

Global Tax Update

India

Deloitte Tohmatsu Tax Co.

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1. Cost re-imbusement under secondment agreement not taxable

An Indian Tribunal¹ has held that the cost reimbursement payment made by the taxpayer to its overseas holding company under an employee secondment agreement, is not chargeable to tax in India.

Pursuant to the Secondment Agreement entered into between the taxpayer and its overseas holding company, certain employees were placed by the overseas holding company to function and act under the control, direction and supervision of the taxpayer. The salaries of the seconded employees were paid directly by the overseas holding company. The salary cost was re-imbursed by the Indian taxpayer without withholding any taxes.

Tax authorities, argued that the work done by these employees resulted in creation of a Permanent Establishment ('PE') in India and is taxable on gross basis @ 40%. They had another argument that the said payment should at least be taxable as fees for technical services if it is observed that PE does not exist and the taxpayer would be held in default as taxes were not withheld.

The Tribunal ruled that:

- The fact of continuing to be on the payroll of the overseas entity is completely irrelevant for this purpose. No PE has been created.
- A pure reimbursement does not constitute a taxable income. The profits attributable in the hands of the PE of the overseas entity, if any, is nil. Obligation to withhold tax² arises only when there is a sum chargeable to tax under the Act³.

2. Liberalization of e-Visa regime

With an aim to stimulate economic growth, increase earnings from export of services such as tourism, medical value travel, travel on account of business and to make India an attractive destination for foreign direct investment, the government of India ('GOI') has approved the e-Visa scheme.

This seeks to liberalize, simplify and rationalize the visa regime with effect from April 01, 2017. With this, the existing 'e-Tourist visa' is replaced by the 'e-Visa' regime.

Key highlights of this new scheme are as follows:

¹ Ahmedabad bench in the case of Burt Hill Design (P.) Ltd [2017] 79 taxmann.com 459.

² under Section 195 of the Income tax Act, 1961

³ under Section 195 of the Income tax Act, 1961

Applicability	All international travelers from specified 161 countries and territories except the following: <ul style="list-style-type: none"> ➤ Pakistani Passport holder or Pakistani origin ➤ Diplomatic or official passport holder ➤ International travel document holder
Sub-categories of e-Visa	<ul style="list-style-type: none"> ➤ e-Tourist visa ➤ e-Business visa ➤ e-Medical visa
Purpose of e-Visa	<ul style="list-style-type: none"> ➤ Recreation, sightseeing, meeting friends and relatives, short-term medical treatment and casual business visit. Unlike the erstwhile e-Tourist visa which covered only casual business visit, the applicant can carry out all activities which are permitted under normal business visa as per the visa manual.
Validity	<ul style="list-style-type: none"> ➤ Valid for 60 days (erstwhile 30 days) from the date of arrival into India. ➤ As against single entry facility it has now extended double entry facility under e-Business and e-Tourist visa and triple entry facility for e-Medical visa ➤ e-Visa facility can be used for a maximum of two times in a calendar year

Note: e-Visa is an independent visa category and does not replace the regular business visa, tourist visa and medical visa.

3. E-proceedings before tax authorities

In furtherance of the government's initiative to bring in paperless assessment as notified earlier⁴, the Central Board of Direct Taxes ('CBDT') has notified procedures, formats and standards for E-proceedings for communication between the taxpayer and the tax authorities.

Additional procedures, formats and standards have been issued by the CBDT for ensuring secured transmission of electronic communication through the e-filing account of the taxpayer on the designated tax department website: <https://incometaxindiaefiling.gov.in>.

Key features of the notified procedures for E-proceedings are summarised below:

- E-proceeding functionality will be available for all types of notices, questionnaires, orders, letters ("communications") issued under various provisions of the Income tax Act, 1961.
- Communication issued by any tax authority will be visible to the taxpayer after logging into the Income Tax website under "E- Proceeding" tab, and may also be sent to the registered email id of the taxpayer. A text message alert may also be sent to the registered mobile number of the taxpayer.
- The taxpayer can also submit responses along with attachments to the communication sent by tax authorities through "E- Proceeding" tab on the e-Filing website. The response submitted by the taxpayer will be accessible to the respective tax authorities.
- Once all proceedings are completed, the final order is communicated to the taxpayer online under "E-proceeding" tab. The taxpayer can also see the entire history of proceedings.
- E-proceeding can be conducted manually, if the taxpayer chooses. Manual mode can be adopted for those taxpayers who are not registered on the E-filing website or if the tax authorities so decides with specific reasons recorded in writing duly approved by the prescribed authority.
- The taxpayer can opt out of online proceeding by communicating to the department through the e-filing website. Such option can be exercised even during the time of proceedings. In such a situation, remaining proceedings shall be conducted in the manual mode.

⁴ Notification no. 2/2016 dated February 3, 2016

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