



**Tuesday, September 10**

### **Seminar E : Taxation of space**

**Chair:** James Anderson (UK)

**Panel Speakers:** Timothy Nelson (USA), Prof. Yun Zhao (Hong Kong), Christine Simoes (Brazil), Rohan Shah (India), Jonathan Schwarz (South Africa/UK)

**Secretary:** Alex Rigby (UK)

**Mr. Timothy Nelson (USA)** commenced the session giving the US perspective on the topic of taxation of space. Mr. Nelson discussed the various Space Law Treaty Frameworks ratified by various members of the United Nations including the Outer Space Treaty, 1967, Rescue Agreement, 1968, Moon agreement, 1979 and so on and the various Institutional powers such as the NASA, ESA etc. He pointed out that there is no international regulator for space travel though the International Telecommunication Union regulates the space spectrum. Thereafter, Mr. Nelson discussed the aspects which currently have consensus on the legal front such as Space to be free of exploration and use by all States, to be used for peaceful means, etc. However, certain areas that still bear uncertainty such as liability for in-orbit debris, exploitation of space resources etc. Mr. Nelson ended the session pondering on whether the international community needs to urgently agree on 'where the Space begins'.



Speaking from the China Perspective **Professor Yun Zhao** suggested that international cooperation should be encouraged to come up with an international mechanism for space exploitation and stated that China will join the group in space resource exploitation and utilisation. Speaking of the legal nature of Space Resources, Prof. Zhao pointed that all countries share in management and benefits derived from exploitation must be shared with all. He further suggested that an International Mechanism be in place to ensure a free-market approach and minimal intervention in the space exploratory activities and promotion of orderly exploration and for creating a transparent environment. Prof. Zhao ended the session raising a question on whether an international levy on exploratory activities would be a practical and effective solution in this area. He further pondered if Space, the Moon and other celestial bodies remain part of the "common heritage of mankind" or if this idea already out of date.

Thereafter **Ms. Christine Simoes** from Brazil gave a South America Perspective and explained the importance of the Geostationary Orbit (GSO) and stated that taxation rights over the GSO may represent an important source of revenue. She hence, pondered on whether the OECD's



view that there is no possibility of Permanent Establishments in Geostationary Orbit should be revised. Further, Ms. Simones discussed the points that the Moon Agreement presently establishes such as exploration and use of the Moon for the benefit and in the interests of all, non-appropriation of the surface or subsurface etc. However, certain areas which are still open to controversies such as in cases where the Moon Agreement doesn't apply in the absence of international law could States adopt unilateral approaches, whether commercial exploitation is possible without an international regime etc. Ms. Simones thereafter explored a crucial aspect i.e., Taxation of the Moon. She suggested the the 2 possible approaches as (i) "Equitable sharing of benefits" that requires a system of international taxation and (ii) where no international norm exists, she pondered over whether countries could apply source taxation to business carried out on the Moon, whether an entity can transfer its residency to the Moon and will OECD adopt the same approach to the Moon as it has adopted for the GSO and so on.

Giving the Indian perspective **Mr. Rohan Shah** began with taxation of Royalty and discussed the



landmark ruling of Delhi Tribunal in Asia Satellite Telecommunications wherein payments made for lease of transponders were held not royalty and thereby not taxable in India as the satellites in which the transponders were situated, were outside India. Overruling the decision, the Government amended the definition of royalty to include transmission by satellite, whether or not such process is secret as part of a "Process". Mr. Shah thereafter discussed the Delhi HC ruling

in New Skies Satellite BV which marked the evolution in the judicial context. Speaking of the global position of taxation of 'transponder leasing' Mr. Shah pointed that the OECD states that the payments by customers under 'transponder leasing' agreements are for use of capacity and are not Royalties while the UN Model characterizes the payment depending on specific contract and states that if owner of satellite leases to an operator, then lease payment is royalty. Speaking of the key issues under Royalty, he pointed that a unilateral amendment of domestic law cannot modify the intent of the provision under a treaty. Mr. Shah ended his session wondering if a regime based on the location of recipients of satellite transmissions would make the international tax system more robust and durable.

**Mr. Jonathan Schwarz** thereafter spoke of the South African and UK perspective. Speaking of what could constitute residence in space, he stated that physical presence for an individual and management for a corporation could be of relevance. He then discussed a ruling in case of LeTourneau which dealt with whether income for services in international airspace is "foreign" and pointed that OECD Model Article 15(3) provides for taxation of income from employment as crew of ship or aircraft operated in international traffic only by state of residence. Exploring on what could constitute source of business income/asset situs, Mr. Schwarz stated that a Spacecraft or Celestial bodies could constitute a fixed place of business, that services supplied in space,



robotic activity, human activity and R&D activities could be considered. He opined that 'resident' based taxation is of central importance to Space industry.

Mr. Schwarz then discussed the impact on the Customs Duty and VAT. He enlightened the delegates on the ruling in *Laliberté v The Queen* where dealing with the question of whether expenditure on a trip to Space station sponsored by the company could be treated as business or fun travel, the Court had held the amount to be only deductible to the extent of 10% as they found the expense to be overwhelmingly of a 'personal' nature. Mr. Schwarz ended the session pondering on whether an internationally agreed system of off-world taxation would give rise to more equitable outcomes for non space-faring countries.

**D T S & Associates** Chartered Accountants **DTS & Associates Take:**

The session on 'Taxation of space' was really interesting. There are many open questions in the mind regarding what will happen if somebody is there on the moon having some income generating activity? How are we going to tax that income? 'Residence in space' is an interesting concept and we are trying to extend the theory of 'source vs. residence' to the moon, satellites etc. Only some of the laws have defined the 'outer space' and laws still are evolving on this. People are talking about capturing the rights of taxation on moon but only 4 countries so far have attempted to reach the moon with only 3 of them being successful. The question is, how have countries captured and decided the territories on Antarctica and North Pole? Same question should apply to moon as well! When we are talking of taxation on moon and rights of taxation, source of income from moon, we need to have some authority that will register entities on the moon. However, whether such thing is going to happen is a big question mark!