

## Tax Hotline

June 01, 2004

### THE CIRCULAR ON BPO TAXATION MAY BE WITHDRAWN

Earlier this year, Central Board of Direct Taxes, India ("CBDT") issued Circular no. 1 of 2004 ("Circular"), on taxation of the profits made by non-resident companies engaged in BPO activities. This Circular sought to tax a portion of the global profits of the foreign companies, if they had outsourced core activities to India. The Circular had distinguished between core revenue generating services and incidental services that generate negligible revenues in India.

The new Finance minister of India Mr. P Chidambaram has been advised to withdraw the aforementioned Circular proposing to tax profits from outsourcing of core activities to India. The Circular was likely to be challenged, as there is no concept of core services in international tax treaties. Also, this Circular gives the income tax officers discretion to decide, on a case-to-case basis, what portion of the parent company's profits can be attributed to Indian BPO operations and taxed in India.

It remains to be seen whether the Finance Minister will pay heed to the advice meted out to him by senior government officials.

Source: [The Economic Times](#), June 1, 2004.

### India's treaties with other countries override IT Act: SC

In a judgement delivered by the apex court in India, the court has held that treaties for avoidance of double taxation between India and other countries will override Indian Income Tax Act provisions and the income derived by a non-resident Indian from his immovable property in Malaysia is exempt from tax in India under the Indo-Malaysian double taxation avoidance treaty.

Justice Babu, writing for the Bench, said that "Taxation policy is within the power of the Government and Section 90 of the Indian Income Tax Act enables the Government to formulate its policy through treaties entered into by it and even such treaty treats the fiscal domicile in one or the other and thus prevails over the provisions of the IT Act".

It is said that this ruling could have a bearing on certain pending petitions challenging the Indo-Mauritius Double Taxation Avoidance Treaty, wherein it has been alleged that the Indian government was losing huge amounts in tax, as many companies were operating in India after registering in Mauritius just for the purpose of avoiding payment of tax.

Source: [The Economic Times](#), June 1, 2004.

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