

India; Singapore

Fees for Provision of Office Design Plans Taxed as Technical Fees Under India-Singapore Treaty, Says Indian Court

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The Delhi Income Tax Appellate Tribunal (ITAT), in the case of *Gensler Singapore Private Limited vs. Joint Commissioner of Income Tax (ITA. No. 7694/Del/2019)*, has held that fees received by a Singaporean taxpayer for the provision of design plans to an Indian entity were fees for technical services (FTS) under article 12(4) of the [India-Singapore Income Tax Treaty \(1994\)](#) (the Treaty).

(a) Facts. The taxpayer, a Singapore resident, provided design services in the Asia Pacific region. During the relevant tax year 2016-17, the taxpayer provided such services to its Indian associated enterprise and offered to tax in India as FTS at 10% under article 12 of the Treaty. The taxpayer also provided design services for an office construction project to another Indian entity (RCITP); however, it did not offer such receipts to tax in India under the belief that such services were not in the nature of FTS under article 12(4) of the Treaty. The tax authorities had a contradictory view and approached the ITAT.

(b) Issue. The ITAT considered the issue whether the design services provided to RCITP were taxable in India under article 12(4) of the Treaty.

(c) Decision. The ITAT accepted the tax authorities' contention and observed that, as per the terms of the agreement between the taxpayer and RCITP, the taxpayer (principal designer):

- assigns and transfers to RCITP all rights, title and interest in all deliverables from the moment of creation; and
- grants a perpetual, irrevocable, non-exclusive, royalty-free, fully paid-up right and licence to use, copy, modify and prepare derivative works of the principal designer intellectual property rights incorporated in the deliverables for the use of the deliverables by RCITP, its affiliates or third parties engaged by RCITP in connection with its business operations.

Thus, the taxpayer made available to RCITP all reports, analyses, tests, tables, plans, drawings or other documents in any form for the use of RCITP, which enables RCITP to apply and use all these deliverables for its business purposes.

Since the conditions of article 12(4)(b) and (c) of the Treaty were satisfied, the fees received by the taxpayer from RCITP were FTS under article 12(4) of the Treaty and taxable at 10%.

This decision, pronounced by the ITAT on 25 August 2023, is available [here](#).

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