

**INTERNATIONAL TAX  
UPDATE**

Business Control  
Constituting Fixed Place PE  
Under India-UAE DTAA

## **Business Control Constituting Fixed Place** **PE under India-UAE DTAA**

Assessee is Hyatt International Southwest Asia Ltd, a company incorporated in UAE engaged in rendering hotel consultancy and advisory services from Dubai to hotels in the Hyatt Group of Hotels, including several located in India. The Assessee entered into 20-year Strategic Oversight Services Agreements (SOSAs) with various hotel owners in India. Under the agreement, the Assessee agreed to provide strategic planning services and 'know-how' to ensure that the hotel was developed and operated as high quality international full-service hotel. The SOSA explicitly stipulates that the assessee shall render its services from Dubai and is not obligated to send or station any employee in India.

The Tax authorities contended that Assessee constituted a Permanent Establishment ('PE') in India as per Article 5(1) of India-UAE DTAA ('DTAA') through the use of such hotel premises by the assessee as its fixed place of business.

### **Observations of Hon'ble Supreme Court**

The Supreme Court meticulously reviewed the agreement (SOSA), in regard to whether the degree of control and supervision, held by the assessee over Indian hotels aligns with the criteria for a Fixed Place PE under the DTAA and drew the following observations:

- **Control of the Assessee over the hotel property:** The SOSA required the hotel owner to obtain a non-disturbance and attornment agreement approved by the assessee when

seeking financing, ensuring the assessee's uninterrupted rights and control over the premises.

- **Long-term operating rights:** As per Article II of the SOSA, the agreement was to remain in force for 20 years, extendable up to further 10 years.
- **Deep operational control:** The assessee had broad authority over key operational aspects of the hotel including formulating the strategic plan, branding, marketing, daily operations and HR policies. It also controlled policies relating to procurement, pricing, use of premises, and policy making w.r.t the hotel's operating bank accounts. The assessee could assign employees to India without prior approval from hotel owner.

## **Judgement of the Hon'ble Supreme Court**

Based on the above observations, the Hon'ble Court deduced that the assessee fulfils three core criteria of a PE:

Stability: The 20-year duration of SOSA, with a possibility of extension by ten years, clearly established the continuous and fixed control over Indian hotels, thus the stability required for a PE.

Productivity: The assessee's entitlement to "Strategic Fees" was not a fixed fee. Performance-linked remuneration- The assessee's income was directly tied to the financial and operational performance of the hotel, clearly indicating active commercial involvement in its day-to-day functioning.

Dependence: Assessee exercised control over strategic, operational, and financial aspects, like

staffing and policy formulation, indicated a strong dependence on the hotel's infrastructure and staff to carry out its business.

**Physical space not a prerequisite:** The Hon'ble Court relied on case of *Formula One World Championship Ltd.* and held that exclusive possession is not necessary—temporary or shared use is sufficient if core business activities are conducted through that space.

**Substance over Form:** Though individual employees did not stay more than 9-month threshold under the DTAA, this does not negate the existence of a PE. What is relevant is not the continuous presence of a particular individual, but whether there is a continuous and cohesive presence of the enterprise itself through its personnel or activities in the source country.

**Profit attribution to a PE -permissible even if overall foreign enterprise has incurred losses:**

The court also held that taxability is based on business presence and not the global profitability of the enterprise. Article 7 cannot possibly be viewed as restricting the right of the source State to allocate or attribute income to the PE based on the global income or loss that may have been earned or incurred by a cross border entity.

**Conclusion**

The Hon'ble Court concluded that assessee indeed had a fixed place PE in India within the meaning of Article 5(1) of the India-UAE DTAA. Consequently, the income derived under the SOSA is attributable to such PE and is therefore taxable in India.

For complete details, please refer to the Supreme Court's order dated 24.07.2025, passed in the case of ***Hyatt International Southwest Asia Ltd. V. Additional Director of Income Tax; Civil Appeal No. 9766 to 9773 of 2025***, available in the link below: -

[https://api.sci.gov.in/supremecourt/2024/9277/9277\\_2024\\_9\\_1502\\_62468\\_Judgement\\_24-Jul-2025.pdf](https://api.sci.gov.in/supremecourt/2024/9277/9277_2024_9_1502_62468_Judgement_24-Jul-2025.pdf)



*DISCLAIMER: - The summary information herein is based on Supreme Court's ruling in the case of **Hyatt International Southwest Asia Ltd. V. Additional Director of Income Tax; Civil Appeal No. 9766 to 9773 of 2025** dated 24.07.2025. While the information is believed to be accurate, we make no representations or warranties, express or implied, as to the accuracy or completeness of it. Readers should conduct and rely upon their own examination and analysis and are advised to seek their own professional advice. This note is not an offer, advice or solicitation. We accept no responsibility for any errors it may contain, whether caused by negligence or otherwise or for any loss, howsoever caused or sustained, by the person who relies upon it.*