

# Tax Hotline

June 01, 2004

## THE CIRCULAR ON BPO TAXATION MAY BE WITHDRAWN

Earlier this year, Central Board of Direct Taxes, India ("CBDT") issued Circular no. 1 of 2004 ("Circular"), on taxation of the profits made by non-resident companies engaged in BPO activities. This Circular sought to tax a portion of the global profits of the foreign companies, if they had outsourced core activities to India. The Circular had distinguished between core revenue generating services and incidental services that generate negligible revenues in India.

The new Finance minister of India Mr. P Chidambaram has been advised to withdraw the aforementioned Circular proposing to tax profits from outsourcing of core activities to India. The Circular was likely to be challenged, as there is no concept of core services in international tax treaties. Also, this Circular gives the income tax officers discretion to decide, on a case-to-case basis, what portion of the parent company's profits can be attributed to Indian BPO operations and taxed in India.

It remains to be seen whether the Finance Minister will pay heed to the advice meted out to him by senior government officials.

Source: [The Economic Times](#), June 1, 2004.

## India's treaties with other countries override IT Act: SC

In a judgement delivered by the apex court in India, the court has held that treaties for avoidance of double taxation between India and other countries will override Indian Income Tax Act provisions and the income derived by a non-resident Indian from his immovable property in Malaysia is exempt from tax in India under the Indo-Malaysian double taxation avoidance treaty.

Justice Babu, writing for the Bench, said that "Taxation policy is within the power of the Government and Section 90 of the Indian Income Tax Act enables the Government to formulate its policy through treaties entered into by it and even such treaty treats the fiscal domicile in one or the other and thus prevails over the provisions of the IT Act".

It is said that this ruling could have a bearing on certain pending petitions challenging the Indo-Mauritius Double Taxation Avoidance Treaty, wherein it has been alleged that the Indian government was losing huge amounts in tax, as many companies were operating in India after registering in Mauritius just for the purpose of avoiding payment of tax.

Source: [The Economic Times](#), June 1, 2004.

## 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

### M&A In The Indian Technology Sector

February 19, 2025

### Unlocking Capital

February 11, 2025

### Fintech

January 28, 2025

## Research Articles

### 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

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

January 03, 2025

## 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

### Arbitration Amendment Bill 2024: A Few Suggestions | Legally Speaking With Tarun Nangia | NewsX

February 12, 2025

**What India's Transition to New Data  
Protection Law Means for Global  
Businesses**

January 23, 2025

**India 2025: The Emerging  
Powerhouse for Private Equity and  
M&A Deals**

January 16, 2025

---