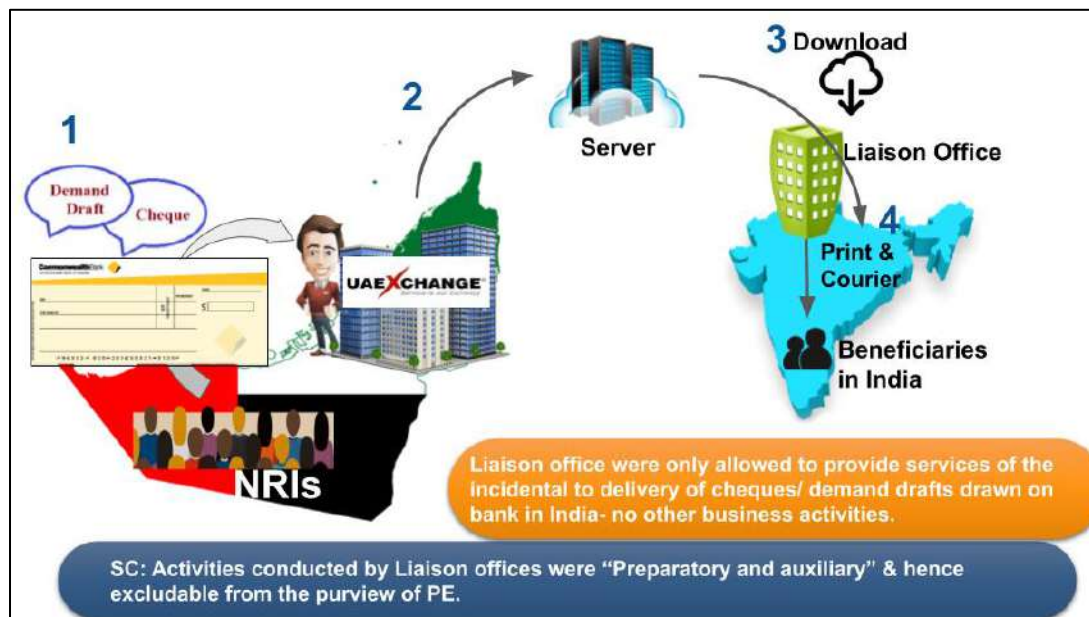


## SATURDAY INTERNATIONAL TAX GYAN !!!

#taxmadeeasy

### Union of India vs. U.A.E. Exchange Centre<sup>1</sup>

The term “preparatory and auxiliary” would have to be seen with respect to its contribution in total activity chain and not independently as a service



#### Facts:

- The respondent is a limited company incorporated in the United Arab Emirates (UAE). It is engaged in offering, among others, remittance services for transferring amounts from UAE to various places in India.
- The liaison office was set up mainly to provide various services to its HO which were auxiliary and support to the main services.
- The entire expenses of the liaison offices in India are met exclusively out of funds received from the UAE through normal banking channels.
- The funds are collected from the NRI remitter by the respondent in UAE by charging a one-time fee. After collecting the funds from the NRI remitter, the respondent makes an electronic remittance of the funds on behalf of its NRI customer in two ways: —
  - (i) by telegraphic transfer through bank channels; or

<sup>1</sup> [2020] 116 [taxmann.com](http://taxmann.com) 379 (SC)

(ii) **On the request of the NRI remitter, the respondent sends instruments/cheques through its liaison offices to the beneficiaries in India, designated by the NRI remitter.**

- The dispute arises in respect of the second mode of remittance through the liaison offices in India.
- Before the above assessment and judgement, respondent had made an application before Authority for Advance ruling where it had held that income shall be deemed to accrue in India from the activity carried out by the liaison offices of the assessee in India.

### Assessee's contention:

- According to the respondent the services provided by the branch in India were **back office and auxiliary work** also it was not charging any fees nor earning any profit for such services and hence the same would not constitute as PE in India as per DTAA and hence it's income won't be taxable in India.

### Revenue's contention:

- Revenue was of the contention that the services being provided by the liaison office was an **important part of main work itself**, because without liaison office doing its job the head office in UAE won't be able to honour its contract.
- Thus, it is indeed a **significant part of the main work of UAE establishment**. It follows that the liaison offices of the applicant in India for the purposes of the second mode of remittance of amount would be a 'permanent establishment' within the meaning of the expression in DTAA and hence it's part of income would accrue or arise in India and hence taxable in India.

### Ruling:

- The only activity of the liaison offices in India is **simply to download information** which is contained in the main servers located in UAE based on which cheques are drawn on banks in India whereupon the said cheques are couriered or dispatched to the beneficiaries in India, keeping in mind the instructions of the NRI remitter.
- Court also relied on the judgement of The Supreme Court in the case of **DIT (International Taxation) v. Morgan Stanley & Co<sup>2</sup>**; wherein it was decided that back office operations came within the purview of Article 5(3)(e). Therefore, the entity located in India which was engaged in only supporting the front office functions of Morgan Stanley & Co., a non-resident, in fixed income and equity research and information technology enabled services such as data

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<sup>2</sup> 2007(7) SCC 1

processing support centre, technical services and reconciliation of accounts being back office operators would not fall with Article 5(1) of the Indo-US DTAA.

- It is evident that the activities are required to be carried out by the respondent subject to conditions specified in clause 3 of the permission by RBI, which includes **not to render any consultancy or any other service, directly or indirectly, with or without any consideration without prior permission of RBI.** The conditions make it amply clear that the office in India will not undertake any other activity of trading, commercial or industrial, nor shall it enter into any business contracts in its own name without prior permission of the RBI. The liaison office in India cannot even charge fee/ commission or remuneration for services provided in India.

### Our comments:

- The Honourable Supreme Court has taken a view that the activity of LO plays a **miniscule role in the overall activity from collecting the money from remitter to receipt of remittance to the beneficiaries in India.** Therefore, it is covered under the term “**auxiliary**” which means “providing supplementary or additional help and support.” Therefore, it will not be considered as a full-fledged activity leading to PE being established in India
- Alternate view that could have been taken is that the **activity needs to be seen individually** and even the task of printing and sending cheque to beneficiaries can be considered as full-fledged courier activity and therefore **Service PE could have been established in India.**
- Cases related to whether LO activities construe as PE are very fact specific and therefore contract and conduct of both parties are of paramount importance.

<b>Section</b>	<b>Section 9(1)(i), Article 5, 7</b>
<b>DTAA/Country</b>	<b>India - UAE</b>
<b>Court</b>	<b>Supreme Court</b>
<b>Date of decision</b>	<b>24.04.2020</b>

Refer our previous case laws editions:

**Majestic Auto Ltd. v. CIT1-** <https://rb.gy/hpozez>, **Regen Powertech (P.) Ltd. v. DCIT, (International Taxation)-2(1)-** <https://rb.gy/ymdnhc>, **Tiger Global International II, III and IV Holdings, Mauritius-** <https://rb.gy/2cw0ow>, **Volkswagen Finance Pvt Ltd v. Income Tax Officer-** <https://rb.gy/tei4s9>

**Note:** Case law name in **Red**- in favour of the Revenue, **Green**- In favour of the Assessee, **Orange** = Partial.

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**Thank you**