

Operational control over India hotels creates Hyatt UAE's 'permanent establishment' in India

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In a landmark ruling on a foreign entity's taxable presence in India, the Supreme Court in *Hyatt International Southwest Asia Ltd. v Additional Director of Income-tax*, 2025 INSC 891 held that the existence of sustained, pervasive, and enforceable control over a hotel's strategic, operational, and financial affairs is sufficient to constitute a 'Permanent Establishment' (PE) of a foreign enterprise in India.

Background

As per the India - UAE Tax Treaty (Treaty), a foreign entity can constitute a taxable presence in the form of a PE in India if, inter-alia, (a) it has a fixed place at its disposal in India through which its business activities are being carried on (wholly or partly) (Fixed Place PE); or (b) it renders services in India through its employees or other personnel (Service PE) for a period exceeding 9-months in any 12-month period.

Hyatt International Southwest Asia Ltd. (Hyatt UAE), a tax resident of the UAE, had entered into Strategic Oversight Services Agreements (SOSAs) with Indian hotel owners for a period of 20 years to provide strategic planning services and know-how to ensure the hotels were developed and operated in accordance with global brand standards. The Indian tax authorities determined that Hyatt UAE constituted a PE in India, a finding that was affirmed by the Dispute Resolution Panel, the Income Tax Appellate Tribunal, and the Delhi High Court.

Taxpayer's arguments before the Supreme Court

Disputing the presence of a PE in India, Hyatt UAE, inter-alia, contended that:

- (a) scope of SOSA was limited to providing strategic guidance, brand compliance and long-term planning;
- (b) presence of its employees in India did not exceed the 9-month threshold under the Treaty;
- (c) visits of employees to India were to ensure brand uniformity and quality compliance; and
- (d) no designated space or office was available to the employees of Hyatt UAE in the Indian hotels.

Supreme Court's ruling

The Supreme Court dismissed the appeals filed by Hyatt UAE observing that its role under the SOSAs was beyond providing mere consultancy services. The Supreme Court held that Hyatt UAE was an active participant in the core operational activities of the hotels in India leading to PE of Hyatt UAE in India. The key parameters based on which the Supreme Court upheld constitution of a PE are as under:

- (a) Substance over form: The Supreme Court reaffirmed the principle that, in assessing the existence of a PE, the economic substance of the arrangement must prevail over its legal form.
- (b) Control over operations of the Indian hotels: The terms of the SOSA indicated that Hyatt UAE had the powers to (i) appoint the general manager and other key personnel of the hotels; (ii) implement human resource and procurement policies; (iii) control pricing, branding and marketing strategies; (iv) manage bank accounts; (v) assign personnel to the hotel without the consent of the hotel owners.

The Supreme Court observed that Hyatt UAE's involvement was not limited to policy formulation and extended well beyond a mere advisory role. In substance, it possessed a continuing and enforceable right to implement its policies and ensure compliance with respect to the day-to-day operations of the hotel.

- (c) Revenue linked service fees: The remuneration structure under the SOSA was not in the nature of a fixed fee but was instead linked to a percentage of room revenue and other income streams of the hotel. This profit-linked arrangement evidenced Hyatt UAE's active commercial involvement, as its earnings were directly contingent upon the financial and operational performance of the hotels.
- (d) Disposal test: For a 'fixed place PE' to be constituted, it is sine qua non that the place through which business is carried on is 'at the disposal' of the enterprise. The Supreme Court reiterated that there is no 'straitjacket formula' to determine the application of the 'disposal test'; rather, it is a fact-specific inquiry. The test is to be applied contextually, taking into account the commercial and operational realities of the arrangement. Importantly, the Court clarified that exclusive possession or a formal right to use the premise is not a prerequisite—even temporary or shared access may suffice, provided the foreign enterprise conducts its core business functions through such premises. [See our ERGO update dated 22 May 2020 on [UOI v UAE Exchange Centre](#) and ERGO update dated 4 May 2017 on [Formula One World Championship Limited](#)]
- (e) Stay of employees in India: The Supreme Court held that, although no individual employee of Hyatt UAE exceeded the 9-month threshold prescribed under the Treaty for constituting a Service PE, the travel logs and the nature of the employees' functions demonstrated a continuous and coordinated engagement with the hotel operations in India. Accordingly, the Court clarified that the intermittent presence or periodic return of personnel does not negate the existence of a PE.

Comments

The Supreme Court's ruling serves as a critical reminder that the existence of a PE is a fact specific determination and legal form does not override economic substance in such determination. The extent of control, strategic decision making and influence exercised were viewed as critical determining factors, not the physical access to, or formal right to use, a dedicated place of business in India.

In this context, foreign entities having brand licensing and services agreements or management agreements must proactively reassess their potential PE exposure and carefully examine their contractual frameworks and operational footprints. Long-term, control-intensive arrangements—particularly in the hospitality, infrastructure, and services sectors—require heightened caution during negotiation and execution. Situations involving shared use of premises by employees of the foreign enterprise alongside their Indian counterparts, even without a formally allocated space, should be closely scrutinized for potential PE risk.

Particularly from the perspective of the hospitality industry, international operators may need to re-think their business models in India in light of this ruling. Typically, international chains exercise significant control over a hotel through a suite of documents. The principal document governing the relationship is a hotel management agreement (HMA). Ancillary agreements such as the brand licensing agreement and other services agreements, also grant decision making power in favour of offshore entities belonging to the same group. In the facts specific to this case, in addition to the SOSA, the parties had executed a Hotel Operating Services Agreement (HOSA), which would be the equivalent of a traditional HMA. While the HOSA was executed by an Indian Hyatt entity, the Supreme Court still held that the foreign Hyatt entity under the SOSA was exercising significant control over the hotel. Hence, it is imperative for all chains to reassess their contractual framework to assess any potential PE risks.

The ruling also reaffirms the principle that profit attribution to a PE is not contingent on the overall profitability of the foreign enterprise—income attributable to the Indian PE may be taxed even if the global entity is incurring losses. [See our ERGO update dated 08 October 2024 on the [Delhi High Court full bench judgement](#)]. Against the backdrop of the Indian tax authorities' increasingly assertive stance on PE attribution, this decision is likely to catalyze further scrutiny and litigation in similar cross-border business models.

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