

Facts in aforesaid case

- 1) The applicant (Indian entity) proposes to enter into an agreement with another group company, namely M/s Cable and Wireless UK (C &W UK) with a view to providing end to end international long distance telecommunication services to its Indian customers.
- 2) Under the proposed agreement the applicant would provide the Indian leg of the service by using its own network and equipments and network of other domestic operators and the international leg of the service would be provided by C&W, UK, using its international infrastructure and equipments. In other words, whereas the applicant will carry the calls and data within the country, C&W UK will further carry those calls and data to the recipients outside India.
- 3) The network and equipments of C&W UK will not be used in India and the applicant's network and equipments will not be used outside India.
- 4) Thus in telecom parlance, domestic half circuit will be provided by the applicant and international half circuit will be provided by C&W UK.
- 5) In respect of the aforesaid services rendered by C&W UK, the applicant/Indian entity will pay fees to the former.

Question before Authority

Taxability of aforesaid payment in hands of UK entity under India-UK DTAA under Income Tax Act, 1961 (Act) and consequential tax withholding u/s 195 (if any) required by Indian Entity.

Reasoning & analysis by AAR

1. We shall first take up the issue whether the applicant pays fees to C&W UK for rendering 'technical services' under the Act or under the treaty. Explanation 2 to para (vii) of section 9(1) defines 'fees for technical services' to mean any consideration paid for rendering any managerial, technical or consultancy services, including provision of services of technical or other personnel. In the present case, in carrying telecom signals from Marseilles to other countries, C&W UK is not providing any managerial, technical or consultancy services, nor is it providing the services of its technical or other personnel to the applicant. C&W UK performs this part of service itself without the involvement of the applicant. The applicant has thus rightly urged that the fees paid by it to C&W UK is not in the nature of fees for technical services under the Act.

2. It is well settled that telecom services are standard services. The arrangement between the applicant and C&W UK is for rendition of service and the applicant pays for the same. It is for C&W UK to see how it will provide that service. The applicant is not concerned with the same. This Authority has dealt with this issue in the case of Dell International Services India Pvt. Ltd.(supra). The Authority also considered in detail the question whether consideration was payable for using or for the

right to use any equipment through which connectivity was provided. That question was answered in the negative. We are of the view that on the same reasoning the applicant does not pay for using any secret process in the present case also.

Conclusion by AAR

In the light of the above discussion, we have come to the conclusion that the **payments made by the applicant to C&W UK are in the nature of business profits.** In the absence of there being any permanent establishment of C&W UK In India, this income is not at all taxable here. Since this income is not chargeable to tax under the Act, there is no question of making any deduction at source under section 195.