

No Service Tax on Payments to Expats in Arms of MNCs

Salary, allowances covered under ruling in a plea filed by Indian subsidiary of US group

Payments to expats working in India for local arms of multinationals by the foreign parent won't attract service tax, the Authority for Advance Ruling has said. The decision is significant as it brings some relief to MNCs that have been served with notices in similar cases.

“There shall be no liability to pay service tax on the salary and the allowances payable by the applicant to the employee in terms of the dual employment agreement and such salary will not be eligible to levy the service tax as per the provisions of the Finance Act,” the ruling said. This followed a plea by North American Coal Corp. India, the local subsidiary of US-based North American Coal Corp. It sought a ruling on the application of service tax on social security benefits given by the parent to an employee working in India on contract.

There have been recent instances of tax authorities issuing notices to MNCs in a number of cases where an expat employee received payments from the parent in his home country.

Their contention is that the practice of paying salaries for work in India that are then transferred to foreign accounts by the parent company and reimbursed to it by the Indian subsidiary make it akin to supply of manpower and therefore taxable.

“Service tax authorities have been taking a view that where an employee of a group company is deputed to work in an associate company for a specified period assignment, the transaction amounts to creating a service provider-service recipient relation ship between the two companies,” said Saloni Roy , senior director, Deloitte India.

Although rulings by the AAR are case specific, they have an effect on tax assessment of other firms under similar circumstances. AAR is a quasi-judicial body , set up to give opinions and guide companies on potential tax liabilities. “The Advance Ruling Authority is a good indication as to how this situation should be interpreted. It is hoped that the tax authorities rely on the ratio emerging from this ruling when they examine identical situations of other companies, albeit this ruling is not binding on them,” said Anita Rastogi, partner, PwC.

Rulings Must Be Consistent Too

It makes sense for MNCs to get to know their tax liability in advance. So, the AAR ruling will lend certainty to the tax treatment of the transaction, and avert disputes. However, this ruling should set a precedent in similar cases. This means that a ruling on a transaction based on one set of principles must hold good for another transaction with the same set of principles. There must be consistency. The rulings must also be made binding on the government, just as the letter rulings in the US.

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