

**F. No: 500/141/2018-FT & TR-V  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes  
Foreign Tax & Tax Research – II  
FT & TR-V Division**

**Hudco Vishala Building,  
Bhikaiji Cama Place,  
New Delhi  
dated 22.11.2018**

**To,  
All Pr. Chief Commissioners of Income Tax**

**Subject: Templates of Rulings received from other jurisdictions under BEPS  
Action 5 – reg.**

1. India being a G20 Country is committed to implement the minimum standards laid down in the Base Erosion and Profit Shifting (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.
2. As a part of this Transparency Framework, India is receiving templates containing information in respect of the following taxpayer-specific rulings from other jurisdictions:
  - (i) rulings relating to preferential regimes;
  - (ii) unilateral APAs or other cross-border unilateral rulings in respect of transfer pricing;
  - (iii) cross-border rulings providing for a downward adjustment of taxable profits;
  - (iv) permanent establishment (PE) rulings;
  - (v) related party conduit rulings;
  - (vi) Miscellaneous rulings which may be included at a later date as decided by the Forum on Harmful Tax Practices
3. Queries have been received from the field formation with respect to the purpose and utilisation of the templates received from other jurisdictions. Brief description of each type of ruling exchanged under BEPS Action 5 and the approach recommended to deal with it is as under;

**3.1. Rulings relating to preferential regimes:**

- 3.1.1.** Rulings pertaining to Preferential Regimes, inter alia, cater to the following types of activities: Shipping, Headquarters, Financing and Leasing, Holding Company regimes, Service Centre and Distribution Centre, Banking and Insurance, Pure equity holding, Fund Management and Miscellaneous regimes.

3.1.2. Any geographically mobile activity that may be based in a jurisdiction must carry substantial activity in that jurisdiction and taxable profits should not be artificially shifted away from the jurisdictions where value is created. Since the aforementioned activities are geographically mobile, there is a tendency to set up business in a jurisdiction having preferential regime even though substantial activities generating income are not actually performed in such jurisdictions.

3.1.3. A 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 utilised 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.

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

3.2.1. In some countries, unilateral APAs can adjust profits both upwards and downwards from the starting position. 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.

3.2.2. 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.

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

3.3.1. A regime that provides for negative adjustments to profits has the potential to result in no or low taxation and MNEs 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, for

example, the adjustment is made in a domestic tax computation without being reflected in an enterprise's accounts or it is made retrospectively.

3.3.2. 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.

3.4. Permanent Establishment (PE) rulings:

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

3.4.2. 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 utilised in assessing the appropriate global profit of the Indian entity.

3.5. Related party conduit rulings:

3.5.1. 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.

3.5.2. 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 utilised in assessing the appropriate profit of the Indian entity.

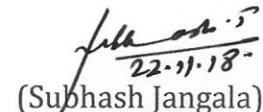
4. The information received by way of such a template may first be examined and necessary action, if required, may then be taken on a case-to-case basis. Further information, if required in relation to any of the template can be obtained from the ruling issuing jurisdiction through Exchange of Information on request. Instructions issued by the Board with respect to EoI from time to time may be referred to in this regard.
5. Maintaining the confidentiality of information received under the provisions of tax treaties is a legal requirement under the said tax treaties and is also an international obligation. All information received from the other jurisdictions through exchange of information, either on a spontaneous basis (templates) or on request basis (subsequent information relevant to the template) are subject to the requirements of confidentiality under the tax treaties with the respective jurisdictions. Detailed guidelines on maintaining confidentiality provided in Chapter-VII of Manual of Exchange of Information should be strictly followed by all the officers who handle the information contained in these templates that are received under BEPS Action 5.
6. This issues under Section 119 of the Income-tax Act, 1961 with immediate effect.
7. The above may be brought to the notice of all Assessing Officers in your charge.

  
22.11.18  
(Subhash Jangala)  
Under Secretary(FT&TR-V)

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Copy To:

1. PS to Finance Secretary/Revenue Secretary,
2. PS to Chairman, CBDT
3. PSs to Members, CBDT
4. All Pr. CCsIT/Pr.DsGIT/CCITs/DGITs with a request to circulate the same amongst all Officers in their Region / Charge.
5. Commissioner (Media & Technical Policy) and Official Spokesperson, CBDT.
6. Addl Director General of Income-tax (PR, PP & OL)
7. ITCC Section of CBDT (3 copies)
8. ADG (Systems)-IV for uploading on the Departmental website.
9. Database Cell for uploading on the IRS Officers website.
10. Hindi cell of Department of Revenue, for Hindi translation.
11. Guard File.

  
22.11.18  
(Subhash Jangala)  
Under Secretary(FT&TR-V)