

2 India

India v. Hyatt

Supreme Court of India, 24 July 2025 The definition of a PE under Art. 5 DTT India-UAE (9766/2025)

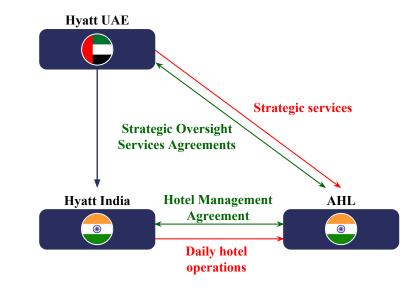
PVSS Prasad

www.ifa.nl | © IFA 2025



2.1 Facts of the case (1/2)

- In 2008, Hyatt UAE entered into 20-year Strategic Oversight Services Agreements (SOSAs) with Asian Hotels Ltd., India (AHL).
- AHL is an **independent company** that owns and operates Hyatt-branded hotels in Delhi and Mumbai.
- **Hyatt UAE** provided the **strategic services** from **Dubai**; only occasionally and temporarily did Hyatt UAE employees travel to **India** to provide consultancy services.
- Hyatt UAE has **full control** and discretion in **formulating** and **establishing** strategic plans relating to branding, marketing, product

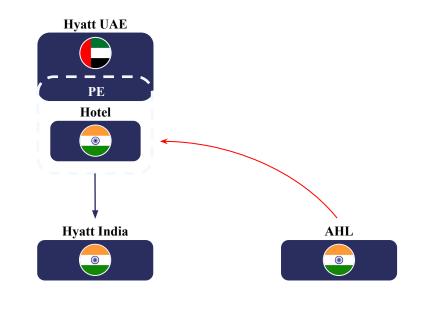


www.ifa.nl | © IFA 2025



2.1 Facts of the case (2/2)

- Art. III Sec. 3 of the SOSA empowers Hyatt UAE to assign employees to India without prior approval from the hotel owner.
- Hyatt UAE receives its fee calculated as a **percentage** of **revenues** of the hotel as well as **cumulative gross operating profit**.
- Hyatt India managed the daily hotel operations on the basis of a separate hotel management agreement.
- The tax authorities held that Hyatt's business activities constituted a **PE** within the meaning of **Art. 5(1) DTT India-UAE**.
- As a result, the **income from SOSA** was taxable in India under **Art. 7 DTT**



www.ifa.nl | © IFA 2025



2.2 Decision of the court

- The Court ruled that Hyatt UAE has a **fixed place PE in India** within the meaning of Art. 5(1) DTT India-UAE, and that, the **income received under the SOSA** is **attributable to** the **PE** and is therefore taxable in India.
- According to the Court, Hyatt UAE exercised **pervasive and enforceable control** over the hotel's **strategic**, **operational**, and **financial** dimensions that goes beyond mere consultancy.
- In reference to the Formula One case, the Court clarified that a fixed place PE does **not require ownership or exclusive possession**.
- The **20-year** duration of the SOSA, coupled with Hyatt UAE's **continuous and functional presence** satisfies the **PE tests of stability, productivity and dependence** under the DTT India-UAE.
- The frequent and regular **visits by executives and personnel** establish a **continuous and coordinated engagement**, even though no single individual exceeded the **9-month** stay threshold.



2.3 Tax consequences (1/2)

- The **Delhi High Court (Full Bench)** held that a **PE** is to be regarded as an **independent taxable entity** and is therefore taxable based on its activities in the **source country**, in accordance with Art. 7(2) of the DTT India-UAE, irrespective of whether the entity is incurring a **global loss**.
- Accordingly, it was held that Hyatt UAE is **taxable in India** in respect of the fee received under the SOSA. This finding was subsequently upheld by the **Supreme Court of India**.
- The **appellants' argument** that no specific place was assigned to, or at the disposal of, the PE was **rejected**.
- The **Supreme Court** concluded that the **entire hotel premises constituted the situs** of the appellant's primary business operations, which were carried out under its direct supervision and aligned with its commercial interests.



2.3 Tax consequences (2/2)

• Consequences:

- All MNEs must reassess both **documentation** and **actual conduct** when implementing agreements between the head office and its PE.
- The decision reaffirmed the **principle of substance over form**.
- Where substance diverges from form, PE taxation may give rise to **tax liabilities** and **penalties**.



2.4 Surveys

Question 1: Is the substance analysis of decisive importance for assessing whether the entity has a PE?

• Answer A: Yes

• Answer B: No

Question 2: Is it technically correct to attribute profits based on the activities of the PE, thereby disregarding the losses incurred?

• Answer A: Yes

• Answer B: No