

Tax Hotline

January 03, 2004

INDIAN BOARD OF DIRECT TAXES CLARIFIES TAXATION OF BPO COMPANIES IN INDIA

The Ministry of Finance ("**Ministry**") vide Circular No. 1/2004 dated January 2, 2004 ("**Circular**") has clarified the extent to which global profits of a non-resident enterprise is to be attributed to the activities of the BPO unit in India in various circumstances. In order to take the benefit of cost arbitrage and skilled labor available in India, many global companies have outsourced their business processes such as answering sales related queries, procurement of orders for sale of goods/provision of services, software maintenance service, debt collection service, software development service, credit card/mobile telephone related service, etc. to India. The Circular clarifies that the manner and extent of attribution of profits to the Indian BPO unit will depend on the facts of each case and the nature of services rendered by the BPO unit. Further, the same has to be determined in accordance with the provisions of the applicable tax treaty and the domestic law. In a case where a non-resident carrying on manufacture and sale of goods or provision of services outside India, outsources some of its activities such as conclusion of contracts and procurement of orders to a BPO unit in India, which constitutes a permanent establishment of the non-resident principal, no income shall separately accrue or arise to the non-resident principal in India provided BPO unit is compensated on arm's length/fair market price for the same. Examples of such services could be the services provided by:

- a) an Indian call centre unit engaged or set up by a foreign company manufacturing and selling computers to customers abroad to procure orders from customers abroad and to answer sales related queries on telephone;
- b) an Indian call centre unit appointed or set up by a foreign insurance company insuring risks in countries other than India to attend to calls from customers outside India regarding acquisition of new insurance policy or revision of existing policy, to disseminate relevant information and accept insurance proposals from the customers, while actual policy issuance as well as collection of premium is done outside India by the foreign insurance company; or
- c) an Indian call centre unit appointed or set up by a foreign credit card company issuing credit cards to customers living in countries other than India to attend to calls from customers outside India seeking to acquire a new credit card, disseminate relevant information and accept the request for issue of a credit card from the customer, while the actual card issuance, the delivery of the card and collection of charges are being done outside India by the foreign credit card company.

On the other hand, where a foreign company outsources the whole or part of its core revenue generating business activities such as the services of a travel agent, software developer, software maintenance, investment consultant, debt collection service, etc. to a BPO unit in India and the BPO unit renders the services either directly to the customers abroad or through the non-resident principal, then profits attributable to the BPO unit in India would be taxable in India if Indian BPO unit constitutes a permanent establishment of the foreign company in India. It appears that the Circular instead of clarifying a simple proposition that there should not be any additional attribution of profits to India in the event that the Indian BPO unit constitutes a permanent establishment of the foreign company provided the relation between the parties is at arm's length, has complicated the issue by classifying the services into core and non-core which would create more uncertainty as regards tax implication of such activities in India.

Source: Circular no. 1/2004 dated the January 2, 2004

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

Littler International Guide (India) 2024

November 08, 2024

Unmasking Deepfakes

October 25, 2024

Are we ready for Designer Babies

October 24, 2024

Research Articles

The Bitcoin Effect

November 14, 2024

Acquirers Beware: Indian Merger Control Regime Revamped!

September 15, 2024

Navigating the Boom: Rise of M&A in Healthcare

August 23, 2024

Audio

Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

Renewable Roadmap: Budget 2024 and Beyond - Part I

August 26, 2024

Renewable Roadmap: Budget 2024 and Beyond - Part II

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 FI8 event in Riyadh

October 31, 2024

Analysing SEBI's Consultation Paper on Simplification of registration for FPIs

September 26, 2024

