

## Tax Hotline

August 18, 2003

### TASKFORCE TO EXAMINE TAX ISSUES APPLICABLE TO BPO INDUSTRY

The idea behind Business Process Outsourcing ("BPO") is moving a job or function to less expensive yet proficient locations. The magnitude of the resulting cost savings is just too compelling to ignore. In order to cut cost in this depressed market, business entities in various sectors, including banking, financial services, telemarketing, insurance, HR, to name a few, outsource their back office operations to cost effective countries. India, Philippines, Malaysia, are a few countries, which have earned a name as cost effective and efficient destinations.

Considering the increase in the BPO activities in India, the government of India is all set to examine whether the non-resident company that has outsourced business processes to a call centre in India should be subject to tax in India. This issue has become relevant on account of the amendment made to the definition of the term Business Connection ("BC") by the Finance Act, 2003 ("FA-2003").

The term BC is analogous to the concept of Permanent Establishment ("PE") under tax treaties, although it wasn't specifically defined thus far under the Indian Income Tax Act, 1961 ("ITA"). As per section 9 of the ITA, a non-resident having a BC in India is taxed only in respect of income attributable to the operations of the BC. The FA-2003 added an explanation to section 9 of the ITA laying out the situations under which an Indian agent would constitute a BC of such non-resident entity in India. The amendment aims at bringing within the ITA the concept of agency BC, along the lines of agency PE under the tax treaties.

Thus, as per the amendment, an Indian agent dependent on his non-resident principal will constitute a BC in India if he exercises an authority to conclude contracts on behalf of the non-resident; he habitually maintains in India stock of goods from which he makes regular delivery on behalf of the non-resident; or it habitually secures orders mainly for the non-resident and its related parties. Further, an Indian agent will be deemed to be a dependent agent if he carries out work mainly for the non-resident or its related entities.

The issues being examined by the Indian government are whether a BPO outfit concluding contracts on behalf of its foreign clients would constitute an agency BC as envisaged under the amended section 9 of the ITA and thus, whether the foreign client of the Indian BPO company who concludes a contract through the call centre is liable to tax in India.

The task force set up by the government to advise it on the emerging issues in non-resident taxation is expected to examine this issue. For this, the taskforce may also look into the practices followed in other BPO hubs like Philippines and Malaysia for taxation of foreign clients of domestic BPO centres.

Clarity on the subject is considered vital for further growth of the BPO industry. If the government decides to tax the foreign clients of Indian BPO outfits, they would factor in this as additional cost and that would alter the competitiveness of the Indian call centre industry vis-a-vis its counterparts abroad.

Source: The Economic Times, August 18, 2003

### 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

### Life Sciences 2025

June 11, 2025

### The Tour d'Horizon of Data Law Implications of Digital Twins

May 29, 2025

### Global Capability Centers

May 27, 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

---