NALSAR

Beneficial Owner

Key highlights

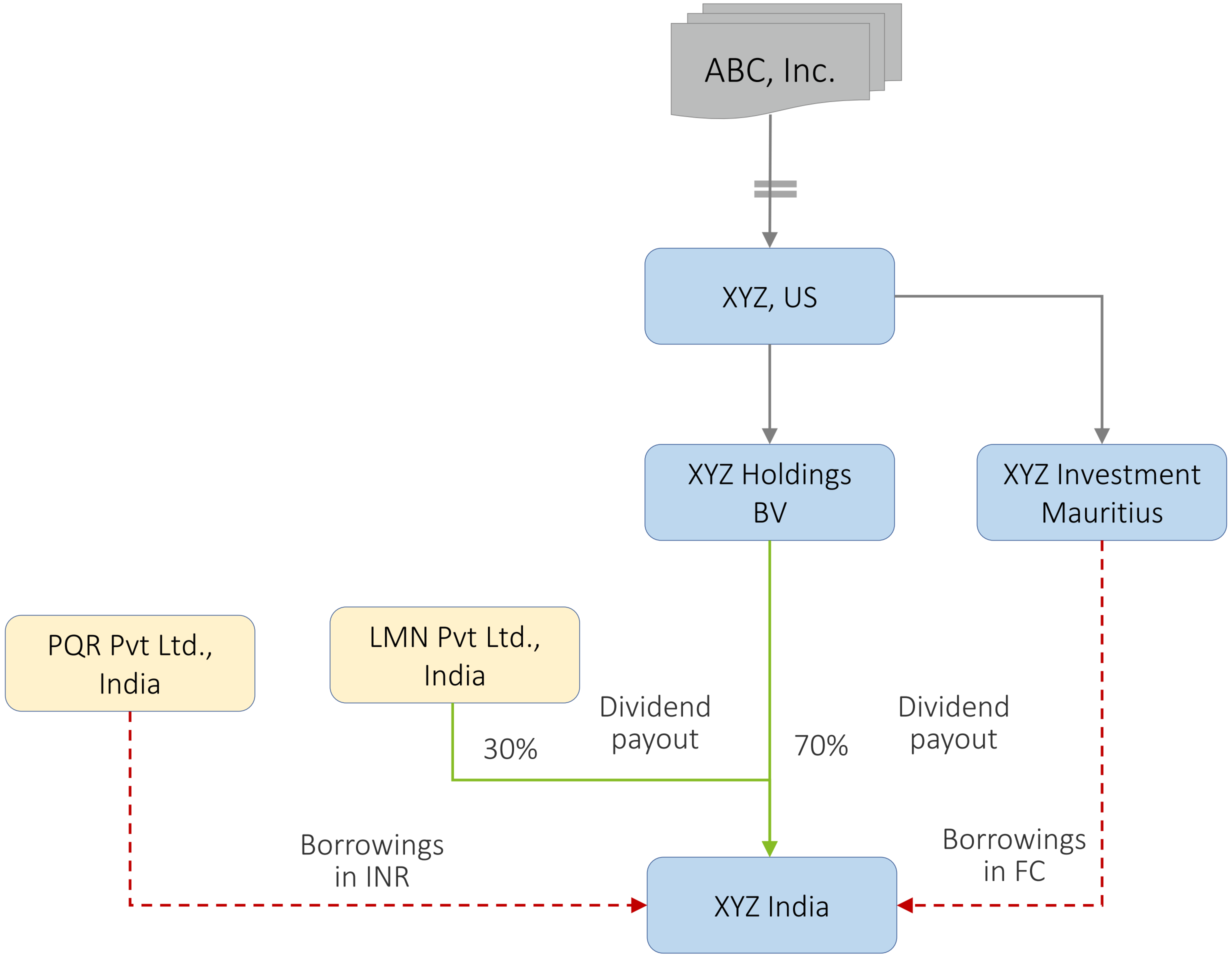
October 2022

CONTENTS

Background

Background

- XYZ India is an Indian company engaged in development of ERP software. It also has an IT enabled services division.
- XYZ India is held by:
  - XYZ Holdings BV, Netherlands - 70%; and
  - LMN Pvt Ltd - 30%
- XYZ India also availed loan from PQR Pvt Ltd. (INR denominated loan) and XYZ Investment Mauritius (FC denominated loan)
- XYZ India approached you to evaluate the (i) Tax rates applicable and (ii) Criteria to be fulfilled for availing the said rates



Background - Taxability of Dividend and Interest under domestic tax law & DTAA

- **Taxability in the hands of LMN India**:

  XYZ India shall be obligated to withhold tax @ 10% u/s 194 while remitting Dividend income to LMN India, being a resident company.

- **Taxability in the hands of XYZ BV**:

  Rate of withhold tax u/s 195 r.w.s. 115A(1)(a)(A) of the Act is 20%

  However, Article 10 of India-Netherlands DTAA provides for a concessional rate of 10% subject to satisfaction of certain conditions.

  In addition, the Protocol to the India-Netherlands DTAA provides for MFN clause. Thus, by importing the beneficial provisions of India-Slovenia (or) India-Lithuania, 5% rate can be explored

Particulars	Stream of Income	WHT Rate (Domestic law)	Rate of Tax (DTAA)
Dividend payment to LMN, India	Dividend	10%	NA
Dividend payment to XYZ BV	Dividend	20%	10%/5%
Interest payment to PQR, India	Interest	30%	NA
Interest payment to XYZ Mauritius	Interest	20%	7.5%

- **Taxability in the hands of PQR India**:

  XYZ India shall be obligated to withhold tax @ 30% u/s 194A while remitting Interest income to PQR India, being a resident company.

- **Taxability in the hands of XYZ Mauritius**:

  Rate of withhold tax u/s 195 r.w.s. 115A(1)(a)(B) of the Act is 20%. It is assumed that the XYZ India obtained a foreign currency loan from XYZ Mauritius in the year 2010. Thus, the provisions of Sec 194LC would not be applicable.

  However, Article 11 of India-Mauritius DTAA provides for a concessional rate of 7.5% subject to satisfaction of certain conditions.

Concept of Beneficial Owner - Article 10/11/12

Concept of Beneficial Owner - Illustrations

The concept of 'beneficial owner' can be found in almost all tax treaties that India has signed with other countries mainly in the context of dividend, interest, royalty and fees for technical services Articles. However, the term 'beneficial owner' is not defined under any tax treaty signed by India.

India - US (Dividend)

- Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
- However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State, <u>but if the beneficial owner of the dividends is a resident of the other Contracting State</u>, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends if the beneficial owner is a company which owns at least 10 per cent of the voting stock of the company paying the dividends

The 365 days condition (Article 8 of MLI) is not applicable since neither India nor Netherlands explicitly opted for it.

India - NL (Dividend)

- Dividends paid by a company which is a resident of one of the States to a resident of the other State may be taxed in that other State.
- However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, <u>but if the recipient is the beneficial owner of the dividends</u>, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

India - Mauritius (Interest)

- Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
- However, subject to provisions of paragraphs 3, 3A and 4 of this Article, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, <u>but if the beneficial owner of the interest is a resident of the other Contracting State</u>, the tax so charged shall not exceed 7.5 per cent of the gross amount of the interest

Mauritius has not chosen India as a CTA. Thus, India-Mauritius DTAA would not undergo any change

Beneficial Owner - Is TRC not sufficient ?

- Neither the Act nor the DTAAs' define the term 'beneficial owner'. However, the CBDT vide Circular No.789 of 2000 has issued clarifications with respect to taxation of income from dividends and capital gains under the Indian - Mauritius DTAA, which categorically states as under:

  "..It is hereby clarified that wherever a Certificate of Residence is issued by the Mauritian Authorities, such Certificate will constitute sufficient evidence for accepting the status of residence as well as beneficial ownership for applying the DTAC accordingly."

  Circular No. 789, dated 13-4-2000.pdf

- Several Courts have upheld that TRC is a sufficient evidence to prove beneficial ownership. Refer Annexure 1.

- However, Courts in several cases have gone beyond TRC and examined the substance of transaction to determine if taxpayer is beneficial owner of concerned income and eligible for the DTAA benefits

- Pertinent to analyse the parameters laid down by judicial precedents under domestic law and OECD Commentary

Beneficial Owner - OECD Guidance

Can the provisions w.r.t Capital gains for conduit / shell company be applied here ? Ex: India-Singapore DTAA

OECD Guidance (relevant extracts)

Para 12: State of source is not obliged to give up taxing rights over dividend income merely because that income was paid direct to a resident of a State with which the State of source had concluded a convention.

Para 12.2 and 12.3: Where an item of income is paid to a resident of a Contracting State acting in the capacity of agent or nominee or conduit it would be inconsistent with the object and purpose of the Convention for the State of source to grant relief or exemption.

Para 12.4: In these various examples (agent, nominee, conduit company acting as a fiduciary or administrator), the direct recipient of the dividend is not the "beneficial owner" because that recipient's right to use and enjoy the dividend is constrained by a contractual or legal obligation to pass on the payment received to another person. Such an obligation will normally derive from relevant legal documents but may also be found to exist on the basis of facts and circumstances showing that, in substance, the recipient clearly does not have the right to use and enjoy the dividend unconstrained by a contractual or legal obligation to pass on the payment received to another person.

Para 12.5: Concept of BO must not be considered as restricting in any way the application of other approaches (viz., addressing Treaty abuse etc.)

GAAR and PPT to be analysed separately

Para 12.6: Beneficial owner of Income is different from Beneficial owner of shares

Beneficial Owner - Judicial precedents

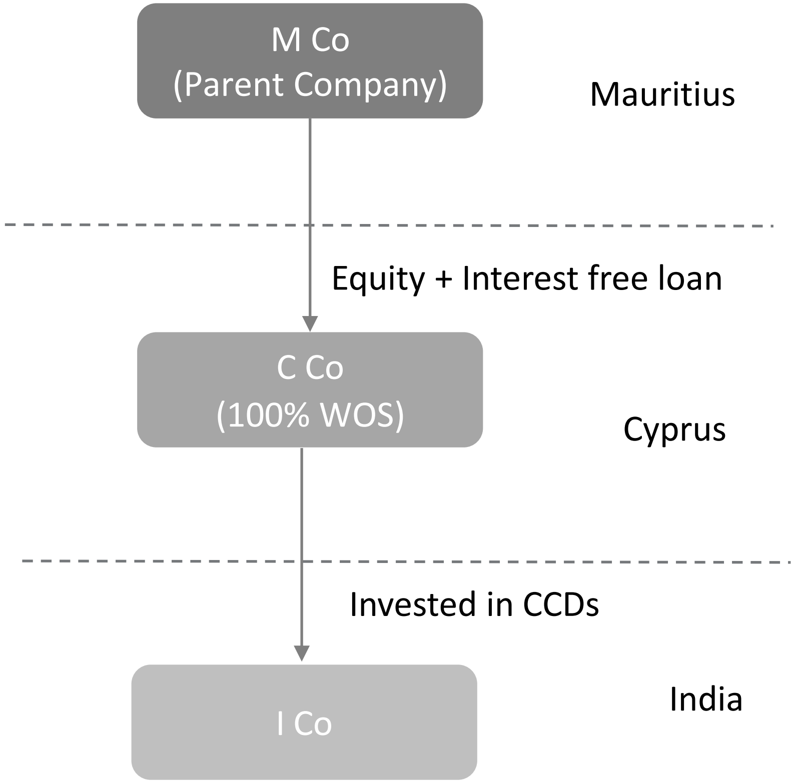
Golden Bella Holdings Ltd. v. DCIT [2019] 109 taxmann.com 83 (Mum)

Revenue's contentions:

- The investment in CCDs was a mere back-to-back loan transaction. Accordingly, Golden Bella (assessee) was not the 'beneficial owner' of interest income
- The assessee was mere conduit, since it had outsourced its corporate secretariat and management functions to a third party and did not carry any business operations.
- It did not exercise dominion and control over the CCDs. Therefore, the interest income is taxable at the applicable rates in force (approx. 42%).
- The DRP confirmed the findings of the AO. It further observed that Circular 789 of 2000 does not apply to Cyprus treaty and, as per judgements, TRC is not conclusive proof of beneficial ownership.

Tribunal's Ruling:

- The assessee invested in CCDs and received interest income thereon for its own exclusive benefit, and not for or on behalf of any other entity.
- Assessee had entire control over funds, assumed forex risk, and the entire interest income was the sole property of the assessee. AO/DRP failed to prove otherwise;
- Mere fact that the investment is funded using a portion of interest-free shareholder loan and share capital does not affect the assessee's status as 'beneficial owner' of interest income



Beneficial Owner - Judicial precedents

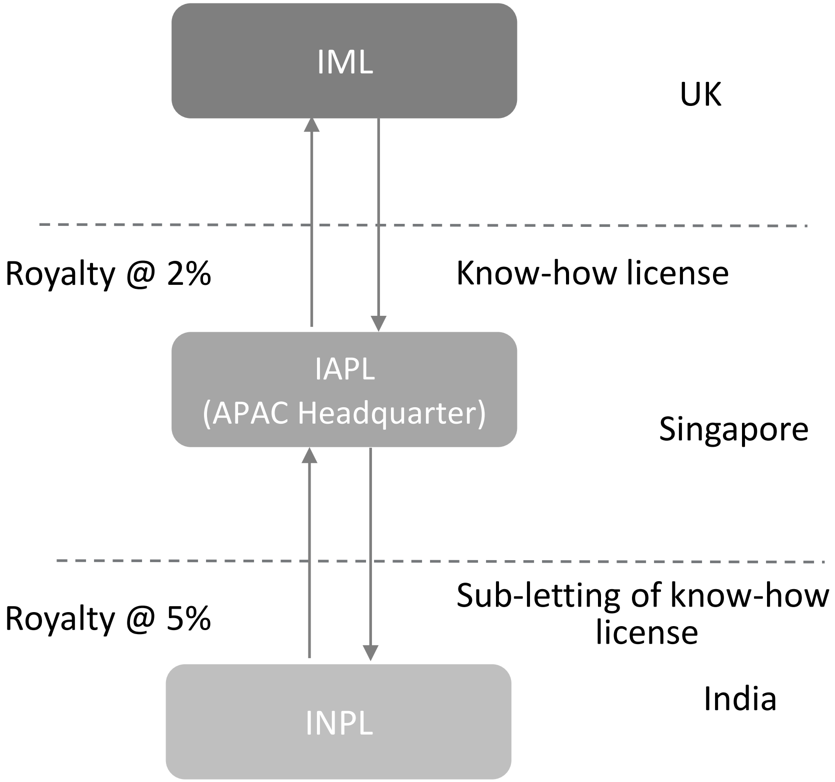
Imerys Asia Pacific (P.) Ltd. v. DDIT [2016] 69 taxmann.com 454 (Pune)

Facts of the case:

- IAPL, a Singapore based company is a 100% subsidiary of IML and has a valid TRC from IRAS;
- IAPL is acting as APAC headquarter, and is an operational entity with sizeable assets, liabilities and turnover. Principal activities include rendering administrative, marketing and sales services to the group and affiliated companies, trading in paper, and other related activities.
- IAPL entered into a Technology License Agreement with INPL against 5% royalty on INPL's net sales. IAPL liable to pay 2% of INPL's net sales as royalties to IML (a UK based group entity and the owner of know-how).

Revenue's contentions:

- The know-how is being provided to INPL by IML, and IAPL (assessee) is acting as mere agent to claim DTAA benefits. Thus, the assessee's claim for lower rate under India-Singapore DTAA is not tenable and the income is taxable at 20% under section 115A of the Act.

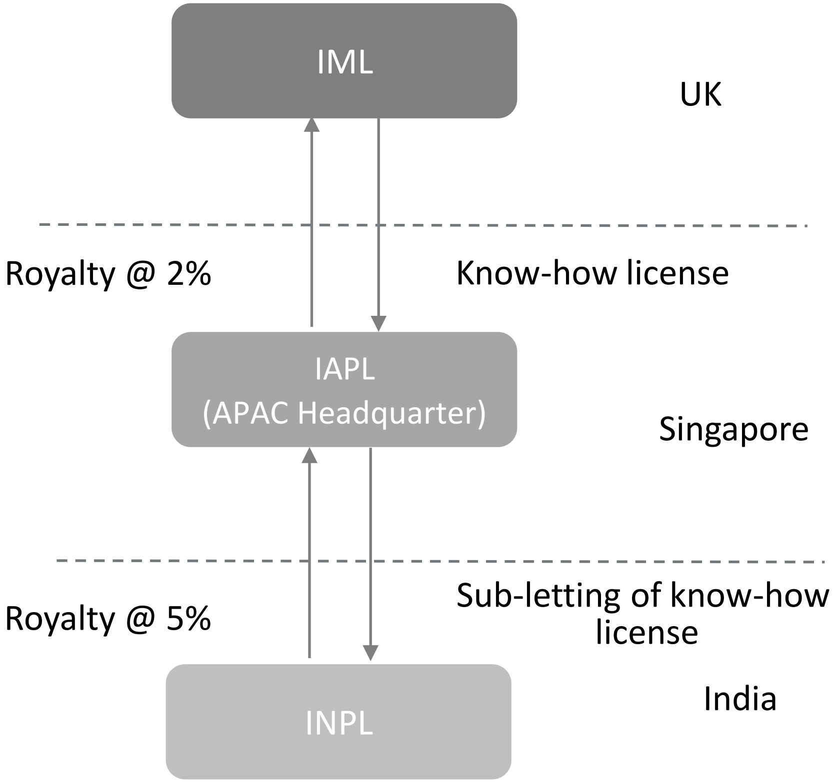


Beneficial Owner - Judicial precedents

Imerys Asia Pacific (P.) Ltd. v. DDIT [2016] 69 taxmann.com 454 (Pune)

Tribunal's Ruling:

- In order to take the benefit of Articles 12 of India-Singapore DTAA, the following conditions need to be satisfied:
- (i) Recipient should be tax resident of Singapore - the assessee has placed a valid TRC on record (ii) Recipient should be the beneficial owner of royalty
- For the second condition above, it is essential that the recipient receives the royalty in its own right. Considering the relevant terms of agreement between INPL and IAPL (along with supporting documents, such as invoices raised, documents submitted with AD Bank for remittance of royalty, extracts of Singapore tax return etc.), the ITAT held that the assessee had entered into an agreement with IML and received the know-how, which in turn was sub-licensed to INPL. Thus, royalty received by the assessee from INPL is on its own right as the beneficial owner.

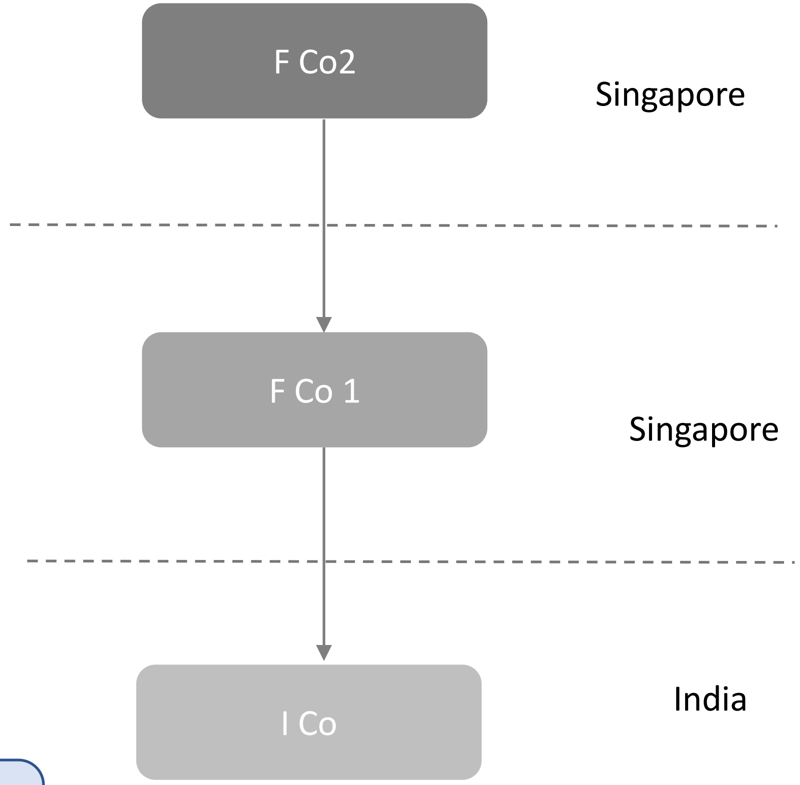


Beneficial Owner - Not satisfied

Scenario 1 - Benefit of treaty where the recipient and beneficial owner are distinct entity though resident of same treaty jurisdiction

- Para 2 of Article 12 of India-Singapore DTAA: However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, *but if the beneficial owner of the interest is a resident of the other Contracting State*, the tax so charged shall not exceed:

- Para 2 of Article 11 of India-Mauritius DTAA: However, subject to provisions of paragraphs 3, 3A and 4 of this Article, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 7.5 per cent of the gross amount of the interest

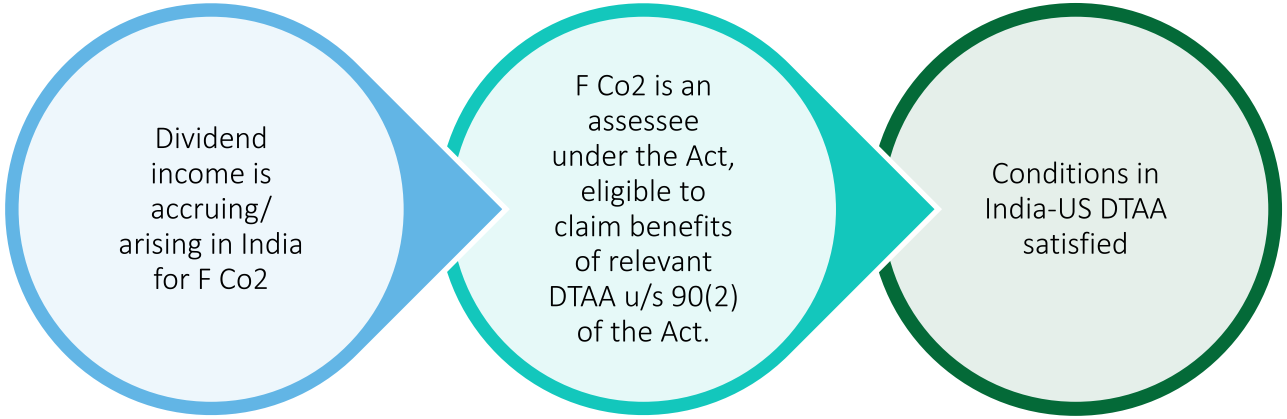


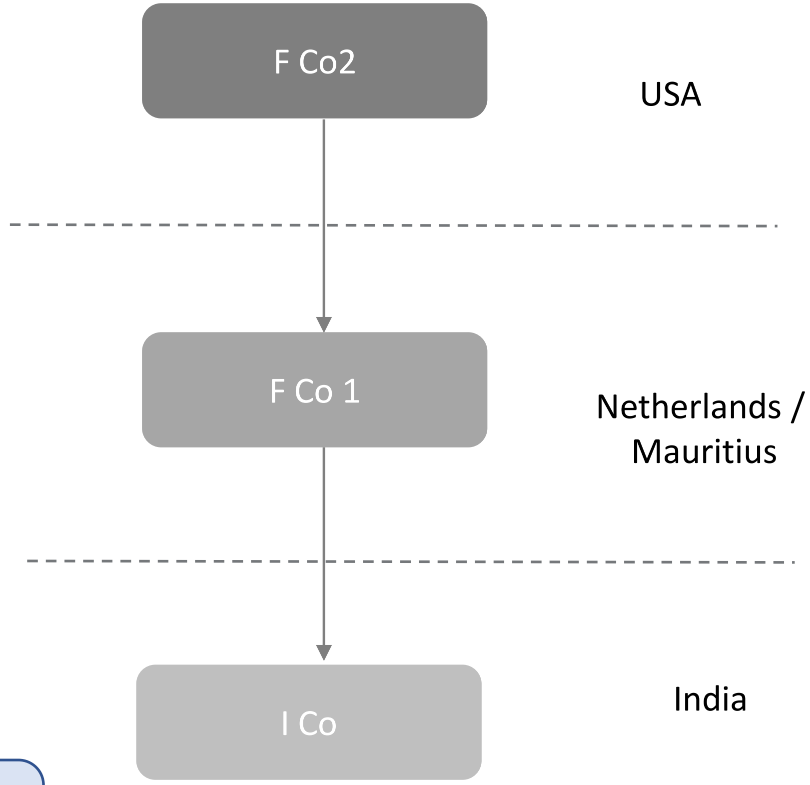
since the both the recipient and beneficial owner of interest are resident of Singapore, reduced tax rate of interest under the Singapore DTAA may be availed. Similar wordings present in India-Mauritius DTAA also

Beneficial Owner - Not satisfied

Scenario 2 - Availing benefit of treaty with third state of which the beneficial owner is resident

- Where F Co1 is not considered as beneficial owner of dividend, the tax authorities could seek to apply withholding tax rate as per the Act i.e. 20% (plus applicable surcharge and cess)
- The question that needs to be answered is whether F Co2 can be regarded as the beneficial owner and whether the DTAA between India and USA can be applied?
- In order to apply India-US DTAA, the following conditions need to be satisfied:





Substance should preside over form. This argument is based on interpretation of Article 10 in the OECD commentary and is yet to be tested in India. However, Indian courts have held that corporate veil can be lifted/the beneficial owner can be taxed in India for capital gains. Refer Annexure 2.

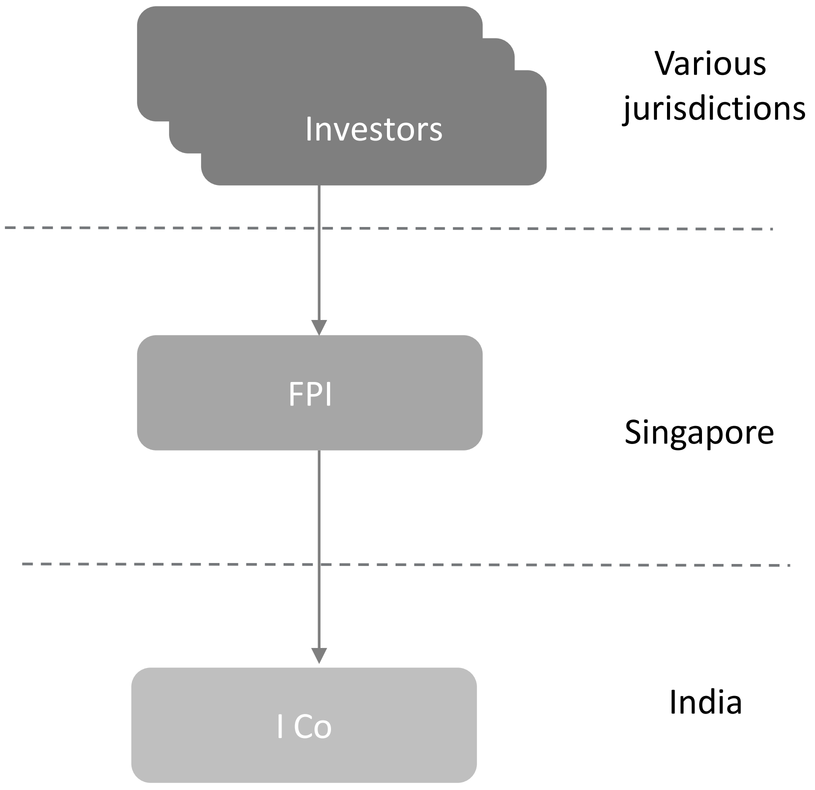
Beneficial Owner - In the context of FPI

Typical scenarios:

- The Question becomes pertinent since there would hardly a time gap between the distribution of the INR returns received from the debt securities of I Co by FPI and the USD amount distributed to Overseas Investors - These are generally called Total Return Swap (TRS) products.
- Typically, these contracts entitle the Overseas Investors to returns referenced to debt securities of I Co. Thus, FPI in Singapore would be required to compensate the Overseas Investor for the economic benefits arising out of corporate actions, if any, (bonus, rights issue etc.) during the continuation of the contract. Such benefits form part of the returns payable to the Overseas Investor under the TRS contract.

Key Parameters relevant for determining the Beneficial ownership:

- Predominantly depends on the way the contract is worded between the FPI and Overseas Investor, and the terms and conditions mentioned therein.
- If the recipient of income goes bankrupt before paying over the income to the intended ultimate recipient, whether the ultimate recipient has any authority to claim funds as its own, or is simply regarded as general creditor of the actual recipient;
- Whether the recipient of income possesses any ownership attributes over the income
- Who is bearing the risks? Illustrative list of risks (Risk of default, operational risk, reputational risk; and regulatory risk etc.)



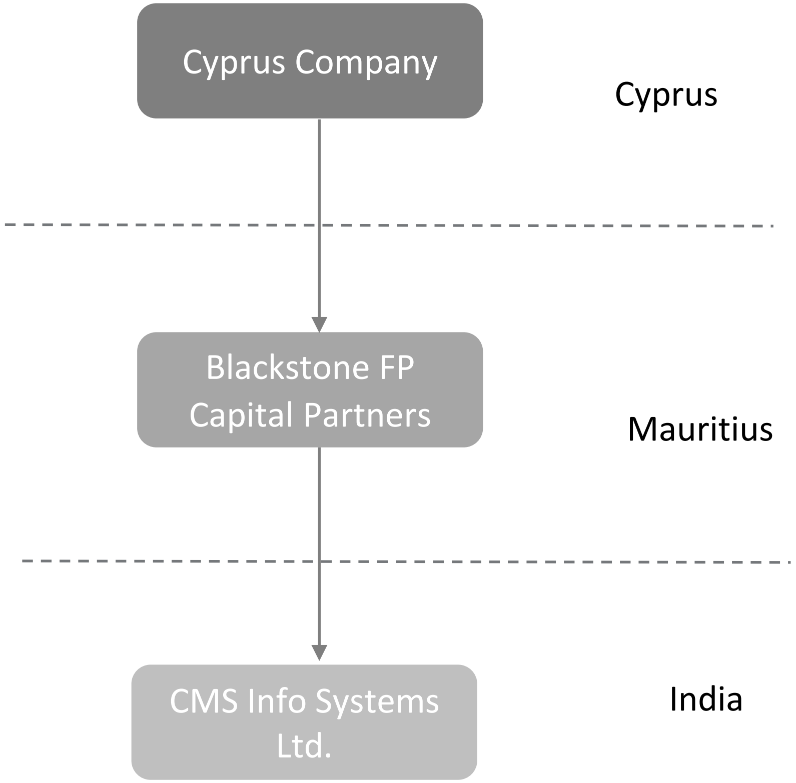
Concept of Beneficial Ownership in Article 13 (Capital gains) ?

Beneficial Ownership - Capital gains

Blackstone FP Capital Partners Mauritius V Ltd. vs. DCIT [2022] 138 taxmann.com 328 (Mumbai - Trib.)

Facts of the Case:

- The assessee was a company incorporated in, and fiscally domiciled in, the Republic of Mauritius. It holds a global business licence (GBL) issued by the Financial Services Commission, Mauritius. The assessee is also registered as a foreign venture capital investor (FVCI) with the Securities and Exchange Board of India. The assessee had also been issued a 'tax residency certificate' by the Mauritian Revenue Authority.
- During the relevant previous year, the assessee sold 8.32 crore equity shares of CMS Info Systems Ltd. and earned Rs. 904.98 crores which was in the nature of long-term capital gains. Dispute arose with respect to treaty protection, in terms of Indo Mauritius tax treaty, in respect of the said long-term capital gains.
- The AO concluded that the assessee company is a WoS of a Cayman Islands company, that it has no independent existence, and that its entire activity was controlled and directed as per the directions of its affiliates. It was thus concluded that the entire scheme of purchase and sale of shares was designed for the benefit of the entities in Cayman Islands and that it was a fit case to lift the corporate veil. On this basis he concluded that that the assessee was not entitled for the benefit of DTAA with Mauritius. It was thus held that the beneficial owner of the shares, on alienation of which the long-term capital gains in question had arisen, is not the assessee, and the benefit of article 13(4) of Indo Mauritius tax treaty will not be admissible.



Beneficial Ownership - Capital gains

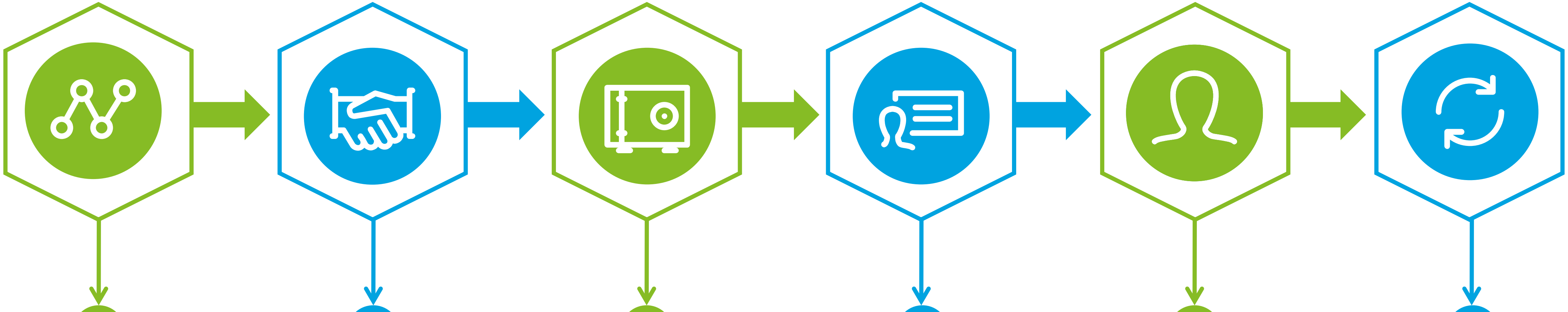
Blackstone FP Capital Partners Mauritius V Ltd. vs. DCIT [2022] 138 taxmann.com 328 (Mumbai - Trib.)

Tribunal Ruling:

- The concept of beneficial ownership of the capital gains can indeed be read into the scheme of article 13 of the Indo-Mauritius tax treaty.
- If this fundamental assumption is found to be incorrect, the question, which would be academic in that case, as to whether the detailed arguments in support of the reasoning adopted by the Assessing Officer to hold the view that the assessee is not the actual or true beneficiary of the transactions leading to capital gains in question will not be required to be dealt with.
- In one of the United Nations Committee of Experts on International Co-operation on Tax Matters document, it is noted that a sub-committee formed by the said Committee of Experts was 'requested to carry out further work on the issue of beneficial ownership and it was noted this could include whether or not the concept of beneficial ownership could apply with respect to other articles of Model Convention, such as articles 13 and 21’.
- Both the foundational issues, i.e., whether the concept of 'beneficial ownership' is inbuilt in the scheme of article 13 and, if so, what are the connotations of 'beneficial ownership' in this context, need to be adjudicated upon by the Assessing Officer by way of speaking order. With these observations, the matter stands restored to the file of the Assessing Officer.

Way forward

Beneficial Owner - Checklist (Illustrative)



1. Provide TRC and information in Form 10F.
2. Prove commercial and business expediency (If incorporated in tax favorable jurisdiction)
3. Recipient enjoys the fruits of the ownership and has the ability to dispose of it for his own benefit (i.e., not as a mere agent or nominee working on behalf of the parent company under parent company’s instruction)
4. Recipient should have discretion to use the income (exclusive possession and control over the income received)
5. The risk associated with such income must be borne by the company.
6. No contractual obligation to pass on the income to the third party.

Annexures

Annexure 1 - Beneficial Owner - Is TRC not sufficient ? (Judicial precedents)

- **ADIT v Universal International Music B.V [2013] 31 taxmann.com 223 (Bombay)**
  - Assessee claimed the benefit of Article 12 of the Double Tax Avoidance Agreement (DTAA) between India and Netherlands and sought to pay tax at concessional rate at 10% in respect of royalty income received from M/s. Universal India Private Limited.
  - The Hon'ble High Court held in favour of the Assessee based on the Certificate issued by the Revenue authorities in Netherlands certifying that the assessee was a beneficial owner of the royalty received. Besides, reliance was placed upon the CBDT Circular No.789 dated 13/4/2000 that certificate from revenue authorities is sufficient evidence of beneficial ownership.

This clause has been deleted from the re-negotiated India-Mauritius DTAA w.e.f 01 April 2017

- **HSBC Bank (Mauritius) Ltd. vs DCIT (IT) -2(2)(2) [2018] 96 taxmann.com 544 (Mumbai - Trib.)**
  - Article 11(3)(c) of the India-Mauritius DTAA prescribes that interest income arising in a contracting state shall be exempt from tax in that state provided it is derived and beneficially owned by any bank carrying on a bona fide banking business which is resident of the other contracting state.
  - The Hon'ble Tribunal held that the CBDT Circular No. 789, dated 13-4-2000 is specifically in the context of incomes by way of dividend and capital gain on sale of shares. It would equally apply even in the present situation where the application of the provisions of the India-Mauritius DTAA is sought to be applied for considering the taxability of interest income as per article 11(3)(c) of the India-Mauritius DTAA. On this aspect itself the plea of the assessee is to be upheld that assessee is the 'beneficial owner' of the impugned interest income on the strength of the TRC issued by the Mauritian authorities.

Annexure 2 - Beneficial Owner - Not satisfied (Judicial precedents)

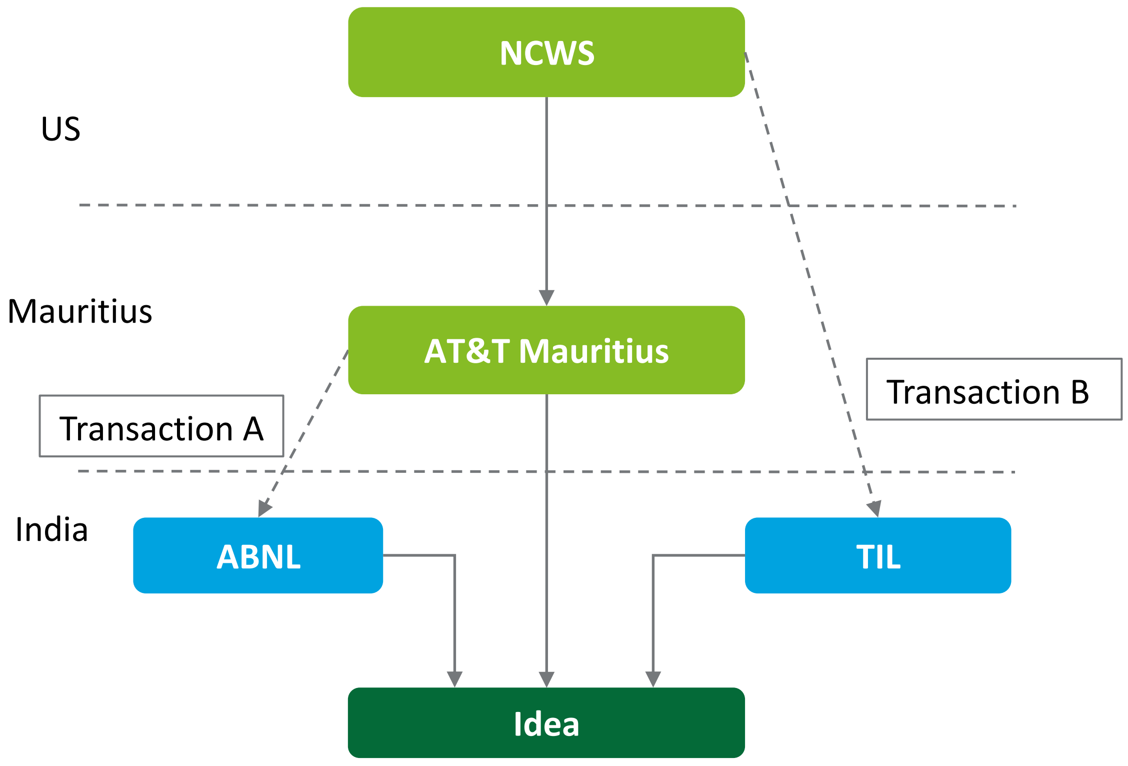
#	Case law/ Citation	Court	Summary
1	Aditya Birla Novo Limited	Bombay High Court	The Court had observed that if the beneficial ownership in shares (of Indian company held by a Mauritius company) actually vests in US company then the capital gains arising on transfer of the Indian company shares would be taxable in the hands of US company to which tax treaty between India and USA would apply.
2	Sanofi Pasteur Holding SA	Andhra Pradesh High Court	The tax department failed to establish that the genesis and continuance of ShanH establishes as an entity of no commercial substance and/or that ShanH was interposed only as a tax avoidant device. Thus, no case was made out for piercing or lifting the corporate veil of ShanH.
3	Vodafone International Holdings B.V.	Supreme Court of India	Thus, whether a transaction is used principally as a colourable device for the distribution of earnings, profits and gains, is determined by a review of all the facts and circumstances surrounding the transaction. It is in the above cases that the principle of lifting the corporate veil or the doctrine of substance over form or the concept of beneficial ownership or the concept of alter ego arises.

Annexure 2 - Beneficial Owner - Not satisfied (Judicial precedents)

Aditya Birla Nuvo Limited v. DDIT [2011] 200 Taxman 437 (Bom)

Facts of the case:

- Birla Group entered into a JV agreement with AT&T US for carrying out wireless telecommunication services in India. AT&T US acquired a 49% stake in Idea. Birla Group continued to own the balance 51% stake in Idea.
- The JV agreement allowed shares in Idea to be held by AT&T US and Birla group either in their name or through a "permitted transferee" who would be 100% subsidiary of JV partners.
- Under this agreement, 49% shares were held by AT&T Mauritius (permitted transferee of AT&T US) and balance 51% was held by ABNL (permitted transferee of Birla group). AT&T Mauritius held valid TRC from Mauritian Tax Authorities
- TIL was inducted as a joint venture partner on account of merger of Tata Cellular with Idea and a fresh shareholder agreement was entered into by all the 3 JV partners.
- Cingular Wireless LLC, USA acquired AT&T US from AT&T Corp., USA and AT&T US was renamed NCWS.
- NCWS decided to exit the venture in 2005. ABNL purchased certain shares of Idea from AT&T Mauritius (Transaction A)
- ABNL obtained NIL withholding tax order from AO and remitted the consideration for Transaction A to AT&T Mauritius. These funds were immediately remitted to NCWS as dividends and repayment of loans.
- TIL acquired the entire share capital of AT&T Mauritius and paid the consideration to NCWS (Transaction B).



Transaction A: Transfer of stake in Idea from AT&T-Mauritius to ABNL.

Transaction B: Subsequent to transaction A above, transfer of 100% stake in AT&T Mauritius from NCWS to TIL.

Annexure 2 - Beneficial Owner - Not satisfied (Judicial precedents)

Aditya Birla Nuvo Limited v. DDIT [2011] 200 Taxman 437 (Bom)

Issue before HC

- Whether any income chargeable to tax in India has accrued/ arisen or deemed to accrue or arisen in India to NCWS where its WOS (being AT&T Mauritius) sold the shares of the Idea to ABNL?

Assessee’s contentions

- The shares were acquired from a tax resident of Mauritius holding a valid TRC. Thus, capital gains are not taxable in India by virtue of Article 13 of the DTAA. Reliance placed on various administrative circulars and the decision of SC in Azadi Bachao Andolan
- Revenue cannot lift corporate veil when valid TRC on record. Utilization of funds received by AT&T Mauritius is irrelevant factor.
- AT&T Mauritius was owner of Idea’s shares, a fact approved by RBI
- NCWS was a party to the SPA since it had given certain warranties to ABNL in connection with Idea’s shares.
- Assets of WOS cannot be considered as assets of the Parent entity.

Bombay HC ruling

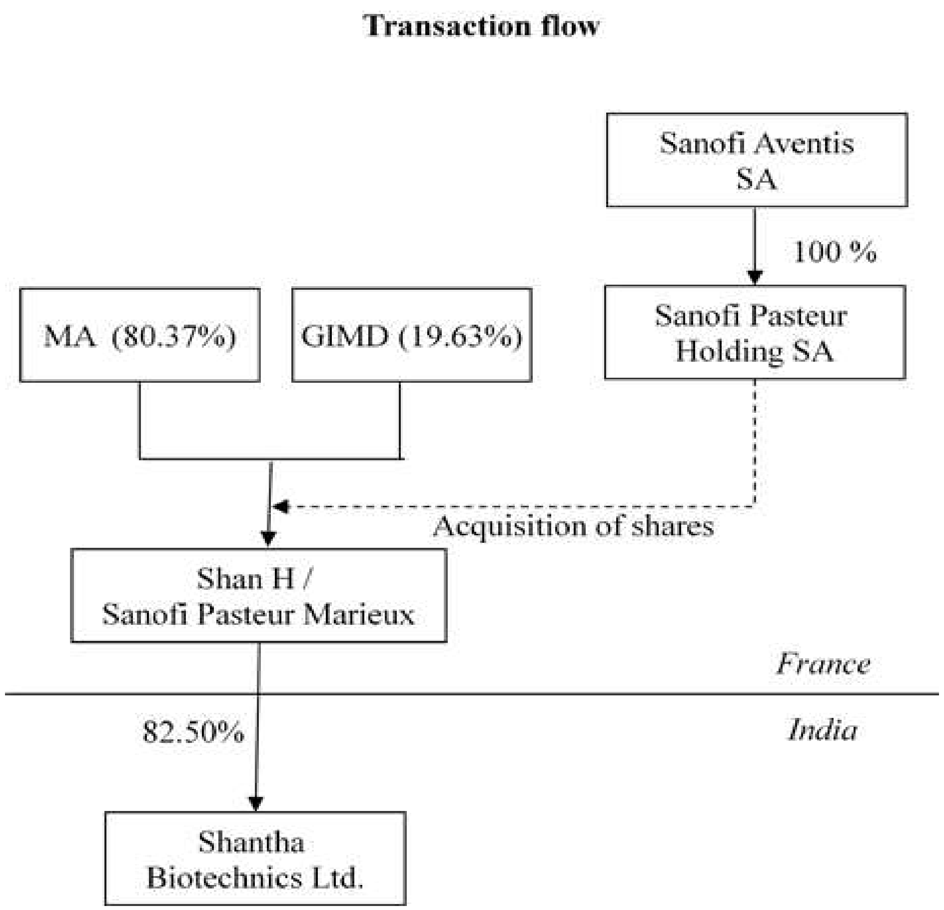
- Idea was formed in India with a view to enable NCWS to carry out its telecommunication business in India.
- Shares in Idea were allotted to AT&T Mauritius as a permitted transferee of HCWS under the SPA. Thus, AT&T had no obligation to pay for the allotment of shares. There is also no document on record to suggest that AT&T Mauritius had agreed to subscribe to/ purchase the shares in Idea.
- AT&T Mauritius, as permitted transferee, had no rights on the shares and is no more than a representative of NCWS. The shares in Idea could not be sold by AT&T Mauritius without the consent of NCWS. Thus, NCWS was the beneficial owner of the stake in Idea.
- It is not a case of lifting of corporate veil to find out the real owners of the shares but because the investment was made by NCWS, capital gains accrued to NCWS on sale of shares.
- Once it was established that the investments was made by AT&T-US and the AT&T-Mauritius was merely as a permitted transferee of AT&T-US, then the benefit under India-Mauritus DTAA, CBDT circulars and the decision of SC in the case of Azadi Bachao Andolan would not apply to this case.

Annexure 2 - Beneficial Owner - Not satisfied (Judicial precedents)

Sanofi Pasteur Holding SA vs. Dept of Revenue [2013] 30 taxmann.com 222 (AP)

Facts of the Case:

- During the year 2009, Sanofi France purchased 80.37% of ShanH from Merieux Alliance (MA), a French company, and balance 19.63% from Groupe Industriel Marcel Dassault (GIMD), another French company.
- ShanH held 82.5% of the share capital of SBL.
- The tax department passed an order on Sanofi dated 25 May 2010 under Section 201(1)/(1A) of the Act holding Sanofi as an 'assessee-in-default' for not withholding taxes on payments made to MA and GIMD on acquisition of shares of ShanH
- MA and GIMD made an application to the Authority for Advance Ruling (the AAR) on the taxability of the transaction. The AAR in November 2011 ruled that the capital gain arising from the sale of shares of ShanH by MA and GIMD was taxable in India in terms of Article 14(5) of the tax treaty.
- Subsequently, both the parties i.e. the Buyer (Sanofi) and Sellers (MA and GIMD) filed writ petitions before the Andhra Pradesh High Court (High Court).



Annexure 2 - Beneficial Owner - Not satisfied (Judicial precedents)

Sanofi Pasteur Holding SA vs. Dept of Revenue [2013] 30 taxmann.com 222 (AP)

Contentions of Revenue:

- ShanH is not a company with an independent status and is only an alter ego of MA and GIMD. ShanH had no control over SBL management nor enjoyed any rights and privileges in SBL as a shareholder.
- For a proper and purposeful construction of tax treaty provisions, the expression 'alienation of shares' in tax treaty must be understood as direct as well as indirect alienation. Thus, no conflict between the provisions of the Act pursuant to the retrospective amendments carried out by the Finance Act, 2012 and Article 14(5).
- The retrospective amendments to Section 2(47) of the Act (By the Finance Act, 2012) clarifies that 'transfer' would mean and would deem to have always meant the disposal of an asset whether directly or indirectly or voluntarily or involuntarily.

Ruling of High Court:

- Since the tax department failed to establish that the genesis and continuance of ShanH establishes as an entity of no commercial substance and/or that ShanH was interposed only as a tax avoidant device, no case was made out for piercing or lifting the corporate veil of ShanH.
- De hors the conclusion that there was no case piercing the corporate veil of ShanH, the transaction in issue was clearly one of transfer by MA and GIMD of their shareholding in ShanH to Sanofi and it was not a case of transfer of shareholding in SBL, which continues with ShanH.
- The transaction was for alienation of shares of ShanH held by MA and GIMD in favour of Sanofi and falls within Article 14(5) of the tax treaty. The transaction neither constitutes the transfer nor deemed transfer of shares or of the control/management or underlying assets of SBL.
- The retrospective amendments do not alter the provisions of the tax treaty and given the text of Section 90(2) of the Act, these amendments do not alter the taxability of the present transaction.

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