

Key Circulars, Notifications and Instructions

Instruction No.6/2018- Guidance to field officers on using ruling received from other jurisdiction under Base Erosion Profit Sharing ('BEPS') Project Action 5:

India being a G20 Country is required to implement the minimum standards laid down in the BEPS Project. One of the minimum standards that every participating jurisdiction has to achieve is to ensure a Transparency Framework for spontaneous exchange of rulings under BEPS Action 5.

As a part of this Transparency Framework, India is receiving templates containing information in respect of the following taxpayer-specific rulings from other jurisdictions:

- unilateral Advance Pricing Arrangements('APAs')/ cross-border unilateral rulings in respect of transfer pricing;
- cross-border rulings providing for a downward adjustment of taxable profits;
- permanent establishment ('PE') rulings;
- related party conduit rulings;
- rulings relating to preferential regimes;
- miscellaneous rulings as decided by the forum on Harmful Tax Practices.

CBDT has issued the following instructions to the field officers on using the said templates received from other jurisdiction:

Unilateral APAs or other cross-border unilateral rulings in respect of transfer pricing:

In some countries, unilateral APAs can adjust profits both upwards and downwards. In addition, unilateral APAs can set a future transfer pricing methodology or a future pricing or profit apportionment structure. In the aforementioned circumstances, Unilateral APA Rulings, in the absence of transparency, can create distortions and may lead to erosion of tax base.

On receipt of a template pertaining to a unilateral APA or other cross-border unilateral rulings in respect of transfer pricing, wherein either,

- a. the ultimate parent of the taxpayer receiving the ruling, or
- b. the immediate parent of the taxpayer receiving the ruling or
- c. the related party with which the foreign resident enters into a transaction that is covered by the APA

is resident in India, care has to be taken to ensure that there are no mismatches in how two ends of a transaction are priced and no profits go untaxed resulting in base erosion or profit shifting.

Cross-border rulings providing for a downward adjustment of taxable profits:

A regime that provides for negative adjustments to profits has the potential to result in no or low taxation and Multinational Enterprises have the incentive to shift profits. In many cases, the affected country, in the absence of such ruling being in its knowledge, will not be able to determine that such an adjustment has been made because, the adjustment is made in a domestic tax computation without being reflected in an enterprise's accounts or it is made retrospectively.

On receipt of a template pertaining to a cross-border ruling providing for a downward adjustment of taxable profits, wherein either,

- a. the ultimate parent of the taxpayer receiving the ruling, or
- b. the immediate parent of the taxpayer receiving the ruling or
- c. the related party with which the foreign resident enters into a transaction that is covered by the cross-border ruling providing for a downward adjustment of taxable profits

is resident in India, care has to be taken to ensure that there are no mismatches in how two ends of a transaction are priced and no profits go untaxed resulting in base erosion or profit shifting.

Permanent Establishment (PE) rulings:

PE Ruling shall usually determine or decide on the existence or absence of a PE or the attribution of profit to the PE.

On receipt of a template pertaining to a PE Ruling, wherein either,

- a. the ultimate parent of the taxpayer receiving the ruling, or
- b. the immediate parent of the taxpayer receiving the ruling or
- c. the head office of the taxpayer

is resident in India or the country where the PE is established is India, information of non existence or attribution of profit to a PE in the country issuing the ruling may be utilized in assessing the appropriate global profit of the Indian entity.

Related party conduit rulings:

Conduit rulings essentially cover arrangements involving cross border flows of funds or income through an entity in the jurisdiction giving the ruling, whether those funds or income flow to another jurisdiction directly or indirectly. In the case of conduit rulings, certain arrangements/structuring are ruled upon wherein, using transparent entities, deduction on interest paid is claimed. However, corresponding income on interest received goes untaxed in resident entities or non-resident partners.

On receipt of a template pertaining to a conduit ruling, wherein either,

- a. the ultimate parent of the taxpayer receiving the ruling, or

- b. the immediate parent of the taxpayer receiving the ruling or
- c. any related party making payments to the conduit or
- d. the ultimate beneficial owner of the payments made to the conduit

is resident in India, information on the arrangement/structuring including transparent entities may be utilized in assessing the appropriate profit of the Indian entity.

Rulings relating to preferential regimes:

Template pertaining to a ruling on a preferential regime in another jurisdiction wherein either

- a. the ultimate parent of the taxpayer receiving the ruling, or
- b. the immediate parent of the taxpayer receiving the ruling or
- c. the related party with which the foreign resident enters into a transaction for which a preferential treatment is granted,

is a resident in India, may be utilized to identify and assess the extent of economic activity actually reported in India and whether the income offered in India is commensurate to the same.

The information received by way of such a template is to be first examined and necessary action, if required, may then be taken on a case-to-case basis. Further information, if required in relation to any of the template may be obtained from the ruling-issuing jurisdiction through Exchange of Information on request.

Notification No.82/2018– Obtaining PAN mandatory for certain category of persons:

Vide the aforesaid Notification, CBDT has made it mandatory for the following category of persons to obtain Permanent Account Number ('PAN') in India:

1. In the case of a person, being a resident, other than an individual, which enters into a financial transaction of an amount aggregating to two lakh fifty thousand rupees or more in a financial year and which has not been allotted any permanent account number, on or before the 31st day of May.
2. In the case of a person, who is the managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of the person referred above or any person competent to act on behalf of the person referred above and who has not been allotted any permanent account number, on or before the 31st day of May.

Source: incometaxindia.gov.in

Rulings

Particulars	Citation	Judgement
Domestic Taxation	ACIT vs Celerity Power LLP (ITAT Mumbai)	Conversion of Company to LLP is not taxable since there is no consideration paid on such conversion, rendering machinery provisions to compute capital gains unworkable.
Domestic Taxation	N R Ravikrishnan vs ACIT (ITAT Bangalore)	ESOP options provide valuable right to the assessee "to exercise and have allotment of shares". They are thus 'capital asset' held by the assessee from the date of grant. If the assessee transfers the option itself, the capital gains will have to be assessed as long-term capital gains if the options have been held for more than three years.
Domestic Taxation	Periar Trading Company Private Limited vs ITO (ITAT Mumbai)	Where one type of share is converted into another type of share (including conversion of debentures into equity shares), there is, no "transfer" of a capital asset within the meaning of section 2(47) of the Income Tax Act, 1961. Hence, any profits derived from such conversion are not liable to capital gains tax under section 45(1) of the Act.
Domestic Taxation	Dr MuthianSivathanuvu vs ACIT (Chennai ITAT)	Gains arising to an employee from sale of shares allotted under ESOP by foreign parent company cannot be assessed as "salaries". It is assessable as "capital gains". Fact that employer has shown the gains as "perquisite" in Form 16 is irrelevant.
Domestic Taxation	PCIT vs Shodiman Investments Private Limited (Bombay HC)	The submission of the department that in view of Rajesh Jhaveri 291 ITR 500 (SC), the tax officer ('AO') can reopen the assessment for "whatever reason" is preposterous. The AO cannot reopen on the basis of information received from DIT (Investigation) that a particular entity has entered into suspicious transactions without linking it to the assessee. Such reopening amounts to a fishing inquiry. The AO has to apply his mind to the information received by him from the DDIT (Investigation) and cannot act on borrowed satisfaction only for reopening.
International Taxation	Dimension Data Asia Pacific Pte Limited vs DCIT (Mumbai ITAT)	If a non-resident assessee derives income from multiple sources in India, it is entitled to adopt the provisions of the Act for one source and the DTAA for the other source, whichever is more beneficial to it, even though the payer is common for both sources.
Transfer Pricing	Sumitomo Corporation India Private Limited vs ACIT (Delhi ITAT)	Different market and geographical location affect pricing factors and therefore, if there were differences on account of these factors Comparable Uncontrolled Price method could not have been held to be most appropriate method for benchmarking arm's length price.

Source: itatonline.org and taxmann.com

Disclaimer

This document is for private circulation only. It has been prepared for general guidance on matters of interest and does not constitute professional advice. Please do not act upon the information contained in this publication without obtaining specific professional advice based on the facts of your case. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication.

PKF International is a network of legally independent member firms administered by PKF International Limited (PKFI). Neither PKFI nor the member firms of the network generally accept any responsibility or liability for the Actions or inactions on the part of any individual member firm or firms.