

## Tax Hotline

October 30, 2008

### IN THE CORRECT SPACE

The Authority of Advance Rulings (“**Authority**”), in the case of Indian Space Research Organization (“**ISRO**”)<sup>1</sup> was faced with questions of characterization and taxability of income of a non-resident company, arising from leasing of “Navigation Transponder Capacity” of its satellite to an Indian resident.

In this case ISRO Satellite Centre (“**Applicant**”) had entered into a contract with one M/s Inmarsat Global Ltd., UK (“**Lessor**”) for leasing the “navigation transponder capacity” of a satellite owned by the Lessor. The navigation transponder capacity of the satellite consists of certain transponders aboard the satellite, which orbits the earth at an altitude of 36,000 kilometers. This capacity can be used by the Applicant by sending data to the transponders through its ground stations. The transponders in turn transmit corrected and more accurate signals, which can be used by the Applicant for better aeronautic navigation. In consideration, the Applicant pays a fixed annual charge to the Lessor irrespective of actual use.

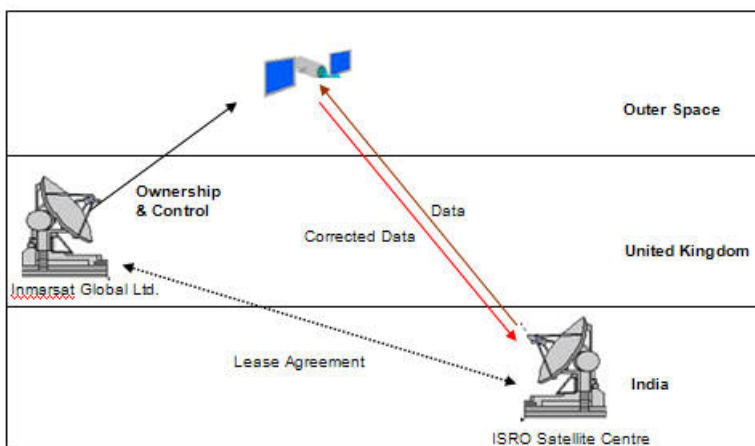


Figure: Contractual Arrangement between ISRO Satellite Centre and Inmarsat Global Limited

The crux of the controversy before the Authority related to the characterization of the income of the Lessor. The question was whether the above contractual arrangement resulted in the “use of” or “right to use” any industrial, commercial or scientific equipment of the Lessor, by the Applicant, so as to characterize the consideration as ‘Royalty’, as income taxable in India under Article 13.3(b) of the Double Tax Avoidance Agreement between India and the United Kingdom and Section 9(1)(vi) of the Income Tax Act, 1961.

The Applicant submitted that there was no use by or no right to use vested with it pursuant to the arrangement, as the satellite was controlled and operated by the Lessor and the Applicant had no role to play in the same. The Income Tax Department (“**Revenue**”), on the other hand, submitted that the Applicant indeed used the transponders in a manner analogous to the operation of a television remote controller.

The Authority, however found it difficult to accept the contention of the Revenue. It held that merely because the transponder automatically responds to data commands sent from a ground station of the Applicant, it does not imply that the Applicant controls or operates the transponders. In case of a television set, it stated that the remote control device is a mere accessory and the owner of the television set is the real operator. It was observed that the ground station of the applicant is an independent unit and not an accessory to the satellite. Relying on its earlier ruling in the case of Dell International Services (India) Pvt. Ltd.<sup>2</sup> the Authority noted that there was no positive act on the part of the Applicant in order to control or operate the transponders or the satellite. It held that neither was there any “use of” nor any “right to use” any industrial, commercial or scientific equipment of the Lessor, by the Applicant, so as to characterize the consideration as royalty income as taxable in the hands of the Lessor.

With the successful launch of the Chandrayaan - I<sup>3</sup>, India is fast establishing itself as a major player in the space industry, but cannot do so without creating synergies with other nations. In this era of globalization there is a need for optimal integration of national economies into the international economy through trade, capital flows, migration, spread of technology etc. However, taxation can distort this equation of optimal integration. This ruling is not only correct in its interpretation of the law, but also goes a long way in augmenting India’s spatial foray.

- Dhruv Sanghavi & Rajesh Simhan

## Research Papers

### Fintech

May 05, 2025

### Medical Device Industry in India

April 28, 2025

### Clinical Trials and Biomedical Research in India

April 22, 2025

## Research Articles

### 2025 Watchlist: Life Sciences Sector India

April 04, 2025

### Re-Evaluating Press Note 3 Of 2020: Should India’s Land Borders Still Define Foreign Investment Boundaries?

February 04, 2025

### INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals

January 15, 2025

## Audio

### CCI’s Deal Value Test

February 22, 2025

### Securities Market Regulator’s Continued Quest Against “Unfiltered” Financial Advice

December 18, 2024

### Digital Lending - Part 1 - What’s New with NBFC P2Ps

November 19, 2024

## NDA Connect

Connect with us at events, conferences and seminars.

## NDA Hotline

Click here to view Hotline archives.

## Video

### Vyapak Desai speaking on the danger of deepfakes | Legally Speaking with Tarun Nangia | NewsX

April 01, 2025

- 
- 1.AAR No. 765 of 2008, dated October 22, 2008.
  - 2.(2008) 218 CTR (AAR) 209; <https://nishiithdesai.com/SectionCategory/33/Tax-Hotline/12/53/TaxHotline/5369/3.html>.
  - 3.India's maiden lunar exploration mission, launched by ISRO on October 22, 2008.
- 

#### DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishiith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.