

Tax Hotline

March 27, 2001

CAPITAL GAINS EARNED BY PRIVATE EQUITY FUNDS TO BE TAXED AS BUSINESS PROFITS

The Indian Authority for Advance Rulings (**AAR**), in a recent ruling, has held that gains on sale of shares, earned by a Mauritius based private equity fund (**the Fund**) will be regarded as business profits. According to the AAR, private equity funds are carrying on a systematic business of buying and selling shares and hence gains arising on sale of shares should be taxed as Business Profits as per Article 7 of the India-Mauritius Tax Treaty and not under Article 13 on Capital Gains.

The AAR in this landmark judgement has considered all the aspects of a private equity fund structure and ruled that neither the Investment Adviser in India, nor the custodian can constitute a Permanent Establishment (**PE**) of the Fund in India. Hence, in absence of a PE, the entire business profits of the Fund will be taxable only in Mauritius and not be taxable in India.

The AAR has once again accepted the 'resident' status of a Mauritius based Fund on the basis of the tax residency certificate issued by the Mauritius Offshore Business Activity Authority. The AAR has distinguished the present case from its earlier ruling in the case of Cyril Pereira wherein the UAE resident was denied the treaty benefits on the ground that he was not liable to tax in UAE. In case of Mauritius, the AAR has held that the Mauritius Income Tax Act does provide for a basic charge to capital gains and business profits, even though currently, all the taxes may not be levied.

At this stage, when the writ petition questioning the tax residency of Mauritius based companies is pending in the Delhi High Court, this ruling would prove to be positive step towards re-establishing Mauritius route for investments into India.

Advance rulings are private and binding only on the applicant and tax authorities, in respect of the applicant. However, they do have some persuasive value.

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

Compendium of Research Papers

January 11, 2025

FAQs on Setting Up of Offices in India

December 13, 2024

FAQs on Downstream Investment

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