

Tax Hotline

June 11, 2004

AUTHORITY FOR ADVANCE RULING HOLDS LIAISON OFFICE OF FOREIGN COMPANY TAXABLE IN INDIA.

The Authority for Advance Rulings ("AAR"), in the case of UAE Exchange Centre ("Applicant") has ruled that certain activities carried on in India by its liaison offices ("LOs") amounted to carrying on of business activities which resulted in a permanent establishment ("PE") of the Applicant and the income attributable to such PE would be subject to tax in India.

The Applicant was incorporated in Abu Dhabi and had several LOs in India. It sought an advance ruling on whether any of its income arising from the activities carried on by the LOs would be taxable in India. After examining the entire gamut of activities carried out by the Applicant, the AAR noted that the main activity of the Applicant consisted buying and selling of foreign currency and travellers cheques, entering into contracts with Non Resident Indians ("NRIs") in UAE to assist them in remitting money to India. The Applicant used two modes to make these remittances:

- (1) by telegraphic instructions from Abu Dhabi through banking channels; or
- (2) by LOs in India by dispatching through courier the instruments such as cheques/drafts prepared by the LOs to the beneficiaries at various places in India.

For execution of transaction in the second mode, the LOs would download data such as the details of the beneficiaries and the amount to be remitted and then print the cheques / drafts for the remittance and dispatch to the beneficiaries. In case of remittances by mode (1), the LOs would handle complaints and do follow up work.

The AAR examined the two activities in light of the following provisions of the Double Taxation Avoidance Agreement between India and UAE ("DTAA") to determine as to whether the activities were "auxiliary" and "preparatory" in nature.

Clause (e) of para 3 of Article 5 of the DTAA states that:

"The term permanent establishment does not include the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character."

The AAR noted and accepted that while the activities carried on by the LOs under mode (1), of handling complaints were of auxiliary and preparatory nature, the activities carried out by the LOs as described under mode (2) above were part of the main activities of the Applicant, and not preparatory and auxiliary in nature. The AAR held that without the LO's activity of downloading the information for remittance from the internet, printing the cheques and dispatching the same to the beneficiaries, the transaction of remittance of the amounts in terms of the contract with the NRIs would not be complete. Accordingly, the AAR held that such activities would create a PE in India, resulting in business profits of the Applicant being taxable in India to the extent of the profits attributable to such PE.

It should be borne in mind that the above ruling cannot be applied generically to all LOs in India. The facts of each case have to be examined in detail to know whether the activities performed by the liaison office are of a preparatory or auxiliary nature or form the core business activities of the parent company, thereby creating a PE of the parent in India.

Source: The Economic Times, June 10, 2004.

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