

# Hyatt's India PE Ruling: Functional Control Creates Fixed Place of Business

*When operational supervision and strategic implementation override mere contractual form—Supreme Court's landmark Article 5(1) DTAA interpretation*



Operational Control



Management Authority



Landmark Ruling

# The Hyatt Case



## What Happened

Hyatt (UAE company) signed a 20-year agreement to manage Indian hotels. They controlled hotel operations, appointed managers, and received a percentage of hotel revenue.



## Hyatt's Argument

"We don't have a fixed office in India. Our employees only visit occasionally. We just provide advice from UAE, so India can't tax our income."



## Tax Department's View

"Hyatt effectively controls these hotels. They manage operations, appoint key staff, and make strategic decisions. This creates a taxable presence in India."



## Court's Decision

The Supreme Court ruled that Hyatt's operational control over the hotels created a taxable presence in India. Physical office isn't necessary when a company has real control over business operations. Despite operations being routed through Hyatt India Pvt Ltd, the Court held Hyatt UAE exercised real control, making legal separation irrelevant for PE purposes.







## Why This Matters

This ruling means companies can be taxed in India based on their actual business control, not just their physical presence. Control over operations can create tax obligations even without a formal office.

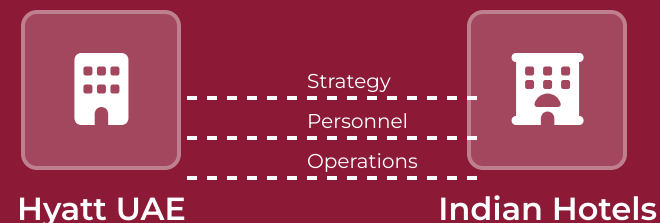
# The Hotel Management Contract

## Understanding SOSA: Hyatt's Control Agreement

SOSA = **S**trategic **O**versight **S**ervices **A**greement: A 20-year hotel management contract between Hyatt UAE and Indian hotel owners

-  Complete control over hotel strategy, branding, marketing, and daily operations
-  Authority to assign employees to India without hotel owner approval
-  Power to appoint General Manager and other key personnel
-  Fees calculated as percentage of hotel revenue and profit (not fixed fee)

### Operational Control Structure



### Supreme Court Finding

"The appellant exercised pervasive and enforceable control over the hotel's strategic, operational, and financial dimensions."

### Key Management Control Provisions

-  **20-Year Agreement Term**  
With option to extend 10 more years
-  **Bank Account Control**  
Authority over hotel's operating accounts
-  **Branding & Standards**  
Hyatt Operating Standards enforcement
-  **Non-Disturbance Agreement**  
Required from hotel lenders

# Supreme Court Ruling: Core Formula One Criteria

## Key Principles Applied by the Court in Hyatt Case:

### 1 "At the Disposal" Test

▶ "The enterprise must have a right to use the premises to carry on its business activities"

### 2 Three Core PE Attributes

▶ Stability (20-year SOSA), Productivity (active business), Dependence (on hotel premises)

### 3 Independent PE Tax Treatment

▶ "Taxability is based on business presence, not global profitability" - Article 7

*"Merely giving access to such a place to the enterprise for the purposes of the project would not suffice. The place would be treated as 'at the disposal' of the enterprise when the enterprise has right to use the said place and has control thereupon."*

— Supreme Court of India, Formula One (2017), cited in Hyatt (2025)

#### Disposal Test Application



Formal  
Access



Right to Use &  
Control

Court found Hyatt had operational control, not mere access

#### Article 7 PE Tax Attribution



Functions  
Management  
Control



Assets  
Hotel  
Operations



Risks  
Revenue-Linked  
Fees

"A PE must be treated as a distinct entity for taxation purposes" despite global losses

## Key Court Findings

🔑 Exclusive possession is not essential - temporary or shared use suffices

🔑 Economic substance over legal formality

🔑 20-year SOSA with control rights = stable business presence


🔑 Article 7 permits source taxation for PE regardless of global results


# Insights from the SC Judgment

Five key PE principles established by the Supreme Court:

- 1 Operational Control vs E-Funds**  
 Unlike E-Funds (back-office support), Hyatt exercised direct supervision over core hotel operations through its staff
- 2 20-Year SOSA Creates Stability**  
 The long-term agreement (with 10-year extension option) satisfied the "stability" criterion required for fixed place PE
- 3 Core vs Auxiliary Functions**  
 Court found Hyatt performed "core and essential functions" of hotel business, not merely "auxiliary" support activities
- 4 Pervasive Control Finding**  
 Control over management, bank accounts, staffing, and operations constituted "substantive operational control"
- 5 Independent PE Taxation Principle**  
 Global losses do not prevent profit attribution to PE in India - PE is treated as a separate taxable entity

## Supreme Court's Fixed Place Test

**Fixed Place**  
 Physical location in India

**At Disposal**  
 Right to use premises

**Business Activity**  
 Core operations through place

**Profit Attribution**  
 Based on India activities

"The hotel premises satisfy the criteria required to be classified as a fixed place of business" - Supreme Court

## Formula One PE Criteria



**Stability**  
 20-year duration



**Productivity**  
 Business activity



**Dependence**  
 Functional nexus

"A PE must demonstrate these three core attributes" - Supreme Court

# Practical Structuring Lessons for MNCs

## Post-Hyatt PE Risk Mitigation Strategy

- ✓ **Avoid Pervasive Control:** Structure hotel management with limited oversight, not operational implementation
- ✓ **Limit Agreement Duration:** Court cited 20-year SOSA as evidence of "stability" element for PE
- ✓ **Fixed Fee vs. Revenue Share:** Avoid profit/revenue-based compensation that indicates "commercial involvement"
- ✓ **Clearly Define Function Types:** Document which activities are "auxiliary" versus "core business"
- ✓ **Limit Personnel Authority:** Restrict foreign staff from operations control, key appointments, or banking

### SOSA Provisions to Avoid

 Strategic Control    High Risk    Advisory

 Personnel    Unrestricted    Limited

 Fee Structure    Revenue %    Fixed Fee


 Agreement Term    20 Years    Short-Term

### Court's Finding:

"Functions performed were core and essential to the hotel's operations."

### E-Funds Distinguished: Key Differentiators

 **Core vs. Support Functions**  
E-Funds: back-office support only






 **Operational Control**  
E-Funds: no pervasive control

 **Compensation Structure**  
E-Funds: arm's length pricing

 **Agreement Duration**  
E-Funds: no long-term presence

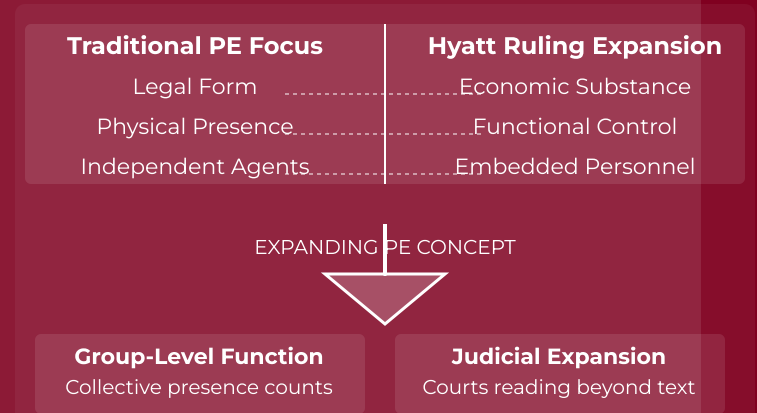
# Fresh Global Tax Perspective

## This Ruling Quietly Redefined the PE Frontier

-  **1. Application of 'economic substance' lens within the Article 5(1) framework**  
Interpreting 'at disposal' functionally rather than formally
-  **2. Digital PE Groundwork**  
Functional control without physical presence = blueprint for digital economy taxation
-  **3. Outsourcing PE Confirmed**  
Embedded staff performing enterprise-level functions ≠ independence
-  **4. Group-Level Function ≠ Individual Duration Test**  
PE triggered by collective continuity of presence, supporting OECD's enterprise-level activity focus
-  **5. Judicial Willingness to Read Beyond Treaty Text**  
Court interpreted "disposal" and "control" based on business reality, not legal form

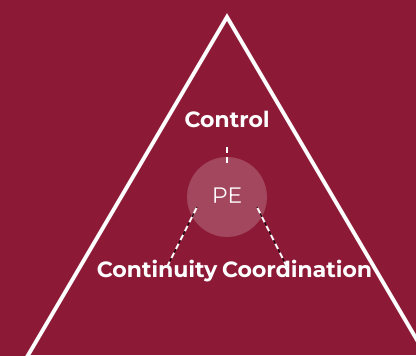
Modern PE risk is triggered by enterprise behavior—not location or labels.

### Hyatt Ruling's Global Impact



The Hyatt judgment transforms PE criteria across all five dimensions

### The Substance Triangle




Court found all three elements present in Hyatt's operations


# The New PE Risk Matrix: Closing Insight

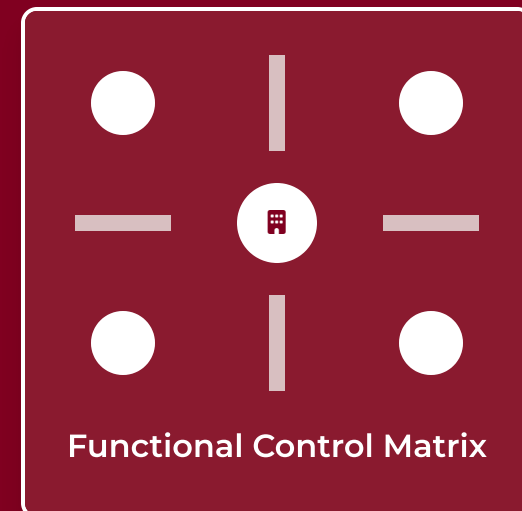
 The Supreme Court has redefined how we assess PE risk.

 **Operational Control > Legal Form**  
Court prioritized functional control over contractual disclaimers

 **20-Year SOSA = Stability Test Met**  
Long-term agreements fulfill "stability" attribute of PE

 **Profit-Linked Fees = Core Business**  
Performance-based revenue signals business control, not auxiliary service

 **Global Losses Don't Prevent PE Taxation**  
PE profits independently assessed regardless of entity-level results



Operational control creates PE risk even without formal presence

**FUNCTION > FORM**

The Court analyzed what Hyatt actually did, not just what the contract labeled as "strategic oversight."

 **Does your global management structure create hidden PE tax exposure?**

## AJMS GLOBAL



206, Opal Tower, Business Bay, Dubai, UAE



T: +971 4 554 2733



[www.ajmsgroup.com](http://www.ajmsgroup.com)