Taxation of Royalties

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Taxation of royalty - Under the Income-tax Act ('Act')

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Retrospective amendment by Finance Act 2012

Section 9(1)(vi)

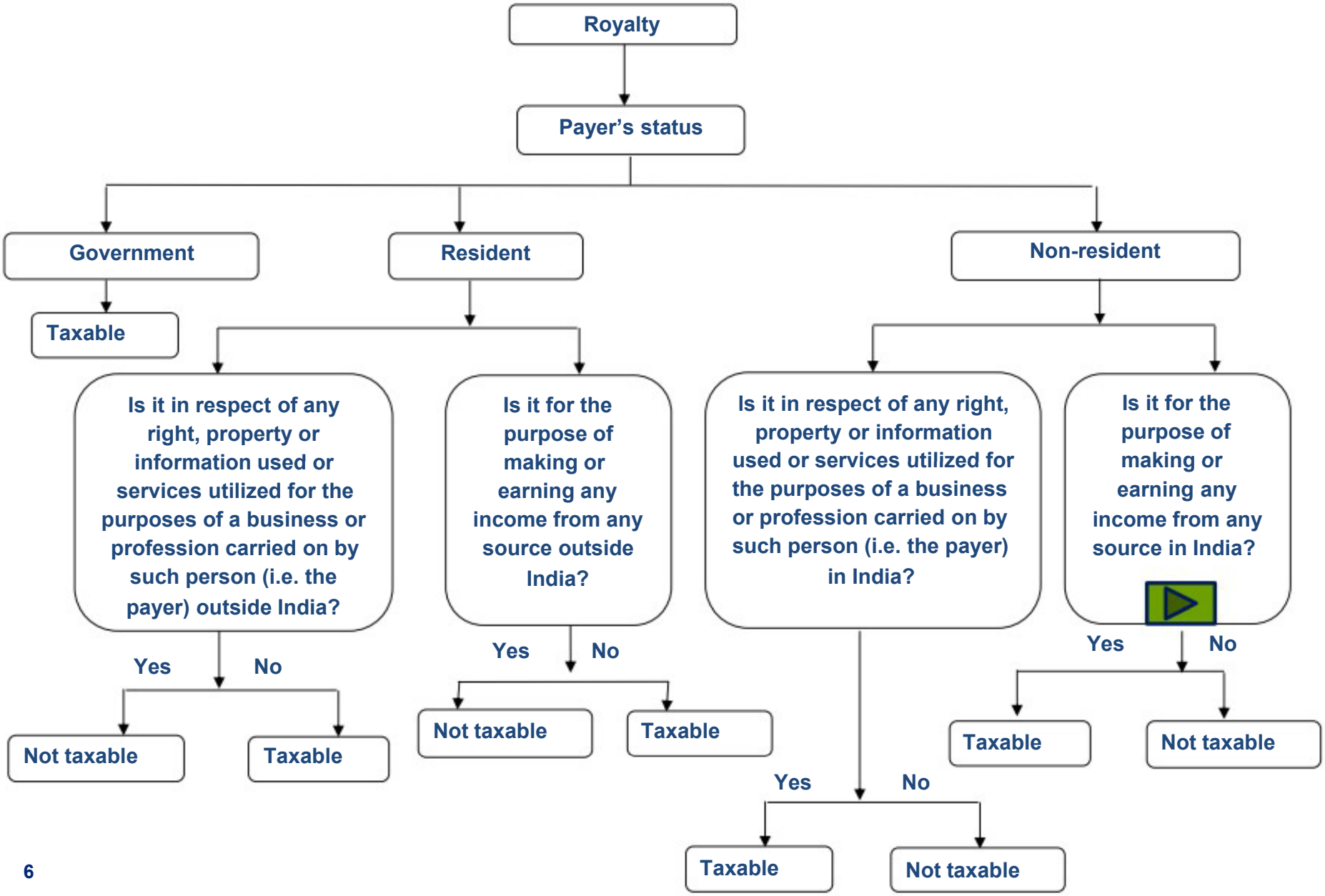
Royalty income deemed to accrue or arise in India if:

- Payable by the Government

- Payable by resident to non-resident, **except**
  - o where the royalty is payable in respect of any right, property or information used or services utilized for the purposes of a business or profession carried on by such person (i.e., the payer) outside India
  - o for the purpose of making or earning any income from any source outside India

- Payable by non-resident to resident, **only if**
  - o the royalty is payable in respect of any right, property or information used or services utilized for the purposes of a business or profession carried on by such person in India
  - o for the purpose of making or earning any income from any source in India

Taxability of royalty



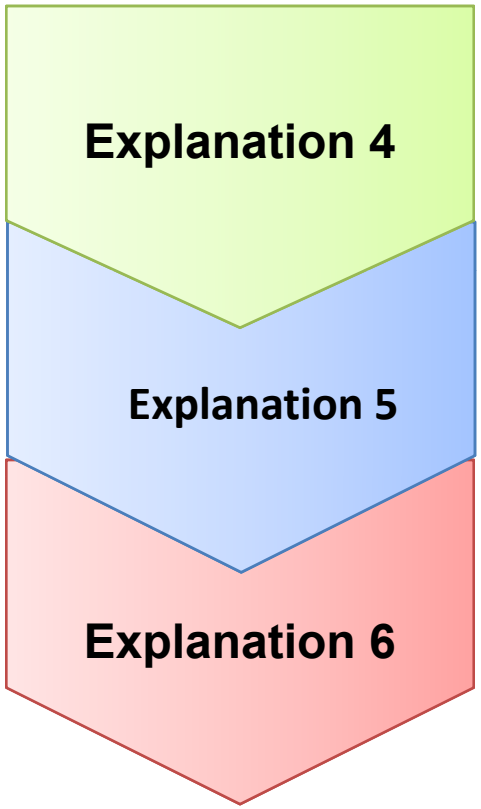
Royalty under the Act

Explanation 2 to section 9(1)(vi)

Description	IPRs	
- The transfer of all or any rights in respect of: - The imparting of any information concerning the - working or use of: - The use of any:	Patent, invention, model, design, secret formula or process or trademark or similar property	►
The imparting of any information concerning	Technical, industrial, commercial or scientific knowledge, experience or skill	
- The use or right to use	Industrial, commercial or scientific equipment	►
- The transfer of all or any rights in respect of	Copyright, literary, artistic or scientific work	►
Services in connection with the above		

Excludes income taxable under the head "capital gain" ►

Amendments by the Finance Act 2012 (Retrospective w.e.f. 1 June 1976)



For the removal of doubts, it is hereby clarified that the transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such right is transferred

For the removal of doubts, it is hereby clarified that the royalty includes and has always included consideration in respect of any right, property or information, whether or not—
(a) the possession or control of such right, property or information is with the payer;
(b) such right, property or information is used directly by the payer;
(c) the location of such right, property or information is in India.

For the removal of doubts, it is hereby clarified that the expression "process" includes and shall be deemed to have always included transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology, whether or not such process is secret

These explanations were introduced to put to rest the on going litigation on interpretation of some aspects of the definition of royalty. However, it seems the desired objective is far from achieved

Amendments by the Finance Act 2012 (Retrospective w.e.f. 1 June 1976)

Explanation 4 ►

- Transfer of all or any rights includes right for or to use a computer software (including granting of a license) irrespective of the medium

Explanation 5

- Includes consideration in respect of any right, property or information, whether or not—
  - the possession or control is with the payer;
  - it is used directly by the payer;
  - the location is in India

Explanation 6 ►

- "process" includes transmission by satellite, cable, optic fibre, etc. whether or not secret

Vodafone South Ltd (Kar HC)

Product v Underlying IPR

Underlying product	Embedded IPR content	What does Licencee of IPR expect?	What does Purchaser of product get?
Medicines / Drugs	Patent	Licence to manufacture	Ownership of drugs
T.V. Programme	Right to Telecast	Right to telecast	Real time entertainment
Books	Copyright	Publishing house wants right of reproduction	Ownership of book
Packaged drinking water	Trademark	Franchisee wants right to manufacture and sell under trademark	Ownership of product
Washing machine	Know-how / experience	License to manufacture and sell.	Ownership of process, skill,

Inherent Features of IPR Grant

- IPR is result of owner's skill, effort, exertion, intellect and/or suffering.
- Owner's possession; usually, constitutes his tool of trade.
- Not in public domain; possessed secretly.
- May or may not be registered / protected.
- Grantee is permitted to do what otherwise would be infringement.
- Enabled to do what owner could have done:
- Grantee can commercialize the product.

Taxation of royalty - under the tax treaty

Taxation of royalties - typical structure of royalty article

Article para	Subject matter
1	Clarification that the royalty arising in a source country may be taxed in the country of residence.
2	Taxability rights also given to source country, but with restriction on rate of tax.
3	Definition of Royalty
4	Provides that this Article would not be applicable in case royalty is effectively connected with PE / fixed base in source country
5	Source rules
6	Concessional rate applicable only to portion of royalty which satisfies the arms length test

Taxation of royalties - UN MC

Taxation of royalties

- Royalty arising in Source country
- Paid to person in Residence country
- May be taxed in Residence country
- Such royalty may also be taxed in Source country

However, if beneficial owner is resident of Residence State, royalty shall be taxable at a beneficial rate

Taxation of royalties - UN MC…

Exception

- Beneficial owner resident of Residence country
- Carries on business in Source country in which royalties arise through a Permanent Establishment ('PE')
- Or performs independent personal services from a fixed base situated in Source country
- And the right or property in respect of which the royalties are paid is effectively connected with
  (a) such PE or fixed base
  (b) business activities referred to in Article 7 [panamsat + quallcom]

  Article 7 or 14 as the case may be shall apply

Taxation of royalties - UN MC…

Source rules

- Royalties deemed to arise in the country in which payer is resident

- Payer need not be a resident, if
  - it has PE / fixed base in Source country
  - Royalty is paid in connection with such PE / fixed base
  - Royalty is borne by such PE / fixed base

  Royalty deemed to arise in the country of PE / fixed base

Definition of royalty - UN MC

Definition as per Article 12 of UN MC

The term “royalties” as used in this article means payments of any kind received as a consideration

a) for the use of, or the right to use:
   - any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting,
   - patent,
   - trademark,
   - design or model,
   - plan,
   - secret formula or process,
   - industrial, commercial or scientific equipment

b) or for information concerning industrial, commercial or scientific experience.

Royalty Income of F Co

Traditional view:

- Providing use of intellectual right for commercial exploitation gives rise to royalty.
- Providing use on confidential basis of information or right which is not in public domain gives rise to royalty.

Key question to be asked by recipient of consideration:

- What does payer of consideration get in return of payment? Does the payer get use of IPR?

Taxation of royalties - OECD MC

Principle of exclusive taxation in Residence country

- Royalty arising in Source country
- Owned by beneficial owner of Residence country
- Taxed in Residence country only

Beneficial owner

- Concessional tax rate under treaty available only if recipient is the beneficial owner

- The term ‘beneficial owner’ not defined in treaty or Act

- Beneficial owner - The term “beneficial owner” is not used in a narrow technical sense, rather, it should be understood in its context and in light of the object and purposes of the Convention, including avoiding double taxation and the prevention of fiscal evasion and avoidance.
  - o Concept applies to payment to intermediaries
  - o Agent, nominee, conduit, administrator, etc. should not be regarded as beneficial owner

Beneficial owner…

Some tests that may be used to determine beneficial ownership

- Control over use of the underlying asset in respect of which income is being received
- Obligation to transfer the income
- Right to enjoy that income stream
- Recipient not to act as agent or nominee

Universal International Music B.V
(Bom HC)

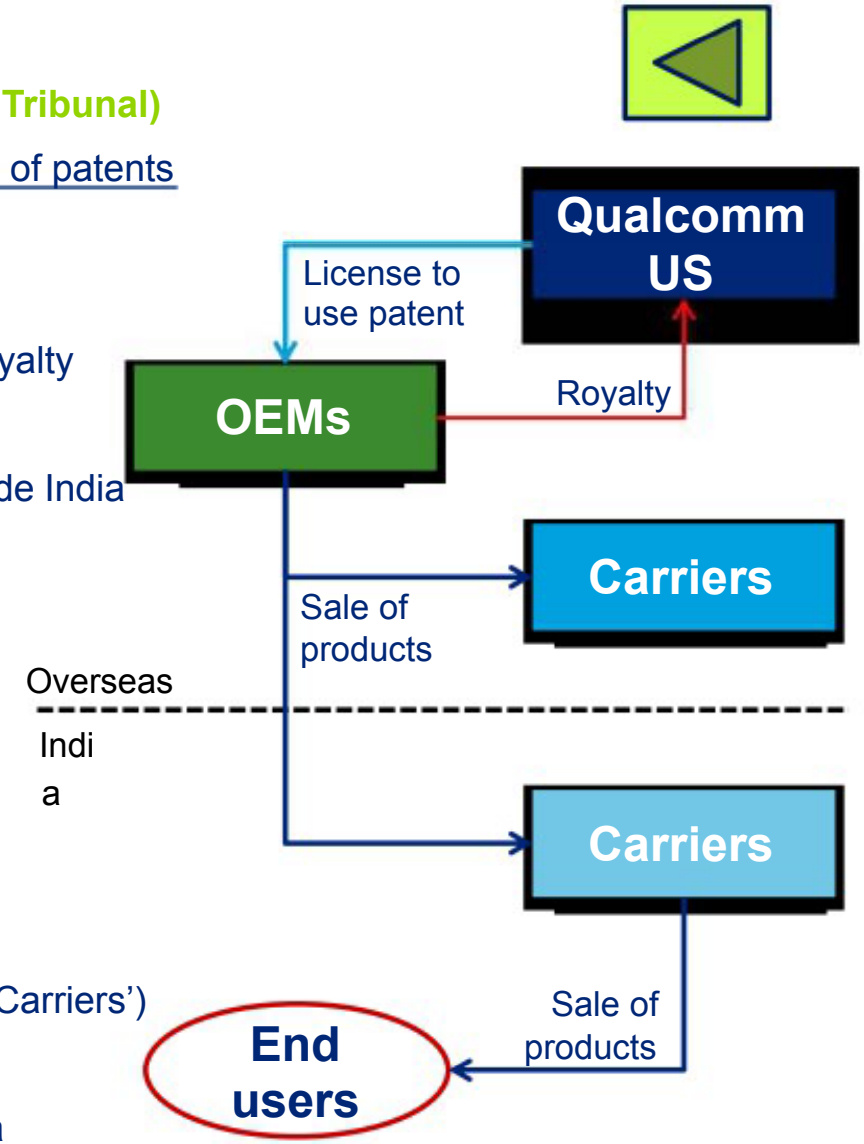
Judicial precedents on income characterization under the head “royalty”

Section 9(1)(vi)(c) - Case

Qualcomm Incorporated (30 Taxmann.com 30) (Delhi Tribunal)

Qualcomm's business model in relation to grant of license of patents

- Qualcomm licenses its patents to Original Equipment Manufacturers ('OEMs')situated outside India, for a royalty
- OEMs use the patents to manufacture products outside India
- Royalty is usually a lump sum amount plus ongoing royalties determined with reference to the net selling price of the products sold
- OEMs sell their products to wireless carriers worldwide - products were also sold to Tata Tele Services and Reliance Communications ('Indian Carriers')
- Indian Carriers sold the products to end users in India



Case …

The AO concluded that the royalty is taxable in India under section 9(1)(vi)(c) of the Act as well as Article 12(7)(b) of the India-US DTAA on the rationale that,

- Under the Act: Royalty payable by a non-resident is taxable in India where it is payable in respect of a right used for the purpose of making or earning income from a source in India - in this case, it is taxable in respect of sales made in India

- Under the DTAA: In the absence of copies of the agreements, the point at which royalty became payable could not be relied upon. As the royalty was not a mere lump sum, the claim that royalty is independent of whether the handsets are sold in India is not correct as royalty arises when goods are sold to a particular customer, here, Indian customer

The Commissioner of Income Tax (Appeals) ('CIT(A)') enhanced the assessment holding that royalty income was also earned on CDMA network equipment, in addition to handsets

Case …

Issue before the Delhi Tribunal:

Whether the royalty income earned by Qualcomm from the OEMs of mobile handsets and network equipment, who are located outside India, is taxable in India,

- Under section 9(1)(vi)(c) of the Act

Section 9(1)(vi)(c)

Income by way of royalty payable by a person who is a non-resident, where the royalty is payable in respect of any **right, property or information used or services utilised for the purposes of a business or profession carried on by such person in India** or **for the purposes of making or earning any income from any source in India**

Article 12(7)(b)

Where under sub-paragraph (a) royalties or fees for included services do not arise in one of the Contracting States, and the **royalties relate to the use of, or the right to use, the right or property**, or the fees for included services relate to services performed, **in one of the Contracting States, the royalties or fees for included services shall be deemed to arise in that Contracting State**

 * The other grounds of appeal are not covered herein

Case …

Assessee's contentions

Arguments on applicability of section 9(1)(vi)(c) of the Act (1/2):

The agreements between Qualcomm and the OEMs were not India specific and were entered into much prior (i.e. in 1993) to when India came into the picture (i.e. in 2001)

Qualcomm's role ended with license of the IP and hence, it had no source of income in India

Royalty was not dependent on the ultimate realization of sale proceeds by the OEMs

- There was no customization of the handset qua the CDMA technology and the handset could operate even outside India
- OEMs did not receive any income from licensing of software

Case …

Assessee's contentions (continued)

Ultimate use in India, of products manufactured by the OEMs using the patents licensed by Qualcomm, cannot be said to be a source in India

Source of income of OEMs is sale, and if they are not held as having a source in India, holding otherwise for Qualcomm would be a contradiction

- Limb 1 of section 9(1)(vi)(c) will apply since the right property or information has been used by the OEMs themselves in their business of manufacturing (and would be excluded from taxability since they do not carry on such manufacturing in India)
  - Reliance placed on Privy Council decision in Rhodesia Metals Limited (9 ITR (Suppl.) 45 and Delhi HC decision in Havells India Limited (ITA No.55/2012, ITA 57/ 2012)

- Limb 2 would have no application

Case …

Department's contentions

Arguments on applicability of section 9(1)(vi)(c) of the Act:

In section 9(1)(vi)(c), the language adopted for royalty in respect of right, property or information is 'used for the purposes of a business' [as against the language 'utilized in a business' appearing in section 9(1)(vii)(c) for services]

- The situs of the property is immaterial. What is relevant is the purpose of the use i.e. whether it is for business carried on in India or for a source in India
- The two limbs of section 9(1)(vi)(c) are not inter dependent on each other and may operate independently
- It cannot be said that business is done in only one of the jurisdictions if the business activities are undertaken at different locations
- The handsets are not off the shelf products and are manufactured with codes programmed to a specific network provider (in this case, India specific)

Case …

Department's contentions (continued)

- The title to the equipment passes in India
- Only hardware is sold by the OEMs whereas the software embedded therein is licensed to the Indian Carriers
- The use of technology by the OEMs for the purpose of carrying on business in India is sufficient nexus for the purpose of section 9(1)(vi)(c)

Case …

Tribunal's Observations and Ruling

On taxability under section 9(1)(vi)(c) of the Act:

Section 9(1)(vi)(c) is a deeming provision and has to be construed strictly

- What is licensed in the agreements is the use of IP owned and patented by Qualcomm for the purpose of manufacture
- The agreements were entered much before CDMA technology was introduced in India are not specific to any particular country
- As the products are manufactured outside India, the OEMs cannot be said to have done business in India
- None of the patents are used for customization of the handset to make it customer or operator specific or for installation activities
- Even otherwise, sale of India specific handsets cannot be a basis of concluding that the OEMs are carrying on business in India

Case …

Tribunal's Observations and Ruling (continued)

On taxability under section 9(1)(vi)(c) of the Act:

- In absence of operations being carried out in India, the argument that manufacturing done in one jurisdiction and sales in the other jurisdiction would result in business being undertaken in the other jurisdiction is devoid of merit
- Technology for manufacturing products is different from products which are manufactured from the use of the technology
- The Revenue's attempt to break down the sale of the products into various components is not supported by the agreements and facts
- When OEM's itself are not brought to tax, to hold that Qualcomm is taxable is not correct
- It is a case of business with India and not business in India

Case …

Tribunal's Observations and Ruling (continued)

On taxability under section 9(1)(vi)(c) of the Act:

- Limb 1 of section 9(1)(vi)(c) covers cases where the right property or information has been used by the non-resident payer (OEM) itself and is so used in a business carried on by OEM's in India
- Limb 2 covers a case where the right property or information has not been used by the non-resident payer (OEM) itself in the business carried on by it, but the right property or information has been dealt with in a manner as would result in earning or making income from a source in India
- None of the agreements refer to licensing of software
- Applying the principle in Rhodesia Metals Limited (9 ITR (Suppl.) 45), it is clear that the source of royalty is where the patent is exploited i.e. where manufacture takes place, which is outside India
- Royalty cannot be brought to tax under section 9(1)(vi)(c) of the Act

Case …

Tribunal's Observations and Ruling (continued)

On taxability under section 9(1)(vi)(c) of the Act:

On taxability under Article 12(7)(b) of the India-US DTAA - Academic

Other observations

Many devices such as washing machines, microwaves, cars, computers and even fixed landline telephones, fax machines etc. have chipsets with embedded software which enable the equipment to work. Technology in a sense, the patent of which is owned by someone, is being used in India. All these devices which have chipsets with some embedded software when operated may in a way result in use of licensed software or IPR's in India. The use of such equipment cannot result in a source of income in India

Supply of drawings, designs, etc.

- CIT v/s Davy Ashmore India Ltd. [1990] (190 ITR 626) (Calcutta HC)
- CIT v/s Klayman Porcelains Ltd [1997] (229 ITR 735) (Andhra Pradesh HC)
- CIT v/s Neyveli Lignite Corporation Ltd [1999] (243 ITR 459) (Madras HC)
- Pro-quip Corporation v/s CIT[2001] (255 ITR 354) (AAR)
- CIT v/s Mitsui Engineering and Ship Building Co Ltd [2001] (259 ITR 248) (Delhi HC)
- Pfizer Corporation [2004] (271 ITR 101) (AAR)
- International Tire Engineering Resources Llc [2009] (319 ITR 228) (AAR)
- CIT v/s Maggronic Devices (P.) Ltd. [2009] (228 CTR 241) (Himachal Pradesh HC)
- DCM Limited [2011] (Delhi HC) (unreported)

Transponder hire charges

Prior to retrospective amendment

- New Skies Satellites N. V. & others v/s ADIT [2009] (319 ITR 269) (Delhi ITAT)
- DCIT v/s Panamsat International Systems Inc. [2006] (103 TTJ 861) (Delhi ITAT)
- ISRO Satellite Centre (Isac) [2008] (307 ITR 59) (AAR)
- Asia Satellite Telecommunication Co. Ltd. v/s DIT [2011] (Delhi HC) (unreported)
- B4U International Holdings Ltd vs. DCIT [2012] 21 taxmann.com 529 (Mum Tri.)

Post retrospective amendment

- Verizon Communications Singapore (Verizon) (Madras HC)
- Viacom 18 Media (P.) Ltd. (44 taxmann.com 1) (Mumbai - Trib.)

Bandwidth charges / link charges

Prior to retrospective amendment

- Dell International Services India Pvt. Ltd [2008] (305 ITR 37) (AAR)

Post retrospective amendment

- Verizon Communications Singapore Pte Ltd. v. ITO [2013] 39 taxmann.com 70 (Madras)
- Convergys Customer Management Group Inc. v. ADIT [2013] (58 SOT 69) (Delhi ITAT)
- DIT v. WNS Global Services (UK) Ltd. [2013] (ITA 1130 of 2012) (Bombay High Court)

Verizon Communications Singapore (Verizon) (Madras HC)

Facts

- Taxpayer, a foreign company, provided bandwidth services to Indian customer for transmission of voice and data.
- The Taxpayer had provided the necessary equipment such as routers, switches, PBXs (Private Branch Exchanges), telephones, key system facsimile products, modems, voice processing equipment, video communication equipment and circuits at customer's premises, configured and customised to ensure that the customer gets the uninterrupted connectivity.

Issue

Whether payments made to taxpayer are in the nature of process/equipment royalty?

Verizon Communications Singapore (Verizon) (Madras HC)

Held

- Payment is towards equipment royalty and falls under the definition of “royalty” as per the provisions of the Act since:
  - The services provided by the Taxpayer involved use of equipment.
  - The amendment to the Act gave an expansive meaning to the term “royalty”.
  - The decisions relied on by the Taxpayer, were all rendered prior to the amendment to the Act, hence irrelevant.

- Payment is towards process royalty and amounts to “royalty” under the Act since:
  - “Process” is defined in the Act to mean and include transmission by satellite, cable, optic fibre or by any other similar technology, whether or not such process is secret.
  - Payment for bandwidth involves use of process

- The definition of “royalty” under the DTAA and the Act are in pari materia i.e. should be read with reference to each other. Therefore, no relief under DTAA.

Payment for software

Prior to retrospective amendment

- Motorola Inc. [2005] (95 ITD 269) (Delhi ITAT)
- M/s Frontline Soft Limited / M/s Call World Technologies Limited v/s DCIT [2007] (Hyderabad ITAT) (unreported)
- CIT Intl Txn v. Samsung Electronics Co. Ltd [2011] 16 taxmann.com 141 (Kar. HC)
- CIT (Intl Tax) vs. Sonata Information Technology Ltd. [2012] 21 taxmann.com 312 (Kar.)

Post retrospective amendment

- Nokia Networks (Delhi High Court)
- Convergys Customer Management Group Inc. v. ADIT [2013] (58 SOT 69) (Delhi ITAT)
- DDIT(IT) v Reliance Infocom Ltd. [2013] ITA NO 837 OF 2007 (Mumbai - ITAT.)
- DIT v Infrasoft Ltd. [2013] (Delhi HC)

DCIT v. Nokia Networks OY (TS-700-HC-2012) Del

Facts

- Tax payer, foreign company, manufactures advanced telecommunication systems and equipment (GSM equipment) used in fixed and mobile networks
- Tax payer entered into agreements with Cellular Operators for supply and installation work and supplied both hardware and software to Indian Cellular Operators
- Tax payer sold GSM equipment manufactured outside India to Indian operators
- Installation activities were undertaken by its subsidiary in India

Issue Whether supply of software is taxable as royalty under the Act and treaty?

Held

- Tax payer opted to be governed by treaty, amendments in Act cannot be read into the treaty
- According to treaty, sale of copyrighted article does not fall within purview of royalty, therefore royalty income not taxable in India
-

Reliance Infocom (Mumbai ITAT)

Background and facts

- The taxpayer entered into a contract with Lucent US for supply of software required to establish telecom network in India
- The AO held that the taxpayer was obtaining a license to use the software, which should be considered as royalty, liable to tax under the Act
- The CIT(A) held that the amounts paid cannot be considered as royalty as the taxpayer purchased 'goods' which is a copyrighted article and in the absence of Permanent Establishment ("PE") for payee in India, the amount paid cannot be charged to tax.

Issue

Whether the payment for software licenses could be considered as royalty under the Act or India-USA DTAA?

Reliance Infocom (Mumbai ITAT)

Held

- The Delhi High Court in the case of Ericcson & Nokia Netwroks dealt with software supplied alongwith hardware as embedded software.
- In the case of the taxpayer, it had purchased the software by virtue of standalone agreement.
- The Karnataka High Court in the case of Synopsys & Samsung held that the payments made for the software purchase are for certain rights in the copyrights and it meets the definition of royalty as per the applicable Treaty as well as under the Act
- 'In respect of copyright' covers rights transferred with the copyrighted article, such rights enable the licencee to use the software
- Consequently, the payments for purchase of software would be chargeable to tax in India as royalty under the Act and the Treaty

Infrasoft Ltd. (Delhi High Court)

Background and facts

- The taxpayer is a US resident and an international software company engaged in the business of developing and manufacturing civil engineering software.
- Branch in India which imports software package in the form of floppy disks or CDs depending on the requirements of their customers.
- The taxpayer customizes the software and then licenses it to its Indian customer.
- As per the Licensing Software Agreement (LSA) entered into between the taxpayer and the customers -
  - The license is non-exclusive, nontransferable and the software has to be used in accordance with the terms of the LSA.
  - The customers are permitted to make only one copy of the software and associated support information for backup purposes.
  - All copies of the software are the exclusive property of the taxpayer.

Infrasoft Ltd. (Delhi High Court)

- o Without the consent of the taxpayer, the software cannot be loaned, rented, old, sublicensed or transferred to any third party or used by any parent, subsidiary or affiliated entity of the customer or used for the operation of a service bureau or for data processing.
- o The customer is further restricted from making copies, decompile, disassemble or reverse-engineer the software without the taxpayer's written consent.
- o Upon termination of the LSA for any reason, the customer shall return the software including the supporting information and the license authorization device to the taxpayer.

- AO taxed the receipts on licensing the software as 'royalty' as per article 12 of India-US DTAA.
- The CIT(A) upheld the order of AO.
- The Tribunal held that the amount received by the assessee under the license agreement for allowing the use of the software was not royalty either under the Act or under the DTAA.

Infrasoft Ltd. (Delhi High Court)

Issue

Whether consideration received by the assessee on grant of licences for use of software is royalty within the meaning of Article 12(3) to the India-US DTAA?"

Infrasoft Ltd. (Delhi High Court)

Ruling of the High Court

- What has been transferred is not copyright or the right to use copyright but a limited right to use the copyrighted material. This does not give rise to any royalty income.
- The license granted by the taxpayer is limited to copying the program onto the computer's hard drive or random access memory or making an archival copy to enable the licensee to operate the program.
- The payment is, therefore, for a copyrighted article and represents the purchase price of an article and cannot be considered as royalty either under the Act or DTAA.
- The effect of the 2012 amendments in the ITL has not been examined because the Taxpayer is covered by the DTAA, the provisions of which are more beneficial.

Infrasoft Ltd. (Delhi High Court)

Ruling of the High Court

- The Delhi HC did not agree with the Karnataka HC ruling in the case of Samsung Electronics Co. Ltd. wherein it was held that a right to make a copy of the software for the purpose of storing it in the hard disk of the designated computer and taking backup copy amounts to use of copyright and, hence, is a royalty transaction.
- According to the Delhi HC, the right to make such a copy for the purpose of storage for its own use was only incidental to the facility extended to make use of the copyrighted product for the internal business purpose of the customer. This process was necessary to make the program functional and to have access to it and is integral to the use of the copyrighted product.

Use of business information reports

- Dun & Bradstreet Espana S A [2004] (272 ITR 99) (AAR)
- Abc Ltd. (Xyz Ltd).[2005] (284 ITR 001) (AAR)
- Credit Agricole Indosuez v DDIT(IT) [2013] ITA NO 4295 and 4965 OF 2005 (Mumbai ITAT)
- CIT v Wipro (2011) (355 ITR 284) (Karnataka HC)

Use of trademark

- DIT v/s Sheraton International Inc. [2009] (313 ITR 267) (Delhi HC)
- DDIT v. Marriott International Licensing Company BV [2013] 144 ITD 333 (Mumbai ITAT)

Use of equipment

- Poompuhar Shipping Corporation Ltd. v. ITO (IT) [2013] ITA Nos. 2206 to 2208, 2629 & 2630 of 2006 AND 56 to 64 & 598 to 601 of 2013 (Madras HC)

Information concerning industrial, commercial or scientific experience

- ThoughtBuzz (P.) Ltd., In re [2012] 21 taxmann.com 129 (AAR)
- ONGC Videsh Ltd. v. ITO [2013] 31 taxmann.com 119 (Delhi ITAT)
- ADIT (IT) v. Globus Stores (P.) Ltd [2012] 28 taxmann.com 117 (Mum ITAT)
- ONGC Videsh Ltd. v. ITO [2013] (141 ITD 556) (Delhi ITAT)
- Ceat International SA v/s CIT [1998] (237 ITR 859) (Bombay HC)
- CIT v/s HEG Ltd [2003] (263 ITR 230) (Madhya Pradesh HC)
- Hughes Escort Communications Ltd vs. DCIT [2012] 21 taxmann.com 171 (Delhi ITAT)
- Standard Chartered Bank v. Deputy Director of Income-tax* , (International Taxation)- 2(1) [2011] 11 taxmann.com 105 (Mum ITAT)
- ITO v. Kendle India (P.) Ltd [2013] 145 ITD 83 (Delhi -ITAT.)
- Thirumalai Chemicals Ltd. v DCIT [2013] 58 SOT 375 (Mumbai - ITAT.)
- Diamond Services International (P.) Ltd. v/s Union Of India[2007] (304 ITR 201) (Bombay HC)
- P.T. McKinsey Indonesia v. DDIT [2013] (141 ITD 357) (Mumbai ITAT)

Section 115A

- Royalty received by F Co or NR (other than royalty under section 44DA) from Government or Indian concern

- Conditions
  - o Pursuant to agreement made after 31 March 1976
  - o Approved by Central Govt. or relates to a matter included in the industrial policy

- Above conditions are not required to be satisfied in respect of transfer of copyright in book to an Indian concern or copyright in computer software to a resident

- Rate of income tax

  o **Assessment Year 2013-14** - If agreement is made after
  - 31 March 1976 but before 1 June 1997 - **30%**
  - 31 May 1997 but before 1 June 2005 - **20%**
  - 31 May 2005 - **10%**

  o **Assessment Year 2014-15** - If agreement is made at anytime after
  - 31 March 1976 - **25%**

Questions

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Thank you !