Taxation of Software Payments

Supreme Court ruling
UN Model/Commentary– Proposed changes

Bombay Chartered Accountants' Society
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The Software Conundrum

- Copyright vs copyrighted article debate
  - Whether use of software use of copyright in it?
    - *Samsung* (Karnataka HC)[1]

      when licence [is] to make use of the software by making copy of the same and to store it in the hard disk of the designated computer and to take back up copy of the software, it is clear that ***what is transferred is right to use the software, an exclusive right, which the owner of the copyright owns*** *and what is transferred is only right to use copy of the software for the Internal business as per the terms and conditions of the agreement. " [Para 24]*

    - *Infrasoft (Delhi HC)*[2]

      We are ***not in agreement with the decision of the Karnataka High Court*** *in the case of Samsung Electronics Co. Ltd (supra) that right to make a copy of the software and storing the same in the hard disk of the designated computer and taking backup copy would amount to copyright work under section 14(1) of the Copyright Act ….. The said process was necessary to make the programme functional and to have access to it and is qualitatively different from the right contemplated by the said provision because i****t is only integral to the use of copyrighted product****.*

SC ruling

- Four categories

  I. Payment by end-user to NR supplier or manufacturer

  II. Resident distributor purchasing copies from NR suppliers/manufacturers and resells to local distributors/end-users

  III. NR distributor acquires copies from another NR supplier/manufacturer and resells to local distributors/end-users

  IV. Software copy affixed onto hardware and sold as integrated unit/ equipment by NR supplier/manufacturer to resident Indian distributors/end-users.

End user payments- ITAT ruling

Facts

- Operational software for the internal use.
- no time limit of the expiry of the software
- standardized software for use in own business without any commercial right to reproduce and sell copies

Revenue's contentions

- only a license to use software;
- no other title or interest in the software transferred to the assessee, hence, no question of sale of software per se.
- If at all there was an element of sale, it was only in respect of media (CD)

Held

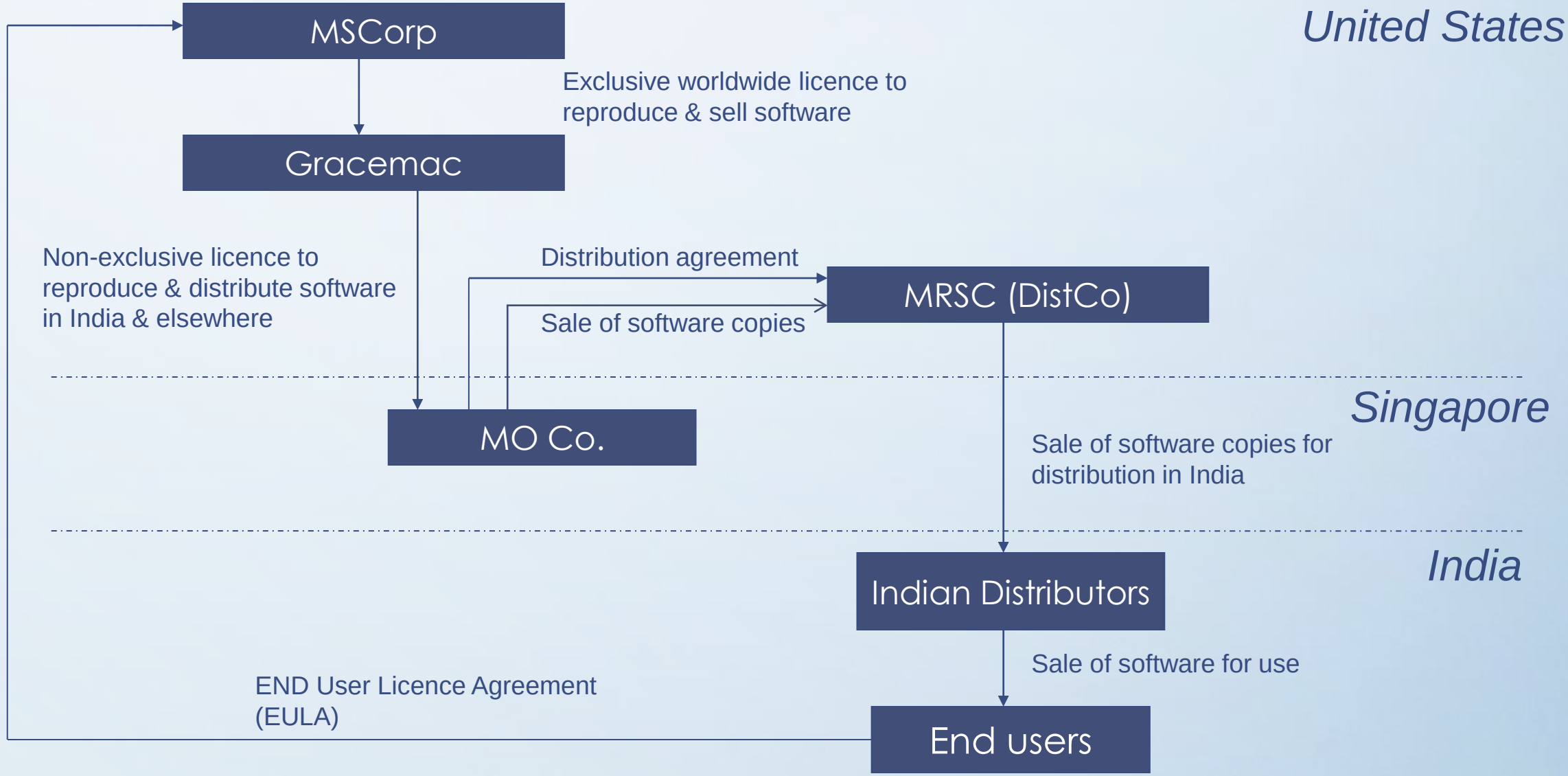
- On completion of sale of CD, the property in such a goods passes to the buyer;
- Buyer has every right of fair use of the said product;
- **Conditions in sale agreement restrictions to prevent misuse** of product amounting to copyright infringement;
- License Agreement unenforceable if it conflicts with law or if an **unconscionable or unreasonable bargain**.
- Owner of a copy legally entitled to its fair use even without a license from the software publisher; any condition in a license restricting fair or reasonable use of the product purchased by the buyer will have to be ignored. Such clause **deemed to be void**.

* DIT (IT) v. Reliance Industries Ltd. (2016) 47 CCH 94 (Mum Trib)

SC ruling – end-user payments

- A licence (EULA) does not confer any proprietary interest on the licensee, does not entail parting with any copyright, and is different from a licence u/s 30 of CA 1957
  - a licence which grants the licensee an interest in the rights mentioned in section 14(a) and 14(b) of the CA 1957.
- Where end-user is authorized to have access to and make use of the "licensed" computer software product over which he has no exclusive rights, no copyright is parted with and no infringement as permitted acts [s. 52(1)(aa)].
  - Significance of non-exclusive rights?
- No difference whether software is customized, or otherwise.

Distribution of software copies*



* Gracemac Corpn (2010) 43 SOT 550 (Delhi)

Microsoft Corporation – ITAT ruling

Taxpayer's contentions

- Copy for back up purpose & internal use
- Copyrighted article vs. copyright (as per OECD MC Comm & US IRS Regulations)
  - EULA restrictions akin to restrictions on books when sold, similar to sale of a book
- Only non-exclusive right granted to end-users

Held

- OECD Commentary, US IRS Regulations not safe or acceptable guide for interpretation
- Not a sale but a licence granted to end-user
- CA 1957 can be referred only for limited purpose of definition of copyright
- End-user granted a 'right to copy' however minimal
- Exclusivity from the perspective of the Owner not licensee
- Consideration royalty

Computer software- Distribution right

- Dealing with copyrighted article whether a copyright?
  - Issue of **copies** to public not being copies already in circulation [Sec. 14(a)(ii) of CA, 1957]
  - To sell or give on commercial rental or offer for sale or for commercial rental **any copy** of computer programme [sec. 14(b)(ii) of CA 1957]
- Issue of copies to public-
  - Must be for transfer of title (sale, even gift) and not for lending/rental; ***free*** circulation
- First sale doctrine and the principle of exhaustion
  - Limits the right-holder's 'distribution right' on the 'copy sold,
    - any consideration received not in respect of copyright
  - Transfer of ownership necessary for exhausting the right-holder's rights over the copy
  - Deals with tangible copy not the intangible copyright
  - Exhaustion national in India – *Penguin Books (1984) DLT 316; John Wiley (2010) [CS (OS) No. 1960/ 2008]*

Computer software – Sale right

- Sale right [sec. 14(b)(ii)]

  (b) in the case of a computer programme--

  (i) to do any of the acts specified in clause (a);

  (ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme~~, regardless of whether such copy has been sold or given on hire on earlier occasions~~;[1]

- A TRIPS Plus Provision- abolishes exhaustion for computer programmes (as introduced in 1994)- whether the position changes after the above deletion?
- SC ruling
  - Deletion a statutory recognition of doctrine of first sale/principle of exhaustion *[para 120]*
  - Restores the tilt in favour of purchaser similar to s. 14(a)(ii)) *[para 141]*
  - Similar provisions for films and sound recording deleted in 2012
  - The words "any copy of a computer programme", makes it clear that the section would only apply to the making of copies of the computer programme and then selling them, i.e., reproduction of the same for sale or commercial rental. *[Para 142*]

[1] Vide Amending Act 1999

Distribution intermediaries – OECD Comm.

- Para 14.4

  "Arrangements between a software copyright holder and a distribution intermediary frequently will grant to the distribution intermediary the right to distribute copies of the program without the right to reproduce that program. In these transactions, the rights acquired in relation to the copyright are limited to those necessary for the commercial intermediary to distribute copies of the software program. In such transactions, distributors are paying only for the acquisition of the software copies and not to exploit any right in the software copyrights. Thus, in a transaction where a distributor makes payments to acquire and distribute software copies (without the right to reproduce the software), the rights in relation to these acts of distribution should be disregarded in analysing the character of the transaction for tax purposes. Payments in these types of transactions would be dealt with as business profits in accordance with Article 7." [Underlining supplied].

SC ruling – On distribution agreements

- What is granted to the distributor is **only a non-exclusive**, non-transferable licence to resell computer software, it being expressly stipulated that no copyright in the computer programme is transferred either to the distributor or to the ultimate end-user.
- Distributor does not get to use the software product
- Similar to case of Indian distributor not having right to reproduce a book and then sell copies of the same. On the other hand, if NR publisher were to sell the same book to an Indian publisher with the right to reproduce and make copies, copyright in the book has been transferred *[para 47]*
- What is "licensed" by the foreign, non-resident supplier to the distributor and resold to the resident end-user, or directly supplied to the resident end-user, is in fact the sale of a physical object which contains an embedded computer programme, and is therefore, a sale of goods which, as has been correctly pointed out by the learned counsel for the assessees, is the law declared by this Court in the context of a sales tax statute in Tata Consultancy Services v. State of A.P., 2005 (1) SCC 308 *[para 52]*
- On the other hand, in the facts of the case before us, the distributors resell shrink-wrapped copies of the computer programmes that are already put in circulation by foreign, nonresident suppliers/ manufacturers, since they have been sold and imported into India via distribution agreements, and are thus not hit by section 14(a)(ii) of the Copyright Act. This is made clear by the *explanation* to section 14 of the Copyright Act, which states as follows: "*Explanation*.--For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation." *[para 130]*
- UsedSoft GmbH v. Oracle International Corp. (Case C-128/11) ECJ relied upon .

On exhaustion

- SC holds deletion statutory recognition of doctrine of first sale/principle of exhaustion
- However -
  - 2012 amendment to s. 14(d)(ii) and 14(e)(ii) – Notes on clauses
    - Intent to extend the rights of the author, not limit
  - "any copy of" indicates no qualification
  - Exhaustion is in the context of distribution right, not sale right
  - s. 14(a)(ii) still survives

Notes on Clauses to Amendment Bill 2010

depiction in three-dimensions of a two-dimensional work or in two-dimensions of a three-dimensional work. It is proposed to substitute the aforesaid sub-clause (i) so to provide that the exclusive right of the author to reproduce the work in any material form including the storing of it in any medium by electronic or other means or depiction in three-dimensions of a two-dimensional work or depiction in two-dimensions of a three-dimensional work.

Clause (d) of section 14 relates to the exclusive right to do or authorise to do in case of a cinematograph film to make a copy of the cinematograph film, including a photograph of any image forming part thereof, to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions and to communicate the film to the public. It is proposed to amend the aforesaid clause to extend the exclusive right of the author including the storing of it in any medium by electronic or other means and to sell or give on commercial rental or offer for sale or for such rental, any copy of the film.

Clause (e) of section 14 relates to the exclusive right of the author in case of a sound recording. Sub-clause (i) relates to making any other sound recording embodying it. It is proposed to amend the aforesaid sub-clause for extending the exclusive right of the author including the storing of it in any medium by electronic or other means. Sub-clause (ii) is proposed to be substituted by a new sub-clause providing that selling or giving on commercial rental or offer for sale or for such rental, any copy of the sound recording shall also come within the purview of exclusive right.

Clause 4.—This clause seeks to amend section 15 of the Act relating to special

SC ruling – significance of copying right to other rights

- Para 36

  In essence, such right is referred to as copyright, and includes the right to reproduce the work in any material form, issue copies of the work to the public, perform the work in public, or make translations or adaptations of the work. This is made even clearer by the definition of an "infringing copy" contained in section 2(m) of the Copyright Act, which in relation to a computer programme, i.e., a literary work, means reproduction of the said work. Thus, the right to reproduce a computer programme and exploit the reproduction by way of sale, transfer, license etc. is at the heart of the said exclusive right.

- (m) "infringing copy" means--

  (i) in relation to a literary, dramatic, musical or artistic work, **a reproduction thereof** otherwise than in the form of a cinematograph film;

  (ii) in relation to a cinematographic film, a copy of the film made on any medium by any means;

  (iii) in relation to a sound recording, any other recording embodying the same sound recording, made by any means;

  (iv) in relation to a programme or performance in which such a broadcast reproduction right or a performer's right subsists under the provisions of this Act, the sound recording or a cinematographic film of such programme or performance,

  if such reproduction, copy or sound recording is **made or imported** in contravention of the provisions of this Act

SC ruling – On OECD/UN Comm.

- ASG's argument
  - Even if OECD Commentary could be relied upon, it being a rule of international law contrary to domestic law, to the extent it is contrary to *explanations* 2 and 4 of section 9(1)(vi) of ITA, it must give way to domestic law.
- SC ruling
  - India's reservation unclear, not categoric enough, does not express a disagreement with the Commentary *[para 153-154]*
    - *India* reserves its position on the interpretations provided in paragraphs 8.2, 10.1, 10.2, 14, 14.1, 14.2, 14.4, 15, 16 and 17.3; it is of the view that some of the payments referred to may constitute royalties
    - *India* does not agree with the interpretation that information concerning industrial, commercial or scientific experience is confined to only previous experience
  - No changes in Treaties post the reservations *[para 156]* –
    - India's treaty policy remains unchanged
  - OECD Commentary a supplementary means of interpretation
    - "supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion'' Art. 31 of the Vienna Convention
  - OECD Commentary persuasive *[para 158]*

SC ruling – other issues

- For meaning of 'copyright', one has to refer to CA 1957
  - There is no copyright otherwise than under the CA 1957 [S. 16]
  - The expression "copyright" has to be understood in the context of the statute which deals with it, it being accepted that municipal laws which apply in the Contracting States must be applied unless there is any repugnancy to the terms of the DTAA
- TDS under section 195 subject to chargeability of income
- Explanation 4 not retrospective wef 1976
- A person not obliged to do the impossible (deduct TDS) i.e. apply a provision of statute when not in the statute book

Copying right vis-a-vis distribution or sale right

- Paul Goldstein *Goldstein on Copyright* (3rd edn, Aspen Publishers, 2006) 7:122.2
  - Distribution right does not depend on reproduction right but operates independently
- Laddie, Prescott and Vitoria, The Modern Law of Copyright Mno. 15.5
  - Possible reproduction right and distribution rights belong to different persons
  - Making of copies outside territory of the UK not infringement of UK CDPA 1988. However, the imported of the copies infringes on the distribution right in the UK
  - A publisher may part with his copyright but continue to sell off his existing stock of copies which are not infringing copies; however, he shall infringe on the distribution right

Distribution – UN CoE Discussion Draft (Feb 21)

- 'Minority view' recognised in Feb 2021 Discussion Draft *[para 19 of the proposed Comm.]*

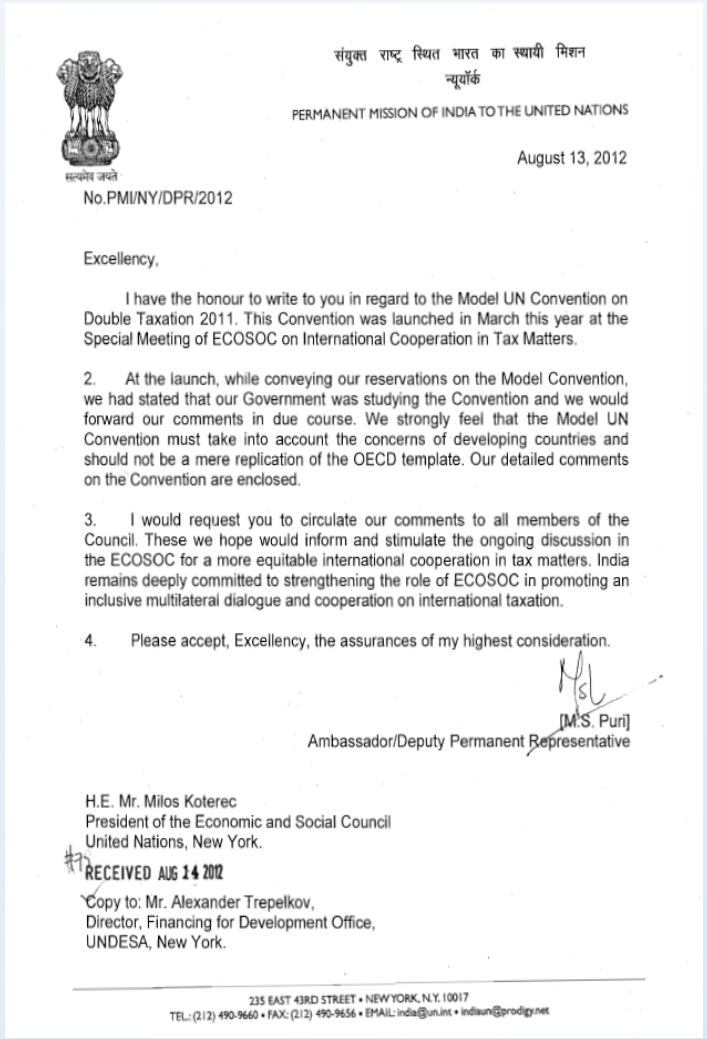
  A [minority] of the members of the Committee disagree with the analysis in paragraph 14.4 of the Commentary on Article 12 of the 2017 OECD Model Convention. In their view, distribution is an integral part of copyright rights in many countries and payments with respect to such rights should be covered by Article 12 even in the absence of reproduction rights. Those taking this position therefore would delete the words "for the purposes of using it."

- *Annex to the DD*
  - Copyright a bundle of rights, each right in the copyright can be dealt with independent of the others. Distribution right does not depend on reproduction right; operates independently of the other rights as do other rights.
  - Distribution right belonging to copyright owner in respect of a copy of a literary work does not survive once a copy is first sold. The copyright owner retains other rights. The first sale doctrine vests the ***copy owner*** with statutory privileges which operate as limits on the exclusive rights of the copyright owners.
  - Differing treatment worldwide -exhaustion of the distribution right applies nationally or internationally.
  - Where a reseller purchases copies of copyrighted work for their distribution in a country where there is national exhaustion of such right (e.g. India or the EU), he introduces the copies for the first time in that country by issuing copies to the public. Since the reseller uses the distribution right belonging to copyright owner, the consideration he pays to the copyright owner to obtain that right is for use of copyright.

UN DD Sept 2020 - Article 12(3) – Proposed change

The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, ***computer software*** *or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.*

Taxing software payments - India's stand



संयुक्त राष्ट्र स्थित भारत का स्थायी मिशन
न्यूयॉर्क

PERMANENT MISSION OF INDIA TO THE UNITED NATIONS

सत्यमेव जयते

August 13, 2012

No.PMI/NY/DPR/2012

Excellency,

I have the honour to write to you in regard to the Model UN Convention on Double Taxation 2011. This Convention was launched in March this year at the Special Meeting of ECOSOC on International Cooperation in Tax Matters.

2. At the launch, while conveying our reservations on the Model Convention, we had stated that our Government was studying the Convention and we would forward our comments in due course. We strongly feel that the Model UN Convention must take into account the concerns of developing countries and should not be a mere replication of the OECD template. Our detailed comments on the Convention are enclosed.

3. I would request you to circulate our comments to all members of the Council. These we hope would inform and stimulate the ongoing discussion in the ECOSOC for a more equitable international cooperation in tax matters. India remains deeply committed to strengthening the role of ECOSOC in promoting an inclusive multilateral dialogue and cooperation on international taxation.

4. Please accept, Excellency, the assurances of my highest consideration.

[M.S. Puri]
Ambassador/Deputy Permanent Representative

H.E. Mr. Milos Koterec
President of the Economic and Social Council
United Nations, New York.

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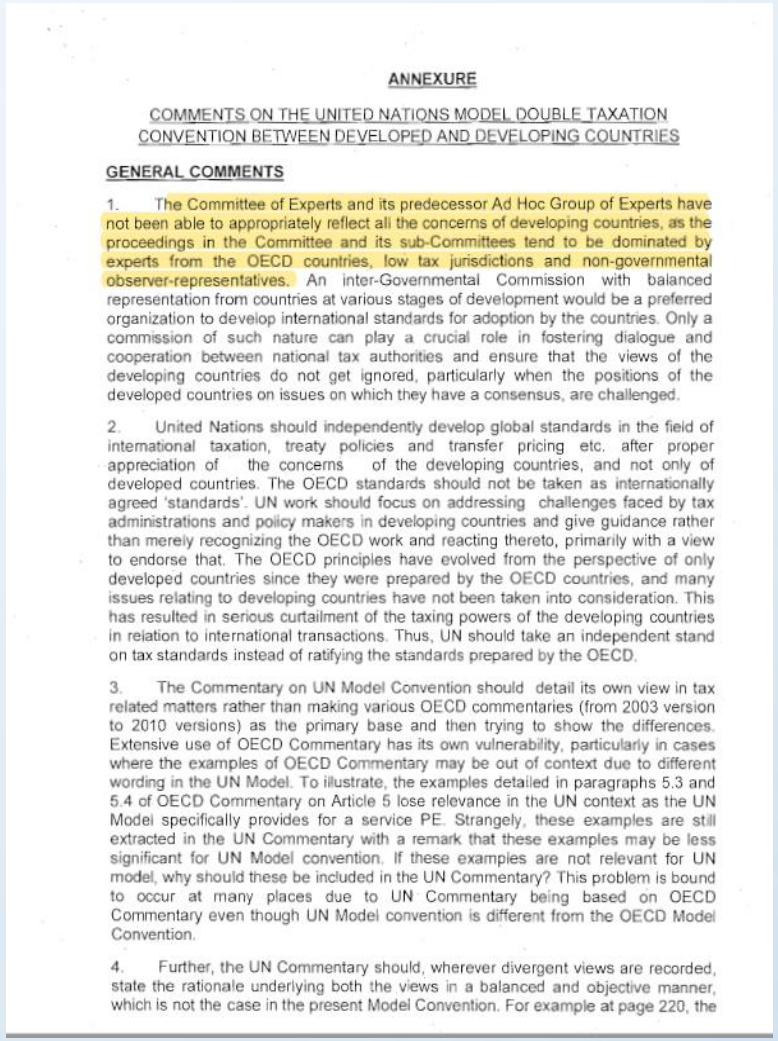


ANNEXURE

COMMENTS ON THE UNITED NATIONS MODEL DOUBLE TAXATION CONVENTION BETWEEN DEVELOPED AND DEVELOPING COUNTRIES

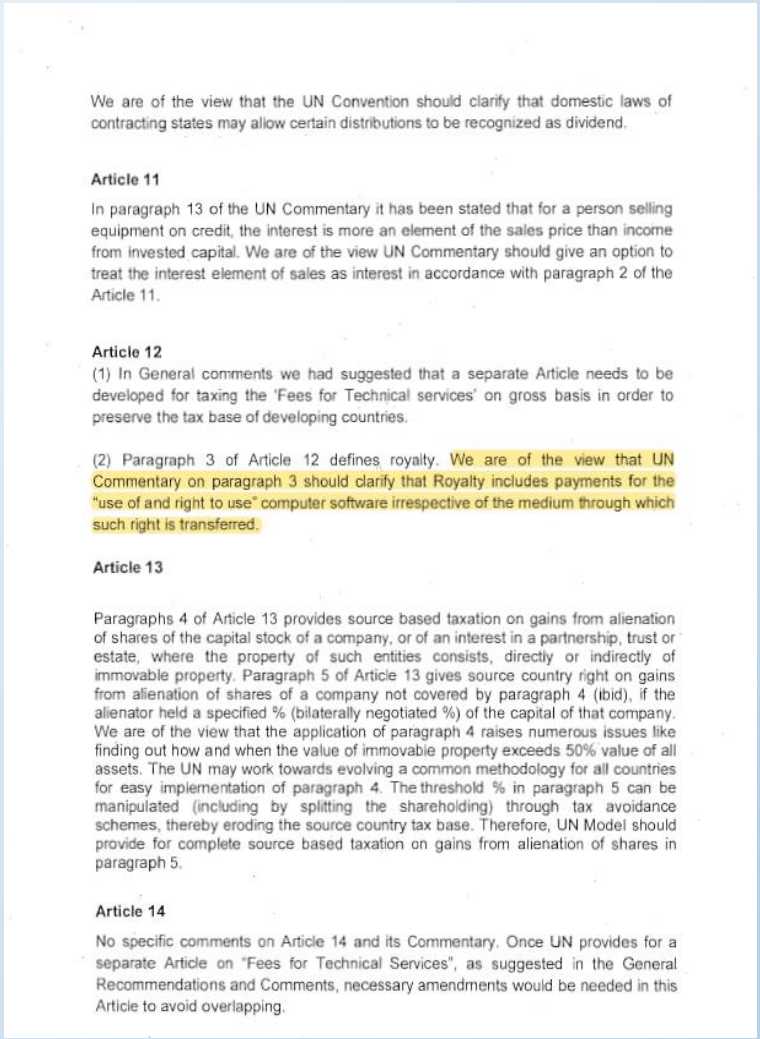
GENERAL COMMENTS

1. The Committee of Experts and its predecessor Ad Hoc Group of Experts have not been able to appropriately reflect all the concerns of developing countries, as the proceedings in the Committee and its sub-Committees tend to be dominated by experts from the OECD countries, low tax jurisdictions and non-governmental observer-representatives. An inter-Governmental Commission with balanced representation from countries at various stages of development would be a preferred organization to develop international standards for adoption by the countries. Only a commission of such nature can play a crucial role in fostering dialogue and cooperation between national tax authorities and ensure that the views of the developing countries do not get ignored, particularly when the positions of the developed countries on issues on which they have a consensus, are challenged.

2. United Nations should independently develop global standards in the field of international taxation, treaty policies and transfer pricing etc. after proper appreciation of the concerns of the developing countries, and not only of developed countries. The OECD standards should not be taken as internationally agreed 'standards'. UN work should focus on addressing challenges faced by tax administrations and policy makers in developing countries and give guidance rather than merely recognizing the OECD work and reacting thereto, primarily with a view to endorse that. The OECD principles have evolved from the perspective of only developed countries since they were prepared by the OECD countries, and many issues relating to developing countries have not been taken into consideration. This has resulted in serious curtailment of the taxing powers of the developing countries in relation to international transactions. Thus, UN should take an independent stand on tax standards instead of ratifying the standards prepared by the OECD.

3. The Commentary on UN Model Convention should detail its own view in tax related matters rather than making various OECD commentaries (from 2003 version to 2010 versions) as the primary base and then trying to show the differences. Extensive use of OECD Commentary has its own vulnerability, particularly in cases where the examples of OECD Commentary may be out of context due to different wording in the UN Model. To illustrate, the examples detailed in paragraphs 5.3 and 5.4 of OECD Commentary on Article 5 lose relevance in the UN context as the UN Model specifically provides for a service PE. Strangely, these examples are still extracted in the UN Commentary with a remark that these examples may be less significant for UN Model convention. If these examples are not relevant for UN model, why should these be included in the UN Commentary? This problem is bound to occur at many places due to UN Commentary being based on OECD Commentary even though UN Model convention is different from the OECD Model Convention.

4. Further, the UN Commentary should, wherever divergent views are recorded, state the rationale underlying both the views in a balanced and objective manner, which is not the case in the present Model Convention. For example at page 220, the



We are of the view that the UN Convention should clarify that domestic laws of contracting states may allow certain distributions to be recognized as dividend.

Article 11

In paragraph 13 of the UN Commentary it has been stated that for a person selling equipment on credit, the interest is more an element of the sales price than income from invested capital. We are of the view UN Commentary should give an option to treat the interest element of sales as interest in accordance with paragraph 2 of the Article 11.

Article 12

(1) In General comments we had suggested that a separate Article needs to be developed for taxing the 'Fees for Technical services' on gross basis in order to preserve the tax base of developing countries.

(2) Paragraph 3 of Article 12 defines royalty. We are of the view that UN Commentary on paragraph 3 should clarify that Royalty includes payments for the "use of and right to use" computer software irrespective of the medium through which such right is transferred.

Article 13

Paragraphs 4 of Article 13 provides source based taxation on gains from alienation of shares of the capital stock of a company, or of an interest in a partnership, trust or estate, where the property of such entities consists, directly or indirectly of immovable property. Paragraph 5 of Article 13 gives source country right on gains from alienation of shares of a company not covered by paragraph 4 (ibid), if the alienator held a specified % (bilaterally negotiated %) of the capital of that company. We are of the view that the application of paragraph 4 raises numerous issues like finding out how and when the value of immovable property exceeds 50% value of all assets. The UN may work towards evolving a common methodology for all countries for easy implementation of paragraph 4. The threshold % in paragraph 5 can be manipulated (including by splitting the shareholding) through tax avoidance schemes, thereby eroding the source country tax base. Therefore, UN Model should provide for complete source based taxation on gains from alienation of shares in paragraph 5.

Article 14

No specific comments on Article 14 and its Commentary. Once UN provides for a separate Article on "Fees for Technical Services", as suggested in the General Recommendations and Comments, necessary amendments would be needed in this Article to avoid overlapping.

UN CoE Discussion Draft Feb 21– Proposed change in definition of royalties

Existing definition in Art. 12(3)	Proposed definition
The term "royalties" as used in this Article means payments of any kind received as a consideration for - the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, - or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.	The term "royalties" as used in this Article means payments of any kind received as a consideration for: (a) the use of, or the right to use, i) any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting; ii) any patent, trademark, design or model, plan, or secret formula or process; iii) ~~or for the use of, or the right to use~~, industrial, commercial or scientific equipment; or iv) computer software; (b) information concerning industrial, commercial or scientific experience, or (c) the acquisition of any copy of computer software for the purposes of using it.

*Treaty practice relating to software**

Type	Treaties	Clarification described
A.	Korea-Germany (2000), Canada (2006), Panama (2010), Ethiopia (2016).	Payments for the use of or right to use software is included in the definition of royalties only where source code is transferred, or the software is tailor-made, or the use is subject to productivity payments
B.	Chile – Ireland (2015)	Payments received in connection with the granting of rights in relation to the copyright of a non-customised software programme (for example, so-called 'shrink-wrapped' software) that are limited to those that are necessary to enable the user to operate the programme shall be treated as business profits covered by Article 7.
C.	France with Hong Kong, Panama, St. Martin and Taiwan (2010)	Payments received as a consideration for the right to use software in a manner which, in the absence of a license, would constitute a violation of copyright laws, are deemed to be royalties, whereas such payments received as a consideration for the right to distribute software are not deemed to be royalties as long as they do not include the right to reproduce this software. Such payments shall be treated as business profits in accordance with Article 7.
D.	Mexico with Russia (2004), and Panama (2010).	Payments relating to software fall within the scope of the definition of royalties where less than the full rights to software are transferred either if the payments are in consideration for the right to use a copyright on software for commercial exploitation or if they related to software acquired for the business use of the purchaser;
E.	Mexico – Peru (2011), and Portugal – Switzerland (2012).	Payments for software applications fall within the scope of definition of royalties where only part of the rights on the program is transferred, whether the payments are in consideration for the use of a copyright on a software application for commercial use (other than payments for the right to distribute copies of standardised software applications, not comprising the right to customise for the client nor to reproduce) or relate to a software application acquired for business or professional use by the purchaser, when, in the latter case, the software applications are not totally standardised but somehow adapted for the purchaser.
F.	Singapore - Sri Lanka (2014)	In relation to payments for computer software, such payments are royalties only if the payments are made for the right to use and exploit the copyright in the program.

A, B E - software customized

C - distribution right along with copying right (OECD Comm)

D & E – For business use

F – standard treaty definition

** The information in the above Table drawn from the book by the same author, Taxation of Copyright Royalties in India - Interplay of Copyright Law and Income Tax, Oakbridge, 2019.*

Impact of adding 'use of computer software'

- Whether a EULA leads to a characterisation of a 'no sale' covered?
  - Transfer of title in the copy if incidents of ownership of copy with acquirer, amounts to a sale. Then not income from letting, so there is no parallel case with that of a lease of ICS equipment.
  - "Acquisition of computer software for the purpose of using it" now covered under the proposed definition.
- Cascading effect; could increase the cost to end-user.
- Amendments required in domestic tax laws of several countries to tax software payments.
- Singling out software payments inconsistent with taxation of other digital products and generally, taxation of digitalisation of economy.
- Taxation of software delivered online if royalties under Art 12, are excluded from Art 12B.
- Justification unclear to take only software rentals (subscription-based revenue models) (usually delivered online) when there are several other items in the online space.

Sec. 14 CA 1957

14. Meaning of Copyright.— For the purposes of this Act, "copyright" means the **exclusive right** subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:—

(a) in the case of a literary, dramatic or musical work, not being a computer programme,—

(i) to reproduce the work in any material form including the storing of it in any medium by electronic means;

(ii) to issue copies of the work to the public not being copies already in circulation;

(iii) to perform the work in public, or communicate it to the public;

(iv) to make any cinematograph film or sound recording in respect of the work;

(v) to make any translation of the work;

(vi) to make any adaptation of the work;

(vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

(b) **in the case of a computer programme**,—

(i) to do any of the acts specified in clause (a);

(ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme ~~regardless of whether such copy has been sold or given on hire on earlier occasions~~ [1]**:**

Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.

[1] deleted in 1999

Sec. 14 CA 1957 (contd)

(c) in the case of an artistic work,—
****
****

(d) in the case of a cinematograph film,—
(i) to make a copy of the film, including—
(A) a photograph of any image forming part thereof; or
(B) storing of it in any medium by electronic or other means;

(ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the film ~~regardless of whether such copy has been sold or given on hire on earlier occasions~~ [2];
(iii) to communicate the film to the public;

(e) in the case of a sound recording,—
****
****

Explanation : For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.

[2] deleted in 2012

Thank you!