of conditions in the LOB Article of the amended India- Mauritius DTAA shall also be important. Additionally, the impact of the GAAR Rules provided in the Act should also be analysed.

FEDERAL COURT OF AUSTRALIA- CHEVRON AUSTRALIA HOLDINGS PTY. LTD V. COMMISSIONER OF TAXATION

The full Australian Federal Court on Friday 21st April 2017 unanimously dismissed Chevron's appeal and confirmed the 23rd October 2015 order of the Federal Court ordering the multinational to pay the Australian Taxation Office's (ATO) USD 250 million tax bill for the intercompany credit facility with an abnormally high interest rate which effectively lowered its taxable income within Australia.

FACTS OF THE CASE

Chevron is an Oil & Gas MNE group having its ultimate parent company, Chevron Corporation (CVX), listed in USA. Pursuant to acquisition of Texaco group by Chevron in 2000, its Australian's business was re-organized. The scheme of re organization needed funds for Australian's units for re-financing of existing debts as well as acquisition of Texaco's Australian unit. Thus an Australian holding company was incorporated, Chevron Australia Holdings Pty Ltd (CAHPL) which in turn held other Australian units.

In mid-2003 a credit facility agreement was entered into between CAHPL and Chevron Funding Corporation (CFC), a subsidiary of CAHPL and tax resident in USA. CFC was formed to raise debt funds through commercial papers in US market with help of guarantee from ultimate parent company, CVX. CFC raised debt fund amounting to USD 2.5 billion @ approximately 1.2% p.a. interest and onward lent to CAHPL based on AUD LIBOR + 4.14% . (approximately 9% p.a.).

CFC generated profits, not taxable in USA as well as Australia as per respective legislatures and tax treaties. CFC also paid dividend out of profits earned to its shareholder CAHPL that was also tax free in Australia. CAHPL claimed inflated interest paid to CFC as deductible expenditure that reduced its taxable income in Australia.

The Federal court of Australia held that interest payment made by CAHPL is above arm's length, and accordingly made adjustment in its total Income

CAHPL'S ARGUMENTS

The issues were fundamental to the interpretation of arm's length principle. CAHPL emphasized that the case required arm's length pricing of the loan it obtained on those terms and upon the assumption of CAHPL's stand-alone credit worthiness.

REVENUE'S ARGUMENTS

The crux of ATO's argument was that terms and contract of the Credit Facility arrangement between CFC and CAHPL was such that an enterprise in the circumstances similar to CAHPL entering into contract with another entity, independent of each other but not necessarily independent of similar group structure as CAHPL would not have entered into same type of loan arrangement and therefore the rate of interest paid to CFC was not at arm's length.

Arm's length consideration as defined in Section 136 AA read with operative section 136 AD of the Australian Income Tax Assessment Act, 1936 did not necessarily require CAHPL to be one of the transacting entity. Instead the law permitted considering a hypothetical borrower under the similar situation as CAHPL from a hypothetical lender.

DECISION OF THE FULL COURT

The Court noted 11 conditions submitted by Revenue which are prevailing between CAHPL and its affiliate that would not have taken place in case transaction was undertaken between independent enterprises in an arm's length situation. The entire arrangement between CAHPL and CFC was controlled by their common parent CVX including the sole reason for CFC's incorporation, the terms and conditions of the arrangement, interest rate, currency of loan, absence of security and financial and operational covenants, and also the credit profiles of CFC and CAHPL were dependent on the decisions made by CVX.

The Full Court specifically held that determination of arm's length consideration, as defined in Section 136AA, does not necessarily require that one party necessarily has to be CAHPL. In respect of the meaning of "independence", FCA held that being independent does not require CAHPL to be considered as "orphan". Doing this would mean undermining the reality and actual situation of CAHPL. FCA accepted none of the third-party loan agreement presented by both the respondent and the appellant as comparable transactions. It upheld re-characterisation of the transaction for determination of arm's length price.

FCA followed the position of Canadian ruling in case of GE Capital where concept of implicit support being irrelevant in case of "separate entity" principle was confirmed. The court accepted that in the absence of a legally binding parental guarantee, implicit guarantee had little impact on pricing by a commercial lender.

Another issue being discussed is the taxing powers under Article 9 of Australia USA DTAA. However FCA did not strike down the case on procedural ground and upheld the TP addition along with 25% penalty.

Comments:-

Multinationals typically use intra-group debts for base erosion and tax avoidance. The issues discussed in the case are so fundamental that its outcome may not be restricted to financial transactions only but may percolate to other inter-company transactions as well.

In the Indian context, reading of Section 92 read with 92F(ii) and Rule 10B(1) through Rule 10B(3) requires that one of the entities for comparability necessarily has to be taxpayer preventing the scope of hypothesizing the actual transaction. It does not offer the liberty to modify the terms and conditions in the actual agreements entered into by the taxpayer and thus the scope in Indian TP for re-characterisation of any transaction is narrow.

Further, the Union Budget 2017 introduced section 94B to limit interest payments to group companies which also covers situations in which an implicit guarantee is linked to such payments. This is still a grey area and requires clarification. Even under the GAAR, the financial transactions of MNEs that are structured with the objective of claiming tax benefits without any commercial purpose will have to be scrutinised. All this indicates a lot of attention on intra-group financing.

Given the India's stand on most of the aspects of BEPS Action 8-10 and GAAR, taxpayers in India should evaluate their international transactions and structures which meet substance and commercial rationality test and not leave the matters exposed to uncertainty in the interpretation of arm's length principle.

The OECD is currently preparing TP guidelines on related-party financial transactions which may include guidance on simple loans between cross-border affiliates, similar to the loan in question which is expected to be released by year-end.

GLOSSARY OF TERMS

A.Y.	Assessment Year
AAR	Authority of Advance Ruling
Act	Income Tax Act, 1961
AE	Associated Enterprises
ALP	Arm's Length Price
ATO	Australian Taxation Office
BEPS	Base Erosion and Profit Shifting
CbCR	Country-by-country Reporting
EBITDA	Earnings before interest, tax, depreciation and amortization
FCA	Federal Court of Australia
F.Y.	Financial Year
G2O	An international forum for the governments and central bank governors from 20 major economies
GAAR	General Anti-avoidance rule
HC	High Court
IFRS	International Financial Reporting Standards
IND AS	Indian Accounting Standards
IT	Income Tax
MNE	Multi National Enterprises
NRI	Non Resident Indian
OECD	Organisation for Economic Co-operation and Development
OM	Operating margin
PPE	Property, Plant and Equipment
SHR 2017	Safe Harbour Rules, 2017
TDS	Tax deducted at Source
TPO	Transfer Pricing Officer
TRC	Tax Residency Certificate
The Tribunal	Income Tax Appellate Tribunal

Do write us back your Feedback/Queries/Comments, if any at corphelpdesk@llca.net

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