

Tax Hotline

July 26, 2006

WITHHOLDING TAX ON PAYMENTS MADE TO NON-RESIDENTS FOR SERVICES RENDERED ABROAD

The Authority for Advance Rulings ("AAR") in a recent ruling (AAR/671/2005) has held that there will be a withholding tax requirement on payments made to a non-resident agent, even if such payments are made outside India and the services are performed outside India, if the agent's entitlement to the income has arisen in India.

As per section 5 of the Income Tax Act, 1961 ("ITA") the income of a non-resident is taxable in India if it accrues or arises in India or if it is received in India. Income is said to have accrued or arisen in India if it arises directly or indirectly from or through any source of income in India. As per section 9 (1) ITA. The question in the instant case was whether the income earned by a non-resident for services performed outside India, could be considered to have been sourced in India.

In this case, an Indian resident involved in the organization of an exhibition in India, appointed a non-resident agent for the purpose of business promotion and solicitation abroad. Payments were to be made to the agent only when those foreign participants which the agent had solicited, attended the exhibition in India. These payments were made outside India. The AAR held that the non-resident agents would be taxable in India because their right to receive commission arose in India, when the exhibitors participated in the Indian exhibition.

Prior to this ruling the Central Board of Direct Taxes ("CBDT") had issued circulars on the issue of taxation of income payable to non-residents. As per CBDT Circular No. 23 of 1969 payments to a non-resident, who acted as the agent of an Indian exporter, for services rendered outside India, are not liable to tax in India. Circular No. 786 of 2000 reiterated this position. However, the AAR, distinguished the two circulars and certain cases such as *In re Ind Telesoft Pvt Ltd* [267 ITR 725 (AAR)] and *Airports Authority of India* (140 Taxmann 147) from the present situation. It held that, as per the circulars and precedents cited, the payment made outside India to a non-resident were not related to activities taking place in India. In the instant case, the entitlement of the non-resident was dependant on an activity that was to take place in India i.e. the exhibition, on the cancellation of which the non-resident agent would not be entitled to his income. Therefore, the AAR held that the payments made to a non-resident would be taxable in India if the non-resident's entitlement to income arises out of an event that takes place in India.

As per this ruling, places other than those where the service is rendered, may be the source of income. Services could therefore be rendered abroad and income from those services still be considered to have accrued or arisen in India if they are dependant on certain events which take place in India.

- **Shreya Rao** & Annapoorna Jayaseelan

Source: AAR/671/2005.

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

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

**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
