

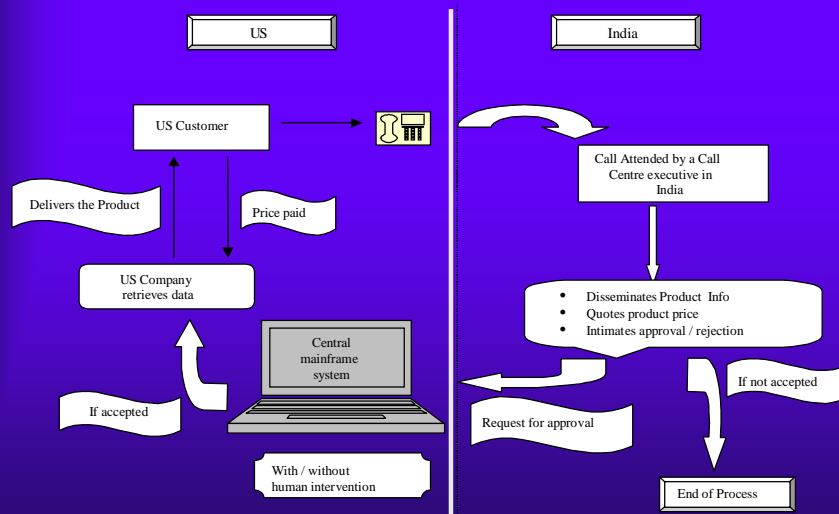
BPO Business Process Outsourcing

Key Direct Tax Issues
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Typical BPO Process

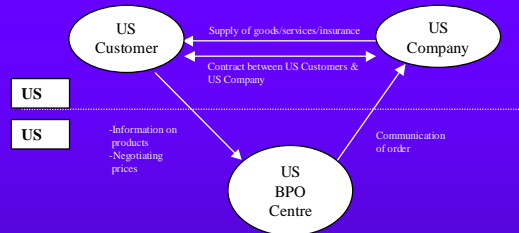


Generally Outsourced Activities

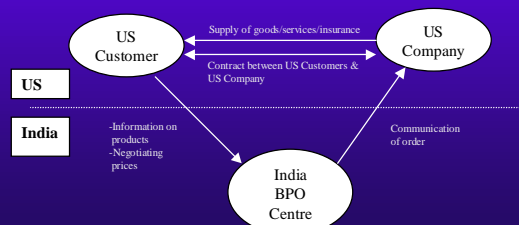
Customer Service Technical Support Tele-marketing Backroom Processing Telesales

Outsourcing.... what changes

Before Outsourcing



After Outsourcing



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Outsourcing PE???

Scenarios giving rise to (Permanent Establishment) PE

- ◆ Securing of Contracts for sale for foreign co. in India
- ◆ Conclusion of Contract for sale on behalf of foreign co. in India
 - Second proviso to Recently introduced explanation 2 to Section 9(1)(i)
- ◆ Rendering of Service by Foreign Co. in India through employee or person resident in India

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Consequence of having a PE

- ◆ Income of foreign co. attributable to activity in India is taxable in India
 - Is payment of price to BPO service provider on arms length basis a satisfactory resolution
- ◆ Payment of Tax by Foreign Company
- ◆ Filing of Indian Tax Return by Foreign Company

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Outsourcing.....PE ??

- ◆ Whether Indian BPO Centre can be considered as:
 - Securing/accepting sales contract in India on behalf of Foreign Co.
 - Providing services in India on behalf of Foreign Company.
- ◆ Whether foreign co. is doing business in India
- ◆ Whether outsourcing contract is on a principal-to-principal basis. Whether Indian BPO Service Provider is an independent service provider

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OutsourcingPE ?? (contd...)

- ◆ Can outsourcing be equated with Buying of goods for export and therefore non-taxable event as per Explanation b. to Section 9(1)(i) of the IT Act
- ◆ Whether presence of employees of foreign co. to supervise BPO Centre aggravates PE exposure

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Other key issues

- ◆ Payment of Connectivity Charges to non-residents – Tax Withholding Obligations
 - Asiasat case (Delhi Tribunal)
 - Wipro case (Bangalore Tribunal)
- ◆ Eligibility to Tax holiday in case of expansion of business
 - Whether a new unit
 - Tax holiday post 2009 – unit in Special Economic Zone
- ◆ Treatment of Interest Income
 - Recent Supreme Court Decision in case of Pandyan Chemicals (129 Taxman 539)

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Other key issues (contd.....)

- ◆ Employees going abroad for Onsite Execution – PE exposure overseas and mitigation strategies
- ◆ Withholding tax on salaries – employees going abroad
 - Foreign Tax Credit
 - Treatment of living allowance
 - Social security tax overseas