CCAs. In addition, the Forum will discuss what kind of services would usually be subject of CCAs, providing concrete examples.

The following issues on CCAs were identified by the Forum as requiring further attention:

- how to distinguish between adding intra-group services and CCAs;
- how to determine expected benefits;
- what form can the contribution take (e.g., cash, in kind, services);
- determination of the repartition of costs among the CCAs participants;
- how to address participants entering and leaving a CCA; and
- what kind of documentation should be provided for CCAs.

In line with the focus on services, questions typically related to CCAs creating intangibles, such as legal versus economic ownership or buy-in/buy-out payments, will not be addressed by the Forum. However, the existing guidelines, while for services, should still provide some guidance for all CCAs. The goal is to have separate guidelines on CCAs by the end of 2012 (end of the current mandate of the EU JTFP).

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India
Ruling on installation PE under Mauritius treaty

The Delhi Income Tax Appellate Tribunal (ITAT) ruled on September 16, 2011 that the taxpayer’s activity of installing and joining pipelines in India fell within the scope of article 5(2)(i) of the India-Mauritius tax treaty and would not create an installation permanent establishment (PE) in India if the activity did not exceed the prescribed threshold period of nine months (GIL Mauritius Holdings Ltd.).

Background

Article 5(1) of the India-Mauritius treaty provides that a PE is a “fixed place of business through which the business of the enterprise is wholly or partly carried on”. In addition to the “fixed place PE” of article 5(1), article 5(2) provides deeming rules under which a PE will be deemed to exist, including an “installation PE” (article 5(2)(i)), which is defined as “a building site or construction or assembly project or supervisory activities in connection therewith, where such site, project or supervisory activity continues for a period of more than nine months”.

Once a PE is found to exist under the treaty, the country in which the PE is located (e.g. India) may tax (under article 7(1)) the profits of an enterprise resident in the other contracting state (e.g. Mauritius) to the extent the profits are attributable to a PE in the first state.

The interplay between a fixed place PE under article 5(1) and the situations specified in article 5(2) in which a taxpayer would be deemed to have a PE has been the subject of considerable controversy and litigation in India. The question that arises is whether a taxpayer that does not have a PE under the deeming rules of article 5(2) is still exposed to the risk of a fixed place PE under article 5(1). As discussed below, the Delhi ITAT ruled in favour of the taxpayer in GIL Mauritius Holdings Ltd., at least with respect to an installation PE.

Facts

GIL Mauritius Holdings Ltd. (GIL), a Mauritius tax resident, was engaged by BG Exploration & Production India Ltd. for the installation/joining of pipelines.