
CBDT clarifies that mere regional headquarter operations may not establish POEM in India of the group companies

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In brief

The Central Board of Direct Taxes (CBDT) has clarified that regional headquarters, operating for group companies in a region within the general and objective principles of global policy of the group in certain fields would not alone be a basis for establishment of place of effective management (POEM) in India.

In detail

- The provisions of the Income-tax Act, 1961 were amended with effect from 1 April, 2016 to stipulate that a company incorporated outside India, would be treated as a tax resident in India if its POEM is in India. POEM has been defined as a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made. Subsequently, the CBDT issued guiding principles for the determination of the POEM (click [here](#) to access our news alert on the final guiding principles for the determination of the POEM).
- The final guiding principles inter-alia stated that for a company engaged in active business outside India, the POEM would be presumed to be outside India if the majority of the meetings of the board of directors of the company are held outside India. However, if it is established that the board of directors are standing aside and not exercising their powers of management, and such powers are being exercised by the holding company or any other person resident in India, then the POEM will be considered to be in India.
- In this regard, stakeholders raised certain concerns that the POEM may get triggered in cases of certain multinational companies with regional headquarter structure, merely on the ground that certain employees having multi-country or oversight operations in other countries of the region are working from India.
- Dispelling the above concerns, the CBDT has now issued a Circular¹ clarifying that the board of directors may not be constituted to be standing aside on account of the regional headquarter activities, if:
 - the regional headquarter operates for subsidiaries/ group companies in a region within the general and objective principles of the global policy of the group laid down by the parent entity in the field of pay roll functions, accounting, human resource functions, information technology

¹ Circular No. 25 of 2017, dated 23 October, 2017

infrastructure and network platforms, supply chain functions, routine banking operational procedures; and

- the activities of the regional headquarter are not specific to any entity or group of entities *per se*.

Accordingly, it has been clarified that a regional headquarter in India alone will not be a basis for establishment of POEM for

subsidiaries/ group companies.

However, the clarification comes with a rider that provisions of the General Anti-Avoidance Rule contained under Chapter X-A of the Act may be triggered in such cases, where the clarification is found to be used for abusive/ aggressive tax planning.

The takeaways

This is a welcome clarification by the CBDT for the multinational

companies having regional operations based out of India. However, concerns may still exist, where the role of the regional headquarter is wider than the stipulated non-core business functions.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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