



AMERICAN CHAMBER OF COMMERCE IN INDIA

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August 25th, 2017

Mr. Sushil Chandra
Chairman
Central Board of Direct Taxes
New Delhi

Dear Mr. Chandra,

Sub: Clarification related to final guidelines for establishing 'Place of Effective Management' (POEM) in India

We write to you in relation to the captioned matter. At the very outset, we sincerely appreciate the efforts of the Hon'ble Board on issuance of the final guidelines in relation to establishing of POEM in India as per Section 6 of the Income-tax Act, 1961 (the Act), vide Circular No.6 of 2017 dated 24 January 2017. This brings in much needed clarity and certainty for corporates.

It is our humble request that the Hon'ble Board issues further clarifications in relation to establishment of POEM in India, wherein, it may be clarified that these guidelines are not intended to apply to Foreign Multinational companies or to tax their income from operations outside India, *merely on the ground of certain employees having multi-country responsibility or oversight over the operations in other countries of the region are working out of India.*

In this regard, it is humbly requested that the following example may be included in the guidelines, to address the issue of Regional Head Quarters or multi county responsibility with Indian employees of Foreign Multinationals, in case the Hon'ble Board considers it appropriate:

"Example 6: XYZ Group is a foreign multinational organization with its Global Head Quarter (Global HQ) situated outside India. XYZ Group has subsidiaries spread across the globe including India and has set-up a Regional Head Quarter (Regional HQ) in India to manage the subsidiaries in the Asia-Pacific Region/ Regional countries, where such subsidiaries are engaged in Active Business as defined in Para 5(a) of the said Circular No.6. The activities of the Regional HQ are:

- a) Acting as a consolidation hub for such subsidiaries, and driving commercial, accounting, HR, regulatory policies in the region, in a uniform, consistent and coherent manner;*
- b) Setting regional policies and business targets for the subsidiaries in the region in consultation with and under the framework and guidance of the Global HQ;*
- c) Establishing a stronger relationship with key customers in the Asia-Pacific region by having an experienced team in the local time-zone, who can more easily engage with such customers as and when deemed necessary.*

In all its activities, the Regional HQ operates within the framework of the priorities, strategies and policies set-out by the Global HQ and is responsible for delivering

financial/operational targets set by the Global HQ for the region. The subsidiaries are managed and controlled by their own local leadership teams and have their own Board of Directors in each of the jurisdictions.

Suggested Answer: *Since the Regional HQ's operates within the framework of the priorities, strategies and policies set-out by the Global HQ and given that the subsidiaries are engaged in active business operations, and are managed and controlled by their own local leadership teams, having their own Board of Directors, the Regional HQ's activities in India will not constitute a POEM in India for such subsidiaries."*

We earnestly believe that such clarifications shall help settle the ambiguity in relation to establishment of POEM in India on account of Regional Head Quarters or multi county responsibility with Indian employees of Foreign Multinationals in India and send a positive signal to the business environment and the investor community at large. Your goodself would appreciate that an appropriate clarification in the matter would assist Foreign Multinational companies in continuing with their current structure of keeping Regional Head Quarters in India.

With the development and maturity of the India talent pool, Foreign Multinationals are increasingly exploring to provide them with greater and broader responsibility beyond the Indian territory, within the overall framework of the global strategy and priorities of the Multinational Group. There has to be a supportive and facilitative regulatory framework which encourages this trend and will dissuade these Multinationals to move their talent from India to more benign tax jurisdictions like Singapore or even China.

We appreciate the Hon'ble Board's attention in this regard and would request for issuance of requisite clarifications.

Thank you and with regards,

Yours sincerely,



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