

Lexygen India Digest

January 2026

The January 2026 issue of Lexygen India Digest reports a decision by the Delhi High Court relating to the conditions for establishment of a permanent establishment under the Double Taxation Avoidance Agreement entered into between India and Singapore. The regulatory section also reports a ruling by the Bombay High Court regarding eligibility for an Indian company to avail concessional tax rate on dividends distributed to a non-resident shareholder under the Double Taxation Avoidance Agreement entered into between India and the United Kingdom. The market updates section of this issue reports some significant private equity deals in the space technology, automotive, financial services, pharmaceuticals, and fast-moving consumer goods, sectors; fundraising by Indian and India-focused private equity and venture capital funds; mergers and acquisitions in the manufacturing, real estate, telecommunications, and consumer sectors; and certain other important deals.

REGULATORY UPDATES

A. CASE UPDATES

Delhi HC: Vacation days and days on which business development activities are undertaken are to be excluded in computing whether the 90-day threshold for service PE is met under the Indo-Singapore DTAA.

In a significant decision by the Delhi High Court (“**Delhi HC**”) in *Commissioner of Income Tax, International Taxation vs. Clifford Chance Pte. Ltd.*, the Delhi HC has held that employees’ vacation days and days on which business development activities are undertaken should be excluded while computing whether the 90-day threshold for physical presence in India is met for establishing a service permanent establishment (“**PE**”) under the provisions of Article 5(6)(a) of the Double Taxation Avoidance Agreement entered into between India and Singapore (“**Indo-Singapore DTAA**”). The Delhi HC has further held that the Indo-Singapore DTAA does not contemplate any conditions for establishment of a virtual PE.

To briefly summarise the facts of the case, Clifford Chance Pte. Ltd. (“**Clifford Chance**”), a tax resident of Singapore, rendered certain legal services to Indian clients. Such services were partly rendered remotely/virtually from outside India and partly through two employees

physically present in India. With respect to the financial years 2019-2020 and 2020-2021 respectively, Clifford Chance filed its return of income declaring ‘nil’ income in India. In the course of assessment, the Assessment Officer (“**AO**”) held that during the financial year 2019-2020, two employees of Clifford Chance were physically present in India for 120 days thereby exceeding the prescribed threshold of 90 days under Article 5(6)(a) of the Indo-Singapore DTAA for establishing a PE. The AO accordingly held that total income earned during such financial years are taxable in India. On appeal by Clifford Chance, the Delhi bench of the Income Tax Appellate Tribunal (“**ITAT**”) found that out of the total 120 days the employees were present in India, they availed vacation period of 36 days and undertook business development activities for 35 days, which are to be excluded while computing whether the threshold limit for constitution of a PE have been met. Accordingly, the ITAT held that the threshold of 90 days provided under Article 5(6)(a) of the Indo-Singapore DTAA for constituting a service PE was not met.

On further appeal by the Commissioner of Income Tax, the Delhi HC decided on the following issues:

- *Whether Clifford Chance had a service PE in India?* The Delhi HC noted that Article 5(6)(a) of the Indo-Singapore DTAA contemplates that an enterprise shall be deemed to have a PE in India through its employees or other personnel only if such employees physically perform services in India for a period aggregating to 90 days in any year. Further, the Delhi HC upheld the decision of the ITAT to exclude vacation days and days on which business development activities were undertaken for computing days on which actual services have been rendered. The Delhi HC noted that Clifford Chance had maintained and submitted detailed bills, time-stamp sheets, e-mail correspondences, and invoices raised to the Indian clients, to support its claims on the days during which services were provided. The Delhi HC therefore concluded that out of the total 120 days, the two employees had rendered services for less than 90 days and therefore Clifford Chance did not have a service PE under Article 5(6) of the Indo-Singapore DTAA.
- *Whether Clifford Chance has a virtual service PE in India?* The revenue