

# TAX FLASH NEWS

18 September 2019

## CBDT notifies rules and form with respect to functioning of the Approving Panel for the purpose of the GAAR provisions

### Background

As per the provisions of Section 144BA of the Income-tax Act, 1961 (the Act), if, the Assessing Officer (AO), at any stage of assessment or reassessment, considers that it is necessary to declare an arrangement as an impermissible avoidance arrangement under the General Anti-Avoidance Rules (GAAR), he may make reference to the Principal Commissioner or Commissioner in this regard.

The Principal Commissioner or Commissioner may issue notice to the taxpayer providing him opportunity of being heard before invoking GAAR provisions. If the taxpayer does not furnish any objection to the notice within the specified time, the Principal Commissioner or Commissioner shall issue appropriate direction in respect of declaration of the arrangement to be an impermissible avoidance arrangement.

In case the taxpayer objects to the application of GAAR provisions and if the Principal Commissioner or Commissioner is not satisfied by the explanation of the taxpayer, he shall make a reference to the Approving Panel.

As per Section 144BA(18), the chairperson and members of the Approving Panel shall meet, as and when required, to consider the references made to the Approving Panel and shall be paid such remuneration as may be prescribed. Further as per Section 144BA(21), the Central Board of Direct Taxes (CBDT) may make rules for the purposes of the constitution and efficient functioning of the Approving Panel and expeditious disposal of the references.

### CBDT Notification

Recently, CBDT has issued a Notification<sup>1</sup> amending the Income-tax Rules, 1962 (the Rules) to introduce new rules and form with respect to functioning of the Approving Panel. Rules will come into force from the date of their publication in the Official Gazette i.e. 17 September 2019.

New Rule 10UD prescribes the procedure for making reference to the Approving Panel which is as follows:

- A reference to the Approving Panel shall be made in the new Form No. 3CEIA (form for making reference to the Approving Panel) along with a copy of Form No. 3CEI (recording the satisfaction by the commissioner before making a reference to the Approving Panel) and such other documents which the Principal Commissioner or the Commissioner deems fit.
- It should be submitted in four sets, either in Hindi or English.

New Rule 10UE prescribes the following procedure before the Approving Panel:

- A reference received under Rule 10UD of the Rules shall be circulated by the chairperson of the said Panel among the other members within seven days from the date of receipt of such reference.
- The Chairperson of the Approving Panel shall be issued the notice to the AO and the taxpayer affording an opportunity of being heard specifying therein the date and place of hearing.
- The meetings of the Approving Panel shall take place at such place as the Approving Panel may decide.

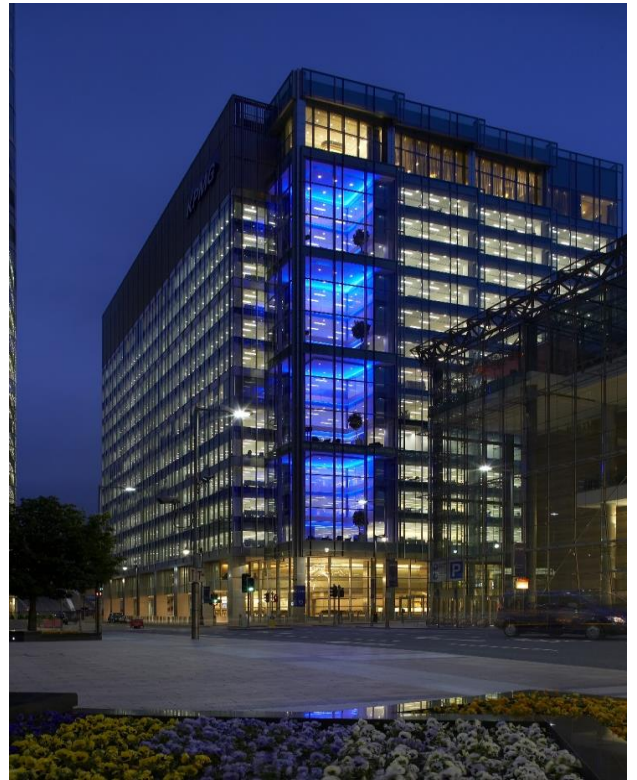
New rule 10UF provides that for attending the meeting of an Approving Panel, the Chairperson and other members of the said Panel shall be entitled to:

- a sitting fee of six thousand rupees per day; and
- travelling allowances including transportation charges for local travel and daily allowances (including accommodation) as admissible to an officer of the rank of Special Secretary to the Government of India.

<sup>1</sup> CBDT Notification No. 67/2019, 17 September 2019

## Our comments

The GAAR provisions provide wide powers to the tax authorities to deal with impermissible tax avoidance arrangements. The GAAR provisions have come into effect from Assessment Year 2018-19. However, rules for referring the matter to the Approving Panel and for functioning of such panel were awaited. The Notification has prescribed procedure for referring to the Panel and functioning of such Panel. New rules will help to ensure smooth working of the GAAR mechanism.



[home.kpmg/in](http://home.kpmg/in)

#### Ahmedabad

Commerce House V, 9th Floor,  
902, Near Vodafone House,  
Corporate Road,  
Pralhad Nagar,  
Ahmedabad – 380 051.  
Tel: +91 79 4040 2200

#### Bengaluru

Maruthi Info-Tech Centre  
11-12/1, Inner Ring Road  
Koramangala,  
Bengaluru – 560 071.  
Tel: +91 80 3980 6000

#### Chandigarh

SCO 22-23 (1st Floor),  
Sector 8C, Madhya Marg,  
Chandigarh – 160 009.  
Tel: +91 172 664 4000

#### Chennai

KRM Towers, Ground Floor,  
1, 2 & 3 Floor, Harrington Road,  
Chetpet, Chennai – 600 031.  
Tel: +91 44 3914 5000

#### Gurugram

Building No.10, 8th Floor,  
DLF Cyber City, Phase II,  
Gurugram, Haryana – 122 002.  
Tel: +91 124 307 4000

#### Hyderabad

Salarpuria Knowledge City,  
6th Floor, Unit 3, Phase III,  
Sy No. 83/1, Plot No 2,  
Serilingampally Mandal,  
Ranga Reddy District,  
Hyderabad – 500 081.  
Tel: +91 40 6111 6000

#### Jaipur

Regus Radiant Centre Pvt Ltd.,  
Level 6, Jaipur Centre Mall,  
B2 By pass Tonk Road,  
Jaipur – 302 018.  
Tel: +91 141 - 7103224

#### Kochi

Syama Business Centre,  
3rd Floor, NH By Pass Road,  
Vytilla, Kochi – 682 019.  
Tel: +91 484 302 5600

#### Kolkata

Unit No. 604,  
6th Floor, Tower – 1,  
Godrej Waterside,  
Sector – V, Salt Lake,  
Kolkata – 700 091.  
Tel: +91 33 4403 4000

#### Mumbai

1st Floor, Lodha Excelus,  
Apollo Mills,  
N. M. Joshi Marg,  
Mahalaxmi,  
Mumbai – 400 011.  
Tel: +91 22 3989 6000

#### Noida

Unit No. 501, 5th Floor,  
Advant Navis Business Park,  
Tower-A, Plot# 7, Sector 142,  
Expressway Noida,  
Gautam Budh Nagar,  
Noida – 201 305.  
Tel: +91 0120 386 8000

#### Pune

9th floor, Business Plaza,  
Westin Hotel Campus, 36/3-B,  
Koregaon Park Annex,  
Mundhwa Road, Ghorpadi,  
Pune – 411 001.  
Tel: +91 20 6747 7000

#### Vadodara

Ocean Building, 303, 3rd Floor,  
Beside Center Square Mall,  
Opp. Vadodara Central Mall,  
Dr. Vikram Sarabhai Marg,  
Vadodara – 390 023.  
Tel: +91 265 619 4200

#### Vijayawada

Door No. 54-15-18E,  
Sai Odyssey,  
Gurunanak Nagar Road, NH 5,  
Opp. Executive Club, Vijayawada,  
Krishna District,  
Andhra Pradesh – 520 008.  
Tel: +91 0866 669 1000

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2019 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (“KPMG International”), a Swiss entity. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

This document is meant for e-communication only