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Transfer Pricing In The Software Industry: The Oracle India Case And Its Impact

Contact Persons:

Datuk D P Naban

Senior Partner

Tax, SST & Customs Practice

+603 6209 5405

naban@rdslawpartners.com

S Saravana Kumar

Partner

Tax, SST & Customs Practice

+603 6209 5404

sara@rdslawpartners.com

Oracle India Pvt. Ltd. (Oracle India) v Deputy Commissioner of Income Tax W.P. (C) 7828/2010 is a transfer pricing dispute which commenced at the Indian Income Tax Appellate Tribunal (ITAT). This case involved a dispute over the fees paid for software licenses and other services made by Oracle India (the Taxpayer) to its parent company, Oracle Corporation. According to the Indian tax authority, the fees charged for the intercompany services were intentionally inflated and did not follow the arm's length principle, which is the standard approach in determining the fair market value of transactions between related parties. The tax authority claimed that the Taxpayer had failed to pay its fair share of taxes because of the excessive and inflated fees that it paid for charged.

The Taxpayer appealed against the assessment at the ITAT, a specialised tribunal in India that reviews tax appeals. The ITAT decided in favour of the Taxpayer, concluding that the tax authority's use of transfer pricing methods did not follow the arm's length principle and that their adjustment of the fees charged for the intercompany services were unjustified.

The method that the Taxpayer used to determine the arm's length pricing of the transactions with its parent company was essentially the basis of the dispute. The Taxpayer at this instance adopted the Transactional Net Margin Method (TNMM), which contrasts the Taxpayer's net profit margin with the net profit margins of similar businesses in the same sector. The tax authority contended that the Taxpayer should have applied the Comparable Uncontrolled Price (CUP) method, which contrasts the prices of the transactions of the tested party with the prices of comparable of uncontrolled transactions.

The Taxpayer disputed the adjustments claiming that the TNMM was the best method to assess arm's length pricing in this situation. The ITAT found in favour of the Taxpayer and held that the TNMM was the best approach to apply and that

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the tax authority's use of the CUP method was not adequately supported by the evidence.

Unsatisfied by the ITAT's ruling in favour of the Taxpayer, the tax authority appealed to the Indian High Court. The High Court upheld the use of the CUP method and found that the adjustments made were appropriate. The decision was then further appealed by the Taxpayer to the Supreme Court, which ruled in favour of the Taxpayer, stating that the CUP method was not the most appropriate method to use.

Transfer Pricing & Arm's Length Principle

The arm's length principle is stated in Paragraph 1 of Article 9 of the OECD Model Tax Convention as:

"Where ... conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly."

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There has been a rising trend of transfer pricing issues in India as it has become a more significant market for multinational corporations. The Oracle India case is an important case to set a precedent to multinational companies (MNC) to show the importance of following the transfer pricing guidelines in the nation. It is also a reminder for MNCs to ensure the transactions between related parties to be in compliance with the arm's length principle.

This case serves as an indication on the significant ramifications that a company may face if it does not ensure that the transfer pricing agreements and the transactions conducted are not as per the arm's length principle. Additionally, this case emphasises how crucial it is to make sure that transfer pricing agreements well drafted to reflect the arm's length principle in ensuring a fair market value.

Lessons Learned From Oracle India Case

The ratio of the Indian Supreme Court in Oracle India when it ruled in favour of the Taxpayer was that the CUP method was not the most appropriate method to use for determining the arm's length pricing between associated enterprises, and that the TNMM was the best approach to apply as it is the more appropriate method in determining the fair market value of the transactions in question. The court then found that the tax authorities' use of the CUP method was not adequately supported by evidence.

The Supreme Court ruling provided further clarity on the transfer pricing methodology that should be applied in cases involving associated enterprises. The Court held that the TNMM was the most appropriate method to determine the arm's length pricing of transactions between associated enterprises, as it takes into account the unique characteristics of each transaction and provides greater flexibility in determining the fair market value of such transactions. The court also emphasised the importance of maintaining proper documentation to support the chosen transfer pricing method, which can help avoid disputes with the tax authorities in the future.

Furthermore, the Supreme Court's ruling also highlights the importance of considering the specific facts and circumstances of each case when determining the appropriate transfer pricing methodology to apply. In this case, the court found that the CUP method was not appropriate, as there were significant differences between the transactions being compared. The court emphasised that the selection of the transfer pricing method should be on a careful analysis of the economic substance of the transactions and the functions performed, assets used, and risks assumed by the associated enterprises.

This ruling also highlighted the importance of applying transfer pricing methods consistently across different tax years. The Indian Tax authorities had applied different transfer pricing methods in different tax years, which the court found to be improper and inconsistent. The court noted that the transfer pricing exercise should be done in a consistent manner across different tax years and that the taxpayers' should not be

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penalised for the tax authorities' failure to do so. This highlights the need for companies to maintain consistent transfer pricing policies and to document any changes or adjustments made to the policies and their reasoning behind them.

Conclusion

Overall, the Oracle India transfer pricing case has significant implications for the software industry and emphasises the significance of abiding to the Country's transfer pricing laws and rules. The Malaysian government has taken a number of measures to encourage the development of the software industry and to address the transfer pricing issues as the digital economy in the nation continues to expand. Together with adopting international agreements to enhance transparency and collaboration in tax affairs, the government also offers incentives and guidance to businesses. The Malaysian government aims to promote a favourable business environment for digital businesses and promote competitiveness and innovation in the software sector by encouraging a just and transparent tax structure.

Authored by Rishima Sudhakaran, a Pupil with the firm's Tax, SST & Customs Practices.

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