

PUNE BRANCH OF WIRC OF ICAI

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NAVIGATING BORDERS: TAXATION & REGULATION IN THE GCC
EVOLUTION
PERMANENT ESTABLISHMENT ASPECTS



AGENDA

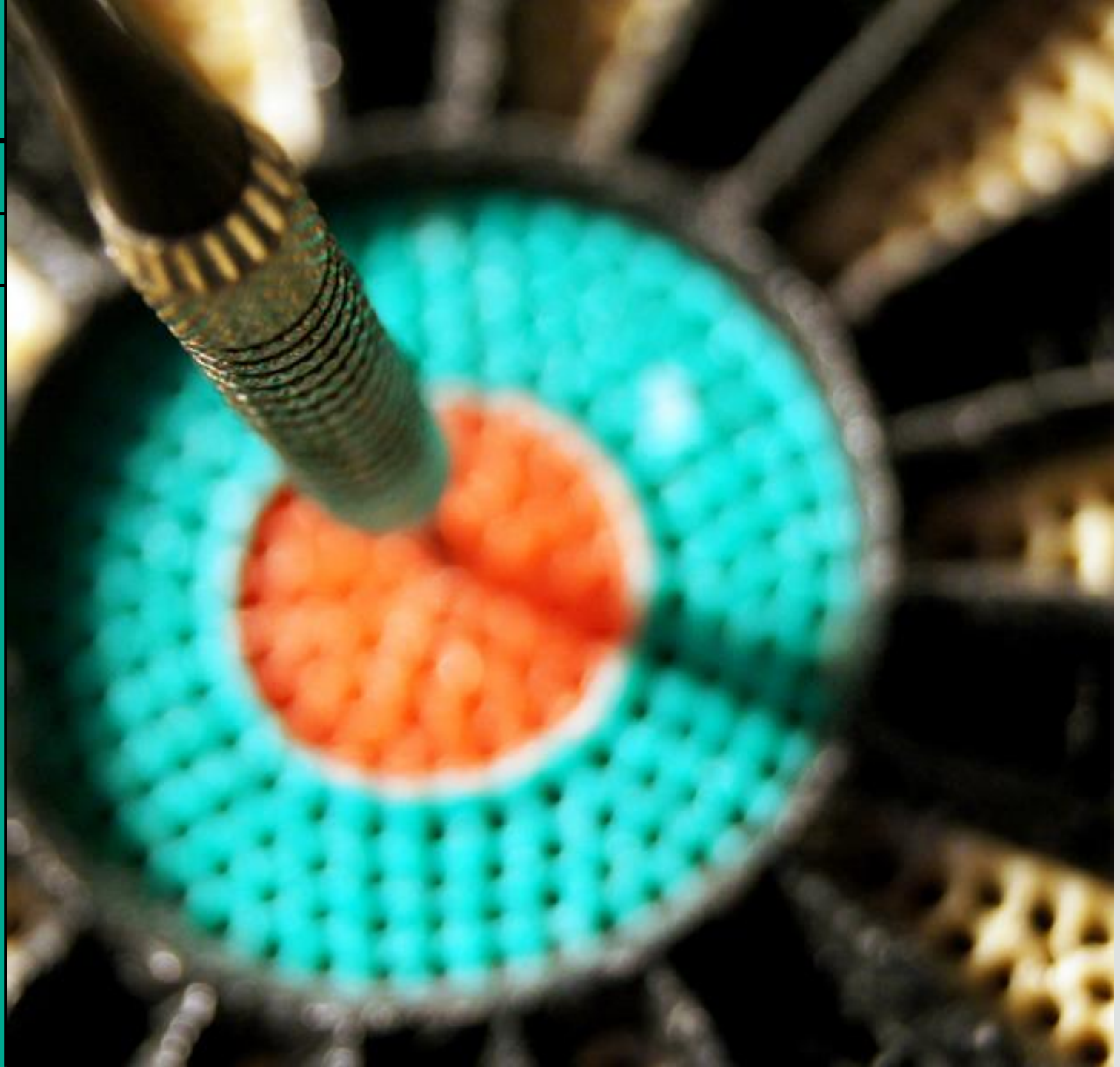
- 1 Emerging Trends
- 2 Global Capability Centres / GCCs – Introduction to PE issues
- 3 Deep Dive – PE Issues
- 4 Factors Relevant for PE constitution
- 5 Secondment Issues
- 6 Service PE – Thresholds and Key Considerations



1. EMERGING TRENDS

1.1 Background

1.2 Typical GCC Models



1.1 BACKGROUND

GCC Growth Snapshot (India & Global)

GCCs have emerged as impactful business models.

India hosts over 1,700 GCCs as of 2024, employing ~1.9 million professionals and generating \$64.6 billion in revenue¹. By 2030, number expected to rise to over 2,100.

Over 120 new mid-sized GCCs are expected to be established in India by 2026².

GCCs are projected to create 425,000 - 450,000 new jobs in India by 2025, driven by demand in Banking, Finance, Manufacturing, and Digital services³.

Transition from cost arbitrage centers to strategic hubs - New GCCs are prioritizing AI/ML, GenAI, and Data Analytics capabilities, reflecting a shift toward innovation-led functions.

GCCs expected to contribute over 4% to India's GDP in FY 2025, underlining their strategic economic importance⁴.

Sources:

¹<https://www.pib.gov.in/PressReleasePage.aspx?PRID=2106222>

²Mid-sized GCCs to set up 120 centres, create 40,000 jobs in India by 2026, ETHRWorld

³India To Lead GCC Sector With 4.5L Jobs In 2025, 1 Mn By 2030: Report - BW Businessworld

⁴GCC Revenue Projected to Soar 14% in FY25, Contributing 4.5% to India's GDP - Times of India

1.2 TYPICAL GCC MODELS

GCCs can operate under various models tailored to the parent company's specific business needs and objectives

BOT contract* between Indian company and a foreign company for the development of GCC

Foreign company wanting to establish GCC in India



Indian BOT partner

Build, Operate and Transfer the fully functional GCC

Foreign company setting up a wholly owned subsidiary in India

Foreign company wanting to establish GCC in India



Wholly Owned Indian Subsidiary

Building the fully functional GCC

JV agreement between Indian company and a foreign company for the development of GCC

Foreign company wanting to establish GCC in India



Indian JV partner

Concludes JV agreement and founds a new company as GCC with JV partner

*Alternatively, BOT agreement could also be between an Indian company and Indian subsidiary of a foreign company for building the GCC

2. GCC - INTRODUCTION TO PE ISSUES

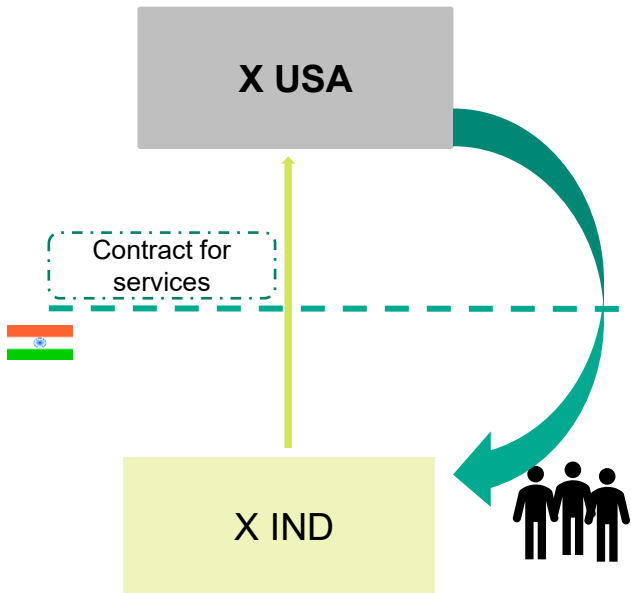
2.1 Lifecycle of GCC – Typical Attributes

2.2 Basics of PE



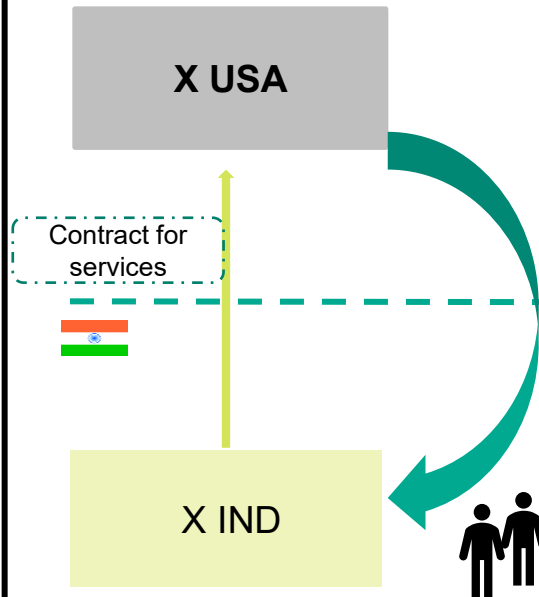
2.1 LIFECYCLE OF GCC – TYPICAL ATTRIBUTES

PHASE 1 – SET UP



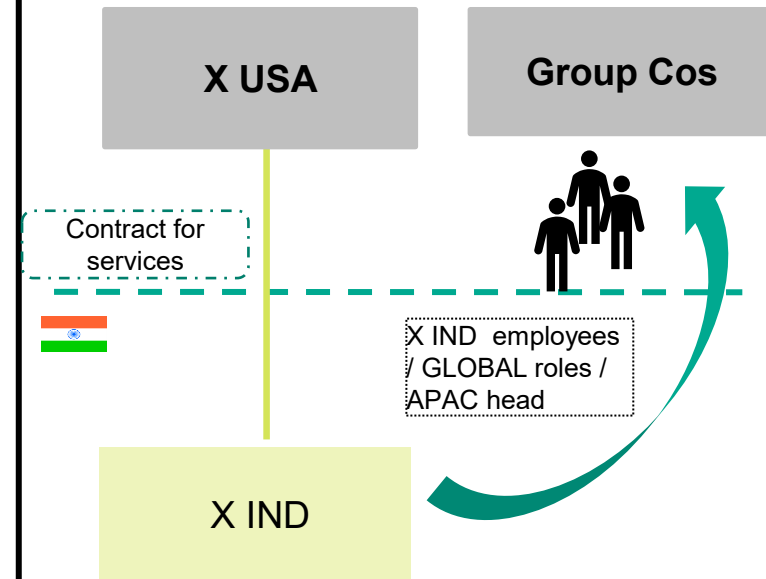
- Lower level services, remunerated at cost plus with low risk pattern
- High degree of control by FCo
- FCo's employees present
- FCo's / foreign Directors

PHASE 2 - RAMP UP



- Gradual scaling up of operations
- Lesser involvement of FCo and its employees
- Independent functioning
- Evolving reporting matrix

PHASE 3 – FULLY FUNCTIONAL / RAMPED UP



- More complex activities, independent functioning
- Transition to Center of Excellence
- (maybe) Customer interfaces
- (maybe) Indian employees moving to global roles with cross / dotted matrix reporting

2.2 BASICS OF PE

As India continues to bolster its position as a hub for Global Business Service, understanding and effectively managing the implications of permanent establishment tax is paramount for multinational corporations.

Fixed Place PE

Fixed Place used for certain period
(**Location and Permanence Test**)

+

Place of business at the disposal
(**Disposal Test**)

+

Business conducted from the place
(**Business Activity Test**)

+

No exempt (auxiliary) services

**Minority view: “Virtual
Projection” /
“Alter Ego”**

Agency PE

Principal – Agent Contract

+

Dependent Agent
(**Control and detailed instructions,
Exclusively working for one Principal**)

+

Habitually **concludes
contracts**/ plays a principal role in
concluding contracts/ secures orders/
habitually maintains stock for regular
delivery on behalf of principal

Service PE

Provision / Furnishing of services

+

Through employees or other personnel

+

For a prescribed duration

3. DEEP DIVE – PE ISSUES

3.1 PE RISK – Background

3.2 Subsidiary PE/ Virtual projection/ Alter ego



3.1 PE RISK – BACKGROUND

"The risk of a Fixed Place PE arises when the business of a foreign company is considered to be carried out from India through a fixed place at its disposal."

1

Is the Indian entity acting as a **virtual extension** of the foreign enterprise in India?

2

Is the Indian entity conducting its **own business or merely executing tasks on behalf of the foreign parent?**

3

Can the functions performed in India be classified as **preparatory or auxiliary** under tax treaties?

4

Can the Indian **entity's premises** be regarded **at the disposal** of the foreign company?

5

Does the **secondment of foreign employees**, especially in the initial phase, trigger a Fixed Place / Service PE?

6

Are the Indian company's employees subjected to **control in their day-to-day operations?**

Typical questions that need to be addressed for determination of PE risk of the foreign company in India

3.2 SUBSIDIARY PE/ VIRTUAL PROJECTION/ ALTER EGO

- The term 'alter ego' typically appears, where the entity is not treated as distinct, its separate existence is disregarded and considered same as / extension of controlling entity
- Subsidiary can be said to have become 'alter ego', if it had no independent business activity or if it worked only to subserve the business interests of the parent entity
- "Virtual projection" envisages a functional integration between two units; meaning complete takeover of premises either in entirety or partly for core business activities of the group
- Mere parental control and management oversight should not trigger; but Article 5 tests are also to be satisfied
- Typically, subsidiary can constitute PE, where same conclusion can be reached dealing with unrelated parties
- **The Test may be satisfied, in case Indian CO was a mere conduit created for business interests of F CO**

3.2 SUBSIDIARY PE/ VIRTUAL PROJECTION/ ALTER EGO

Factors considered for Subsidiary PE constitution

Nokia Networks OY [2018] (Delhi ITAT) (SB) (minority view)

Assignment of pre-signed contracts

Commitment for monitoring of activities of the Indian subsidiary

Service guarantee by foreign parent company in the initial years of operation of Indian subsidiary

Initial years of operation of Indian subsidiary, indicate extensive dependency on foreign parent company in view of lack of requisite knowledge, expertise, experience, infrastructure, skilled personnel to provide services

Dependence on expertise, experience and knowledge predominantly of the foreign company either through seconded employees or outsourcing arrangement

Presence of employees on secondment, dual roles of employees, continuance of association of employees with parent entity

Arvid Skaar Commentary (Second Edition)

Extensive cooperation between the Indian subsidiary and the parent company in respect of business activities

Monitoring and collaboration of the parent company at every stage of business

In case there is an overlap between them or if activities are being undertaken jointly by both the entities

4. FACTORS RELEVANT FOR PE CONSTITUTION

- 4.1 Business Activity
- 4.2 Risk Mitigated Captive Entity
- 4.3 Employee Factors / Sub-contractors
- 4.4 Subsidization Of Assets



4.1 BUSINESS ACTIVITY

GCCs can either be functioning in -

- (1) Support domain such as finance, HR, ITES etc., or
- (2) Core functions, i.e. aligned with main business of parent entity

Support GCCs are regarded as performing auxiliary functions as their activities are generally considered remote from the actual realization of profits [**Commentary to OECD MTC 2017**]

Preparatory or auxiliary activities do not constitute a PE, if exercised 'for the enterprise', that is, for the taxpayer: services rendered to customers no more 'preparatory/ auxiliary'
[advertising division example in **Klaus Vogel, Fifth Edition**]

Where the overall purpose of the Indian entity aligns with business purpose of parent entity, Indian entity could be regarded as being engaged in core business activities for MNC group
[**Commentary to OECD MTC 2017**]

Unlikely that activity that requires a significant proportion of assets or employees could be considered as having an auxiliary character
[**Commentary to OECD MTC 2017**]

4.1 BUSINESS ACTIVITY TEST

| Case Law | Business of the group | Activities in India | Observations on Business Activity |
|-----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Morgan Stanley [2007] (SC) | <ul style="list-style-type: none"> Securities Investment Management Investment Banking Credit services | <ul style="list-style-type: none"> Support main office in equity and fixed income research Account reconciliation ITES such as back-office operations, data processing and support centre to parent company | <ul style="list-style-type: none"> Back-office functions do not constitute business activities. Back office functions proposed to be performed by MSAS in India falls under Article 5(3)(e) of the DTAA. |
| E-Funds [2017] (SC) | <ul style="list-style-type: none"> ATM Management Services Electronic Payment Management, Decision Support and Risk Management, Global Outsourcing and Professional Services. | <ul style="list-style-type: none"> Financial Shared Services Call centers Software development | <ul style="list-style-type: none"> No part of main business and revenue generating activity carried on from India – only support services rendered from India |
| Vertex [2013] (Delhi ITAT) | <ul style="list-style-type: none"> Customer Management Outsourcing Business Service Outsourcing Transfer of Technology | <ul style="list-style-type: none"> Activities outsourced by the parent company based in UK | <ul style="list-style-type: none"> Since the activities carried out in India constitute only back-office operations, no Fixed Place PE of the parent company may be constituted in India. |
| Epcos AG [2009] (Pune ITAT) | <ul style="list-style-type: none"> Designing, manufacturing and marketing passive electronic components | <ul style="list-style-type: none"> Certain services in respect of: <ol style="list-style-type: none"> product marketing and sales support services; and IT support services | <ul style="list-style-type: none"> When a PE is not engaged in a critical activity having some contribution to overall profits of the group or a revenue generating activity, the exercise to ascertain whether or not a PE is in existence is a mere formality |

Outsourced activities have often been regarded as non-PE constituting

4.1 BUSINESS ACTIVITY TEST

Relevance of this discussion then?



- New age GCCs can form essential and significant part of the enterprise as a whole
- Increasing alignment with core business activities (strategic role, joint product development, complete responsibility of delivery)
- Services performed may be no more remote from the actual realization of profits
- Catering to multiple group entities or could be in extensive client serving roles/ solutions offering
- Indian employees are often found in global, multiple country roles
- Back office / support GCCs also offering a value proposition (accounting KPOs - overall financial strategy, funding/ investment opportunities, etc.)



Points for deliberation

- Applicability of past decisions to evolving GCCs with strategic functions, solutions offering, customer delivery?
- 'Disposal Test' should still hold the fort !!
- POEM risks beyond PE horizon also to be watched out for, as strategic role of GCCs evolves

4.2 RISK FREE CAPTIVE ENTITY

GCCs are captive units typically remunerated at Arm's Length basis – this does indicate a degree of dependence of GCC on MNC group

Question to be addressed is, whether such dependence / risk free status of GCC can be considered as PE constituting



E-Funds IT Solution [2014] (Delhi HC) (upheld)

Below factors, were not considered relevant for existence or constitution of Fixed Place PE:

- Indian subsidiary was **dependent for its earning** on foreign group companies.
- **No / insufficient risk was borne** by the Indian subsidiary, as it was **remunerated on cost plus basis**.
- Assignment or sub-contract of work to the Indian subsidiary by the foreign group companies

Progress Rail Locomotive Inc. [2024] (Delhi HC)

Indian subsidiary being **remunerated on cost plus basis** by the foreign group companies is not relevant



OECD commentary cites an example of a contract manufacturer producing goods solely for the business of foreign enterprise. It clarifies that such an arrangement (of captive nature) does not place the manufacturer's premises at the disposal of the foreign entity, leading to an assumption of PE [**Commentary to OECD MTC 2017 - India has expressed a reservation to this**]

4.3 EMPLOYEE FACTOR / SUBCONTRACTING

Presence of foreign employees in India

Nature of activities carried on in India

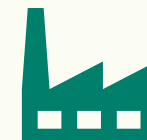
Contractual Arrangement

Stewardship role / Shareholder activity

Strategic and Tactical decision making by foreign employees for the Indian company

Dual role and reporting of Indian employees; dual appraisals, dotted line matrix reporting

Conjoint efforts / intertwining of activities of Indian subsidiary and foreign parent



4.3 EMPLOYEE FACTOR / SUBCONTRACTING

Commentary to OECD MTC 2017

- An enterprise may carry on business through **subcontractors, acting alone or together with employees** of the enterprise
- Existence of a PE will require that subcontractors perform work of the enterprise at a fixed place of business that is at the **disposal of the enterprise** (basis general guidance on PE constitution)
- In the **absence of employees**, necessary to show that such place is at disposal of the enterprise basis :
 - effective power to use that site, **e.g. because the enterprise owns or has legal possession of that site and controls access to and use of the site.**



Klaus Vogel (Fifth Edition)

- Principle of supervision and control laid down
- The activities of subcontractor could attribute to Principal, if **subcontractor is subject to full supervision and control by taxpayer**
- Subcontractors and staff will not constitute a service PE, unless economically integrated with regard to supervision, direction and control



4.3 EMPLOYEE FACTOR / SUBCONTRACTING

Judicial guidance



EXL Service.Com Inc [2023] (Delhi ITAT)

Activities (USA)

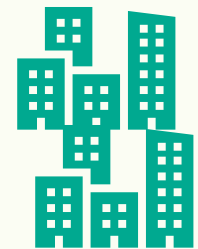
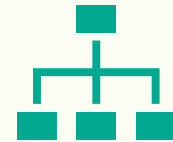
- Corporate Strategy
- Marketing
- Delivery of outsourced services
- Client relationship

Activities (India)

- Performance of outsourced Contract

Decision

- EXL India merely performs a works contract
- No employees seconded to India
- Core activities such as management functions, development of strategy, identifying new business areas, guidance to the group, sales and marketing, contract negotiation and conclusion, and CRM are managed from outside India.



4.3 EMPLOYEE FACTOR / SUBCONTRACTING

Indirect references



Pintsch Bamag, [2009] (AAR – Delhi)

Work carried on by independent subcontractor, POB of subcontractor cannot be regarded as the PE of applicant

- Factual situation seemed to influence the Ruling
- Subcontractor carried on fabrication at a different site uncontrolled by the F Co

In contrast, in **Master Card [2018] (AAR – Delhi)**,

- employees of BOI carried out work under control and supervision of the applicant
- space occupied by them in BOI held to be at the disposal of the applicant

[acknowledged that BOI was carrying out activities as an established bank in India, AAR opined that for PE constitution, space may not exclusively be used by the F Co]

4.4 SUBSIDIZATION OF ASSETS

Often, the foreign entity provides assets / software free of cost or at subsidized cost to Indian subsidiary

Indian tax authorities may allege constitution of Fixed Place PE, when assets of foreign entity are located at the premises of the Indian company or other parties involved, such as vendors or customers

In the context of leasing, if the foreign entity's personnel participate in decisions regarding the work for which equipment is used, a permanent establishment could be deemed to exist, provided that criterion of permanency is met

[Commentary to OECD MTC, 2017]

In the context of GCCs specifically, provision of assets free of cost by the foreign parent to its Indian subsidiary was considered as one of the relevant factors to trigger constitution of PE in India

Convergys [2013] (Delhi ITAT)

On the other hand, Intangible software, assets supplied free of cost were not considered relevant to hold location PE

E-Funds [2014] (Delhi HC) (upheld)

Some principles where assets / systems/ software in India led to PE constitution in India are explained briefly in subsequent slides.

4.4 SUBSIDIZATION OF ASSETS

In a series of cases concerning Computer Reservation Systems (CRS), Indian courts have upheld the existence of a Fixed Place PE based on the partial localization of revenue-generating infrastructure—specifically, computers installed at the premises of subscribers. Some factors that were considered are as follows:

Degree of control exercised by the foreign enterprise over the equipment

1

Autonomy to deal with the equipment in terms of relocation – whether subject to prior approval

2

Configuration and connectivity of the systems

3

Maintenance and upkeep – whose responsibility

4

In **Sabre GBLB Inc [2024] (Delhi ITAT)**, the Delhi ITAT held no PE constitution in light of different facts (Comparative analysis in subsequent slides)

4.4 SUBSIDIZATION OF ASSETS

| Particulars | Sabre GLOB Inc. [2024] (Delhi ITAT) | Galileo International Inc. [2007] (Delhi ITAT) |
|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Contractual Framework | <ul style="list-style-type: none"> Sabre Inc had Agreements with Travel Agencies outside India. These Agencies permitted their global affiliates (including India) to access the SABRE System across the globe These agencies had access to Sabre’s mainframe computer through networks and communication links managed independently No direct engagement in India. | <ul style="list-style-type: none"> The Company appointed a sole and exclusive distributor of its CRS services in India to enter into agreements with Travel Agents |
| Access to Systems | <ul style="list-style-type: none"> Subscriber agencies were allowed access to the Company’s CRS mainframe located in the USA The Indian subsidiary did not assist, provide or facilitate the provision of any communication links. Sabre was not responsible for providing any computers, printers, communication lines etc. to Global Travel Agents or their subsidiaries. | <ul style="list-style-type: none"> The Distributor entered into agreements with various travel agents to provide them access code, equipment, communications link and support services, for accessing CRS. |
| Assets/ Equipment | <ul style="list-style-type: none"> No computer, printer or software installed on a computer present at the premises of travel agent in India no financing of such equipment by Sabre Inc or India. | <ul style="list-style-type: none"> The Company had placed computers and ensured connectivity in all the cases through nodes leased from external service provider. These were installed through an agent, and the Company exercised complete control over the computers installed at the premises of the subscribers. |
| Conclusion | No PE position upheld | PE constituted due to computers and system at premises of the travel agents. |

4.4 SUBSIDIZATION OF ASSETS

MasterCard, [2018] (AAR –Delhi)

F Cos' Involvement throughout transaction flow/ critical activities carried on in India through 'MIPs'.

Comparison between activities in India vis-à-vis Singapore– leading to conclusion that Indian activities are not preparatory and auxiliary**

Significant role played by the equipment, as regards the core business activity

Decision on whether the equipment needs repair and whom to engage for repair, entering into Agreements with 3rd parties – F CO

Recharge of cost of maintenance and upgradation of the equipment by IND CO to F CO

IND CO did not have the relevant capabilities to take decisions in relation to MIPs

Fact driven exercise

**

India

**initial verification
validation of PIN,
card codes**
Verification of names
and address

Singapore

server led
fraud prevention
securing transaction

**[Encryption /
communication of data
important and crucial
function in the context
of overall functions
performed in India to
facilitate authorization]**

5. SECONDMENT ISSUES

5.1 Secondments

5.2 Comparative Summary of Rulings

5.3 Facts of the Samsung case



5.1 SECONDMENTS

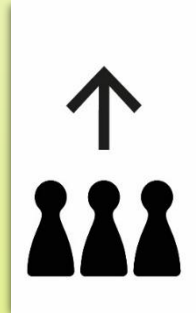


Key Managerial Persons (KMPs)

Indian KMPs having directorship/leadership roles in overseas entities

Regional leadership roles based in India

Individual seconded to India while continue to hold decision making positions in foreign entities



Global Reporting Structures

Day to day oversight and direction of Indian employees handled by foreign parent entities

Work outcomes primarily monitored or owned by the offshore parent

Social media profile of employees making direct reference to overseas entities



Remote and Cross Border Working models

Foreign employees temporarily visiting India and working during their stay from the GCC office

Over the years, the Indian judiciary has adopted a **substance-over-form approach** while examining secondment arrangements and service PE exposure. Courts focus on the actual working arrangement, such as -

- Clauses of employment agreements
- who controls / monitors day to day working, day to day reporting
- activities performed by secondees

Morgan Stanley (SC) - Twin tests applied - (1) Lien on employment with the foreign parent and (2) Responsibility of the foreign parent for the work of deputationist.

5.2 COMPARATIVE SUMMARY OF RULINGS

| Particulars | Northern Operating Systems [2022] (SC)** | Centrica India Offshore [2014] (Delhi HC) (SLP Dismissed) | Flipkart Internet (P.) Ltd. [2022] (Kar HC) | Serco India Pvt. Ltd. [2023] (Delhi ITAT) | Teradata Operations Inc. [2020] (Delhi ITAT) Fixed Place PE |
|-----------------------------------|------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|
| Activities | IT-enabled services supporting back-office banking and related operations. Staff supplied: Managerial and Technical | Captive unit engaged in providing services of coordinating with third party Indian vendors Staff: Knowledge holders / experienced operative staff | ITES for E-commerce Industry Staff: Senior position in management | Captive centre to provide IT & IT enabled services to group companies Staff: HR officer, CFO, CEO | Software Development, guiding Teradata India team on projects Staff: Computer and Technical Experts |
| Lien on foreign employment | Yes | Yes | Not clear | No F Co relieved the employees | Yes |
| Local Employment Contract | No | Not clear | Yes | Yes | No |
| Payroll | F CO [Reimbursement by Indian company with mark-up] | F CO [Reimbursement by Indian company at cost] | F CO | F CO (upon instructions of Ind CO) | F CO [Reimbursement by Indian company at cost] |
| Termination Clause | Both I Co and the employee have the right to terminate the employment | I Co can terminate the secondment but the original and subsisting employment relationship between the secondee and the F Co could not be terminated | I Co can terminate the services of seconded employees in India | I Co can terminate the employment | Not Clear |

**in the context of applicability of Service tax – question before SC was whether overseas group company or companies, with whom the assessee has entered into agreements, provide the assessee manpower services, for the discharge of its functions through seconded employees.

5.2 COMPARATIVE SUMMARY OF RULINGS

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|------------------------------------|-------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|----------------------------------------------|
| Social Security | Continued in foreign country | Continued in foreign country | No specific mention | Continued in foreign country | Continued in foreign country |
| Right to claim Salary | F Co | No right against Indian company to claim salary | Indian company | Indian Company | Not clearly spelt out |
| Replacement of any Employee | Contractual obligation on the F Co to replace unsuitable | Not clearly spelt out | No | Indian company can terminate, foreign company not bound to replace | Not clearly spelt out |
| Supervision & Control | Indian Company [observed that operational control is inevitable in such scenarios] | Indian Company [Whilst IND CO may have operational control over these persons in terms of daily work and may be responsible for their failures, these limited and sparse factors cannot displace the larger and established context of employment abroad] | Indian company [Triple Test namely (i) Direct Control, (ii) Supervision & (iii) Direction towards Indian company] | Indian company | Indian company |
| Conclusion | Foreign company is providing manpower recruitment and supply services to Indian company. | Real Employer – F Co Amounts reimbursed by Indian company towards salary constitute FTS | Payments are demonstrably salaries, accordingly outside the purview of FIS or FTS | Secondes held as employees of Indian company. | Fixed Place PE upheld |

5.3 FACTS OF THE SAMSUNG CASE

| Employee & Position | Key Statements / Findings |
|---------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Kyoung Soo Kim (Deputy GM - Purchasing) | Reports to Korean MD; Appointed by Samsung Korea; Gets guidance on pricing, quality & delivery from Korea; Purchase decisions guided by HQ |
| B.D. Park (Director - Mobile & IT Business) | Reports to HQ almost daily; Replacement under 2-way agreement with the foreign company; Discusses key matters with MD. |
| Anuj Pareek (Sr. Manager - Accounts) | Salaries of expats paid by Korea & reimbursed by SIEL; Taxes deducted in India; Payments routed via Korea for administrative ease |
| Anshuman Sah (VP - Sales & Marketing) | Expat experts visit India for short-term tech training & support (on request); Visits usually last 3-4 days. |
| Kyong Yeol Kim (VP - HA Marketing) | Travels to Korea 1-2 times yearly; Reports to CEO & Deputy MD; Discusses production line along with business strategy in Korea during the course of business trip. |

| Employee & Position | Key Statements / Findings |
|----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| J.H. Kyung (CFO & Director) | Communicates with HQ 2-4 times weekly; HQ approval needed for major investments; Managing F/A, A/R, Logistics, Taxation & HR. MD and CFO takes policy decision regarding the financing of various business divisions of Indian Company. |
| H.K. Seo (VP - CE Sales & Marketing) | Coordinates with HQ for developing Indianized products; Weekly communication with HQ; |
| Y.H. Cho (VP - Sales, North Region) | Sends product requirements to HQ; Weekly communication on aging stock & sales issues; Manages North India sales team |
| Mahesh Sutagatti (Manager - R&D Korea) | Korean HQ employee; Temporarily assigned to India for technical trials; Paid in Korea; Assignment based on HQ & Indian unit requests through emails/ telephones. |
| Chungseop Song (Employee) | Receives purchase guidelines from HQ regarding foreign vendors. |

Deployment of such employees is not in furtherance of the business of foreign entity. Rather it was for the benefit of the Indian subsidiary – NO Fixed Place PE constituted

6. SERVICE PE - THRESHOLDS AND KEY CONSIDERATIONS



6. SERVICE PE – THRESHOLDS AND KEY CONSIDERATIONS

Foreign entity provides services through its employees or other personnel in India, for a period exceeding the threshold provided in the respective tax treaty. The OECD Commentary covers persons receiving direct instructions from foreign entity under other personnel.

Threshold limits in some tax treaties of India:

| Country | Number of days | Number of days (in case of AE) |
|-------------|----------------|--------------------------------|
| USA | 90 | 1 |
| Canada | 90 | 1 |
| Singapore | 90 | 30 |
| Switzerland | 90 | 30 |
| UAE | 9 months | - |
| UK | 90 | 30 |

Relevant factors

- Stewardship activity
- Services other than FIS (USA)
- Services furnished in India
- Solar days vs Man days
- Fiscal year or 12 month period
- Employees or other personnel
- Presence in India

QUESTIONS?



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