

TAX FLASH NEWS

1 December 2022

The Singaporean subsidiary of an Indian company has a fixed PE as well as an agency PE in India

Executive summary

Determination of whether a foreign company is having a Permanent Establishment (PE) in India is a complex issue and mostly depending upon facts of the case and arrangements amongst the parties. The Courts have laid down important principles to analyse the existence of a PE for example to establish a fixed place PE, the non-resident entity should have at its disposal certain place in India. Similarly, for existence of agency PE, the dependent agent should have authority to conclude contracts in India and such authority was habitually exercised on behalf of the non-resident entity.

Recently, the Chennai Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Redington Distribution Pte. Ltd¹ (the taxpayer) held that the Singaporean subsidiary company of an Indian company had a fixed place PE in India since the premises of its Indian holding company were at the disposal of the Singaporean company. Further, the services rendered by the Indian holding company for the Singaporean Company were neither preparatory nor auxiliary services but main functions of group business. The Singaporean company also had an agency PE in India since the Indian holding company acted as an agent of such Singaporean company for Indian customers. Further, the Indian holding company had the authority to conclude contracts and such authority had habitually concluded contracts on behalf of the Singaporean company.

Facts of the case

- The taxpayer is a Singaporean subsidiary of an Indian-listed company. The group is engaged in the business of providing end-to-end supply chain solutions for all categories of IT products, consumer & lifestyle products.
- The taxpayer had taken support from its holding company referred to as 'Dollar Team' for rendering services to its customers in India.
- The AO observed that:
 - The Dollar Team of the Indian holding company exclusively works for the taxpayer for identifying the customers, negotiating the price, follow-up of outstanding receivables, etc.
 - The Indian holding company supplies various products to companies and such business was carried out in the name of the taxpayer.
 - The Dollar Team negotiates with Indian customers for their import requirements so as to avail duty benefits and also fix terms and conditions of sales.
 - Therefore, the taxpayer had a fixed place PE and agency PE in India.

Tribunal's decision

Fixed Place PE

- The Dollar Team of the Indian holding company works for the taxpayer right from seeking orders, request for quote from the customer, vendor discussion, negotiation and conclusion of terms of sales, etc. Only documents like packing list, airway bill, etc. were prepared by the taxpayer.

¹ Redington Distribution Pte. Ltd v. DCIT (IT (TP) A No.14/Chny/2020) (Chennai) – Taxsutra.com

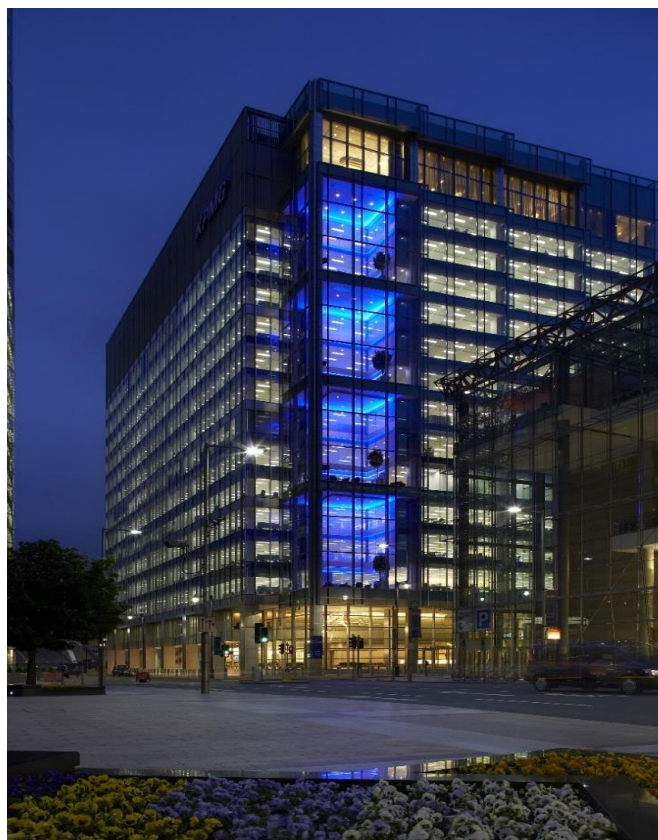
- The premises of the Indian holding company was at the disposal of the taxpayer. The Dollar Team carried out their functions from the premises of the Indian holding company.
- The services rendered by the Dollar Team of the Indian holding company were neither preparatory nor auxiliary services but main functions of a group business.
- Accordingly, the taxpayer had a fixed place PE in India.

Agency PE

- The Dollar Team of the Indian holding company acted as an agent of the taxpayer for Indian customers. Further, they had the authority to conclude contracts, and such authority was habitually exercised to conclude contracts on behalf of the taxpayer.
- Right from sourcing of customers, supply of equipments and follow-up payments, all activities were carried out by the Dollar Team.
- Therefore, the activities undertaken by the Dollar Team of the Indian holding company constituted an agency PE in India.

Our comments

While dealing with the transaction of end-to-end supply chain solutions, the Chennai Tribunal reiterated the important principles that to establish the existence of fixed place PE, the disposal test is important. The non-resident should have a place at its disposal in India and from such place business activities of the non-resident were carried out. Further, the conditions of 'preparatory and auxiliary' services also need to be checked. In group business activities, it is important to identify whether the activities performed by the Indian counterpart are main functions of the business or they are merely preparatory activities. With respect to agency PE, the Tribunal analysed that whether the Indian entity has authority to conclude contract and whether the Indian entity has habitually exercised such authority. Taxpayers should consider these factors while undertaking any transaction in India to determine the exposure of PE.



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