

Preface

1. ***Author*** has felt when he ***qualified*** as Chartered Accountant (CA) in Year 1985 that ***legal provisions' interpretations*** are ***big challenge*** for legal professionals, govts' officials and public at large ***in India and outside India***.
 2. ***Author*** has ***realized*** that ***something*** should ***be developed to resolve this challenge*** in India and outside India.
 3. ***Author*** has ***started compiling*** Frequently Asked Questions (FAQs) on many subjects where his 100% ***answers are precisely based on Yes or No i.e. white or black nothing is grey***
 4. ***Author*** has ***compiled approximately 150 +(plus) research papers / books with 25 thousand + (plus) pages*** on many prevailing subjects / acts in India and outside India.
 5. ***Author's 1st paper book*** is now ***being published*** under head FAQs on Enforcement Directorate (ED) ***where 571 FAQs are replied*** based on Yes or No i.e. white or black nothing is grey
 6. This ***book*** is also ***containing***
 - (i) Foreign Exchange Management Act (***FEMA***) 1999 and rules / regulations
 - (ii) Prevention of Money Laundering Act (***PMLA***) 2002 and rules / regulations
 - (iii) Fugitive Economic Offenders Act (***FEOA***) 2018 and rules / regulations
 7. This ***book*** is ***published with Sai Kripa and dedicated*** to my father (late) ***Mr. M.R. Agarwal***, Mother ***Mrs. R.D. Agarwal***, wife ***Mrs. Snigdha Agarwal***, daughter ***Ms. Soumya Agarwal***, daughter ***Ms. Sanya Agarwal*** and dedicated team headed by ***Rajat Kumar***
- ***I trust that you will be enriched by reading this book***

With best wishes,
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Author's Profile

Mr. Satish Agarwal (FCA) is heading M/s Satish S Agarwal & Co. Chartered Accountants since 1985 with a team of dynamic young professionals serving clients from various business sectors including public listed companies and government undertakings. Firm was also registered with PCAOB (USA) for undertaking audits and other work of US GAAP.

He is regularly advising on several matters to Institute of Chartered Accountant of India (ICAI) and also to Ministry of Commerce (MoC) for Foreign Trade Agreements (FTAs) and World Trade Organization (WTO) for securing India's best interests.

He is continuously advising on Foreign Investments (FIs) in India and also on Overseas Direct Investments (ODIs) outside India.

He is known for his expertise in incorporating companies in most of countries across the world.

He has written around 150 +(plus) Research papers / books containing 25 thousand +(plus) pages available "freely" on certain portals like:

https://taxguru.in/author/satishagarwal307_1957

Or

www.femainindia.com

Few out of abovementioned Research papers / books are as under:

- 1. Book on Enforcement Directorate (ED) in India- (Book with 617 pages)***
- 2. Director of Revenue Intelligence (DRI) in India***
- 3. Central Bureau of Investigation (CBI) in India***
- 4. National Investigation Agency (NIA) in India***
- 5. Serious Fraud Investigation Office (SFIO) in India***
- 6. Financial Intelligence Unit (FIU-IND) in India***
- 7. Central Vigilance Commission (CVC) in India***
- 8. Narcotics Control Bureau (NCB) in India***
- 9. Research & Analysis Wing (R&AW) in India***
- 10. Economic Offence Wing (EOW) in India***
- 11. Intelligence Bureau (IB) in India***
- 12. Director General of Income Tax Criminal Investigation (DGITCI) in India***
- 13. National Company Law Tribunal (NCLT) in India***
- 14. Security Exchange Board of India (SEBI) in India***
- 15. Prevention of Corruption (PC) Act, 1988 in India***

16. *Foreign Assets Investigation Unit (FAIU) in India*
17. *Book on International Financial Services Center (IFSC) in India (Book with 290 pages)*
18. *Replacement of Indian Penal Code (IPC) Criminal Procedure (CP) & Evidence Act (EA) in India*
19. *Undisclosed Foreign Income & Asset (UFIA)-Black Money Act, 2015*
20. *Statutory provisions for General Anti Avoidance Rule (GAAR) in India*
21. *Reserve Bank of India (RBI) Act, 1934*
22. *Foreign Exchange Management Act (FEMA) 1999 in India*
23. *Benami Transactions (Prohibition) Amendment Act, 2016 in India*
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50. *Auditor Checks and Reporting for Indian Companies in India*
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52. *Tax Audit Report (TAR) + Accounting Standard (ASs) in India*
53. *World Trade Organisation (WTO) & Benefits for India*
54. *Deposits by Corporate in India*
55. *Expatriates + Foreign Citizens in India*
56. *Book on Foreign Investments (FIs) by Non-Residents of India (Non-RoI) (Book with 346 pages)*



41 FAQs on POEM on company located outside India but operated from India

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41 FAQs on POEM on company located outside India but operated from India

(A) Briefs on POEM for companies located outside India but controlled from India

1. Briefs on introduction for POEM's application in India

- (i) *Our article* written specifically in benefits *for* understanding about *residential status of company located outside India but* Place of Effective Management (POEM) *existed in India* during any previous year.
- (ii) POEM in India *introduced through Finance Act 2015* + also applicable from assessment year (AY) *2017-18* for previous year ending on *March 31st 2017* for *taxation* on company located outside India but POEM existed in India during any previous year (both).
- (iii) POEM in India *inserted through section 6(3)(ii) of Income Tax Act (ITA), 1961* under taxation on company located outside India but POEM existed in India during any previous year.
- (iv) POEM *Guidelines notified through CBDT's circulars no. 06 + 08 + 25 of 2017* under taxation on company located outside India but POEM existed in India during any previous year.
- (v) (a) POEM *Guidelines notified* under taxation on company located outside India but POEM existed in India during any previous year *for non-clarity against applicability for payment of advance tax + applicability of TDS + etc. (all)* in India.
(b) Finance Act, 2016 *deferred* for applicability of POEM *from April 1st 2016 to April 1st 2017* (AY 2017-18).
(c) CBDT *clarified through circulars for determination* of POEM + also *transition mechanism* for taxation on company located outside India but POEM existed in India during any previous year (*both*).



- (vi) POEM *applicable for 12 month* like from April 1st to March 31st *when key management + commercial decisions regularly + predominantly being made during whole (100%) year + also during part (not 100%) year (all).*
- (vii) POEM guidelines from CBDT *be clearly define every term* like key + effective + key management + commercial decision + senior management + Key Management Personnel's (KMP) *(all) to avoid any ambiguity for interpretations in future.*
- (viii) (a) *Application of POEM in India be based on specific facts + also circumstances (both).*
 (b) POEM guidelines *be clearly define factors* which to be *considered to determine POEM in India + also maximum illustrations be provided for clarity of applicability through CBDT's circulars + notifications + press releases + etc. (all).*

2. Briefs on *criteria's for POEM's application in India*

- (i) When *company* located outside India but POEM existed in India *not engaged in Active Business outside India (ABOI)*
- (ii) When *majority of members of Board of Directors (BODs) residing in India*
- (iii) When *senior management making key management decisions + commercial decisions (both) in India for conducting wholly (100%) + substantially (around 100%) business outside India.*
- (iv) When *place for taking + also implementing (both) key decisions located in India*
- (v) When *global turnover or gross receipts exceeding INR 50 crore during relevant financial year* ● notified vide CBDT *Circular no. 08 of 2017*

3. Briefs on *OECD role's for POEM's application in India*

- (i) Govt. inserted *provisions for treating POEM in India* by altering language under section 6(3)(ii) of ITA, 1961 *through Finance Act, 2015* based on international practices like guiding principles of OECD
- (ii) *Interpretation for applicability of POEM in India derived from international practices + also guiding principles of OECD (both).*



- (iii) OECD's *guiding principles* treated attempt to interpret *for determining POEM's applicability*.
- (iv) OECD's *commentary providing tie-breaker rules for determining residency in India + also residency in 1 more country outside India simultaneously* based on place of key management + also commercial decisions (*all*).
- (v) OECD's *commentary advising to examine facts + circumstances (both)* for determining application of POEM.
- (vi) OECD's *commentary advising entity when same entity has more than 1 place of management* based on effective management.
- (vii) *OECD's commentary advising various factors for determining application of POEM*
 - (a) Place where *meetings of BoDs* or equivalent body of company located outside country *being usually held*
 - (b) Place where chief executive officer (*CEO*) + also other senior executives (*both*) *being usually carrying business activities*
 - (c) Place where day-to-day *management being carried*
 - (d) Place where *headquarter located*
 - (e) Place when *country's laws governed legal status of company*
 - (f) Place where accounting *records being kept*
 - However *India not applying OECD's interpretation on POEM*

4. *Briefs on important factors for POEM's application in India*

- Certain *important factors for application of POEM in India* like:
 - (i) *Place factor*
 - *Place where Senior Management + Key Management Personnel's (KMP) located*
 - (a) Also *meetings of BODs being held*
+ (*plus*)
 - (b) Also *Shareholder's influence* existed



(ii) *Ancillary factor*

- *Place where operational management + Operational commercial decisions (both) being taken*

(iii) *Limited Relevant factors + Irrelevant factors (both) for application of POEM in India*

- (a) *Place of incorporation + governing law treated limited relevance*
- (b) *Place of location of accounting records kept treated limited relevance*
- (c) *Place of location of global advisory committee in India + providing non-binding advisory services treated irrelevant factor*
- (d) *Place of location of support service treated irrelevant factor.*

5. *Briefs on Safe harbor provisions for POEM's application in India*

(i) *POEM not to be considered in India when company located outside India but POEM existed in India with minimum base tax rate like 20% + also Income tax department required to allow Foreign Tax Credit (FTC) in India (both).*

(ii) (a) *POEM not to be considered in India when primary assets + employees (both) located outside India.*

+ (plus)

(b) *Also POEM not to be considered in India when company already fully active + also fully operative (both) outside India.*

+ (plus)

(c) *Also CBDT already allowed through guidelines issued vide circular no. 06 of 2017 where certain criteria's prescribed for minimum % of Passive incomes + assets + employees + expenses on salaries (all) located outside India for treating Active Business outside India (ABOI) + also Income Tax Department (ITD) in India not permitted to apply POEM on company located outside India.*

(iii) *CBDT required to prescribe specific guidelines when POEM be invoked in exceptional cases (only) like invocation of GAAR's provisions in India*

(iv) *CBDT required to allow FTC when POEM already invoked on company located outside India but POEM existed in India*



- (v) CBDT required to prescribe *guidelines to avoid double taxation* in hands of more than 1 companies when *working in multi-layer structure* in India.
- (vi) CBDT required to consider existing *TP provisions* applicable in India.

6. Briefs on *issuing guidelines for POEM's application + transfer pricing (TP) principles*

- (i) CBDT required to issue guidelines for not to consider transactions between associate enterprises under POEM in India + also for Indian company under specified domestic transactions (*SDT*) for *Transfer Pricing (TP) principles* in India (both).
- (ii) CBDT required to issue guidelines for not to consider transaction between associate enterprises under POEM in India + also with group companies located outside India for application of *TP principles* in India (both).

7. Briefs on *Mutual Agreement Procedure (MAP) for POEM's application in India*

- CBDT required to issue guidelines to undertake tax compliance under *ITA, 1961* when company located outside India but *POEM existed in India* + also be confirmed under *MAP through DTAA (treaty)*(both).

8. Briefs on *POEM's application up to march 31st 2016 under section 6(3)(ii) of ITA*

- (i) On company *located outside India* but *POEM* existed in India
+ (plus)
- (ii) On company located outside India but *control + management* of affairs (both) *100% situated in India*

9. Briefs on *POEM's application from April 01st 2016 under section 6(3)(ii) of ITA*

- (i) On company *located outside India* but *POEM* existed in India
+ (plus)
- (ii) On company located outside India but *control + management* of affairs (both) *wholly (100%) or substantially (near to 100%) situated in India*

10. Briefs on *changes in provisions for POEM's application through Finance Act*

- (i) *POEM* existed in India when company located outside India but *having effective management* of business affairs *from India* beside holding *1 meeting* outside India.



+(plus)

- (ii) Also POEM *existed* in India when *shell company* located outside India *to avail* lower income tax or *0% income tax* through residency in tax free (tax heaven) country + territory (both) where company *having effective management* of business *from India*.
- (iii) Several *cases for tax evasion* already *observed by* IT (revenue) department through Assessing Officers (AO) + also *endorsed by ITAT* located at Delhi in case of Radha Rani Holdings vs ACIT (2007) 110 TTJ Delhi 920
- (iv) (a) POEM *being used* by several developed countries *for determining residential status* + recognized + also *accepted by* Organization of Economic Cooperation and Development (OECD) (all).

+(plus)

- (b) Also POEM *inserted* in Indian tax laws *to align* with *international tax* laws.

11. Briefs on shipping business for POEM's application in India

- (i) POEM *originated* from ITA, 1961 *for taxing shipping companies* based on POEM.
- (ii) POEM *1st time introduced through* Direct Tax Code (DTC) 2010 *for determining residential status* of companies located outside India but POEM existed in India.

12. Briefs on Income tax provisions for POEM's invocation in India

- (i) AO required *to refer case* when POEM already existed in India *to* Commissioner of Income tax (CIT) thereafter CIT required *to refer case to approval panel* for obtaining approval *before invoking POEM* on company located outside India.
- (ii) *Process to refer case* by AO to CIT thereafter CIT to approval panel for obtaining approval *before invoking POEM* on company located outside India already *similar* as prescribed *for invoking GAAR's provisions* under section 144BA of ITA, 1961.
- (iii) *Company* located outside India *permitted to make it representation before CIT* thereafter approval panel (*both*) *against invocation's order* for POEM.



(B) Implications of POEM on companies located outside India but controlled from India

13. Briefs on POEM's application under section 6(3)(ii) of ITA, 1961

- (i) 100% global incomes of company located outside India but POEM existed in India liable to Income tax under section 5(1) of ITA, 1961 in India.
- (ii) Income tax @ 40% be levied on global incomes of company beside located outside India treated resident of India where income tax being levied @ 22% or @ 25% in India

14. Briefs on POEM's other provisions under section 115JH of ITA, 1961

- (i) (a) Income Tax being levied on global income of company in India + outside India
+ (plus)
(b) Effectively double income tax being levied in India + outside India (both)
+ (plus)
(c) Company located outside India but POEM existed in India permitted to avail FTC against income tax paid + TDS (both) outside India.
- (ii) Govt. of India already inserted section 115JH under ITA, 1961 + also CBDT issued notification no. 28 of 2018 for transition mechanism (both).

15. Briefs on POEM's application through Govt. of India (Govt.)

- (i) Govt. empowered to notify conditions for computation of total incomes + treatment of unabsorbed depreciations + set off of losses + carry forward of losses + collection + recovery + special provisions for avoidance of tax + exceptions + modifications + adaptations specified through notifications + circulars for transition mechanism against previous year when POEM not applied in preceding to previous year (all).
- (ii) Govt. empowered to notify provisions for transition mechanism when determination of POEM already made during assessment year proceeding for previous year + for other previous year + for succeeding previous year if assessment proceedings completed before end of previous year (all).

16. Briefs on POEM's application through transition under section 115JH of ITA

- (i) Transition mechanism under section 115JH of ITA, 1961 permitting benefits + also reliefs under double taxation avoidance provisions of ITA, 1961.



- (ii) (a) *100% Global Incomes* of company located outside India but POEM existed in India to *be taxed* under section *115JH* of ITA, 1961.
+ (plus)
- (b) *100% unabsorbed depreciations* + carry forward losses of company located outside India in country of incorporation *be set off* + carried forward *(all)* in *India* while computing taxable incomes under ITA, 1961.
+ (plus)
- (c) *CBDT issued Notification* no. 29 dated June 22, 2018 *for modifications* + exceptions + adaptations *against set offs* + carried forwards + transition mechanism *(all)*

17. Briefs on POEM's disallowances of benefits + exemptions by Assessing officer (AO)

- (i) AO *permitted to disallow* against already *availed benefits* + exemptions + reliefs claimed in India *by company* located outside India + *also granted by AO* when company *failed to comply conditions* specified in *notification* no. 29 dated June 22, 2018 under section *115JH(1)*
- (ii) AO *permitted to disallow* abovementioned *benefits* + exemptions + reliefs + *also to re-compute taxable incomes* under exceptions + modifications + adaptations which *not permissible* under section *115JH (1)* but already *claimed by company* in India
- (iii) AO *permitted to rectify assessment order* under section *154(7)* in 4 assessment year from end of previous year *when company failed to comply conditions* referred under section *115JH(1)* of ITA, 1961.

18. Briefs on POEM's exceptions + modifications (both) in India

- (i) When company already *assessed to tax in foreign jurisdiction* located outside India
 - (a) Company located outside India *required to take* Written Down Value (WDV) against depreciable asset *on 1st day of previous year* already taken in income tax records in foreign jurisdiction located outside India *for computing taxable income in India*
+ (plus)
 - (b) Company located outside India *required to compute* WDV against depreciable asset when WDV *on 1st day of previous year not already taken* in income tax records in foreign jurisdiction located *outside India*.



+ (plus)

- (c) Company located outside India required to compute WDV for computing taxable incomes in India through working for assets already installed + utilized + also depreciation actually allowed in foreign jurisdiction located outside India (all)
- (ii) When company already not assessed to tax in foreign jurisdiction located outside India
- Company located outside India required to take WDV against depreciable asset on 1st day of previous year already taken in books of accounts maintained under laws of foreign jurisdiction located outside India for computing taxable incomes in India
- (iii) When company already assessed to tax in foreign jurisdiction located outside India
- Company located outside India required to take brought forward losses + unabsorbed depreciations (both) on 1st day of previous year already taken in income tax records in foreign jurisdiction located outside India for computing taxable income in India.
- (iv) When company already not assessed to tax in foreign jurisdiction located outside India
- Company located outside India permitted to take brought forward losses + unabsorbed depreciations (both) on 1st day of previous year which already taken in books of accounts maintained under laws of foreign jurisdiction outside India for computing taxable incomes in India
- (v) (a) Company located outside India permitted to take brought forward losses + unabsorbed depreciations (both) on 1st day of previous year already computed under para (iii) or (iv) + to allow for remaining period in India
- + (plus)
- (b) Company located outside India not permitted to take brought forward losses + unabsorbed depreciations (both) when incomes of company not chargeable to income tax in India
- (vi) Company located outside India required to revise or modify brought forward losses + unabsorbed depreciations (both) referred under para (iii) or (iv) when brought forward losses + unabsorbed depreciations (both) already revised or modified where



due to action from tax authority or legal authority in foreign jurisdiction located outside India.

- (vii) (a) Company located outside India *required for converting financial statements from 1st April to 31st March (for 12 month) when financial statements not prepared outside India for same period*
+ (plus)
- (b) Company located outside India *required for converting financial statements from 1st April to 31st March (for 12 month) when financial statements prepared from 1st January to 31st December or 1st July to 30th June or from 1st October to 30th September (for 12 month) for preceding to previous year + previous year + succeeding year till POEM applicable on company in India*
- (viii) Company located outside India *required to add (+/plus) 3 month or 9 month in preceding accounting year when preceding accounting year ending on 31st December or 30th June in preceding to previous accounting year for converting financial statements from 1st April to 31st March (for 12 month)*
- (ix) Company located outside India *required to allocate on proportionate basis against carry forward losses + unabsorbed depreciations (both) under income tax records in foreign jurisdiction located outside India or books of accounts as case may be outside India.*
- (x) (a) Company located outside India *permitted to apply provisions under Chapter XVII-B of ITA, 1961 beside company liable for income tax under POEM in India.*
+ (plus)
- (b) Also provisions under Chapter XVII-B of ITA, 1961 to *override provisions applicable under POEM in India.*
- (xi) (a) Company located outside India *permitted to apply provisions under Chapter XVII-B of ITA, 1961 when compliances of provisions already executed before company became resident company under POEM in India.*
+ (plus)
- (b) Compliances of provisions under Chapter XVII-B of ITA, 1961 be *treated fulfillment of compliances under POEM in India.*



- (xii) (a) Company located outside India *permitted to apply* provisions under section 195(2) of ITA, 1961 *when compliances* of provisions already *executed before* company became resident under POEM in India.
- + (plus)
- (b) *Compliances* under section 195(2) of ITA, 1961 *be treated fulfillment of* *compliances* under POEM in India
- (xiii) Company located outside India *permitted to avail reliefs + FTC (both)* under section 90 or 91 of ITA, 1961
- (xiv) Company located outside India *restricted to avail proportionate FTC* when company has *offered incomes* under ITA, 1961 *for more than 1 year*



(C) Meanings of words for POEM's application on companies located outside India

19. Meaning of Active Business outside India by company located outside India

- (i) When *passive incomes* outside India *exceeding 50% of total* global incomes
+ (plus)
- (ii) When *assets* outside India *exceeding 50% of total* global assets
+ (plus)
- (iii) When *employees* outside India *exceeding 50% of total* global employees
+ (plus)
- (iv) When *salary's expenses* outside India *exceeding 50% of total* global salary's expenses

20. Meaning of Incomes of company located outside India

- (i) Incomes to include as *computed for income tax* purpose under laws *for country of incorporation* of company
or
- (ii) Incomes to include as *computed for income tax* purpose in *books of accounts* for *country of incorporation* of company where *not requiring computation* of incomes for *income tax* purpose like *Income Computation and Disclosure Standards (ICDS)* in India.

21. Meaning of value of assets of company located outside India

- (i) *Average of value of assets at beginning + ending (both)* of previous year for tax purpose in country of incorporation of company *when assets* being *depreciable in books* of accounts outside India.
+ (plus)
- (ii) *Average of value of assets at beginning + ending (both)* of previous year for tax purpose in country of incorporation of company *when fixed assets* being *treated block of assets* outside India.
- (iii) *Value of assets be taken* which already recorded in books of accounts *when assets* *existed* outside India.

22. Meaning of number of employees of company located outside India

- *Average of employee at beginning + ending* of previous year in country of incorporation



of company + *also to include not employed directly* like employed on contract basis but performing task similarly to be performed by employed employees (*all*).

23. **Meaning of Pay Roll of company located outside India**

- To include cost of salaries + wages + bonus + 100% employee's compensations + pensions + *also any social cost* born by employer (*all*).

24. **Meaning of Head Office of company located outside India**

- (i) To include place where *company's senior management* + also their support staff (*both*) located
- or*
- (ii) To include place *primarily* + predominantly (*both*) when company *having* more than 1 locations for maintaining head office.
- (iii) To include place not necessarily same place where *majority of employees* already *working* + broadly meeting (*both*).

25. **Meaning of Passive Incomes of company located outside India**

- (i) To include incomes from transactions *when purchases* of goods + *sales* of goods (*both*) *transacted with* Associate Enterprises (*AEs*)
- + (plus)*
- (ii) To include *incomes from royalty* + dividend + capital gains + interest + also rent (*all*)
- But*
- (iii) *Not to include* incomes from *interest* when company located outside India + *engaged in business of banking* + public financial institution + also activities already *regulated by regulatory* of country of incorporation in foreign jurisdiction located *outside India*

26. **Meaning of Senior management of company located outside India**

- To include persons those *responsible for developing* + formulating key strategies + policies for company + ensuring exhibitions + overseeing executions + *implementation of strategies* on regular basis + also ongoing basis (*all*) like:
 - (i) Managing Director (*MD*) or Chief Executive Officer (*CEO*)
 - (ii) Financial Director or Chief Financial Officer (*CFO*)



- (iii) Chief Operating Officer (COO)
- (iv) Head of division + Head of department like Chief Information officer + Technology Officer + Director for Sales + director for Marketing + etc. (all).

27. Meaning of POEM in India

- (i) POEM already defined through CBDT's circular No. 06 dated January 24, 2017 place where key management + commercial decision (both) necessary for conducting business wholly (100%) or substantially (near 100%) located in India.
- (ii) (a) POEM be determined each year based on specific facts + circumstances + figures (all).
+ (plus)
- (b) POEM be determined separately for each year

28. Meaning of Determination of POEM of company in India

- (i) (a) POEM applicable when majority meetings of board of directors (BOD's) being held in India
+ (plus)
- (b) POEM applicable when key decisions being taken in India.
+ (plus)
- (c) POEM applicable when abusive + aggressive (both) tax planning's already covered through General Anti Avoidance Rule (GAAR) provisions under section 96 of ITA, 1961 beside POEM not applicable in India
- (ii) (a) POEM not applicable when power of taking key decisions not available with BODs beside majority of meetings of BODs being held in India
- (b) POEM not applicable when general + objective principles of global policy of group already laid down by parent company in certain fields like payroll functions + accounting functions + Human Resource (HR) functions + IT infrastructure + network platforms + supply chain functions + routine banking operational procedures + other functions beside not specific to entity or group of entities (all).



29. Meaning of *Period for determination of ABOI of company outside India*

- (i) *Average of 3 Previous Year (PY) be considered for determining of ABOI like Assessment Year (AY) 2023-24 (PY 2022-23) 2019-20 + 2020-21 + 2021-22 = 3 PY*
- (ii) *Average of 1 or 2 PY be considered for determining of ABOI when existence of company 1 or 2 PY (only)*

30. Meaning of *Foreign jurisdiction outside India*

- *Place of incorporation of company located outside India called foreign jurisdiction.*

31. Meaning of *rate of Foreign exchange for conversion into INR*

- *Rate of foreign exchange for converting foreign incomes + FTC (both) for computing into INR.*



(D) POEM's application in developed countries located outside India

32. Briefs on International Jurisprudence for POEM outside India

- (i) Place where actual *top level of management* + realistic + positive management of taxpayer or trust *taking majority decisions (all)*.
- (ii) Place where *effective* + realistic + positive management *(all) being located*.
- (iii) Place where any *director acting on another person's wishes* + instructions *without considering merit of wishes* + instructions + directions + also *making decisions* with possession of limited information's which required to take any decision *(all)*.
- (iv) Place where *economic centre* + effective centre *(both)* of company *being located*.
- (v) Place where management of *daily's business activities* being *carried*.

33. Briefs on POEM in United Kingdom (UK)

- Place where *effective management* like finance director + managing director + company's *records* + senior administrative staff *(all) being located in UK*

34. Briefs on POEM in Russia

- (i) *Main criteria's for determining POEM in Russia*
 - (a) Place where *majority of meeting of board of directors (BODs)* being *held in Russia*
 - (b) Place where *senior management* of company being regularly *acted in Russia*
 - (c) Place where *key corporate officials performing their actual daily's management activities in Russia*.
- *Meaning of Key corporate officials*

To include *persons like in charge of strategic planning* + management + also control of company *(all) located in Russia*
- (ii) *Auxiliary criteria's for determining POEM in Russia*
 - (a) Place where *preparation of accounting* + also financial statements *(both) being made in Russia*
 - (b) Place where operational *personnel management* being *conducted in Russia*



- (c) Place where *books of accounts* + mandatory legal records being *kept in Russia*
- (d) Place where *certain activities like budgeting* + preparing of consolidated financial statements + *adopting of group standards* + also adopting of group policies (*all*) being *carried in Russia*

35. Briefs on POEM in Italy

- (i) POEM *applicable* where *company* located outside Italy *having registered office* + also main business activities (*both*) being *held in Italy* for greater part of financial year like *9 to 12 month* in financial year.
- (ii) POEM *applicable* where *company* located outside Italy *having place of management* + control + exercising relevant influence + *also satisfying 2 conditions* like:
 - (a) Where *company* located outside Italy *directly* + also indirectly *controlled by* Italian's *resident persons* like company or individual (*any*)
+ (plus)
 - (b) Where *company* located outside Italy *consisting of majority of members of* board of directors (*BODs*) *from* Italian's *resident persons*.

36. Briefs on POEM in Maxico

- Place where *principal administration* of business or POEM being *located in Mexico*

37. Briefs on POEM in Germany

- (i) Place where *registered office or* Place of Management (*PoM*) being *located in Germany*
- (ii) Place where person having *final authority* to take decisions *for management* of business being *located in Germany*

38. Briefs on POEM in Australia

- Place where *incorporation* + *carrying business* + central management + control + also voting power (*all*) being *located in Australia*

39. Briefs on POEM in Switzerland

- Place where *effective management for day to day affairs* + meeting of BoDs + also functioning of administration (*all*) being *located in Switzerland*



(E) Guidance's for POEM's application on companies located outside India

40. Advantages for POEM's application in India for reducing litigations

- (i) POEM perspective for domestic laws + being used important factor for determining residency of company located outside India but being operated from India + also international laws being used for making tie-breaker rules for restricting from dual residency to single residency (all).
- (ii) (a) POEM in India crucial for impacting multinational groups where decisions of foreign entities required to be ratified + also being taken by officials' located in India (both).
+ (plus)
(b) Also multinational groups generally have common directors on board of foreign company + also board of Indian company (both) which creating problem of POEM's application in India.
+ (plus)
(c) Indian entity required to plan to set up company outside India to undertake adequate tax planning.

41. Suggestions for implementation of POEM in India for reducing litigations

- (i) Application of POEM impacting negative effect on genuine companies those operating from outside India
- (ii) (a) Although CBDT already issued guidelines on POEM through circular no. 06 + 08 + 25 of 2017 for determining POEM's application based on nature of guiding principles.
(b) CBDT guidelines on POEM generally vague for many terms used therein. It's suggested that CBDT be rectified guidelines appropriately.
(c) CBDT guidelines on POEM lacking of definite established legal factors for determining POEM's application which likely to lead tax disputes + also existence of POEM in India already subject matter for litigation in many cases . It's suggested that CBDT be rectified guidelines appropriately.



- (iii) (a) POEM's application *be determined based on facts of each case* + also activities of company located outside India *like wholly (100%) or substantial (near 100%)*.
 - (b) POEM's application *be defined key factors* for company located outside India + *to examine 100% facts* + also circumstances on case to case basis (*all*).
 - (c) POEM's application *be taken into account based on facts* + also *locations* necessary *for determining single principal* where effective management being located.
- (iv) POEM's application *be considered based on certain key factors like place of meeting of BODs* + place of *residence of* Key Management Personal (*KMP*) + shareholder's influence *in key management* + commercial decisions + day to day management + also etc. *for examining* to guide in determination of POEM in India (*all*).



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July-2023

