

Payment to Singaporean Company for executive training isn't FTS as it falls in exclusive clause of FTS under treaty

Summary – The Authority for advance rulings in a recent case of Eruditus Education (P.) Ltd., (the Assessee) held that payment received by Singaporean company from applicant towards cost of teaching in education programmes conducted by applicant in India, is not in nature of fees for technical services and is not taxable in India.

Facts

- The applicant is an Indian company engaged in the business of providing high quality executive education programmes to Indian corporate and other participants.
- It entered into a Programme Partnership Agreement with INSEAD, a Singaporean company which is in the business of providing various management education programmes globally.
- As per the Programme Partnership Agreement, INSEAD is obliged to conduct teaching intervention as per the agreed terms while the applicant, shall assist in the marketing, organizing, managing and facilitating to conduct the programme. The duration of the programme shall be 11 months and the teaching intervention to be conducted by INSEAD will be for a period of 30 days that will consist of in-class teaching on INSEAD global campuses in Singapore and France, in-class teaching in India and teaching through tele-presence in Singapore in the manner set out in the agreement.
- The applicant shall compensate INSEAD for the cost involved in teaching the entire programme and the other incidental expenses.
- The applicant sought advance ruling on the following questions:
 - Whether the payments made by the applicant to INSEAD for various services under the terms of the Programme Partnership Agreement is in the nature of 'Fees for Technical Services' within the meaning of the term in article 12 of the India-Singapore Tax Treaty and /or under the provisions of section 9(1)(vii)?
 - Whether the recipient in the stated facts and circumstances, would have a Permanent Establishment ('PE') in India under article 5(1) or 5(8) of the Treaty?
 - Whether the payments received by INSEAD are chargeable to tax in India?
- The applicant contended that the payment for the services rendered by INSEAD falls under the exclusion clause 'for teaching in or by educational institutions' as per article 12(5)(c) of India-Singapore Tax Treaty and the payment will not constitute fees for technical services as per the India-Singapore Treaty and is not taxable in India.
- In its submission, the department stated that INSEAD, the non-resident company, is rendering certain services to the applicant in the form of the training, in-class teaching and on-line teaching and the services rendered under the broader term "technical services" and, therefore, the payments

are taxable in India as fees for technical services both under section 9(1)(vii) of the Income-tax Act and article 12(2)(4) of the DTAA with Singapore.

Held

- By definition of the curriculum of the programme offered by INSEAD to the applicant, it will be seen that the services rendered involve expertise in or possession of special skill or knowledge that are technical in nature. It is true that the payment for the services falls under the broad definition of 'Fees for Technical Services' both under the Indian Income-tax Act and under the India-Singapore Tax Treaty. However, the case of the applicant will fall in the exclusive clause of article 12.5(c) of the (India-Singapore Tax Treaty).
- In this case there is no dispute about the teaching conducted by INSEAD for the applicant. There is also no dispute about the status of INSEAD being an education institution.
- It is a settled position in law now that Tax Treaty shall override the provisions of the Act to the extent the same is beneficial to the applicant. In this case, the applicant opted for the provision of the Tax Treaty as it is found more beneficial to it and there is no reason for not allowing it. The payment made by the applicant to INSEAD for services rendered under the terms of Agreement is not in the nature of "Fees for Technical Services" as it falls under the exclusive clause of article 12.5(c) of the Treaty though the payment for the service may be 'fees for technical services' under the provision of section 9(1)(vii) of the Income-tax Act, 1961.
- Based on the facts stated, the recipient (INSEAD) does not have a Permanent Establishment in India within article 5(1) or 5(8) of the India-Singapore Tax Treaty.
- The payments are stated toward the costs involved in the components of the Programme taught by INSEAD faculty. In view of aforesaid holding, payments received by INSEAD from the applicant are not chargeable to tax in India.
- As the payments are held to be not taxable in India, there is no case for withholding tax under section 195.