

Tax Hotline

May 15, 2001

FOREIGN INSURANCE COMPANIES NOT LIABLE TO TAX IN INDIA

In a landmark ruling, the Indian Authority for Advance Rulings (**AAR**) has held that the profits earned from the sale of Indian securities by a foreign insurance company (**the Company**) would be regarded as business income and not capital gains.

In holding that the profits arising from the sale of securities would be business profits for the Company and hence taxable under Article 7 of the Double Taxation Avoidance Agreement between India and the jurisdiction of which the Company is a tax resident, the AAR observed that the purpose of the investment by the Company in securities was to generate sufficient funds to enable it to meet the future claims of policy holders. The AAR also reiterated the principle laid down in earlier decisions of the English and Indian courts that the income earned from the buying or selling of shares by an insurance or a banking company in the normal course of its insurance or banking business, would be "business income". This is because the activity of investment and realization of securities is integral to the business of insurance and banking. The AAR also stated that the Company had appointed experts to advise them on the investments and all this goes to prove that the investment in securities was a well-organized business activity for the Company.

The AAR also examined the issue of whether the Company could be deemed to have a Permanent Establishment (**PE**) in India, in which case the business profits of the Company that are attributable to the PE in India will be taxable in India. The AAR clearly held that the mere fact that the Company was purchasing and selling shares in India would not constitute a PE. The AAR also held that when shares are purchased or sold through a stock broker who is not an exclusive agent of the Company, then the stock broker cannot be regarded as constituting a PE of the Company in India.

The AAR also examined whether the Company could be absolved from filing a tax return in India as its income would not be subject to tax in India. The AAR concluded that the Company would be required to file a tax return in India, even though there may be a NIL assessment after all the deductions and allowances including the benefit of the double taxation avoidance agreement.

This ruling comes in the wake of another recent landmark ruling by the AAR in the case of a private equity fund that was based in Mauritius, where the AAR held that the profits and gains realized by a private equity fund from the purchase and sale of Indian securities would assume the character of "business income" as the investment in securities for realization of values is integral to the business of private equity funds.

Advance rulings are private and binding only on the applicant and the tax authorities in respect of the applicant, and only with respect to the transaction as stated in the application. However, advance rulings 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

Structuring Platform Investments in India For Foreign Investors

March 31, 2025

India's Oil & Gas Sector— at a Glance?

March 27, 2025

Artificial Intelligence in Healthcare

March 27, 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

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

**Vaibhav Parikh, Partner, Nishith
Desai Associate on Tech, M&A, and
Ease of Doing Business**

March 19, 2025

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

February 18, 2025