

International Tax October 2025

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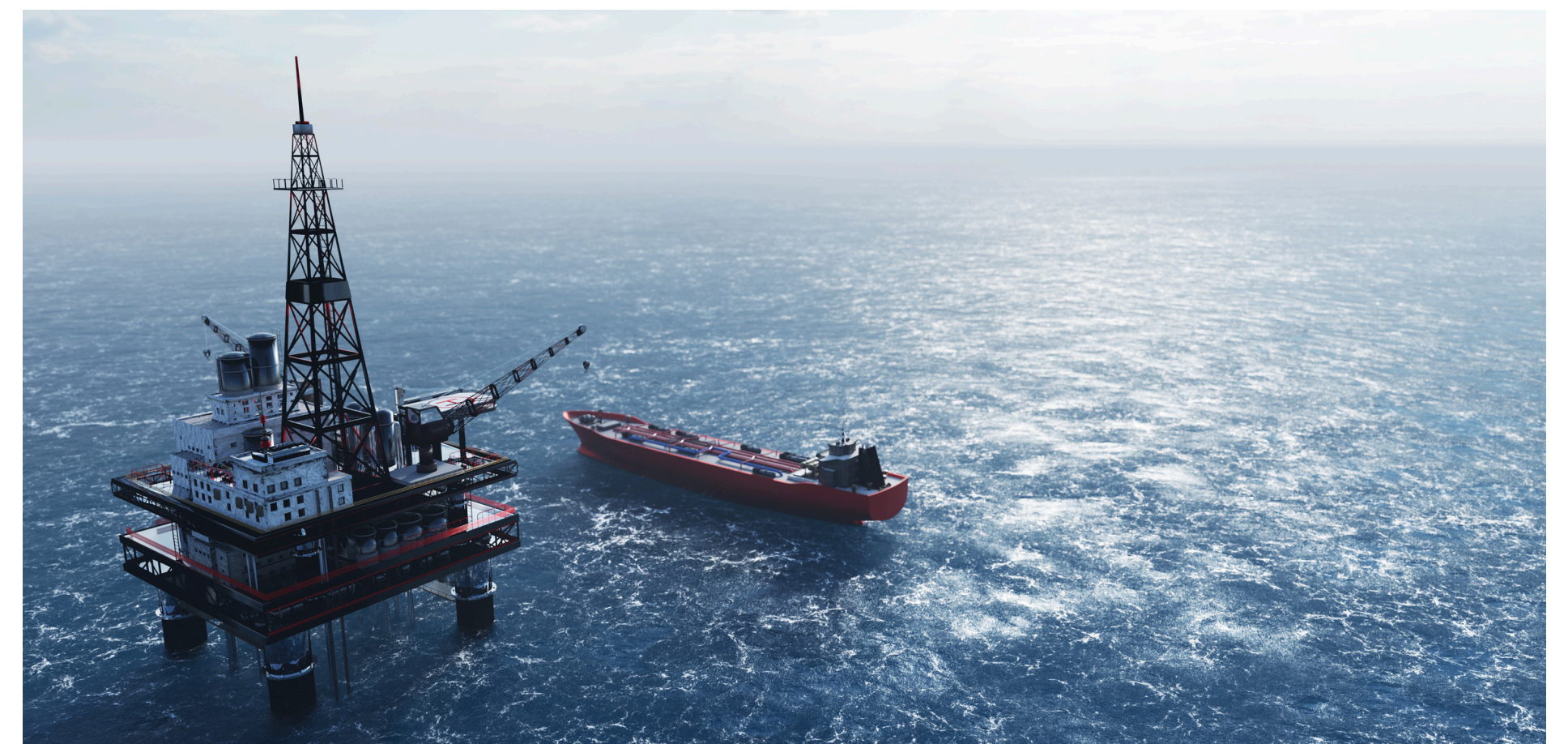
The appellant, a non-resident French company engaged in oil drilling, had a 10-year offshore drilling contract in Mumbai from 1983 to 1993 and was awarded another in 1998, formalized in 1999. During the intervening years, though no drilling contract was active, the appellant-maintained business correspondence with ONGC, submitted a bid in 1996, and incurred administrative and audit expenses to continue business activities and pursue tax refunds. For AYs 1996–97, 1997–98, and 1999–2000, returns were filed showing NIL income except interest on tax refunds, against which business expenditure and unabsorbed depreciation were claimed. The AO disallowed these claims, holding no business was carried on; CIT(A) upheld this, but ITAT reversed, treating the lull as temporary and allowing deductions under Sections 71 and 32(2). The High Court, while agreeing that a lull does not mean cessation, reversed ITAT’s decision, leading to the present issue before the Supreme Court: whether the appellant was carrying on business during the relevant period to claim such deductions.

Rulings

In the present case, The Supreme Court set aside the Uttarakhand High Court’s ruling and restored the ITAT order, holding that the High Court

erred in concluding the assessee was not carrying on business in India merely because it had no active contract with ONGC. The Court clarified that a non-resident need not have a permanent establishment in India to be considered as carrying on business, and business correspondence from abroad aimed at securing contracts constitutes business activity. It observed that a temporary lull does not amount to cessation of business and that failure to obtain a contract cannot be decisive. Emphasizing the wide scope of the term “business,” the Court allowed the appeals, permitting deduction of business expenditure under Section 37(1) and carry forward of unabsorbed depreciation under Section 32(2).

Source: SC, in the case of Pride Foramer S.A. Vs CIT vide [TS-1364-SC-2025] on October 17, 2025



Network Connectivity Payments for Offshore Services Not Royalty Under India-UAE DTAA

Facts

The assessee, ISAT Africa Ltd FZC, a non-resident company and tax resident of the UAE, engaged in providing integrated communication services, received payments from BT Global Communications India Pvt. Ltd. (BTGC) under a service agreement dated 01.04.2016. These payments, totaling Rs. 1,55,55,344, were made for services including VSAT network provisioning and bandwidth connectivity. The Income-tax Department observed that BTGC had not deducted tax at source on these remittances, which were treated as royalty under Section 9(1)(vi) of the Income-tax Act. Consequently, proceedings under Sections 201 and 148 were initiated, and the assessee was issued notices. In response, ISAT claimed protection under the India-UAE DTAA, asserting that it had no Permanent Establishment in India, and that the income was not royalty, but business income earned outside India. However, the Assessing Officer and the Dispute Resolution Panel held that the payments constituted royalty under Article 12 of the DTAA, being for the use of process and equipment. The final assessment order dated 16.01.2024 assessed the income at Rs. 1,55,55,344 and initiated penalty proceedings under Section 270A. aggrieved, the assessee has filed an appeal.

Rulings

The Hon'ble bench holding that payments received from BT Global Communications India Pvt. Ltd. for network connectivity and related services rendered outside India do not constitute 'royalty' under Article 12 of the India-UAE Double Taxation Avoidance Agreement (DTAA). The Hon'ble Tribunal examined the service agreement and found that the assessee retained full ownership, control, and operational responsibility over the equipment and processes used to deliver services. No rights were transferred or surrendered to the Indian entity. The court place reliance to the coordinate bench decision in Reliance Jio Infocomm Ltd., the ITAT emphasized that for a payment to qualify as royalty, there must be a transfer of the right to use equipment or a process, which was absent in this case. The bench further noted that the services were provided entirely outside India, and the Revenue's claim that the assessee failed to bring relevant facts on record was factually incorrect. It concluded that the directions issued by the Dispute Resolution Panel (DRP) and the Assessing Officer (AO) were legally untenable, and the income in question was not taxable in India as royalty. Therefore, the court allowed the appeal.

Source: ITAT, Mumbai in the case of iSAT Africa Limited FZC vs DCIT vide [TS-1319-ITAT-2025(Mum)] on September 22, 2025



Mere Use of Technology Does Not Constitute Technical Services Under Article 12 of India-Belgium DTAA

Facts

The assessee, a non-resident corporate entity and tax resident of Belgium, is engaged in the manufacture and distribution of specialty polymers and chemicals, serving various global industries. For the relevant assessment year, the assessee filed its return declaring income of INR 3.24 crore. During scrutiny, the Assessing Officer noted that the assessee received INR 109.72 crore from two Indian group entities- Solvay Specialties India Pvt. Ltd. and Sunshine Chemical- for business support services under a Functional Service Agreement. The assessee claimed that the receipts were not taxable as fees for technical services (FTS) under the India-Belgium DTAA, invoking the Most Favoured Nation (MFN) clause. However, the AO rejected this claim, stating the MFN clause was not notified and treated the receipts as royalty under Section 9(1)(vi) of the Act and Article 12(3)(a) of the DTAA. The Dispute Resolution Panel (DRP), while considering objections, issued a show cause notice and ultimately held the receipts to be taxable as FTS under Article 12(3)(b) and Section 9(1)(vii), and alternatively as royalty. Based on DRP's directions, the AO finalized the assessment, which is now under appeal.

Rulings

In this case, the Hon'ble Tribunal hold that the receipts from services rendered to Indian group entities do not qualify as Fees for Technical Services (FTS) under Article 12(3)(b) of the India-Belgium DTAA. After examining the Functional Services Agreement and the nature of services provided, the Tribunal concluded that the assessee was not in control of the management of the Indian entities, and the services rendered did not involve the transfer of technical knowledge or skills. Referring to OECD guidance, the bench clarified that the mere use of technology in delivering a service does not make it technical in nature; rather, the service must require specialized technical knowledge at the point of delivery. Applying principles from earlier decisions in Springer Verlag GmbH and UPS SCS (Asia) Ltd., the Tribunal found that the services were not managerial, technical, or consultancy in nature. It also noted inconsistencies in the Revenue's approach—while the AO failed to assess the issue under Article 12(3)(b), the DRP treated the receipts as both FTS and royalty without a clear basis. The Tribunal further observed that the agreement had been in place since 2013 and the Revenue had never previously treated such receipts as taxable, which supported the assessee's position. Accordingly, the ITAT held that the receipts were not taxable as FTS or royalty under the DTAA or the Act.

Source: ITAT, Mumbai in the case of Solvay S. A. vs DCIT, vide [TS-1199-ITAT-2025(DELTS-1413-ITAT-2025(Mum))] on October 27, 2025



Support Service Fees Not FTS Under India-USA DTAA Due to Absence of 'Make Available' Condition

Facts

The brief facts are that the assessee, a diversified financial services company headquartered in San Francisco, USA, is a tax resident of the United States under Article 4 of the India-USA DTAA and holds a valid Tax Residency Certificate. It offers a range of services including banking, loans, investments, and wealth management to various customer segments. During the relevant assessment year, the assessee earned income from three sources: its liaison office in India, interest from borrowings, and support service fees from associated enterprises. For AY 2014–15, the assessee filed its return declaring income of INR 27.63 crore. The case was selected for scrutiny and assessed under Section 143(3) read with Section 144C(3), resulting in additions of INR 1.52 crore towards interest income and INR 4.35 crore towards support service fees. The assessee appealed against these additions before the CIT(A), who deleted both. While the appeal was pending, a reassessment notice under Section 148 was issued, and a reassessment order was passed on 25.05.2023, carrying forward the same additions. In the reassessment appeal, CIT(A) held that the issues had become infructuous since relief had already been granted in the

original appeal, which had attained finality as the Revenue did not challenge it. The Revenue has now appealed before the Tribunal against CIT(A)'s treatment of the issues as infructuous.



Rulings

The Hon'ble Tribunal upheld the order of the CIT(A) in favor of Wells Fargo Bank National Association, ruling that the support service fees received from its Indian associated enterprise are not taxable as Fees for Technical Services (FTS) or Fees for Included Services (FIS) under Article 12(4)(b) of the India-USA DTAA. The Tribunal emphasized that the services rendered did not satisfy the "make available" condition, as they did not involve imparting technical knowledge, skill, or experience that would enable the recipient to perform the services independently. Referring to the service agreement and treaty provisions, the ITAT noted that the services were routine and centralized in nature, and did not involve managerial, technical, or consultancy elements. It also observed that in earlier assessments, including AY 2011–12, the Revenue had accepted the assessee's claim that such services were not taxable under the treaty. Further, for AY 2013–14, the Tribunal found no change in the factual or legal position compared to AY 2014–15. The ITAT criticized the Revenue's approach in the reassessment proceedings, where the same additions were repeated despite the CIT(A) having already granted relief in the original assessment. It concluded that the services provided do not fall within the scope of FIS under the treaty, and the income received is not taxable in India.

Source: ITAT, Mumbai in the case of ACIT vs Wells Fargo Bank National Association vide [TS-1321-ITAT-2025(Mum)] on September 26, 2025



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