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What's the score? What is the source of World Cup income?

Jonathan Schwarz (Temple Tax Chambers; King's College London) · Tuesday, August 25th, 2020

Those with a long memory for cricketing events may remember the 1996 World Cup hosted jointly by India, Pakistan and Sri Lanka. The winner, Sri Lanka, made 398 runs for 5 wickets, in a one-day international match, a record that stood until April 2006. South Africa's Gary Kirsten scored 188 runs, not out, against the United Arab Emirates, the highest individual score in a World Cup match until 2015. Sadly, it was also dogged by bombings in Sri Lanka which resulted in some teams refusing to play there. Tax issues may also have produced a record: The Indian Supreme Court in April this year finally pronounced on withholding tax issues in connection with the event.

PILCOM v CIT West Bengal-VII (Civil Appeal No. 5749 OF 2012) concerned the applicability of withholding taxes on certain cross-border payments made by the organising committee. The case addresses the perennial question of the source of income in the context of complex international sporting events.

World Cup organising committee

PILCOM, the Committee formed by the three host members of the International Cricket Council (ICC), opened bank accounts in London to receive sponsorship, TV rights and similar payments. Expenses were met from those funds and the remaining surplus shared between the hosts. 17 out of 37 matches were played in India.

Expenses included payments to the ICC and Cricket Control Boards or Associations of different countries in connection with conducting preliminary phases of the tournament and for promotion of the game in their respective countries.

Payments

Expenses included paying out the following amounts:

"Guarantee money" paid to Cricket Control Boards in 17 countries which did not participate in the World Cup matches

Prize money for matches in Pakistan and Sri Lanka for payment in those countries

Payment to the ICC towards expenses incurred by it in connection with the tournament and for the development of cricket generally.

Payment for ICC Trophy qualifying matches between ICC Associate members held outside India

“Guarantee money” paid to Cricket Associations in South Africa and the United Arab Emirates neither of which played in India

“Guarantee money” paid to Cricket Associations in Australia, England, New Zealand, Sri Lanka, Kenya and the Netherlands, where double tax treaties were in issue.

Source of income from the tournament

Indian domestic law requires withholding tax on payments of income to non-resident sportsmen for participation in any sport in India and to non-resident sports associations “in relation to” any sport played in India. The Indian tax authorities accepted that prize money for matches played outside India did not have an Indian source but argued that the balance of the payments were from an Indian source to the extent that matches were played in India and that withholding tax in the proportion of matches played India to total matches was due on those payments.

The taxpayer argued that the guarantee money was for participation in the tournament and not for matches played. It was payable regardless of whether national teams played or not (hence “guaranteed”).

The Calcutta High Court (11 November 2010) had ruled that there is an accrual of income to a non-resident sport association when games are played which is sufficient to engage the withholding obligation on the basis that that the expression “in relation to” has a wide meaning. Therefore, if the amount bears any relationship to any games or sports played in India it should come within the provision.

The Supreme Court, however, determined that before the withholding obligation is engaged, the income question must be taxable in India. In other words, it must have an Indian source. The Supreme Court concluded that payments to countries that did not participate was not from an Indian source because it was not for playing in India but merely because the World Cup was held.

In relation to those countries that had played matches in India, the Supreme Court ruled that tax should have been deducted in the same proportion as the number of matches played by each such country in India to the total number of matches played by that such country in the tournament. It rejected the argument of the Indian tax authorities that 17/37 of all payments were from an Indian source. Thus, there must be a direct relationship between the payment and playing in the country. Payment for mere participation in the event did not give rise to an Indian source.

A subsidiary argument that payments made from a foreign bank account to a foreign payee did not give rise to an Indian source was rejected.

Tax treaty classification

The Calcutta High Court overturned the ruling of the Income Tax Appellate Tribunal that the payments fell within article 17(1) of the relevant double tax treaties, all patterned on the OECD Model. Article 17(1) only applies to the personal income of sportspeople exercising their activities as such. It held that payment to the Cricket Associations was not for or on account of players or for their playing the games. As a result, the payments fell within article 21 (other income) which was only taxable in the state of residence of the relevant Cricket Associations.

This conclusion was left undisturbed by the Supreme Court. It merely noted that the withholding obligation was imposed on the Indian payor and that it was up to the non-resident payee to claim relief under the relevant treaty.

Limited consideration of the treaty issues meant that the potential role of article 17(2) was not considered. This grants the state of performance by the sportsperson taxing rights where income from performing the activities accrues to another person instead of the sportsperson. This will allow source state taxation to the extent that payment to the Cricket Association represents, for example, players' salaries. The potential for double withholding relating to players' remuneration was therefore, likewise, not considered.

The amounts in issue in this case are modest by the standards of modern international sporting events. The issues continue to resonate not only with cricket, the second most watched sport in the world, but all international tournaments.

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