

Tax Hotline

September 29, 2003

SERVER HELD TO CONSTITUTE PERMANENT ESTABLISHMENT

A recent resolution between the U.S. competent authority and its Indian counterpart as regards VISA's obligation to pay taxes in India does not spell good news for this credit card major. VISA would now be required to shell out the taxes demanded by the Indian revenue authorities as the U.S. competent authority has concurred with the views of the Indian revenue authorities that VISA is liable to tax in India.

The Indian revenue authorities had held that VISA was taxable in India, on the income attributed to its operations carried out in India because it had a fixed place of business in India. The revenue authorities reckoned that the server through which business was transacted constituted a Permanent Establishment ("**PE**") of VISA in India.

Under Article 5 of the Indo-US Double Taxation Avoidance Agreement ("**Treaty**"), a PE means a fixed place of business through which an enterprise operates either wholly or partly and includes a place of management, a branch, an office, a factory, a workshop, etc. Further, as per Article 7 of the Treaty the business profits of a US company can be taxed in India only if it has a PE in India and such profits can be taxed only to the extent that these are attributable to the PE in India.

The Indian revenue authorities had sought to tax VISA for that portion of the profits that could be attributed to its Indian operations, by concluding that the server located in India constituted a PE of the company in India. VISA had contested the income tax demands raised on it and had approached the competent authority of the U.S. as per the Mutual Agreement Procedure ("**MAP**") prescribed under the Treaty.

The U.S. competent authorities have now settled the issue in favour of the Indian revenue authorities by holding that that VISA has a PE in India. The US authorities have sought a re-assessment of income tax demand raised on VISA, based on acceptance of the fact that the company has a PE in India.

Here it would be pertinent to note that the MAP proceedings are confidential in nature and thus the details of the same are not published for public reference.

This hotline has been prepared based on the newspaper reports published in this regard.

Source: The Economic Times, September 29, 2003

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