Case Study

A Singaporean Trading and Chemical Company

Service(s) offered: **International Tax Advisory**

Sector/Industry: **Pharmaceutical**

Analysis of existing transactions and providing mitigation strategies on PE exposure and POEM of the foreign company

Our client, a Singaporean subsidiary of an Indian company is engaged in business of indenting chemicals. It earns commission income for carrying out indenting activities in India. The Indian company had setup this subsidiary in Singapore (our client) for trading Active Pharmaceuticals Ingredients (API).

Our client had appointed the Indian company as indenting agent for its business. Both the companies have three common directors who are resident in India. Our client has a total of seven directors on board.

Given that the Indian company was the holding company of our client, and had common directors, our client requested us to analyze whether there would be any exposure to them of being considered as a company having effective management in India in light of new residency rules introduced by the Indian government (i.e. Place of Effective Management Rules (POEM)).

Furthermore, given that the Indian company was carrying out agency function for our client, our client also wanted to understand Permanent Establishment (PE) risk in India on account of having an agent in India.

Case Highlights

- Our Client wanted to analyze whether their POEM will be considered to be in India under the new guidelines
- Client wanted to understand the PE risk in India
- Helped the client with various do's and don'ts to mitigate POEM and Dependency Agency risk
- Suggested that it would be possible to argue that the Indian company is an independent agent and hence, Agency PE would not be triggered

Solution

Based on the facts of the case, we carried out an in depth PE and POEM analysis and provided a few mitigation strategies to our client.

Given that POEM regulation were recently introduced in India, we carried out a detailed research on old case laws and took the help of a few foreign case laws to identify whether the client has any POEM exposure in India. We also carried out a detailed analysis of the draft guidelines on POEM issued by the Indian tax authorities and provided detailed insights along with various do's and don'ts for mitigating the POEM exposure.

Furthermore, we also advised the client on maintaining documentation to substantiate the fact that management decision are in fact taken outside India.

In respect of PE exposure in India, we conducted a research on various case laws and tax commentaries and provided a detailed opinion on Agency PE risk in India. We also suggested that in the given set of facts, it would be possible to argue that the Indian company is an independent agent as it is carrying out indenting activities for various customers and hence, Agency PE would not be triggered.

Based on our experience of handling similar cases, we provided various do's and don'ts to mitigate the Dependent Agency PE (DAPE) risk in India. Nexdigm (SKP) also suggested that as a last resort, the company should be remunerated at arm's length in order to avoid any additional attribution of profits even in the case an Agency PE is constituted. We also suggested that robust transfer pricing documentation should be maintained to substantiate the fact that the agent is remunerated at arm's length.

Impact

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

For more information on this case study, please write to us at:

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