

Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

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PRESS RELEASE

CBDT invites stakeholder comments on report pertaining to Profit Attribution to Permanent Establishment(PE) in India

Taxation of non-residents in India is governed by the provisions of the Income-tax Act, 1961 ("the Act") and the provisions of the Double Taxation Avoidance Agreement(s) [DTAA(s)] concluded or adopted by the Central Government under the powers conferred under Section 90 or 90A of the Act, respectively. The business income of a non-resident can be taxed in India if it satisfies the requisite thresholds provided under the Act as well as the threshold provided in the applicable tax treaty, by a concept of Permanent Establishment (PE), which is defined in Article 5 of Model Tax Conventions and tax treaties. Under Article 7 in the Indian treaties, profits are to be attributed to the PE as if it were a distinct and separate entity on the basis of the accounts of the PE and where such accounts are not available to enable determination of profits attributable to the PE, the profits attributable to the PE can be determined under the domestic laws. For the application of this method, the Assessing Officer in India can resort to Rule 10 of Income-tax Rules, 1962.

Recognizing the significance of issues relating to attribution of profits to a permanent establishment as well as the need to bring greater clarity and predictability in the applicable tax regime, a Committee was formed to examine the existing scheme of profit attribution to PE under Article 7 of DTAA's and recommend changes in Rule 10 of the Income-tax Rules, 1962. The Committee has submitted its report and it has been decided to seek suggestions/comments of the stakeholders and the general public. For this purpose, the notice seeking suggestions/comments of the stakeholders and the general public alongwith the report of the Committee on profit attribution has been placed in public domain and can be accessed at www.incometaxindia.gov.in. Suggestions/comments on the same may be furnished electronically at the email address usftr-1@gov.in within 30 days of the publication of the aforementioned document on the website of the Department.

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