



Global Business Tax Alert Sharp Insights

CBDT clarification for determination of POEM in cases where regional headquarter of the group is located in India

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Background

- Effective 01 April 2017, the concept of 'Place of Effective Management' ("PoEM") has been introduced in the Income-tax Act, 1961 ("Act") for determining tax residency in India of foreign companies in India.
- Final guidelines for the determination of PoEM were introduced by the CBDT vide circular No. 06 of 2017, dated 24 January 2017. Further, vide circular No. 08 of 2017 dated 23 February 2017, the CBDT clarified that the PoEM provisions shall not apply to companies having turnover or gross receipts of INR 50 crore or less in a financial year.
- Circular No. 06 of 2017 *inter-alia* clarified that, if on the basis of facts and circumstances, it is established that the Board of Directors of a foreign company is standing aside and not exercising its powers of management, and such powers are being exercised by either the holding company or any other person(s) resident in India, then such foreign company shall be considered to have a PoEM in India.
- Several representations were received by the CBDT seeking clarification on whether PoEM would be triggered in case of multinational companies merely because such companies have "regional headquarter" in India, conducting activities in the field of payroll functions, accounting, HR functions, IT infrastructure and network platforms, supply chain functions, and which functions were not specific to any foreign entity or group of entities.

Clarification by the CBDT¹

Referring to the specific conditions laid down in circular No. 06 of 2017, it has now been clarified by the CBDT that, such activities alone would not be the basis for establishment of PoEM in India:

- So long as the regional headquarter operate for subsidiaries / group companies within the general and objective principles of the group laid down by the parent entity, (in fields such as payroll functions, accounting, HR functions, IT infrastructure and network platforms, supply chain functions and routine banking operational procedures); and
- These functions are not specific to any entity or group of entities.

It has also been clarified that the General Anti Avoidance Rules ("GAAR") may be triggered, in case it is found that the clarification provided by the circular is used for abusive / aggressive tax planning.

¹ Vide Circular No. 25/2017 dated 23 October 2017

Comments

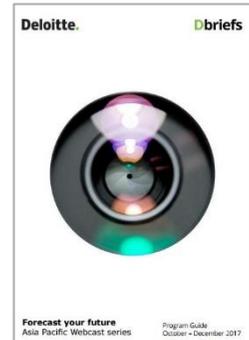
This clarification issued by the CBDT provides much needed clarity on the applicability of PoEM for multinational companies having their regional headquarter in India, which are merely conducting routine activities as per the global policies of the parent entity, for the entire group.

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