

McDonalds India Pvt Ltd – ITAT – Delhi

Outcome: In **favour** of taxpayer
Category: Royalty Pass-through

The Tax Court upheld the taxpayer's claim for recognising royalty from franchisee/ JVs transaction as pass through cost to AE, that did not have any profit element or value additions made.

Further, facts suggest that taxpayer remits royalty / franchise fees within 5 days of each month to its AE without fail. It was the Department's view that royalty is not a pass through as taxpayer assumes risk in case of default by franchisee. Accordingly, the Tax Court pointed out that there was no default in prior years and no risk would be assumed, therefore ruling in favour of taxpayer.

Strides Shasun Limited – ITAT – Mumbai

Outcome: **Against** taxpayer
Category: Interest free loan

Tax Court rules interest free loan to AE for reimbursement of expenditure to fall within meaning of international transaction. Accordingly, clause (c) of Explanation-(i) to Section 92B of Income-tax Act, 1961 covers expenditure on receivables from AEs which are incurred on behalf of AE.

RECENT NEWS

CBDT proposes draft 'indirect transfer' valuation rules

CBDT releases draft valuation rules to determine FMV, for public consultation:

- FMV of tangible or intangible assets held by foreign company deriving its value substantially from assets located in India, shall be calculated as per new rule 11UB.
- FMV of listed shares to be on 'observable price' i.e. higher of average weekly high and

low closing prices during last 6 months or 2 weeks preceding the specified date. Where listed shares held as shareholding, then fair market value equals $(A+B)/C$, where,

- **A=** market capitalization of company on 'observable price'
 - **B=** book value of liabilities
 - **C=** total number of shares
 - Fair market value of unlisted shares transferred shall be determined on arm's length basis increased with value of liability by merchant banker or accountant following internationally accepted pricing methodology.
 - Assets of foreign company or transfer of shares between unrelated parties be evaluated on external valuation report plus adjustment for liabilities.
 - Income attributable to Indian assets be determined as per Rule 11UC: $A * B/C$ where,
 - **A=** Income from transfer of share/interest
 - **B=** Fair Market Value of assets located in India as per Rule 11UB,
 - **C=** Fair Market Value of all global assets as per Rule 11UB
- Form 3CT should be obtained from accountant for determining proportionate income relating to assets in India. If transferor fails to give information for applying above formula, whole income shall be deemed to be attributable to assets located in India.
- 90 days deadline from end of financial year for transfer of share/interest in foreign company.

Equalisation levy & Direct Tax Dispute Resolution Scheme rules to be effective from June 1

CBDT notifies Equalisation Levy Rules, 2016 for furnishing Equalisation Levy electronically on or before June 30 in prescribed Form 1. December 31, 2016 to be last date for making declaration to designated authority in respect of tax arrears / specified tax under new Direct Tax Dispute Resolution Scheme, 2016.