

Tax Hotline

December 26, 2005

AUTHORITY FOR ADVANCE RULINGS DENIES TREATY BENEFIT TO US FII - HOLDS THE PENSION TRUST TAXABLE IN INDIA

The Authority for Advance Rulings ("Authority") has held in a recent judgment that the \$43bn General Electric Pension Trust ("GEPT") is liable to be taxed in India. GEPT's investment in India is over \$80m.

GEPT, a trust set up in the US, is registered as a Foreign Institutional Investor in India, and invests in Indian securities, the returns from which are used for General Electric's pension liabilities. It had sought a ruling on taxability of its income in India.

In the case of GEPT, the Authority upheld its decision in the cases of [Fidelity](#) and [Morgan Stanley](#) to the extent that it classified the income of the FII in India from the trading of securities as profits from business.

However, unlike the earlier cases, where the Authority had held that the business income of the FIIs would not be liable to tax in India on the basis that the FIIs had no permanent establishment in India under the applicable tax treaties, in the case of GEPT, the Authority held that the benefit of the India - US tax treaty was unavailable. The basis for holding as such was that the applicant (GEPT) was a trust and the residential status of a trust under the India- US tax treaty was determined in accordance with the provision of clause (1)(b) of Article 4 of the treaty. GEPT enjoys a tax exemption in the US and it would appear that the Authority held that GEPT was ineligible to treaty benefits on this ground. The immediate consequence of the denial of tax treaty benefits to the US based FIIs structured as trusts, is that the business income of these entities could become taxable in India. As opposed to this, had the income of these FIIs been classified as capital gains, where the trading of securities had been done on a recognized stock exchange, the liability to tax in India would have been either 0% or 10% depending on whether the gains were long term or short term. This change in the tax situation would have a significant negative impact on the business costs of FIIs.

It may be noted that this clause regarding residential status of trusts is not a standard feature in India's tax treaties, and is absent in many treaties with other countries. The decision is therefore unlikely to affect similarly structured FIIs from other jurisdictions. Thus, where a US pension fund were to invest into India through Mauritius instead of directly, the FII would be tax exempt in India in the absence of a PE, whether its income were to be classified as business income or capital gains.

- [Annapoorna Jayaseelan & Shefali Goradia](#)

Source: The Economic Times, December 24, 2005

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.

Research Papers

Taxing Offshore Indirect Transfers in India

February 28, 2025

Unlocking Corporate Philanthropy

February 27, 2025

Digital Health in India

February 26, 2025

Research Articles

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

Key changes to Model Concession Agreements in the Road Sector

January 03, 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

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

How Cross Border M&A Will Shape the AI Age

February 13, 2025