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日本人出向者の給与クロスチャージに関する最高裁判決（サービス税）

In brief

インドの最高裁判所(SC、Supreme Court)において、日本の親会社からインド子会社への出向者の給与のクロスチャージが役務提供対価としてサービス税の課税に服するかについての、重要な判決がありました。

（事実関係）

- 親子会社間で出向者の給与や各種手当を規定した Agreement を締結
- 出向者は、インド子会社との雇用契約に基づき、インド子会社の指揮命令・管理下にあった
- 日本円建て給与は、親会社が従業員に立替払いした後、マークアップなしでインド子会社にクロスチャージされていた
- 出向者の給与の所得税は、インド所得税法に基づき、インド子会社が源泉徴収・納付を行っていた

（訴訟の経緯）

インド税務当局は、日本の親会社は、サービス税（役務提供に課される間接税。2017 年 7 月にインド物品・サービス税＜GST＞に置き換えられた税の一つ）上の課税対象である”人材派遣または業務代行”をインド子会社に提供しており、クロスチャージはその対価であるとして課税処分を行いました。間接税租税裁判所（CESTAT） は、税務当局の課税を否認したため、当局は最高裁に提訴し、最高裁は、以下の理由により上告を棄却しました。

- 出向者は、インド子会社の指揮命令・管理下に置かれており、かつインド法人は雇用者としてのコンプライアンスを実施している
- 日本の親会社は、出向者の派遣に関して、給与相当額の実費弁済を除き、報酬を得ていない
- 出向に係る契約書には、出向者はインド子会社の従業員であることが明記されている
- グループ会社間の給与の経費の立替は、役務提供には該当しない

詳しくは下記（英語)をご覧ください。

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SC upholds decision that salary reimbursed by Indian entity to foreign company for deputation of employees will not be taxed as manpower supply

Facts
The assessee had entered into an agreement with its overseas parent company in Japan for payment of salary and other perquisites for employees deputed from such parent company. The employees deputed by the parent company operated under the control, direction and supervision of the assessee. Further, the assessee withheld tax on the salary paid to such employees as per the requirements of the Income-tax Act, 1961. The salary payment to such employees was disbursed by the overseas parent company. Subsequently, the salary cost was reimbursed to the parent company by the assessee.

The Revenue sought to tax such reimbursement of salary as manpower supply services and demanded service tax under the reverse charge mechanism.

The Tribunal ruled in favour of the assessee, after which the Revenue had filed an appeal with the Supreme Court (SC).

Supreme Court's decision
The SC dismissed the appeal filed by the Revenue and upheld the Tribunal's ruling. While determining the nature of service, it made the following key observations:

1. The deputed person works under the control, direction and supervision of the assessee, and the compliance to withhold tax was also undertaken as an employer by the assessee.
2. The assessee did not pay any direct or indirect compensation to its parent company for the deployment of employees, apart from the reimbursement of salary at cost.
3. The terms of the agreement makes it clear that the relationship between the assessee and the deputed employee is that of employer-employee.
4. Method of salary disbursement [through a group company] will not result in provision of service.

PwC comments
This is an important decision in favour of the industry, potentially concluding several on-going litigations pending at various Tribunals. The SC decision has laid down the essential principle that needs to be considered while determining an employer-employee relationship. While the decision pertains to the service tax regime, the industry should assess whether the tax authorities will accept the said position in the GST regime.

[1] 2018-TIOL-1976-CESTAT-DEL, 2019-TIOL-151-SC-ST

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With Best Regards
PwC TRS Team

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