

F No 142/11/2015-TPL (Part-I)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, 23rd October, 2017

Subject: Clarification related to guidelines for establishing 'Place of Effective Management' (PoEM) in India-reg.

The concept of 'Place of Effective Management' (PoEM) for deciding residency status of a company, other than an Indian company, was introduced in the Income-tax Act, 1961 (the Act) which has become effective from 1st April, 2017, i.e., Assessment Year 2017-18 onwards.

2. Guiding Principles for determination of PoEM of a company were issued on 24th January, 2017 vide Circular No 06 of 2017. Further, vide Circular No 08 of 2017 dated 23rd February, 2017, it has been clarified that the PoEM provisions shall not apply to a company having turnover or gross receipts of Rs 50 crore or less in a financial year.

3. Representations have been received from the stakeholders wherein concerns have been raised that as per the extant guidelines, PoEM may be triggered in cases of certain multinational companies with regional headquarter structure merely on the ground that certain employees having multi-country responsibility or oversight over the operations in other countries of the region are working from India, and consequently, their income from operations outside India may be taxed in India.

4. In this regard, it may be mentioned that Para 7 of the guidelines provides that the place of effective management in case of a company engaged in active business outside India (ABOI) shall be presumed to be outside India if the majority meetings of the board of directors (BoD) of the company are held outside India.

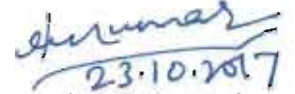
4.1 However, Para 7.1 of the guidelines provides that if on the basis of facts and circumstances it is established that the Board of directors of the company are standing aside and not exercising their powers of management and such powers are being exercised by either the holding company or any other person (s) resident in India, then the PoEM shall be considered to be in India.

4.2 It has also been provided that for this purpose, merely because the BoD follows general and objective principles of global policy of the group laid down by the parent entity which may be in the field of Pay roll functions, Accounting, Human resource (HR) functions, IT infrastructure and network platforms, Supply chain functions, Routine banking operational procedures, and not being specific to any entity or group of entities per se; would not constitute a case of BoD of companies standing aside.

5. In view of the above, it is clarified that so long as the Regional Headquarter operates for subsidiaries/ group companies in a region within the general and objective principles of global policy of the group laid down by the parent entity in the

field of Pay roll functions, Accounting, HR functions, IT infrastructure and network platforms, Supply chain functions, Routine banking operational procedures, and not being specific to any entity or group of entities per se; it would, in itself, not constitute a case of BoD of companies standing aside and such activities of Regional Headquarter in India alone will not be a basis for establishment of PoEM for such subsidiaries/ group companies.

6. It may be mentioned that the provisions of General Anti-Avoidance Rule contained in Chapter X-A of the Income-tax Act, 1961 may get triggered in such cases where the above clarification is found to be used for abusive/ aggressive tax planning.


23.10.2017
(Niraj Kumar)

Under Secretary to the Government of India

Tel: 011-23095468

Email: ustpl1@nic.in

Copy to:-

1. PS to Finance Minister/ OSD to Finance Minister/ OSD to Minister of State for Finance.
2. PS to Secretary (Revenue).
3. The Chairperson, Members and all other officers in CBDT of the rank of Under Secretary and above.
4. All Pr. Chief Commissioners/ Pr. Director General of Income-tax – with a request to circulate amongst all officers in their regions/ charges.
5. Pr. DGIT (Systems)/ Pr. DGIT (Vigilance)/ Pr. DGIT (Admn.)/ Pr. DG (NADT)/ Pr. DGIT (L&R).
6. CIT (M&TP), CBDT.
7. Web manager for posting on the departmental website
8. Data Base Cell for uploading on www.irsOfficersonline.gov.in
9. Guard File