

## Thomas Cook (India) Limited – ITAT – Mumbai

**Outcome:** In favour of taxpayer  
**Category:** AMP expenditure

Tax Court rules in favour of taxpayer in respect of treatment of AMP expenditure and holds that it cannot be an international transaction.

Accordingly, due to the absence of direct evidence of incurrance of AMP expenditure for the benefit of AE or on behalf of AE, transaction does not fall within meaning of international transaction. Reliance was placed on the stand taken by Delhi High Court in various issues regarding AMP expenses. Further, in the absence of any agreement for sharing AMP expenses, Tax Court maintains a clear-cut stand and deletes taxpayer's adjustment.

## ZTE Corporation – ITAT – Delhi

**Outcome:** Against taxpayer  
**Category:** Permanent Establishment (PE)

With regard to attribution of profit to PE the Tax Court considers 'economic life' of PE in source country to be a decisive factor.

Further, the level of operations carried out through Indian PE are considerable enough to conclude that entire sales function were carried out by PE in India. Tax Court rejects taxpayer's stand and rules that if functions, assets and risks assumed is not effectively followed in transfer pricing analysis then further attribution of profits to PE is required for such functions, risks.

## Aptara Technologies Pvt Ltd – ITAT – Pune

**Outcome:** Against taxpayer  
**Category:** Multiple-year data

Tax Court rejects taxpayer's views in regard of use of multiple-year data in its transfer pricing analysis. Accordingly, taxpayer is directed to use single year data unless and until proven that the comparable data retrieved under single year is not functionally similar.

## Recent News:

### OECD seeks technical inputs on Multilateral Instrument Standard

With regard to specific technical inputs, the Organisation for Economic Cooperation and Development (OECD) invites public comments based on BEPS Action Plan 15 (Developing a Multilateral Instrument to Modify Bilateral Tax Treaties). The technical issues discussed relate to development of multilateral instrument to modify tax treaties and the optional provision on MAP (Mutual Agreement Procedure) arbitration. The aim is to enable taxpayers in applying multilateral instruments to existing tax treaties.

### China evaluates additional disclosures on intra-group services along with CbC - reporting

China's Consultation draft circular 'Implementation Measures for Special Tax Adjustments' proposes new requirement for preparation of Special File wherever taxpayer engages in intra-group service transactions, cost sharing agreements or with thin capitalisation. Contents of the file include copies of relevant intercompany agreements, documentation of service cost identification and allocation keys, selection of specific TP methods. In line with Action Plan 13 of OECD's BEPS Project, India and China give emphasis to CbC reporting in high risk assessments and challenge in collecting information on global operations of a group company headquartered elsewhere.

### OECD adopts BEPS Actions 8-10 & 13 recommendations in Transfer Pricing (TP) Guidelines

OECD includes amendments to TP-Guidelines constituting participation of member countries as well as non-member countries. Changes are likely to align various chapters of BEPS.