



### **Supreme Court's ruling on Fixed Place PE in Hyatt International** **What the MNC's operating in India need to bear in mind!**

The Supreme Court of India (“SC”), in the case of Hyatt International<sup>1</sup> on 24 July 2025, affirming the decision of Delhi High Court<sup>2</sup>, in a landmark ruling held that continuous and substantive control over operations of an Indian entity by a foreign entity establishes a Fixed Place PE of the foreign entity in India.

#### **Background and facts of the case**

Hyatt International Southwest Asia Ltd. (“Hyatt”), a UAE-based entity, entered into Strategic Oversight Services Agreements (“SOSA”) with Asian Hotels Limited (one for its Delhi hotel and the other for its Mumbai hotel) in India.

In terms of the SOSA, Hyatt agreed to provide strategic planning services and know-how for a period of 20 years to ensure the Indian hotels were developed and operated as efficient and high quality international full-service hotels. In return Hyatt was entitled to a revenue sharing fee that was not fixed but calculated as a percentage of the revenue generated by the Indian hotel.

#### **What was the issue before the SC?**

- ✓ **Creation of a Fixed Place PE** - The key issue under consideration before the SC was whether the services being provided by Hyatt to its hotels in India under the SOSA led to constitution of a Fixed Place PE of Hyatt in India under Article 5(1) of the India-UAE double taxation avoidance agreement (“DTAA”).
- ✓ **Attribution of income if foreign parent incurs consolidated global losses** - The other issue was that if PE of Hyatt is constituted, then whether such PE can be treated as a separate and independent entity under Article 7 of the DTAA and accordingly whether its income derived under the SOSA is taxable in India i.e. profits be attributed on the basis of arm's length principle to such PE, irrespective of the overall financial position of the foreign entity, i.e. even if on a global level Hyatt has incurred losses.

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<sup>1</sup> Hyatt International Southwest Asia Ltd. v. Additional Director of Income Tax CIVIL APPEAL NO. 9766 OF 2025 (Arising out of SLP (C) No. 5710 of 2024)

<sup>2</sup> [2024] 158 taxmann.com 136 (Delhi) and [2024] 166 taxmann.com 466 (Delhi) (Full Bench decision)

## Contention of the tax authorities

**Continuous and substantive control over operations** - The revenue contended that on a plain reading of the SOSA, Hyatt exercised control in respect of all activities at the hotel, *inter alia*, by framing the policies to be followed by the hotel in respect of each and every activity, and by further exercising apposite control to ensure that the said policies are duly implemented and that the control of the day-to-day operations of the hotel was in terms of the SOSA. This further ensured that the policies and the diktats by Hyatt in regard to operations of the Indian hotel were duly implemented without recourse to the owner.

**The Disposal Test:** The main contention of the tax authorities was that Hyatt had discretion to send its employees *at its will* without concurrence of either Hyatt India or the owner. Evidence was produced about room bookings, flight tickets, stay of Hyatt personnel involved in substantive hotel operations, the ability of Hyatt to appoint and remove key management, etc. This clearly indicates that Hyatt exercised control over the premises of the Indian hotel for the purposes of its business. Thus, the condition that a fixed place (Hotel Premises) was at the *disposal* of Hyatt for carrying on its business, was duly satisfied.

## Hyatt's contentions

- **Only strategic guidance, no involvement in management** - Hyatt contended it merely provided strategic guidance, branding compliance, and long-term planning under SOSA. The day-to-day operations of the hotel were carried out by an Indian entity viz. Hyatt India Pvt. Ltd, under a separate Hotel Operating Services Agreement (HOSA) entered into with the hotel owner and not Hyatt.
- **No fixed place from which any business carried out, visits in nature of oversight** - Hyatt argued that there was no fixed place at its disposal in India through which it carried on its business. The services under the SOSA were largely rendered from outside India, and any presence of its personnel in India was occasional, of short duration, and these oversight visits were intended to ensure brand uniformity and quality compliance.
- **Disposal test not met:** Hyatt submitted that that the High Court incorrectly inferred that the absence of an express prohibition in the SOSA on decision-making by appellant's employees during their stay at the hotel implies a right of disposal. In law, a fixed place of business PE cannot be presumed from the mere absence of a restriction; there must be an affirmative grant of a right to use a specific physical location to carry on the enterprise's own business.

Hyatt also contended that High Court erroneously disregarded the two essential conditions as laid down in *Formula One*<sup>3</sup> case –

- (i) there must be a specific, fixed, and identifiable physical location in India; and
- (ii) such location must be at the disposal of the foreign enterprise for use in carrying out its own business activities.

It argued that it had no designated office space or reserved area within the hotel premises, which remained under the ownership and control of the Indian entity, and that limited and occasional presence of Hyatt's employees for the purposes of inspection, training, or policy

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<sup>3</sup> Formula One World Championship Limited v. Commissioner of Income Tax, International Taxation-3, Delhi & Anr. (2017) 15 SCC 602

discussions was merely incidental to its advisory functions under the SOSA. Hyatt contended that such occasional and temporary access did not satisfy the “disposal test” under Article 5(1), and hence, no Fixed Place PE could be said to exist in India.

## **The SC Ruling**

After considering both arguments and the facts and referring to previous precedents in particular the Formula One (*Supra*), the Supreme Court upheld the Delhi High Court’s decision of Hyatt constituting a ‘Fixed Place PE’ in India, on the reasoning that ‘*continuous provision of strategic and managerial services in India*’ under SOSA constituted sufficient presence to establish a Fixed Place PE.

The Supreme Court relied on the specific facts of the case to opine that the rights with Hyatt under the SOSA go well beyond mere consultancy and indicate that Hyatt was an active participant in the core operational activities of the hotel in India.

The SC also upheld that the profits attributable to such activities are taxable in India, even where the global entity incurs an overall loss. The Supreme Court did not interfere with the High Court’s reasoning on attribution under Article 7 of the DTAA, thereby reaffirming the principle that a PE must be treated as a functionally separate and taxable entity.

## **Conclusion**

The ruling in this case marks a significant development in India’s international tax jurisprudence. By relying on the principles laid down in Formula One (*Supra*) and distinguishing *E-Funds*<sup>4</sup> case as factually different, the Supreme Court reinforced the position that existence of a Fixed Place PE must be determined through a fact-specific inquiry.

This ruling makes it clear that there is no thumb rule or a standard formula which can be made applicable to all cases, and evaluation of creation of a PE is a nuanced fact-specific exercise, wherein several factors must be analysed, including the enterprise’s right of disposal over the premises, the degree of control and supervision exercised, the activities undertaken in India and the presence of ownership, management, or operational authority etc.

## **ALMT view**

Given the fact that SC relied on the Formula One case and distinguished the E-Funds case (as being differentiated on facts), one hopes that the Hyatt ruling not be used as a general precedent for all service agreements to constitute a PE going forward, and that the general principle that constitution of a PE is a fact specific exercise as always, will continue. However, one must take care to draft agreements carefully and ensure that the physical presence and control element by the foreign entity is reduced as much as possible, to mitigate any PE risk.

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<sup>4</sup> Assistant Director of Income Tax-1, New Delhi vs. M/s. E-Funds IT Solutions Inc. (2018) 13 SCC 294