

INTERNATIONAL TAX **CASE SUMMARY**

INDIA VS SAMSUNG

JANUARY 2025

ACADEMY OF TAX LAW

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HEAD OF ACADEMICS



Welcome to the Academy of Tax Law's case and judgment summaries. These documents have been carefully curated to support professionals, students, and researchers navigating the complex landscape of international tax and transfer pricing. At the Academy, we understand that tax law is ever-evolving, with key rulings continuously shaping its practice.

Each summary you'll find here is designed to provide not just the facts, but the context and implications of pivotal legal decisions. These case summaries are created to serve as a valuable resource for legal teams, multinationals, revenue authorities, and academics, offering insights that go beyond the surface. Our goal is to ensure you remain informed and prepared, whether you are dealing with tax planning, dispute resolution, or risk management.

We believe that knowledge is the foundation of sound decision-making, and with these resources, we hope to empower you in your professional journey. As you delve into the analysis, remember that staying ahead in tax law requires not just understanding the rules but how to apply them in a dynamic, global environment.

Thank you for choosing the Academy of Tax Law as your partner in this ongoing learning experience.

Sincerely,
Dr. Daniel N Erasmus

PART 1

SUMMARY

JUDGEMENT SUMMARY

CASE OVERVIEW

Court:	High Court of Delhi
Case No:	ITA 1029/2018 and connected matters
Applicant:	The Pr. Commissioner of Income Tax
Defendant:	Samsung Electronics Co. Ltd
Judgment Date:	15 January 2025
Full Judgment:	CLICK FOR FULL JUDGMENT
View Online:	CLICK TO VIEW SUMMARY ONLINE

JUDGMENT SUMMARY

The High Court of Delhi ruled on appeals filed by the Commissioner of Income Tax (International Taxation) against Samsung Electronics Co. Ltd., challenging the Income Tax Appellate Tribunal's (ITAT) earlier decisions. The core dispute revolved around whether Samsung's Indian subsidiary, Samsung India Electronics Pvt. Ltd. (SIEL), constituted a Permanent Establishment (PE) of Samsung Korea under Article 5 of the India-Korea Double Tax Avoidance Agreement (DTAA).

The Income Tax Department argued that the activities conducted by expatriates seconded to SIEL exceeded preparatory or auxiliary functions, creating a Fixed Place PE or Service PE. It cited close interactions between expatriates and Samsung Korea as evidence of operational control. Conversely, Samsung contended that SIEL operated as a separate legal entity, with expatriates employed locally under tripartite agreements. Their roles, the company argued, were confined to supporting SIEL's Indian business.

The Dispute Resolution Panel (DRP) and ITAT had ruled in Samsung Korea's favour, asserting that the expatriates' functions aligned with SIEL's business and did not

establish a PE. The Delhi High Court upheld these decisions, emphasising that there was insufficient evidence to prove that Samsung Korea conducted its business in India through SIEL. The expatriates' activities were deemed to benefit SIEL alone, with no direct control exerted by Samsung Korea.

The Court highlighted that Article 5 of the DTAA requires concrete evidence of business management or operational control by the foreign entity to establish a PE. It found no such evidence in the present case. Further, remuneration arrangements complied with transfer pricing regulations and did not indicate disguised control. The Court reiterated that the mere subsidiary-parent relationship does not automatically constitute a PE.

This judgment underscores the importance of differentiating between local subsidiary activities and parent company operations under international tax treaties. For multinationals, it reaffirms the need for robust governance structures and compliance with transfer pricing standards to avoid disputes. The ruling also serves as a reminder to tax authorities to base their assessments on substantive evidence rather than assumptions.

KEY POINTS OF THE JUDGMENT

BACKGROUND

Samsung Electronics Co. Ltd. (Samsung Korea), a South Korean company, operates globally through subsidiaries, including Samsung India Electronics Pvt. Ltd. (SIEL). SIEL is responsible for manufacturing, distribution, and marketing Samsung products in India. In 2010, the Indian Income Tax Department conducted a survey at SIEL's premises, raising questions about the tax implications of the relationship between Samsung Korea and SIEL.

The core issue stemmed from the presence of expatriates seconded by Samsung Korea to SIEL. The tax authorities alleged that these expatriates managed operations in India, creating a Permanent Establishment (PE) under Article 5 of the India-Korea Double Tax Avoidance Agreement (DTAA). Specific allegations included that SIEL functioned as a Fixed Place PE, Dependent Agent PE, and Service PE.

The Assessing Officer determined that Samsung Korea's involvement in decision-

making and reimbursement arrangements demonstrated operational control over SIEL. This finding led to tax demands for income attributable to the alleged PE.

Samsung Korea contested these claims, arguing that SIEL was an independent legal entity operating under Indian laws. It maintained that expatriates' roles were limited to assisting SIEL in its business. The Dispute Resolution Panel (DRP) ruled in Samsung's favour, stating that the activities of expatriates were preparatory or auxiliary under Article 5(4). The Income Tax Appellate Tribunal (ITAT) affirmed the DRP's decision, dismissing the existence of a PE.

The matter escalated to the Delhi High Court, where the tax authorities sought a reversal of the ITAT's decision. The case brought into focus the interpretation of DTAA provisions, the role of transfer pricing, and the distinction between parent-subsidiary relationships in taxation.

KEY POINTS

OF THE JUDGMENT

CORE DISPUTE

The core dispute revolved around whether the activities conducted by expatriates seconded to SIEL established a Permanent Establishment (PE) for Samsung Korea under Article 5 of the India-Korea DTAA. The tax authorities contended that SIEL met the criteria for a PE on three grounds:

- 1. Fixed Place PE:** The Income Tax Department argued that Samsung Korea used SIEL's premises to conduct business, citing the presence of seconded expatriates and their involvement in decision-making. It claimed this constituted a fixed base for operations under Article 5(1).
- 2. Dependent Agent PE:** The Department alleged that SIEL habitually acted on behalf of Samsung Korea, negotiating contracts and facilitating operations, thereby meeting the criteria for a Dependent Agent PE under Article 5(5).
- 3. Service PE:** The Department argued that the expatriates provided services

exceeding 183 days within 12 months, qualifying as a Service PE under Article 5(3)(b).

Samsung Korea, however, asserted that:

- Expatriates were employed under tripartite agreements with SIEL, reporting to local management.
- SIEL operated as an independent entity, fulfilling its tax obligations and complying with transfer pricing regulations.
- The activities of expatriates were preparatory or auxiliary under Article 5(4), exempting them from PE classification.

The key question for the Delhi High Court was whether the evidence demonstrated that Samsung Korea conducted its business in India through SIEL. Additionally, the Court examined whether the arrangements adhered to international tax principles and transfer pricing standards.

KEY POINTS

OF THE JUDGMENT

COURT FINDINGS

The Delhi High Court affirmed ITAT's findings that SIEL did not constitute a Permanent Establishment (PE) of Samsung Korea under Article 5 of the DTAA. Key observations included:

- 1. Fixed Place PE:** The Court found no evidence that Samsung Korea conducted its business operations through SIEL's premises. It held that the activities of expatriates were preparatory or auxiliary, such as gathering market insights and providing technical support, falling under Article 5(4) exceptions.
- 2. Dependent Agent PE:** The Court determined that SIEL acted independently in its transactions with Samsung Korea. It concluded that SIEL operated on a principal-to-principal basis, with no authority to conclude contracts on behalf of Samsung Korea.

3. Service PE: The Court noted that Article 5(3)(b) of the India-Korea DTAA did not support the creation of a Service PE, as the expatriates' roles were limited to SIEL's internal operations.

The Court reviewed expatriate statements, tripartite agreements, and financial arrangements, concluding that the evidence did not substantiate the tax authorities' claims. It emphasised that routine communication between SIEL and Samsung Korea for global business management does not equate to operational control.

The judgment underscored that SIEL, as a legally distinct entity, adhered to Indian tax laws and transfer pricing regulations. The Court found no justification for lifting the corporate veil to treat SIEL as a PE of Samsung Korea.

KEY POINTS

OF THE JUDGMENT

OUTCOME

The High Court dismissed the appeals filed by the tax authorities, ruling in favour of Samsung Korea. The key outcomes were:

- 1. No PE Established:** The Court upheld the ITAT's decision that SIEL did not constitute a Fixed Place PE, Dependent Agent PE, or Service PE of Samsung Korea. It ruled that expatriates' activities were confined to supporting SIEL's local business.
- 2. Compliance with Laws:** The Court noted that SIEL complied with Indian tax laws and transfer pricing regulations. It rejected claims of disguised operational control by Samsung Korea.
- 3. Adherence to DTAA:** The Court clarified the interpretation of Article 5, stating that substantial evidence is required to establish a PE. It emphasised the

importance of distinguishing preparatory or auxiliary activities from core business operations.

This ruling reinforced the principle that subsidiaries and parent companies must be treated as separate entities unless concrete evidence proves otherwise. For Samsung Korea, it affirmed that its global business model did not violate Indian tax laws. For tax authorities, the judgment highlighted the need for evidence-based assessments and rigorous application of DTAA provisions.

TP METHOD

HIGHLIGHTED (IF ANY)

Transfer pricing was central to the Court's assessment of whether Samsung Korea adhered to international tax principles. The Arm's Length Principle, codified in Indian transfer pricing laws, was used to evaluate the remuneration and reimbursement arrangements between Samsung Korea and SIEL.

The tax authorities alleged that the salary reimbursements for seconded expatriates indicated disguised operational control by Samsung Korea over SIEL. However, the Court noted that SIEL complied with transfer pricing regulations, which ensured fair allocation of profits and expenses between the two entities.

The Comparable Uncontrolled Price (CUP) method was applied to assess the pricing of transactions, including reimbursement of expatriate salaries. The Court found no evidence of transfer pricing manipulation or any attempt to shift profits artificially. The analysis showed that the reimbursements reflected actual costs incurred for services

rendered to SIEL.

Further, the Court highlighted that secondment agreements explicitly defined the roles and responsibilities of expatriates, aligning them with SIEL's business objectives. These agreements, coupled with adherence to transfer pricing laws, demonstrated the independence of SIEL's operations.

The ruling affirmed that the proper application of transfer pricing methodologies is critical for maintaining transparency and compliance in multinational transactions. It underscored the importance of documenting intercompany agreements and adhering to the Arm's Length Principle to avoid disputes.

For multinationals, this case highlights the need to engage transfer pricing experts to ensure robust compliance frameworks. For revenue authorities, it emphasises the importance of basing assessments on accurate transfer pricing analysis rather than assumptions.

PART 2

SIGNIFICANCE

MAJOR ISSUES

AREAS OF CONTENTION

Several contentious issues emerged during the case:

- 1. Interpretation of Article 5 of DTAA:** The central debate was whether the activities of expatriates exceeded the preparatory or auxiliary threshold under Article 5(4). The tax authorities claimed that expatriates conducted core business functions, but the Court found their roles to be supportive and non-substantive.
- 2. Role of Expatriates:** The tax authorities argued that expatriates exercised control over SIEL, effectively making it a Permanent Establishment (PE) of Samsung Korea. However, the Court concluded that expatriates worked within the framework of SIEL's operations and reported to local management.
- 3. Reimbursement Arrangements:** Salary reimbursements for expatriates were scrutinised as potential evidence of disguised control. The Court dismissed this claim, noting that the transactions adhered to transfer pricing regulations.
- 4. Independent Subsidiary Operations:** The tax authorities contended that SIEL was a mere extension of Samsung Korea. The Court rejected this, affirming SIEL's status as a separate legal entity complying with Indian laws.
- 5. Lack of Substantive Evidence:** The Court emphasised the need for concrete evidence to establish a PE. It found that the tax authorities relied on assumptions rather than substantiated facts, weakening their case.

This case highlighted the complexities of interpreting DTAA provisions and distinguishing between parent-subsidiary relationships. It underscores the importance of clear documentation, robust compliance frameworks, and evidence-based tax assessments.

EXPECTED OR CONTROVERSIAL?

The Delhi High Court's ruling in favour of Samsung Korea was consistent with established international tax principles and prior judicial precedents. However, the case's complexity and the stakes involved made the decision significant for multinationals and tax authorities alike.

The Court's interpretation of Article 5 of the DTAA was expected, given the emphasis on evidence-based assessments in similar cases. It reiterated that preparatory or auxiliary activities do not constitute a PE, aligning with global jurisprudence. The Court's dismissal of the tax authorities' claims reflected the lack of substantive evidence to prove operational control by Samsung Korea over SIEL.

For multinationals, the decision reinforced the principle that a parent-subsidary relationship does not automatically lead to a PE. The Court's

detailed examination of expatriates' roles and secondment agreements highlighted the importance of maintaining clear boundaries between parent and subsidiary operations.

While the judgment was not controversial in its legal interpretation, it underscored the challenges faced by revenue authorities in assessing multinational operations. The tax authorities' reliance on assumptions rather than robust evidence weakened their case, providing lessons for future assessments.

Overall, the decision was anticipated by tax professionals, given the adherence of Samsung Korea and SIEL to transfer pricing regulations and the lack of concrete evidence of a PE. The ruling provides clarity on DTAA interpretations and sets a precedent for similar disputes.

SIGNIFICANCE FOR MULTINATIONALS

This judgment carries profound implications for multinational enterprises (MNEs), particularly in the context of transfer pricing and Permanent Establishment (PE) risks.

- 1. Clear Boundaries:** The ruling underscores the importance of maintaining distinct legal and operational boundaries between parent companies and subsidiaries. MNEs must ensure that local entities operate independently, with well-defined roles and responsibilities for seconded employees.
- 2. Compliance with Transfer Pricing:** Adherence to transfer pricing regulations, including proper documentation and application of the Arm's Length Principle, is critical. This case highlights how compliance can shield MNEs from allegations of profit shifting or disguised control.
- 3. Proactive Governance:** The judgment

reinforces the need for robust governance structures. By implementing clear policies and intercompany agreements, MNEs can mitigate the risk of disputes arising from tax assessments.

Documentation and Transparency: Comprehensive documentation of intercompany transactions and secondment agreements is essential. Transparent practices enhance credibility and reduce the likelihood of adverse tax outcomes.

This case serves as a reminder that multinationals must prioritise tax compliance and risk management to navigate the complexities of international taxation.

SIGNIFICANCE

FOR REVENUE SERVICES

The ruling highlights several lessons for revenue authorities:

- 1. Evidence-Based Assessments:** Tax authorities must base their assessments on concrete evidence rather than assumptions. This case underscores the importance of detailed investigations and accurate interpretation of DTAA provisions.
- 2. Understanding International Tax Principles:** The judgment emphasises the need for tax authorities to align their interpretations with established international tax principles.

Misinterpretation can weaken cases and lead to reputational risks.

- 3. Focus on Compliance:** The case illustrates how robust compliance with transfer pricing regulations can strengthen a taxpayer's defence. Revenue authorities must ensure that their assessments account for such compliance.

This judgment encourages revenue authorities to adopt a balanced approach in assessing multinational operations, ensuring fairness and accuracy in their decisions.

RELEVANT CASES

MORGAN STANLEY VS INDIA

This case examined whether a subsidiary providing back-office services constituted a PE for its parent company under DTAA. The Supreme Court ruled that back-office functions performed by the subsidiary were preparatory and auxiliary, exempting them from PE classification.

This case addressed whether a subsidiary performing back-office services for its parent company constituted a Permanent Establishment (PE). The Supreme Court ruled that the subsidiary's functions were preparatory or auxiliary under the DTAA and did not create a PE. Similarly, in Samsung's case, the High Court determined that the roles of expatriates seconded to Samsung India Electronics Pvt. Ltd. (SIEL) were auxiliary to its local operations and did not qualify as core business functions. The Morgan Stanley case reinforces the principle that routine support services or non-substantive activities do not establish a PE, aligning with the Court's rationale in the Samsung dispute.

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HMRC UK VS ANSON

This case dealt with the treatment of income from a Delaware limited liability company (LLC) for tax purposes in the UK. The Court ruled that for tax purposes, the LLC was distinct from its UK member, and the income could not be directly attributed to the member. The case highlighted the importance of recognising legal separateness between entities under international tax principles.

The Anson case parallels the Samsung Electronics judgment as both underscore the principle that separate legal entities should not be treated as extensions of their parent companies without clear evidence of control. This reinforces the necessity of respecting corporate boundaries in international tax disputes, particularly under DTAA's.

FORMULA ONE VS INDIA

The Supreme Court ruled that temporary use of facilities in India for an event created a Fixed Place PE. The judgment underscored the importance of the duration and purpose of activities in determining PE status.

This case examined whether temporary use of facilities in India for an event created a Fixed Place PE under DTAA. The Supreme Court ruled that the duration and purpose of activities were critical in determining PE status. In Samsung's case, the Court considered whether the expatriates' roles exceeded the threshold of preparatory or auxiliary functions under Article 5 of the DTAA. The Formula One ruling underscores the need for substantial evidence when asserting the existence of a PE, which was lacking in the tax authorities' claims against Samsung Korea.

PART 3

PREVENTION

Transfer pricing experts play an indispensable role in helping multinational enterprises (MNEs) navigate complex tax regulations and avoid disputes like the one involving Samsung Electronics. They specialise in applying the Arm's Length Principle, ensuring that intercompany transactions reflect market standards and comply with local laws. This adherence is critical to defending against allegations of profit shifting or disguised control.

In cases like Samsung's, transfer pricing experts provide crucial support by structuring and documenting intercompany arrangements, such as secondment agreements and salary reimbursements. These professionals ensure that each transaction is appropriately priced and justified with clear economic analysis. For Samsung, the application of methods such as the Comparable Uncontrolled Price (CUP) method was instrumental in demonstrating compliance with Indian transfer pricing laws, safeguarding the company from further tax

liabilities.

Experts also assist in dispute resolution, providing detailed analyses to counter tax authorities' claims. They offer insights into the interpretation of Double Tax Avoidance Agreements (DTAAs) and ensure that local entity activities are classified correctly—whether as preparatory, auxiliary, or core business functions.

Moreover, transfer pricing experts contribute to proactive risk management by advising MNEs on setting up robust governance frameworks. Their expertise in creating transparent documentation and robust compliance practices can protect businesses from prolonged litigation and reputational damage. In an increasingly complex global tax environment, engaging transfer pricing professionals is essential for MNEs to maintain compliance, mitigate risks, and ensure fair tax treatment.

PREVENTATIVE

MEASURES TO AVOID SIMILAR CASES

Preventative measures are essential to avoid disputes like the one faced by Samsung Electronics. The implementation of robust governance frameworks and compliance systems is critical for multinational enterprises (MNEs) to manage tax risks effectively. Establishing a tax steering committee can play a pivotal role in ensuring adherence to local and international tax laws.

A tax steering committee, composed of senior executives and tax professionals, can oversee transfer pricing policies, monitor intercompany transactions, and address emerging tax issues proactively. For example, Samsung's adherence to proper documentation and the Arm's Length Principle shielded it from allegations of disguised operational control. Committees can ensure that secondment agreements and other intercompany arrangements are clearly defined, reducing ambiguity in tax

assessments.

Additionally, a comprehensive tax risk management process involves regular audits of intercompany transactions, ensuring they comply with the Arm's Length Principle and local regulations. This process includes training local and global teams to understand jurisdictional tax requirements and DTAA's. Using technology to track transactions and prepare robust documentation further strengthens compliance.

Preventing disputes also involves adopting transparency in business operations and maintaining clear boundaries between parent and subsidiary activities. For instance, Samsung's ability to demonstrate that expatriates acted under the local entity's business objectives was a decisive factor in the judgment.

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PREVENTATIVE

MEASURES TO AVOID SIMILAR CASES

TAX STEERING COMMITTEE

Establishing a tax steering committee can help ensure that tax policies are aligned with the broader business strategy and that transactions are vetted for both commercial and tax implications. A tax steering committee can:

- Review all significant cross-border transactions before they are executed.
- Ensure that tax decisions are made in the context of overall business objectives, not solely for tax savings.
- Monitor changes in international tax laws to ensure ongoing compliance and avoid disputes like this case.

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CASE SUMMARY

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