Insight

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Medianet Pvt Ltd v Maldives Inland Revenue Authority (2019)

Summary

The phrase "other property" in Section 6(a)(1) of the BPT Act should be construed to include only tangible property

In the case of Medianet v MIRA[1], the Tax Appeal Tribunal, by a majority decision of four to one, held that channel licensing fees are not within the ambit of Section 6(a)(1) of the BPT Act[2] and hence not subject to Withholding Tax.

The major question - whether channel licensing fees paid to a non-resident party falls under "royalties or other such consideration" stated in Section 6(a)(1) - was deliberated by the tribunal members, and the majority members were of the opinion that the payments (i.e. any rent, royalty or other such consideration) stated in Section 6(a)(1) must be towards the use of plant, machinery, equipment or other property - which are of tangible nature. This being the case, channel licensing fees, which are not paid for the use of tangible property, are not taxable under Section 6(a)(1) of the BPT Act.

[1] Medianet Pvt Ltd v MIRA (TAT-CA-W/2017/005)

[2] Business Profit Tax Act (Law Number 5/2011)

Facts and Observations

MIRA: channel licensing fees fall under "royalties and other such consideration"

Medianet Private Limited ("Medianet") - the largest pay-tv broadcaster in the Maldives - was subject to a WHT audit for the taxable periods from 1 October 2013 to 30 September 2014. In the audit conducted by the MIRA, it was deemed that channel licensing fees paid to non-resident broadcasters were in the nature of "royalty or other such consideration" which are subject to WHT under Section 6(a)(1)[3] of the BPT Act.

The MIRA's rationale for its interpretation of Section 6(a)(1) is that the definition of "royalty" given in the BPT Act contemplates payments made with respect to both tangible and intangible property. MIRA argued that channel licensing fees are paid to acquire channel rebroadcasting rights and thus were of the nature of "royalty or other such consideration", viz, the amounts were paid for the right to receive and rebroadcast certain types of media. In making this argument, the MIRA also cited Section 17 of the Interpretation Act[4] which states that priority should be given to an interpretation of the law that achieved the aims and objectives of the law and that laws should not be interpreted in a manner that would thwart its objectives. MIRA's position is that the Peoples Majlis intended cover intangible property within the term "other property" in Section 6(a)(1) for the purpose of imposing WHT on royalty payments made towards such intangible property.

Medianet: Payment for the use of intangible property does not fall within the ambit of Section 6(a)(1)

The key legal argument raised by Medianet was based on a rule of statutory interpretation - the ejusdem generis rule. With reference to Section 8(a)[5] of the Interpretation Act, Medianet derived the interpretation that plant, machinery, and equipment is a class of descriptors which have specific characteristics and any general term - other property - that follows these specific terms must be read in light of the preceding specific terms. Medianet argued that channel licensing fees were not paid for the use of anything with similar characteristics to the aforementioned descriptors - namely, any type of tangible property - and hence would not be subject to WHT.

In its argument, Medianet also stated that if Section 6(a)(1) was intended to cover payments for the use of intellectual property, Section 6(a) would not have separately specified "payments for the use of computer software". In response, the MIRA argued that even if intellectual property is not within the ambit of Section 6(a)(1), if channel license fee fall under the definition of "royalties or other such consideration", it would be subject to WHT.

[3] Rent, royalties and any other such consideration for the use of plant, machinery, equipment or other property for the purposes of a business

[4] Interpretation Act of the Maldives (Law Number 4/2011)

[5] Where in an Act, specific descriptors used in reference to certain persons or things are followed by more general descriptors, the otherwise wide meaning of the general descriptors shall be taken to be restricted to a reference to persons or things of the specific category.

As a counter argument to MIRA's position - on the purposive approach - Medianet posited that given the descriptors used in the text of Section 6(a)(1), it cannot be argued that channel licensing fees are subject to tax under that section as is evident that WHT is to be levied on the use of a specific type of thing.

Held

Section 6(a)(1) is limited to tangible property

By a majority decision of four to one, it was held that the MIRA's decision to charge additional WHT on channel license fees was in violation of Section 6 of the BPT Act.

Member Uza Fathimath Minhath in her opinion, on the question whether channel broadcasting fees are subject to WHT under Section 6(a)(1) stated that it is apparent that channel broadcasting fees are not paid with respect to any plant, machinery, equipment or similar type of tangible good as specified in Section 6(a)(1). She further noted that the language of Section 6(a)(1) leads us to the understanding that WHT is to be imposed on payments made towards the use of certain types of goods - namely, tangible property - while payments made towards the use of broadcasting rights and channel licensing fees are of a specific nature - payment for the use of an intellectual property or intangible property. As such, the People's Majlis would have made their intent clear if Section 6(a)(1) imposed the liability of WHT on channel licensing fees or broadcasting rights payments.

Further, Member Uz Nasrullah Jameel commented on the nature of channel licensing fees, opining that those types of fees, would conceivably be classified as royalty payments because of the fact that there is a payment to use the process of rebroadcasting foreign cable channels in the Maldives, which leads to the conclusion that a copyright exists pertaining to the process. However, Member Nasrullah, Member Zuhair and Member Azfa were in agreement on the matter that Section 6(a)(1) specifically stipulates that any rent, royalty or other such payments must be made towards the use of plant, machinery, equipment or other such property, and that if "other property" were to mean both intangible and tangible goods, there would be no logical explanation as to why software payments should be taxed separately under Section 6(a)(3)[6] of the BPT Act.

The four Members of the majority opinion were in agreement that MIRA does not have the power to impose WHT on any good or service which is not explicitly specified in the BPT Act or any other Tax Act, nor can it delegate responsibility for the collection of a tax not specified in the law to Medianet. Any such delegation of responsibility would be perceived as a violation of the law committed by the MIRA.

[6] Payments made for the use of computer software of a business

Our Comments

The broad definition of "royalty" does not apply for the purposes of WHTMIRA's legal basis should be clear

This is a landmark decision by the TAT. In its broad sense, the case was not about channel license fees per se, but about how the phrase "other property" in Section 6(a)(1) of the BPT Act should be defined. The MIRA's argument that "other property" includes both tangible and intangible property stems from the definition of "royalty" given in the BPT Act. The TAT made it clear that although the definition of royalty is broad (to include payments with respect to both tangible and intangible property), the term "royalty" in Section 6(a)(1) is used in a limited manner; i.e. only to refer to royalty payments in relation to tangible property. This is a classic example of the application of the rule of ejusdem generis in statutory interpretation, as given in Section 8(a)(5) of the Interpretations Act.

It is to be noted that the Civil Court has previously ruled - also in favour of Medianet - on the interpretation of Section 6(a)(1), along the same lines. However, the Civil Court's decision was later overturned by the High Court on procedural grounds.

MIRA's legal basis should be clear

One aspect of interest from the case is the fact that the MIRA did not specifically categorise the payment as a royalty. Rather, it was argued that channel licensing fees fall under "royalties and other such consideration". This issue has not been challenged by Medianet and not specifically addressed in the TAT's decision. We feel that it is crucial for the tax administration to clearly state their position on the application of the law as this has broader ramifications on how the taxpayer may counter the MIRA's legal arguments.

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