

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.

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

Fintech

May 05, 2025

Medical Device Industry in India

April 28, 2025

Clinical Trials and Biomedical Research in India

April 22, 2025

Research Articles

2025 Watchlist: Life Sciences Sector India

April 04, 2025

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

Audio

CCI's Deal Value Test

February 22, 2025

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

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

Vyapak Desai speaking on the danger of deepfakes | Legally Speaking with Tarun Nangia | NewsX

April 01, 2025

**SIAC 2025 Rules: Key changes &
Implications**

February 18, 2025
