

Tax Hotline

July 31, 2007

TAXATION OF OUTSOURCING ACTIVITY - MORGAN STANLEY RULING ANALYZED

Further to our hotline “[Supreme Court rules on permanent establishment in the outsourcing industry](#)” dated July 9, 2007, [please click here to read our analysis](#) (published in the Worldwide Tax Daily: 2007 WTD 142-5) of the judgment in the case of *DIT (International Taxation), Mumbai v. Morgan Stanley and Co. Inc.* In its ruling the Supreme Court held that the outsourcing of services such as back-office operations to a captive service provider will not *per se* create a permanent establishment (“PE”) of the parent in India. This was a key consideration, as in case outsourcing were to cause a PE of the non-resident company in India, the global profits of the non-resident company attributable to the PE may have been taxable in India at the rate of approximately 42.23%(approximately). Further, the availability of tax credit for such tax paid in the home jurisdiction may be uncertain, thus potentially leading to double taxation and wiping out the economic advantage of outsourcing to India. The Supreme Court has held that the presence of employees for stewardship functions will not constitute a service PE, whereas deputation of employees may create a service PE. Therefore foreign companies need to be careful in structuring inter-country assignments henceforth. It has also accepted the single-entity approach for the attribution of profits to a PE by ruling that the payment of an arm's-length price by the nonresident to the PE extinguishes any further attribution of profits to tax.

Hope you find the analysis informative.

Best regards,

Taxteam

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

April 11, 2024

Third-Party Funding for Dispute Resolution in India

April 02, 2024

Opportunities in GIFT City

March 18, 2024

Research Articles

Private Client Insights - Sustainable Success: How Family Constitutions can Shape Corporate Governance, Business Succession and Familial Legacy

January 25, 2024

Private Equity and M&A in India: What to Expect in 2024?

January 23, 2024

Emerging Legal Issues with use of Generative AI

October 27, 2023

Audio

IBC allows automatic release of ED attachments: Bombay HC reaffirms

April 15, 2024

The Midnight Clause

February 29, 2024

Enforceability of unstamped or inadequately stamped Arbitration Agreements

January 10, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

[Click here to view Hotline archives.](#)

Video

Cyber Incident Response Management

February 28, 2024

Webinar : Navigating Advertising

**Laws in India Part II Fireside Chat
with Manisha Kapoor**

February 27, 2024

**Webinar : Navigating Advertising
Laws in India**

February 20, 2024
