JMP Advisors

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TAX MATTERS

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DID YOU KNOW?

The CBDT has further extended the tax audit report deadline from 31 October 2025 to 10 November 2025 and the ITR filing deadline from 31 October 2025 to 10 December 2025 for taxpayers whose accounts are required to be audited. This extension is not applicable to taxpayers required to file transfer pricing audit report.

The team at JMP Advisors is pleased to bring to you a gist of some of the significant developments in the direct tax space during October 2025:

Income tax rulings

➢ Provisions relating to indirect transfer cannot override treaty provisions

- eBay Singapore Servies Private Limited vs DCIT[1]

The taxpayer, a Singapore resident company sold shares of Flipkart Singapore to another Singapore entity, FIT Holding, resulting in capital gains. The taxpayer relied on the India-Singapore Double Taxation Avoidance Agreement ('DTAA') and submitted a valid TRC to claim exemption from Indian taxation on such gains.The tax officer contended that the taxpayer functioned as a conduit, seeking to apply the look-through approach.

The tax officer denied the treaty benefits and taxed the capital gains in India. He characterised the transaction as a layered and indirect transfer benefiting the US parent company, contending that the management and control of the taxpayer effectively resided in the USA.

The taxpayer filed an appeal to the Tribunal and argued that the control and management was in Singapore evidenced by its Board decisions, director residencies, financial operations and that the transaction was solely between two Singapore-resident entities.

The Tribunal held that the evidence produced by the taxpayer (such as board resolutions, details of directorships of taxpayer) suggest that the control and management of the taxpayer was with its board of directors based in Singapore.

The tax department was not able to submit any evidence to prove its allegations. The Tribunal analysed Article 13 of India Singapore DTAA and held that Article 13(4B) applies only if the seller and the company whose shares are sold are from different countries. In the present case, the taxpayer and Flipkart Singapore are residents of Singapore, so Article 13(4B) does not apply. Regarding tax department's proposition on 'look through' approach, the Tribunal relied on earlier precedents and reiterated the principle that Tax Treaty provisions override domestic provisions and in absence of any specific provision under the Tax Treaty, the residuary clause (i.e. Article 13(5)) shall apply, which allocates taxing rights exclusively to Singapore for indirect transfer of shares.

JMP Insights **:** *The ruling underscores that indirect transfer provisions under Indian domestic law cannot override the taxing rights allocation under the treaty, reaffirming a strict and literal application of treaty rules on capital gains taxation.*

➢ Payments for Network Connectivity Services are not taxable as Royalty

- iSAT Africa Limited FZC vs DCIT[2]

The taxpayer, a UAE tax-resident entity, provides integrated communication and network-connectivity services to its customers. It entered into a Network Bandwidth ('VSAT') Connectivity Agreement with BT Global Communications India Pvt.

[1] TS-1343-ITAT-2025 (Mum)
[2] ITA No. 832/Mum/2024

Ltd. ('BTGC') to provide communication technology services, including a VSAT-based network and a dedicated router at the customer's premises.

The dispute arose when the tax officer considered payments made by BTGC to the taxpayer for network connectivity and related services rendered outside India as 'royalty' taxable under Act and the India UAE DTAA. The tax officer argued that BTGC had acquired a possessory interest in the taxpayer's equipment to the extent of the bandwidth hired. As the bandwidth was dedicated, the payment represented consideration for the use or right to use a process involving transmission through cable, optic fibre, or satellite. Accordingly, it should be classified as royalty both under section 9(1)(vi) of the Income-Tax Act, 1961 ('the Act') and Article 12 of the India UAE DTAA.

The taxpayer contended before the Tribunal that all services were rendered outside India and, therefore, the income was not taxable in India. It was argued that under the agreement, the taxpayer merely provided network access without transferring any equipment, rights or control to BTGC, and hence, the payments could not be characterized as royalty. Reliance was placed on Judicial precedents[3] wherein it was held that mere use of services does not constitute 'use or right to use equipment/process'.

The Tribunal held that no lease or transfer of control had occurred in favour of the Indian entity, as the contractual terms explicitly vested control, management, maintenance and risk with the taxpayer. It observed that royalty arises only where the payer is conferred a right to use the equipment or process, which was absent in the present case. Since the services were rendered through facilities owned and operated by the taxpayer outside India, and all operational obligations remained with it, the contention of the tax officer regarding use of the equipment by the Indian entity was factually untenable. Referring to several judicial precedents mentioned above, the Tribunal held that such payments do not qualify as 'royalty' under the DTAA or the Act.

***JMP Insights** – This decision serves as a guiding precedent for foreign service providers rendering services to Indian customers, reinforcing that income derived from infrastructure facilities owned and operated outside India cannot be construed as royalty in the absence of any substantive dominion or possessory rights granted to the Indian entity.*

- **Subcontracting and support activities do not establish PE in India**

- Concentrix CVG Customer Management Group Inc. vs DCIT[4]

The taxpayer, a U.S. incorporated company, provides outsourced customer management and marketing support services to its overseas clients. These services were provided by leveraging IT-enabled services of its Indian Associate Enterprise ('AE'), Convergys Indian Services Pvt. Ltd. ('CIS'). CIS rendered call centre and back-office services under a subcontracting arrangement with a 14% service fee mark-up on its cost.

The tax officer contended that due to supervision, direction and control exercised by the taxpayer's employees on CIS as well as the use of CIS premises, the taxpayer

[3] Cable & Wireless Networks India Pvt. Ltd. [2009] 224 CTR 463, Reliance Jio Infocomm Ltd. [2019] 108 taxmann.com 325, Asia Satellite Telecommunications Co. Ltd. (2011) 197 taxman 237 (Del)
[4] TS-1297-ITAT-2025(DEL)

constitutes fixed place PE, a dependent agent PE ('DAPE') and a service PE under India USA DTAA making certain profits taxable in India.

On appeal, the CIT(A) offered partial relief, reducing the attributed profit but upheld the existence of a fixed place PE while rejecting DAPE and service PE.

Before the Tribunal, the taxpayer relied on the Supreme Court's (SC) decision in E-Funds IT Solution Inc[5]. ('E-funds') wherein it was held that no part of the taxpayer's core business or revenue-earning activity was carried out through a place in India 'at its disposal'. CIS provided only auxiliary support services with no core business or revenue-generating activities in India. Regular interaction or close business relationship does not suffice for PE under Article 5(1) of the India USA DTAA. For a service PE to be created, since CIS rendered only support and not direct services to the taxpayer's clients in India, Article 5(2)(l) for service PE was not triggered. CIS also did not constitute a Dependent Agent PE as it had no authority to conclude contracts, operating on a principal-to-principal basis under Articles 5(4) and 5(5) of the India USA DTAA.

JMP Insights *– This ruling clarifies that managerial oversight and auxiliary support services provided by an Indian affiliate do not create a PE under the India USA DTAA. Multinational groups operating in India should structure their support operations carefully, ensuring that the Indian subsidiary's activities do not cross into main business operations or acquire authority to conclude contracts on behalf of the foreign entity. This approach substantially reduces PE risk and unintended tax exposures in India.*

➢ Opting for Section 115BAA (lower rate of tax) may lead to higher Long term capital gain taxation

\- Maharishi Education Corporation P. Ltd vs CIT(A)[6]

The taxpayer is a Domestic Company and opted for taxation under Section 115BAA of the Act by submitting requisite Form 10-IC. During Financial Year ('FY') 2021–22, it earned Long Term Capital Gain ('LTCG') on sale of land and tax rate of 20% under section 112 of the Act was applied. In the return of income filed for FY 2021-22, income other than LTCG was offered to tax as per Section 115BAA of the Act.

The return was processed electronically and an intimation under Section 143(1) of the Act was issued. According to the intimation, since the taxpayer has opted for taxation under Section 115BAA of the Act, the applicable tax rate on LTCG should be 22%. The taxpayer filed an appeal challenging the applicability of the 22% tax rate. The CIT(A) upheld the tax rate as per the intimation under Section 143(1) of the Act.

The Tribunal, without providing any detailed reasoning, concurred with the tax officer's contention and held that the taxpayer had opted for Section 115BAA of the Act. Therefore, the applicable tax rate on the taxpayer's total income was 22%.

JMP Insights *– The ITAT order does not explain the reasoning behind its decision, and it appears that the Hon'ble Tribunal may have overlooked that Section 115BAA(1) is 'subject to the other provisions of Chapter XII.' The phrase 'subject to' limits the overriding scope of Section 115BAA, creating*

[5] 399 ITR 34 SC
[6] ITA No.2639/DEL/2025

creating exceptions where specific tax rates, such as those under Section 112, are provided within the same Chapter. This decision also impacts other concessional tax rate provisions, including Sections 115BAB, 115BAC, 115BAE and similar sections. One will have to wait for a ruling of a large bench of the Tribunal or a High Court for a detailed and reasoned ruling.

We would like to take this opportunity to announce that JMP Advisors has once again been recognized as a **Leading Tax and Transfer Pricing Firm in the International Tax Review (Euromoney) World Tax 2026 Directory**. We are proud to receive this accolade and endeavour to continue providing high quality services to our clients!

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Should you wish to discuss any of the above issues in detail or understand the applicability to your specific situation, please feel free to reach out to us on coe@jmpadvisors.in.

JMP Advisors Private Limited
12, Jolly Maker Chambers II, Nariman Point, Mumbai 400 021, India
E: info@jmpadvisors.in, W: www.jmpadvisors.com

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JMP Advisors offers advice in international taxation, domestic taxation, transfer pricing, mergers and acquisitions, Goods and Services Tax (GST), business laws and exchange control regulations and foreign investment consulting. We specialize in fiscal strategy, policy foresight and advocacy matters and are trusted advisors to high net worth families. Our team at JMP Advisors takes pride in being the best at what matters most to clients - technical expertise, innovative solutions, consistent, high quality service, reliability and ease of doing business.

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