

# Tax Hotline

September 29, 2003

## SERVER HELD TO CONSTITUTE PERMANENT ESTABLISHMENT

A recent resolution between the U.S. competent authority and its Indian counterpart as regards VISA's obligation to pay taxes in India does not spell good news for this credit card major. VISA would now be required to shell out the taxes demanded by the Indian revenue authorities as the U.S. competent authority has concurred with the views of the Indian revenue authorities that VISA is liable to tax in India.

The Indian revenue authorities had held that VISA was taxable in India, on the income attributed to its operations carried out in India because it had a fixed place of business in India. The revenue authorities reckoned that the server through which business was transacted constituted a Permanent Establishment ("**PE**") of VISA in India.

Under Article 5 of the Indo-US Double Taxation Avoidance Agreement ("**Treaty**"), a PE means a fixed place of business through which an enterprise operates either wholly or partly and includes a place of management, a branch, an office, a factory, a workshop, etc. Further, as per Article 7 of the Treaty the business profits of a US company can be taxed in India only if it has a PE in India and such profits can be taxed only to the extent that these are attributable to the PE in India.

The Indian revenue authorities had sought to tax VISA for that portion of the profits that could be attributed to its Indian operations, by concluding that the server located in India constituted a PE of the company in India. VISA had contested the income tax demands raised on it and had approached the competent authority of the U.S. as per the Mutual Agreement Procedure ("**MAP**") prescribed under the Treaty.

The U.S. competent authorities have now settled the issue in favour of the Indian revenue authorities by holding that that VISA has a PE in India. The US authorities have sought a re-assessment of income tax demand raised on VISA, based on acceptance of the fact that the company has a PE in India.

Here it would be pertinent to note that the MAP proceedings are confidential in nature and thus the details of the same are not published for public reference.

This hotline has been prepared based on the newspaper reports published in this regard.

Source: The Economic Times, September 29, 2003

## 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 Nishith 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.

## Research Papers

### Horizon Technologies

January 21, 2025

### Compendium of Research Papers

January 11, 2025

### FAQs on Setting Up of Offices in India

December 13, 2024

## Research Articles

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

January 15, 2025

### Key changes to Model Concession Agreements in the Road Sector

January 03, 2025

### The Revolution Realized: Bitcoin's Triumph

December 05, 2024

## Audio

### 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

### Renewable Roadmap: Budget 2024 and Beyond - Part I

August 26, 2024

## NDA Connect

Connect with us at events, conferences and seminars.

## NDA Hotline

Click here to view Hotline archives.

## Video

### "Investment return is not enough" Nishith Desai with Nikunj Dalmia (ET Now) at FI18 event in Riyadh

October 31, 2024

### Analysing SEBI's Consultation Paper

on Simplification of registration for  
FPIs

September 26, 2024

Scope of judicial interference and  
inquiry in an application for  
appointment of arbitrator under the  
(Indian) Arbitration and Conciliation  
Act, 1996

September 22, 2024