

RECENT NEWS:

Much awaited India-Mauritius Double Taxation Avoidance Agreements (DTAA) amended to include the following important highlights:

- (i) Insertion of new Article 12A to provide source based taxation of Fees for Technical Services (FTS) @10% on gross basis. FTS definition similar to Indian domestic tax law
- (ii) Inclusion of Service Permanent Establishment (PE) clause to include furnishing of services by an employer enterprise for periods aggregating more than 90 days within any 12-month period
- (iii) With effect from April 1, 2017, India gets right to tax capital gains on alienation of shares in a company resident in India
- (iv) For capital gains on alienation of shares between April 1, 2017 to March 31, 2019, the tax rate would be limited to 50% of the domestic tax rates in India subject to the LOB clause
- (v) Article 11 for Interest amended to remove earlier exemption on interest received by banks in source state and tax source state at 7.5% of gross interest when beneficiary of such interest is resident of other contracting state
- (vi) Amends the Exchange of Information article (EOI) to be in line with International standards

6 countries sign CbC Multilateral Agreement

India including China, Iceland, Israel, New Zealand and Canada sign Multilateral Agreement to facilitate automatic exchange of CbC (Country-by-Country) reporting and boost transparency by MNEs.

Gruner India Pvt Ltd – ITAT - Delhi

Outcome: **Against taxpayer**

Category: **Royalty & FTS**

The Tax Court upheld that payment for royalty and fees for technical services (FTS) are two separate international transactions with peculiar nature rather than 'closely linked' as considered by the taxpayer. In general parlance too royalty is paid for the use or right to use an intangible and an FTS for paid for provision of service. Hence, every international transaction has to be benchmarked separately unless they are belonging to a same class of transaction.

NTT DATA Global Delivery Services Ltd – ITAT - Bangalore

Outcome: **Against taxpayer**

Category: **Merger**

With respect to finding functionally similar companies for benchmarking purposes, it is ruled by the Tax Court that a merger itself does not imply an exclusion from final set of comparables when amalgamated company is functionally similar to tested party activities.

Further, reference was placed on the decision of M/s Willis Processing Services (India) Pvt Ltd (TS-49-ITAT-2013(Mum)-TP)