

Tax Hotline

January 05, 2009

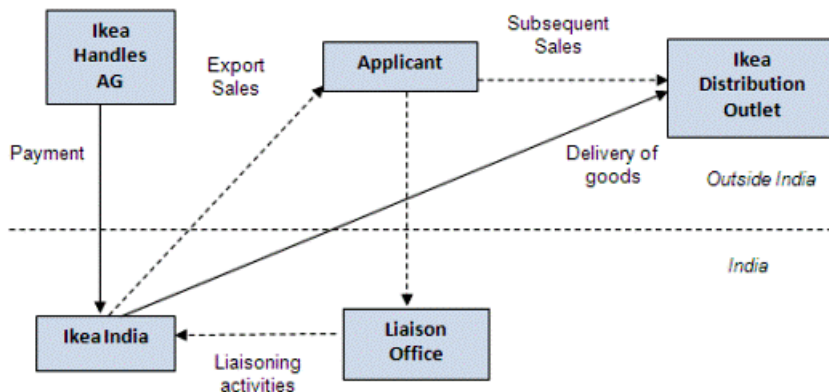
AAR WISHES IKEA'S INDIAN LIAISON OFFICE A TAX FREE NEW YEAR

The Authority for Advance Rulings ("AAR") was faced with an interesting question as to whether a liaison office of a foreign entity which is facilitating the purchase of goods in India can be captured under the Indian tax net.¹

FACTS OF THE CASE

Ikea Trading (Hong Kong) Ltd. ("Applicant") is a company incorporated under the laws of Hong Kong and is a tax resident of Hong Kong. The Applicant has established a liaison office in India ("Liaison Office") exclusively for the purpose of undertaking liaisoning activities in connection with purchase of goods from India. The Liaison Office does not charge any fees or commission for the liaison services rendered, but only gets reimbursed for the expenses incurred by it in connection with the purchase operations.

The goods are exported by a separate entity ("Ikea India") and not by the Liaison Office. After the goods are exported to the Applicant, it in turn sells the same to Ikea distribution outlets outside India and the sale price for the same is received by the Applicant outside India. Thus, no revenue generating activity takes place in India. However, in order to save freight and travel, Ikea India delivers goods directly to Ikea distribution outlets in Belgium and other countries. Further, Ikea Handles AG, Switzerland ("Ikea AG") carries out the function of central treasury, and hence all payments to various third parties are remitted by Ikea AG.



QUESTION RAISED

The main question which was raised before the AAR was whether the Liaison Office can be said to have any income which accrues or arises or is deemed to accrue or arise in India, and whether the Applicant can be said to have a business connection in India under the provisions of section 9(1) (i) the Income Tax Act, 1961 ("ITA").

ARGUMENTS PUT FORTH

On behalf of the Applicant

The Applicant stated that it did not earn any income in India because its activities were confined to the purchase of goods which were exported by Ikea India to the Applicant. Therefore since no sales were effected in India, no income could be said to accrue or arise in India. The Applicant also stated that no business connection should be formed in India on account of the purchase operations in India of the Applicant, due to the specific exclusion contained under the Explanation 1 to Section 9 (1) (i) ("Explanation"). The Explanation lays down that for the purpose of Section 9, no income shall be deemed to accrue or arise in India to a non-resident from operations confined to the purchase of goods for the purpose of export.

On behalf of the Revenue

The Revenue stated that the Explanation is inapplicable to the present scenario as the Applicant was merely a service provider and not a purchaser. The actual sale was effected by Ikea Handles AG and the Applicant through its liaison office was merely an "intermediate entity" which got remunerated for the services rendered by it. Further the exports were made by Ikea India and not by the Applicant.

RULING

The AAR in its ruling has expressed some apprehension about the exact role played by Ikea Handles AG holding it out to be dual in nature. The first being buying of the goods shipped from India from the Applicant and second being acting as a paying agent on behalf of the Applicant. However on account of the lack of AAR's ability to make "roving inquiries" into the facts and there being no clinching material to contradict the Applicant's statements of fact, the AAR accepted the facts provided by the Applicant.

Thus after considering the arguments put forth by both parties the AAR came to the conclusion that the Applicant

Research Papers

Structuring Platform Investments in India For Foreign Investors

March 31, 2025

India's Oil & Gas Sector— at a Glance?

March 27, 2025

Artificial Intelligence in Healthcare

March 27, 2025

Research Articles

2025 Watchlist: Life Sciences Sector India

April 04, 2025

Re-Evaluating Press Note 3 Of 2020: Should India's Land Borders Still Define Foreign Investment Boundaries?

February 04, 2025

INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals

January 15, 2025

Audio

CCI's Deal Value Test

February 22, 2025

Securities Market Regulator's Continued Quest Against "Unfiltered" Financial Advice

December 18, 2024

Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

Vyapak Desai speaking on the danger of deepfakes | Legally Speaking with Tarun Nangia | NewsX

cannot be brought within the tax net, neither under Section 5 (2) or 9 (1) (i) of the ITA, on account of the nature of transaction and the specific exclusion contained under the Explanation.

CONCLUSION

This ruling is bound to leave a smile on the faces of many foreign companies who have liaison offices in India, which are engaged in facilitating purchase of goods from Indian companies. It is also interesting to note that while the AAR has decided on the case even though it has not been satisfied with respect to completion of facts, it has however taken a view that in the event more concrete facts can be obtained by the Revenue which impairs the Applicant's version of the facts, the Revenue may take appropriate steps as permitted by law.

Advance rulings are generally available to non-residents and foreign companies for providing clarity with respect to their Indian tax liability in connection with transactions undertaken or proposed to be undertaken. These rulings are binding on the applicant and the revenue, but are not binding on others. However, they do carry persuasive value. Statutorily advance rulings are to be provided within 6 months.

- Harshal Shah & Parul Jain

You can direct your queries or comments to the authors

¹ IKEA Trading (Hong Kong) Ltd. vs. DIT, AAR No. 771 of 2008, dated December 19, 2008

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

April 01, 2025

Vaibhav Parikh, Partner, Nishith Desai Associate on Tech, M&A, and Ease of Doing Business

March 19, 2025

SIAC 2025 Rules: Key changes & Implications

February 18, 2025