

## Idea Cellular Ltd – ITAT - Mumbai

Outcome: **In favour** of taxpayer

Category: Arranger fees

Tax Court upheld taxpayer's view that fees paid to non-resident for arranging loan was neither considered as 'interest' nor 'Fees for technical services' (FTS) and thereby the arranger fees was not subject to TDS under section 195 of Income-tax Act, 1961.

Tax Court held that arranger was merely third party and accordingly 'Arranger fee' could not be termed as 'interest'. Further, held that arranger did not provide any advisory or counselling services, so arranging loan cannot be equated with lending of managerial services and hence it cannot be termed as 'FTS'.

## First Blue Home Finance Ltd – ITAT - Delhi

Outcome: **In favour** of taxpayer

Category: Issuance of Shares

Tax Court held that the transaction of issue of shares was rightly considered by taxpayer as an international transaction. Further, referred to amendment made by Finance Act, 2012 which included capital financing transaction within the ambit of international transaction. Further, tax court deleted the addition made by TPO on account of interest on deemed loan due to under receipt of share premium on international transaction of issue of share capital to Associate Enterprise (AE).

## Recent News:

### Clarifications on Rollback Provisions of Advance Pricing Agreement (APA) Scheme

Rollback provisions in the APA scheme were introduced in 2012 through insertion of section (9A) inserted in section 92CC by the Finance Act, 2014 and the relevant rules namely Rules 10MA and 10RA have been notified recently. The following clarifications were made which may be considered while processing APA applications containing Rollback request:

1. APA Rollback would be availed only where **revised return has been filed u/s 139(5) and further this scheme would not be availed in case if return of income is filed beyond due date under section 139(4).**
2. Transaction in Rollback year has to be of **same nature** and undertaken with same AE as proposed to be undertaken in the future years.
3. Rollback to apply only if Function Assets Risk (FAR) analysis pertaining to Rollback year **does not materially differ** from FAR validated for future years agreement.
4. No option provided to choose Rollback year. It should be applied **to all the 4 years or none** except the cases where covered international transaction did not exist or disqualifications exist in the rollback year, then applicant may apply rollback for remaining years.
5. Benefit of Rollback would be availed in cases where **Tax Court has only set aside the order for fresh consideration** of the matter by lower authorities with full discretion at their disposal.
6. No Rollback for years where Mutual Agreement Procedure (MAP) has been concluded and where MAP request is pending, then **applicant may exercise the option of MAP or rollback application.**
7. Further, for including rollback provisions, the applicant **would be eligible to revise** the concluded APA's.
8. Arm's Length Price (ALP) could be different for different years; however **manner of ALP determination needs to be same.**
9. In case of Merger, person (Company) who makes APA application would be entitled for rollback provisions.
10. In case of Demerger, person (Company) who makes APA application would be entitled for rollback provisions.
11. Where applicant fails to **carry out specified action for any of the rollback years**, the entire agreement shall be cancelled.
12. **Compliance Audit for Rollback** would be applicable to check if agreed price or methodology of rollback has been applied in the modified return.
13. Further, rollback provisions **should not result in reduction of income or increase in losses.**
14. The **option to withdraw rollback application** would be availed to applicant while maintaining APA application for future years.