



Form vs. Substance

SC Holds Hyatt Liable to
Tax in India on PE Attribution

The Hon'ble Supreme Court of India, in *Hyatt International Southwest Asia Ltd. v. Additional Director of Income Tax* (2025 INSC 891), has authoritatively interpreted the concept of a 'Permanent Establishment' (PE) under Article 5 of the India–UAE Double Taxation Avoidance Agreement (DTAA). The decision affirms the principle that commercial substance and actual functional control must prevail over the mere legal form of cross-border arrangements.

Factual background

The appellant, Hyatt International Southwest Asia Ltd., is a company incorporated in the United Arab Emirates and is a tax resident of the UAE under Article 4 of the India–UAE DTAA.

Hyatt claimed that it operated exclusively from Dubai & had no fixed place of business, branch, or office in India. Occasional visits by employees were within the permissible threshold of Article 5(2)(i) of the DTAA.

The High Court upheld the Revenue's position. Aggrieved, Hyatt filed multiple appeals before the Supreme Court.

It entered into Strategic Oversight Services Agreements (SOSAs) with Indian hotel owners for rendering brand development and strategic planning services to ensure compliance with Hyatt's international operating standards.

The Revenue, however, concluded that Hyatt had a PE in India under Article 5(1) of the DTAA & attributed business income to such PE under Article 7.





Issues Before the Supreme Court

The principal issues considered were:

- Whether the appellant had a Fixed Place PE in India under Article 5(1) of the India-UAE DTAA.
- Whether its income derived under the SOSA was taxable in India under Article 7.
- Whether attribution of profits to a PE was permissible despite the global loss position of the enterprise.

Supreme Court's Analysis and Findings

A. Definition of Permanent Establishment (PE)

The Court reiterated that under Article 5(1), a PE exists where:

- There is a fixed place of business;
- Through which the business of the foreign enterprise is wholly or partly carried on;
- The place is at the disposal of the foreign enterprise.

The Court referred to Formula One [(2017) 15 SCC 602], OECD and UN Model Conventions, and academic commentary to emphasize that the PE test is based on control, continuity, and commercial connection, not mere formal presence.

B. Functional Control under the SOSA

The Court examined various provisions of the SOSA & observed that:

- Hyatt had substantive authority over hotel operations, including:
 - Appointment and supervision of the General Manager & key personnel
 - Implementation of branding, pricing, procurement, and HR policies;
 - Control over operational bank accounts;
 - Right to assign its employees without prior consent;
- The agreement was of a long-term nature (20 years) and included performance based fee arrangements, linking Hyatt's remuneration directly to hotel revenues and profits.

These factors indicated that Hyatt exercised continuous and enforceable control over the hotel's operations, far beyond mere advisory or auxiliary functions.

C. Absence of Exclusive Office Not Determinative

- The appellant's argument that the absence of a designated physical office within the hotel precluded the existence of a PE was rejected. The Court held
 - Exclusive possession is not essential; what matters is whether the premises are used to carry on core business functions.
 - Business was being carried on "through" the hotel premises, satisfying the PE criteria under Article 5(1).



D. Attribution of Income Despite Global Losses

The Court upheld the Delhi High Court's reference to a Larger Bench on profit attribution and noted that:

- Income attributable to a PE is taxable in the source country, even if the overall foreign enterprise incurred global losses.
- Article 7 does not restrict the taxing rights of the source country based on entity-level profitability.

Conclusion

The Supreme Court's ruling in Hyatt International cements the jurisprudence that the existence of a Permanent Establishment must be assessed based on real-world business conduct, and not on paper separations or the absence of formal offices. For businesses engaged in long-term oversight or strategic advisory roles in India, a careful review of existing agreements, operational protocols, and employee deployment is now more critical than ever.