GCCs pause overseas employee deputations, to seek FinMin clarity after EY tax ruling

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Some multinational companies have temporarily paused FY27 secondments and are exploring alternate employment structures amid uncertainty over tax treatment.

The concerns stem from a June 18 judgment of the Delhi High Court in a case involving EY US, which held that payments made by EY India to EY US towards employees deputed to India were taxable as fees for technical services.

- Delhi HC ruling creates tax uncertainty for secondments.
- Nasscom to seek clarification from Finance Ministry.
- Companies pause FY27 secondments due to ruling.

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A number of Global Capability Centres (GCCs) and multinational companies are preparing to approach the Finance Ministry through industry body Nasscom after a recent Delhi High Court ruling cast uncertainty over the tax treatment of cross-border employee secondments—arrangements under which overseas group companies temporarily depute employees to their Indian affiliates. The industry is expected to seek a clarification from the government to prevent disruption in case of such deployments, people with direct knowledge of the matter told Moneycontrol.

The industry body is expected to submit a representation to the Finance Ministry sometime in the next two weeks, requesting that the government clarify the tax position to avoid widespread disruption to existing secondment arrangements, the people said.

The uncertainty has already prompted several technology and IT companies to temporarily put FY27 secondments on hold while they assess the implications of the judgment and evaluate alternative employment structures, they added.

The concerns stem from a June 18 judgment of the Delhi High Court in a case involving EY US, which held that payments made by EY India to EY US towards employees deputed to India were taxable as fees for technical services rather than tax-free reimbursements. This verdict was rendered by a two-judge bench comprising of Justice V Kameswar Rao and Justice Vinod Kumar.

Previously, the Income Tax Appellant Tribunal(ITAT) had ruled in favor of EY prompting the revenue department to move the Delhi High Court.

Historically, in a secondment arrangement, the overseas parent company continues to employ and pay the employee, while the Indian entity reimburses the parent company for the salary cost. Such reimbursements have generally not attracted tax in the hands of the overseas entity, nor have Indian companies been required to deduct tax at source on these payments.

"The judgment has created considerable uncertainty around secondment arrangements. Some companies have temporarily paused FY27 secondments until they have greater clarity on the tax implications. Others are evaluating alternate structures, such as transferring employment contracts to the Indian entity, which may reduce ambiguity but could still result in additional tax costs. At the same time, an industry representation is being prepared seeking clarification from the government," said one of the persons cited above.

Tax experts said that if the ruling is upheld on appeal and applied more broadly, reimbursements under secondment arrangements could be treated as fees for technical services, exposing overseas group companies to additional tax liabilities in India and requiring Indian entities to withhold tax on such payments.

Emails sent to Nasscom and the Finance Ministry seeking comment remained unanswered at the time of publication.

Companies are also concerned that the judgment could increase the risk of creating a Permanent Establishment (PE) for foreign entities in India. If a PE is constituted, profits attributable to the Indian operations of the foreign company could become taxable in India, besides triggering additional compliance obligations, including transfer pricing requirements.

"The Delhi High Court's judgment is likely to materially increase the tax risk associated with cross-border secondment arrangements, particularly for multinational groups operating GCCs, captive centres and Indian subsidiaries that regularly host personnel from overseas group entities," said Aditi Goyal, Partner – Tax, Trilegal.

"The finding by the Delhi High Court that seconded employees remain employees of the non-resident entity may heighten the risk of a PE being constituted in India. If a PE is constituted, the business profits of the non-resident entity attributable to the activities performed by the PE would be taxable in

India on a net basis at 35% plus applicable surcharge and cess," she added.

India is home to one of the world's fastest-growing GCC ecosystems, with multinational companies increasingly using secondments to transfer specialised skills, technology and management expertise across jurisdictions. Industry executives said prolonged uncertainty over the tax treatment of such arrangements could increase costs and force companies to redesign their cross-border staffing models.

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