

## A German Manufacturing Company

SERVICES OFFERED: **International Tax Advisory**

SECTOR/INDUSTRY: **Manufacturing/Chemicals**



### Issuance of comprehensive memo on Permanent Establishment exposure in India

Our client is the parent company of a large group headquartered in Germany. The group is engaged in the business of manufacturing and sale of silicon, wafers, polymers, polysilicon, silicones and fine chemicals, and biotechnology. The total sale of the group is approximately EUR 5.3 billion in 2015.

The group has intensified their efforts to expand the market share for high-value products in the areas of construction, health, personal care, medicine, electronics, automotive engineering and energy.

The group has setup two subsidiaries in India which are engaged in rendering marketing and sales promotion services for products in India and in manufacturing of various silicon products, primarily for the textile and personal care industry.

Our client provides Information Technology (IT) support services to its Indian subsidiaries. In order to provide the IT support services, it has provided certain IT assets or equipment (including software) to its subsidiaries and had charged the subsidiaries service fees for providing IT support services.

These IT assets or equipment (including software) are purchased by the company from third-party vendors outside India and delivered to its subsidiaries in India. The IT assets or equipment are physically located at the premises of the Indian subsidiaries.

The client approached us to advise them on PE exposure in India on account of its IT assets or equipment in India.

#### Case Highlights

- Our client approached us to for advice on PE exposure in India
- We were able to established that the company did not have complete control over its assets, hence did not qualify for the disposal test
- Assets were located at multiple locations, and hence cannot be considered as a fixed place
- We gave a suggestion that assets or equipments to be directly purchased by the Indian subsidiaries to mitigate the risk completely

We analysed, researched and investigated the facts of the situation, and advised to mitigate the risk and course of documentation.

Based on the facts of the case, our international tax experts carried out a detailed PE analysis and provided their views along with mitigation strategies.

We carried out an extensive research on various case laws and tax commentaries based on the facts of the case. Based on the research, it appeared that the company had a fixed place PE exposure in India.

Upon additional investigation, we discovered that it was possible to argue that the company did not satisfy the disposal test as it did not have complete control over the assets or equipment, and neither did it have the right to access the premises of the Indian subsidiaries without their consent.

Furthermore, we also observed that the assets or equipment were kept at various locations of the Indian subsidiaries. Accordingly, we argued that since the assets are located at multiple locations, it can be argued that assets or equipment cannot be considered as a fixed place. We were also in a position to back the arguments with various judicial precedents.

We also suggested that a detailed documentation should be maintained to substantiate the fact that the client does not have right to access the place, and that the equipments are kept at different locations.

We advised that in order to completely mitigate the risk, it would be advisable that the asset or equipment are purchased directly by the Indian subsidiaries from the third-party vendors instead of the parent company.

## Impact

Our detailed advice helped the client to have a clear and comprehensive understanding of the PE exposure and the ways to minimise risks in India. The advice also helped the client in ensuring that appropriate documentation are in place which would eventually help in defending its case before the Indian tax authorities and avoid protracted litigation.

Our client was pleased with our recommendations and our approach of providing a fact specific advise rather than just legal advice.

## For more information on this case study, please contact:

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