



POEM-PLACE OF EFFECTIVE MANAGEMENT

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Introduction

As per Section 6 of the Income Tax Act'1961 (As amended), it specifies that the company will be said to be resident in India, if it satisfies the following condition:

- It is an Indian company or
- Place of effective management is in India

Two major criteria have been laid down for deciding the place of effective management and the criteria are as follows:

- Key commercial & managerial decisions are taken from that place
- It is taken in substance

The Finance Act 2015 has been amended for the test of residence for foreign companies to provide that a company would be treated as resident in India if its place of effective management in the previous year is in India.

“Place of effective management” has been defined to mean a place where **key management & commercial decisions** that are necessary for the conduct of the business of an entity as a whole are in substance made.

The place where these management decisions are taken would be more important than the place where such decisions are implemented. For the purpose of determination of POEM, it is the substance which would be conclusive rather than the form.

Applicability

POEM came into effect w.e.f. 1st April 2018 (as per Budget Announcement of 2017).

Guiding Principles for determination of Place of Effective Management (POEM) of a company was issued on 24th January 2017 (Circular No. 6/2017 of Ministry of Finance).

Clarification for determination of Place of Effective Management (POEM) of a company, other than an Indian Company-Requirement dated 23rd February, 2017 (Circular No. 8/2017 of Ministry of Finance) has stated that the POEM guidelines shall not apply to a company having Turnover or Gross Receipts of Rs.50 Crores or less in a Financial Year.

Guiding principles in determination of POEM

- Passive Income
- Passive income of a company shall be aggregate of:
 - Income from the transactions where both the purchase & Sale of goods is from/ to its associated enterprises.
 - Income by way of royalty, dividend, capital gains, interest or rental income
- A company should be engaged in active business outside India if the passive income is not more than 50% of its total income.
 - less than 50% of its total assets are situated in India
 - Less than 50% of total number of employees are situated in India or are resident in India
 - The payroll expenses incurred on such employees is less than 50% of its total payroll expenditure.
- POEM in case of a company engaged in active business outside India shall be presumed to be outside India if the majority meetings of the board of directors of the company are held outside India.
 - Determination of whether the company is engaged in active business outside India - the average of the data of the previous year & two years prior to that shall be taken into account. In case the company has been in existence for a shorter period, then data of such period shall be considered.

- Place where main and substantial activity of the company is carried out; or
Place where the accounting records of the company are kept.

Assessment based on POEM

The Assessing officer proposes to hold a company incorporated outside India, on the basis of its POEM, as being resident in India then any such finding shall be given by the assessing officer after seeking prior approval of the principle commissioner or the commissioner, as the case may be, in this regard. The principal commissioner or the commissioner shall provide an opportunity of being heard to the company before deciding the matter.

Who is affected by the Legislation?

- Subsidiary Companies / Joint Ventures of Indian Parent Company established overseas (including companies incorporated in Singapore)
- Software companies having parent companies in India & operate in various overseas jurisdiction.
- Investment companies established overseas by Indian Companies to enjoy tax treaty shopping.
- Shell companies incorporated overseas but managed & operated from India.