



## Supreme Court Confirms PE of Hyatt International Under India-UAE DTAA

### Hyatt International Southwest Asia Ltd. v. Additional Director of Income-tax [2025] 176 taxmann.com 783 (SC)

#### **Background:**

In a landmark verdict, the Supreme Court affirmed the Delhi HC judgment and ruled that Hyatt International (global hotel chain) has a fixed place Permanent Establishment (**PE**) in India under the India-UAE Double Tax Avoidance Agreement (**DTAA**) and consequently, that its income derived under the Strategic Oversight Services Agreement (**SOSA**) is taxable in India. The Income Tax Appellate Tribunal and Delhi High Court (HC) had upheld this view of the Assessing Officer, leading to this Supreme Court appeal.

#### **Facts:**

- Hyatt International Southwest Asia Ltd (the taxpayer), an entity incorporated in the UAE, is engaged in rendering hotel consultancy and advisory services from Dubai to hotels in the Hyatt Group of Hotels, including several located in India.
- These services are rendered under a SOSA entered into with each hotel owner individually, in this case with Asian Hotel Limited (AHL) – for the Hyatt hotels in Delhi and Mumbai.
- The SOSA spanned over 20 years and involved strategic planning, brand compliance and operational oversight for Hyatt-branded hotels in India.
- The SOSA explicitly stipulated that the taxpayer shall render its services from Dubai and is not obligated to send or station any employee in India. However, the agreement permits at the taxpayer's sole discretion, occasional and temporary visits by its employees to India.
- Day-to-day hotel operations were managed independently by Hyatt India Pvt. Ltd. under a separate agreement.
- Although the SOSA stipulated that services were to be rendered from Dubai, the Indian tax department contended that the hotel premises constituted a fixed place PE due to the taxpayer's continuous operational involvement.

**Supreme Court's Analysis and Decision:**

- On the basis of the facts, the Supreme Court held that taxpayer's role was not merely advisory but extended to administrative and operational control. The SOSA also allowed the taxpayer to appoint and supervise the General Manager and other personnel, implement certain policies, control pricing and marketing strategies, manage operational bank accounts and assign personnel without requiring the owner's consent.
- In the view of the Supreme Court, the above activities resulted in constitution of a Fixed Place PE of the taxpayer in India under Article 5 of the India – UAE DTAA.
- Further, the fact that the taxpayer's employees made frequent, coordinated visits to India to implement the SOSA, which was a long-term contract of 20 years, clearly showed the degree of control exercised by the taxpayer as well as the degree of permanence of the place of business, even though such visits were not mandated under the SOSA.
- The taxpayer argued that there was no formal clause in the SOSA which allowed it to conduct its business from the hotel. The Supreme Court held that the absence of such a clause would not mean that there would be no PE. The test is substance over form—whether the premises were effectively at the disposal of the taxpayer.
- The Supreme Court also held that as the strategic and operational control is with the taxpayer, the argument that the daily operations were undertaken by a separate legal entity (Hyatt India Pvt. Ltd.) lacks merit and is of no consequence.
- The Supreme Court also affirmed the finding of the Delhi High Court which had held that profits would be attributable to a PE of the taxpayer in India even if it has reported global losses.

**CNK Comments:**

The Hyatt ruling clarifies the scope of PE and reinforces the principles laid down earlier, wherein if a non-resident has strategic and operational control over activities undertaken in India, and if

the place of business is, in substance, considered to be at the disposal of the taxpayer, there could be a fixed place PE of the taxpayer in India. The question as to whether a PE exists or not is a factual exercise and one would need to evaluate the actual conduct of the non-resident, in addition to the agreements, to determine whether a PE exists. Various factors may need to be considered such as whether the place of business is at the disposal of the taxpayer, the extent of control and supervision, and the presence of operational authority while determining the existence of a PE in India.

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