

Chapter Review Exercises

Chartered Accountancy Strategic Level Corporate Taxation (TAX)

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(a)

- The Inland Revenue Act No. 24 of 2017 in Section 69(4) provides the criteria to be satisfied for a company to be considered as a 'resident' person.
- Since PHP is a company incorporated in Singapore and it is not incorporated or registered in Sri Lanka and since its management is not done in Sri Lanka, it will be considered as a 'non resident' person for income tax purposes.
- Section 4 provides that a non-resident person is liable to pay income tax on profits and income that arises in or is derived from a source in Sri Lanka.
- Section 75 provides that where Sri Lanka has entered into a double tax treaty with another country, the articles in the DTA will apply, superseding the domestic law.
- Sri Lanka and Singapore has entered into a DTA.
- According to the DTA a non-resident person is only liable to pay income tax in the other State where it creates a permanent establishment (PE).
- Article 5(3) of the DTA defines a PE to include;

“the furnishing of services, including consultancy services, by an enterprise of a Contracting State through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within the other Contracting State for a period or periods aggregating more than 183 days within any 12-month period.”

- However, PHP has not sent any of its employees to Sri Lanka and therefore, PHP cannot be considered as providing services in Sri Lanka.
 - However, Article 5(7) provides;
- “An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.”

- PHP Lanka is a wholly owned subsidiary of PHP and the work performed by PHP Lanka will exclusively provided to PHP. Therefore, since the agent is devoted wholly to the work provided by PHP, it cannot be considered as an independent agent. And therefore, according to Article 5(5) a PHP will be liable to pay income tax in Sri Lanka since it is deemed to create a PE in Sri Lanka because of the dependent agent in Sri Lanka. i.e. PHP Lanka.

(b)

- Article 7(1) provides that;

“The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.”

- PHP is only liable to pay income tax in Sri Lanka on the profits that are attributable to the PE in Sri Lanka.
- The supply and delivery of equipment is directly handled by PHP from Singapore and there is no involvement of PHP Lanka in this process. Therefore, the profits and income arising from this part of the transaction is not attributable to the PE in Sri Lanka and therefore, it will not be liable to income tax in Sri Lanka.
- In the case of *Anglo-Persian Oil Co. v CIT*, the appellant company was incorporated in England, and it was in the business of providing fuel. It entered into contracts with ship owners in London and these ships called at various ports including Colombo.
- In Colombo, the appellant company had no place of business but stored its fuel with its agent a Ceylon company that was trading in fuel.
- The payment was to be made in London. The Ceylon company stored its own fuel and the appellant’s fuel in the tanks built by the Ceylon company for its own business.
- It was held in this case that the property in the goods passed to the shipping company at the time the contract was signed, and that the Ceylon company was merely an agent for the delivery of the oil. The delivery of the oil does not bring the profits under the classification of “profits arising in or derived from Ceylon”.
- If the agent in Ceylon did not actually affect the contract, or if he was instrumental in affecting it, the non-resident would not be liable for the profits arising on this transaction in Ceylon.
- Based on the above case, the transaction of merely delivering the equipment of PHP from Singapore will not be considered as attributable to the PE since the contract was signed previously. Further, the local entity was not instrumental in affecting the transaction.
- Therefore, PHP will not be liable to pay income tax in Sri Lanka on the profits relating to the delivery of equipment.

December 2019 - Q 3(e)

- Section 139 of the IRA on Administrative Review specifies that UEL has to;
 - Lodge an appeal within 30 days from the date of the notice of assessment
 - Appeal should be in writing and should be addressed to the CGIR and it should state the grounds of appeal
 - According to the question, UEL has not filed the income tax return for the Y/A 2018/19. Section 139(3) specifies that where the assessment is made in the absence of a Return, the appeal should be submitted along with a duly completed Return. Therefore, UEL will be required to submit a duly completed Return along with the appeal.
 - On receiving the appeal the CGIR has to acknowledge the receipt of the appeal within 30 days from the date of receipt.

- The CGIR may cause further inquiry by an Assistant Commissioner other than the Assistant Commissioner who made the assessment.
- Where there is no agreement with the taxpayer and the Assistant Commissioner, the CGIR shall fix a time to hear the appeal.
- The CGIR can agree or determine every appeal received within a period of 90 days from the date of receipt of the appeal.



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