



Applicability of POEM on Foreign Company in India

INDEX

	Topic	Page No.
	(A) Introduction on Applicability of POEM on Foreign Company in India	3
1	Applicability of background for poem on Foreign Company in India	3 & 4
2	Applicability of criteria's for POEM on Foreign Company in India	4
3	Applicability of criteria's for POEM through OECD on foreign company in India	4 & 5
4	Applicability of relevant factors for POEM on foreign company in India	5 & 6
5	Applicability of Safe harbour provisions for POEM on foreign company in India	6
6	Applicability of Suggestions for issuing guidelines against transfer pricing (TP)	6
7	Applicability of Mutual Agreement Procedures (MAP) for POEM on foreign company	7
8	Applicability of POEM up to march 31st 2016 under section 6(3)(ii) of ITA, 1961	7
9	Applicability of POEM from April 01st 2016 under 6(3)(ii) of ITA, 1961	7
10	Applicability of amendment for POEM through Finance Act on foreign company	7 & 8
11	Applicability of POEM for Shipping Business on foreign company in India	8
12	Applicability of Income tax provisions for approving an invocation of POEM	8
	(B) Implications of applicability of POEM on foreign company in India	9
1	Implication's of applicability of POEM section 6(3)(ii) of ITA, 1961 on foreign co.	9
2	Implication's others of POEM under section 115JH on foreign company in India	9
3	Implication's of POEM through Govt. of India (Govt.)	9
4	Implication's of POEM through transition mechanism under section 115JH of ITA	9 & 10
5	Implication's of Disallowance against benefit + exemption by AO	10
6	Implication's of Permitted exceptions + modifications for foreign company in India	10 to 12
	(C) Meaning of words for applicability of POEM on Foreign Company in India	13
1	Meaning of Active Business outside India (ABOI)	13
2	Meaning of Income	13
3	Meaning of value of asset	13
4	Meaning of number of employee	13
5	Meaning of Pay Roll	13

6	<i>Meaning of Head Office of company</i>	14
7	<i>Meaning of Passive Income of company</i>	14
8	<i>Meaning of Senior management of company</i>	14
9	<i>Meaning of POEM in India</i>	14 & 15
10	<i>Meaning of Determination of POEM</i>	15
11	<i>Meaning of Period for determination of ABOI</i>	15
12	<i>Meaning of Foreign jurisdiction outside India</i>	15
13	<i>Meaning of rate of Foreign exchange for conversion into INR</i>	15
(D) Applicability of Poem in countries outside India		16
1	<i>Applicability of International Jurisprudence for POEM outside India</i>	16
2	<i>Applicability of POEM in United Kingdom (UK)</i>	16
3	<i>Applicability of POEM in Russia</i>	16 & 17
4	<i>Applicability of POEM in Italy</i>	17
5	<i>Applicability of POEM in Maxico</i>	17
6	<i>Applicability of POEM in Germany</i>	17
7	<i>Applicability of POEM in Australia</i>	17
8	<i>Applicability of POEM in Switzerland</i>	17
(E) CONCLUSION		18
Profile of Publisher on Applicability of POEM on Foreign Company in India		19



(A) Introduction on Applicability of POEM on Foreign Company in India

1. Applicability of background for poem on Foreign Company in India

- (i) *This article is beneficial for understanding about residential status of foreign company in India where Place of Effective Management (POEM) is existed in India during previous year under consideration*
- (ii) *POEM in India is introduced through finance Act 2015 + applicable from assessment year (AY) 2017-18 for previous year ending on march 31st 2017 under taxation on foreign company in India.*
- (iii) *POEM in India is inserted through section 6(3)(ii) of Income Tax Act (ITA), 1961 under taxation on foreign company in India.*
- (iv) *POEM Guidelines are notified vide CBDT circular no. 06 + 08 + 25 of 2017 under taxation on foreign company in India.*
- (v)
 - (a) *POEM Guidelines as notified under taxation on foreign company in India having non-clarity for applicability of guidelines for determining a POEM against payment of advance tax + applicability of TDS + etc.*
 - (b) *Finance Act, 2016 was deferred for applicability of POEM from April 1st 2016 to April 1st 2017 (AY 2017-18). CBDT has clarified through circulars for providing the guidelines against determination of POEM + transition mechanism for taxing the foreign company as resident in India for first time*
- (vi) *POEM is applicable for 12 months like from 1st April to 31st March where key management + commercial decisions (both) are regularly + predominantly as made during 12 month or 10 - 11 month (both)*



- (vii) **POEM** guidelines from CBDT be clearly define the term as key + effective + key management+ commercial decision + senior management + Key Management Personnel's (KMP) to avoid any ambiguity for interpretation for future matters
- (viii) (a) Applicability of POEM in India should be based on specific facts + circumstances.
- (b) **Hence** POEM guidelines be clearly define the factors to be considered to determine a POEM in India + maximum illustrations be provided for clarity of applicability by CBDT through circulars

2. **Applicability of criteria's for POEM on Foreign Company in India**

- (i) **Where** foreign company is not engaged in Active Business outside India (ABOI)
- (ii) **Where** majority of members of Board of Directors (BODs) are residing in India
- (iii) **Where** senior management is making key management + commercial decisions (both) for conducting as 100% or substantial business in India.
- (iv) **Where** place for taking + implementing (both) key decisions in India
- (v) **Where** global turnover or gross receipts (any one) is exceeding INR 50 crore during financial year as notified vide CBDT Circular no. 08 of 2017

3. **Applicability of criteria's for POEM through OECD on foreign company in India**

- (i) **Govt.** has inserted the provisions for treating a POEM of foreign company 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) **Hence** interpretation for applicability of POEM on foreign company in India is derived through considering the international practices + guiding principles of OECD (both).
- (iii) **However** guiding principles of OECD an attempt to interpret for determining an applicability of POEM on foreign company in India.
- (iv) **OECD** commentary is providing the tie-breaker rules for determining the residency where foreign company in India is resident of 2 countries as based on place of key management + commercial decisions (both).



- (v) **OECD** commentary is advising to examine the facts + circumstances (both) to determine POEM
- (vi) **OECD** commentary is advising the entity where entity has more than 1 place of management but effective management can be at 1 place at 1 time
- (vii) **OECD** commentary is advising various factors for determining a POEM
 - (a) **Place** where meetings of Board of Directors or equivalent body of foreign company are usually held
 - (b) **Place** where chief executive officer (CEO) + other senior executives (both) are usually carrying business activities
 - (c) **Place** where day-to-day management is carried on
 - (d) **Place** where headquarter is located
 - (e) **Place** where country's laws as governed the legal status
 - (f) **Place** where accounting records are kept
 - **However** India is not adhering to OECD interpretation on POEM

4. **Applicability of relevant factors for POEM on foreign company in India**

- (i) **Primary Factors** as relevant for application of POEM in India like place of effective management
- (ii) **Place of Senior Management + Key Management Personnel's (KMP)**
 - (a) **Place of meeting of Board of Directors (BODs)**
 - (b) **Shareholders influence.**
- (iii) **Ancillary factors** as relevant for application of POEM in India
 - **Operational management + Operational commercial decisions (both)**
- (iv) **Limited Relevant factors + Irrelevant factors (both)** for application of **POEM** in India
 - (a) **Place of incorporation + governing law as limited relevance**
 - (b) **Place of location of accounting records kept as limited relevance**



- (c) *Place of location of global advisory committee in India + providing non-binding advisory services as irrelevant factor*
- (d) *Place of location of support service as irrelevant factor.*

5. Applicability of Safe harbour provisions for POEM on foreign company in India

- (i) *POEM should not be considered in India where foreign company is incorporated in jurisdiction with minimum base tax rate like 20% + India should grant Foreign Tax Credit.(FTC)*
- (ii)
 - (a) *POEM should not be considered in India where primary assets + employees employed outside India.*
 - (b) *Hence POEM should not be considered in India where foreign company outside India is active + operative (both).*
 - (c) *However CBDT already allowed through guidelines vide circular no.06 of 2017 where certain minimum % of Passive income + asset+ employee+ expenses on salary (all together) outside India for treating a foreign company as Active Business outside India (ABOI) + not to apply a POEM on foreign company in India*
- (iii) *CBDT should prescribed specific guidelines as similar to GAAR provisions where POEM should be invoked in exceptional cases (only)*
- (iv) *CBDT should allowed to avail FTC where POEM is invoked on foreign company in India*
- (v) *CBDT should prescribed the guidelines to avoid the double taxation in hands of more than 1 foreign company as working in multi-layer structure in India itself*
- (vi) *CBDT should allowed to consider already existed the TP principles in India*

6. Applicability of Suggestions for issuing guidelines against transfer pricing (TP)

- (i) *CBDT should issued the guidelines for not to consider the transaction between associate enterprise as POEM in India and Indian company under specified domestic transactions (SDT) for Indian TP principles.*
- (ii) *CBDT should issued the guidelines for not to consider the transaction between associate enterprise as POEM in India and group company outside India for international TP principles.*



7. Applicability of Mutual Agreement Procedures (MAP) for POEM on foreign company

- *CBDT should issued the guidelines to undertake the tax compliance under ITA, 1961 where foreign company having POEM in India + also to be confirmed under MAP through DTAA (treaty)*

8. Applicability of POEM up to march 31st 2016 under section 6(3)(ii) of ITA, 1961

(i) *On Indian company*

or

(ii) *On Foreign company where control + management of affairs was situated as 100% in India*

9. Applicability of POEM from April 01st 2016 under 6(3)(ii) of ITA, 1961

(i) *On Indian company*

or

(ii) *Where place of effective management (POEM) is situated as 100% or substantially (both) during previous year in India*

10. Applicability of amendment for POEM through Finance Act on foreign company

(i) *Foreign company was having effective management of business affairs from India but holding 1 meeting outside India to avoid a residency in India + application of income tax on foreign company in India.*

+

(ii) *Foreign shell company was availing as lower income tax or 0% income tax in tax free (tax heaven) country + territory (both) beside foreign company effectively controlled + managed from India.*

(iii) *This kind of tax evasion was observed by IT (revenue) department through Assessing Officer (AO) + endorsed by ITAT at Delhi in case of Radha Rani Holdings vs ACIT (2007) 110 TTJ Delhi 920*

(iv) (a) *POEM is used by many advanced countries for determining the residential status + recognized and accepted by organization of Economic Cooperation and Development (OECD).*



(b) Hence POEM is inserted in Indian tax laws to align with international tax laws.

11. Applicability of POEM for Shipping Business on foreign company in India

- POEM is originated from ITA, 1961 for taxing the shipping company as based on POEM. However POEM for purpose of determination of residence of foreign company was first time introduced in Direct Tax Code 2010.

12. Applicability of Income tax provisions for approving an invocation of POEM

- (i) AO is permitted to refer to Commissioner of Income tax (CIT) + CIT to refer to approval panel before invoking POEM on foreign company in India.
- (ii) Process for referring by AO to CIT + CIT to approval panel before invoking POEM on foreign company in India is similar as prescribed for invoking GAAR provisions under section 144BA of ITA, 1961.
- (iii) Foreign company in India is permitted to make its representation against invocation of POEM before CIT + approval panel (both).



(B) Implications of applicability of POEM on foreign company in India

1. Implications of applicability of POEM section 6(3)(ii) of ITA, 1961 on foreign co.

- (i) 100% global income of foreign company is subject to income tax in India under section 5(1) of ITA, 1961.
- (ii) Income tax @ 40% is levied on global income beside foreign company is treated as resident of India where income tax is levied @ 25% in India

2. Implication's others of POEM under section 115JH on foreign company in India

- (i) (a) Income Tax is levied on global income of foreign company in India + outside India (both).
 - (b) Hence double income tax is levied in India + outside India (both)
 - (c) However foreign company in India is permitted to take a benefit of foreign tax credit (FTC) against income tax paid + deducted outside India
- (ii) Now Govt. of India has inserted section 115JH of ITA, 1961 + CBDT has issued a notification no. 28 of 2018 for transition mechanism

3. Implication's of POEM through Govt. of India (Govt.)

- (i) Govt. is empowered to notify the conditions for computation of total income + treatment of unabsorbed depreciation + set off of losses + carry forward of losses + collection + recovery + special provisions for avoidance of tax + exceptions + modifications + adaptations is specified through notification or circular for transition mechanism against previous year where POEM was not applied in preceding to previous year.
- (ii) Govt. is empowered to notify the provisions for transition mechanism where determination of POEM is made during assessment proceeding for previous year + other previous year + succeeding previous year if assessment proceedings are completed as before end of previous year.

4. Implication's of POEM through transition mechanism under section 115JH of ITA

- (i) Transition mechanism under section 115JH of ITA, 1961 is permitting the benefit + reliefs in accordance the double taxation avoidance provisions of ITA, 1961.



- (ii) (a) *Global Income of foreign company having POEM in India is completed in accordance with provisions under section 115JH of ITA, 1961.*
- (b) *Unabsorbed depreciation + carry forward losses of foreign company in country of incorporation be set off + carried forward (both) in India while computing taxable income in accordance with ITA, 1961. However CBDT Notification no. 29 dated 22nd June 2018 is available for modifications + exceptions + adaptations against set off + carried forward + transition mechanism (both)*

5. Implication's of Disallowance against benefit + exemption by AO


- (i) *AO is permitted to disallow against benefit + exemption + relief as claimed by foreign company in India + granted by IT deptt. where foreign company is failed to comply with conditions as specified in notification no. 29 dated 22nd June 2018 under section 115JH(1)*
- (ii) *AO is permitted to disallow abovementioned benefit + exemption + relief + to re-compute taxable income under exceptions + modifications + adaptations as not permissible under section 115JH (1) when already claimed by foreign company in India*
- (iii) *Hence AO is permitted to rectify assessment order under section 154(7) as not exceeding the 4 years from end of previous year when failure to comply the conditions as referred under section 115JH(1) is took place*

6. Implication's of Permitted exceptions + modifications for foreign company in India

- (i) *Where Foreign company is assessed to tax in foreign jurisdiction outside India*
 - (a) *Foreign company in India is required to take the written down value (WDV) against depreciable asset on 1st day of previous year already taken in income tax records in foreign jurisdiction outside India for computing taxable income in India*
 - (b) *Foreign company in India is required to compute the WDV against depreciable asset where WDV on 1st day of previous year is not taken in income tax records in foreign jurisdiction outside India. Hence foreign company in India is required to compute the WDV for computing taxable income in India through working the asset as installed + utilized + depreciation actually allowed in foreign jurisdiction outside India*

- (ii) **Where** Foreign company is not assessed to tax in foreign jurisdiction outside India
- Foreign company in India is required to take the WDV against depreciable asset on 1st day of previous year already taken in books of accounts as maintained in accordance with laws of foreign jurisdiction outside India for computing taxable income in India
- (iii) Foreign company is assessed to tax in foreign jurisdiction outside India
- Foreign company in India is required to take the brought forward loss + unabsorbed depreciation (both) on 1st day of previous year already taken in income tax records in foreign jurisdiction outside India for computing taxable income in India .
- (iv) Foreign company is not assessed to tax in foreign jurisdiction outside India
- Foreign company in India is required to take the brought forward loss + unabsorbed depreciation (both) on 1st day of previous year already taken in books of accounts as maintained in accordance with laws of foreign jurisdiction outside India for computing taxable income in India
- (v) (a) Foreign company in India is permitted to take the brought forward loss + unabsorbed depreciation (both) on 1st day of previous year as computed under para (iii) or (iv) + to allow for remaining period
- (b) **However** Foreign Company in India is not permitted to take the brought forward loss + unabsorbed depreciation (both) where income of foreign company is not chargeable to income tax in India
- (vi) Foreign company in India is required to revise or modify the brought forward loss + unabsorbed depreciation (both) as referred under para (iii) or (iv) where brought forward loss + unabsorbed depreciation (both) is revised or modified as due to action of tax or legal authority in foreign jurisdiction outside India
- (vii) (a) Foreign company in India is required to convert the Balance sheet+ profit and loss account (both) from 1st April to 31st March (12 months) where Balance sheet+ profit and loss account (both) are not prepared for same period outside India



- (b) **Hence** foreign company in India is required to convert the Balance sheet+ profit and loss account (both) from 1st April to 31st March (12 months) beside Balance sheet+ profit and loss account (both) are prepared from 1st January to 31st December or 1st July to 30th June or from 1st October to 30th September (12 months) for preceding to previous year + previous year + succeeding year till POEM is applicable on foreign company in India
- (viii) Foreign company in India is required to add 3 month or 9 month in preceding accounting year where preceding accounting year is ending on 31st December or 30th June in preceding to previous accounting year to convert the Balance sheet+ profit and loss account (both) from 1st April to 31st March (12 months)
- (ix) Foreign company in India is required to allocate on proportionate basis the carry forward loss + unabsorbed depreciation (both) in accordance with income tax records of foreign jurisdiction outside India or books of accounts as case may be outside India
- (x) Foreign company in India is permitted to apply of provisions of Chapter XVII-B of ITA, 1961 **beside** foreign company is also liable for income tax under **POEM**. **Hence** provisions of Chapter XVII-B of ITA, 1961 are to override the provisions as applicable under **POEM**.
- (xi) Foreign company in India is permitted to apply of provisions of Chapter XVII-B of ITA, 1961 where compliance of provisions have already been executed before foreign company is became resident under POEM in India. **Hence** compliance under Chapter XVII-B of ITA, 1961 is treated as compliance under **POEM** in India
- (xii) Foreign company in India is permitted to apply of provisions of section 195(2) of ITA, 1961 where compliance of provisions have already been executed before foreign company is became resident under POEM in India. **Hence** compliance under section 195(2) of ITA, 1961 is treated as compliance under **POEM** in India
- (xiii) Foreign company in India is permitted to avail the relief + deduction of Foreign Tax Credit (FTC) under section 90 or 91 of ITA, 1961
- (xiv) Foreign company in India is required to avail the proportionate FTC where foreign company has offered the income under ITA, 1961 against more than 1 year 

(C) Meaning of words for applicability of POEM on Foreign Company in India

1. Meaning of Active Business outside India (ABOI) :

- (i) Where passive income outside India is exceeding 50% of total global incomes
+
- (ii) Where asset outside India is exceeding 50% of total global assets
+
- (iii) Where employee outside India is exceeding 50% of total global employees
+
- (iv) Where expense on salary outside India is exceeding 50% of total global expenses on salary

2. Meaning of Income

- (i) Income as computed for income tax purpose in accordance with laws of country of incorporation of company
- or
- (ii) Income as computed for income tax purpose in accordance with books of accounts where laws of country of incorporation of company is not requiring the computation of income for income tax purpose + like ICDS in India.

3. Meaning of value of asset

- (i) Average of value of asset at beginning + ending (both) of previous year for tax purpose in country of incorporation of company where asset is depreciable
+
- (ii) Average of value of asset at beginning + ending (both) of previous year for tax purpose in country of incorporation of company where fixed asset is treated as block of assets.
- (iii) Value of asset in accordance with books of accounts where any other asset is existed.

4. Meaning of number of employee:

- Average of employee at beginning + ending (both) of previous year in country of incorporation of company + include the not employed as directly but performing the task as similar to perform by employee as employed

5. Meaning of Pay Roll:

- Includes the cost of salaries + wages + bonus + 100% employee compensation + pension + social cost as born by employer.



6. **Meaning of Head Office of company**

(i) *Include a place where company's senior management + their support staff are located*

or

(ii) *Include a place as primarily or predominantly (both) the place where company has more than 1 location for head office*

(iii) *Include a place not necessarily the same place where majority of employees are working or broadly (typically) meeting.*

7. **Meaning of Passive Income of company**

(i) *Include the income from transaction where purchase + sale of goods (both) with Associate Enterprise (AE)*

+

(ii) *Includes the income from royalty + dividend + capital gains + interest + rent (all)*

(iii) *But not includes the income from interest where company is engaged in business of banking + public financial institution + activities are regulated by regulatory of country of incorporation in foreign jurisdiction outside India*

8. **Meaning of Senior management of company**

● *Include the persons generally responsible for developing + formulating key strategies + policies for company + ensuring + overseeing the execution + implementation of strategies on regular + ongoing basis 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 + Technology Officer + Director for Sales + director for Marketing + etc.*

9. **Meaning of POEM in India**

(i) *POEM is defined under CBDT circular No. 06 dated January 24th 2017 a place where key management + commercial decision (both) necessary for conducting of business of entity as 100% or substantially is located in India.*



- (ii) *POEM is determined on each year as based on specific facts + circumstances + figures.
Hence POEM is determined every year*

10. Meaning of Determination of POEM

- (i) (a) *POEM in India is applicable where majority of meetings of board of directors (BOD's) are held in India*
- (b) *However POEM in India is applicable where majority of meetings of BOD's are held in India + key decisions are taken in India*
- (c) *Hence POEM in India is applicable where abusive + aggressive (both) tax planning's have has applied under General Anti Avoidance Rule (GAAR) provisions section 96 of ITA, 1961 beside POEM is not applicable in India*
- (ii) (a) *POEM in India is not applicable where power of taking key decisions are not available with BODs beside majority of meetings of BODs are held in India*
- (b) *Hence POEM in India is not applicable where general + objective principles of global policy of group as laid down by parent company (entity) in field of Payroll functions + Accounting functions + Human resource (HR) functions + IT infrastructure + network platforms + Supply chain functions + Routine banking operational procedures + other functions as not specific to entity or group of entities.*

11. Meaning of Period for determination of ABOI

- (i) *Average of data of 3 Previous Year (PY) is considered for determination of ABOI like Assessment Year (AY) 2022-23 (PY 2021-22) 2018-19 + 2019-20+ 2020-21 = 3 PY*
- (ii) *Average of data of 1 or 2 PY is considered for determination of ABOI where existence of company is 1 or 2 PY (only)*

12. Meaning of Foreign jurisdiction outside India

- *Place of incorporation of foreign company is called as foreign jurisdiction outside India*

13. Meaning of rate of Foreign exchange for conversion into INR

- *Rate of Foreign exchange for converting foreign income + foreign tax credit (both) against computing into INR*



(D) Applicability of Poem in countries outside India

1. Applicability of International Jurisprudence for POEM outside India

- (i) Place where real top level of management + realistic + positive management of taxpayer or trust is exercised.*
- (ii) Place where effective + realistic + positive management (all) are located.*
- (iii) Place where director is acting on another person's wishes or instructions without truly considering the merit of wishes or instructions or directions still talking making the decision with possession of limited informations as required to take a decision.*
- (iv) Place where economic + effective centre (both) of company are located.*
- (v) Place where management of daily business activities is carried.*

2. Applicability of POEM in United Kingdom (UK)

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

3. Applicability of POEM in Russia

- (i) Main criteria's for determining a POEM in Russia:*
 - (a) Place where majority of meeting of board of directors (BODs) are held in Russia*
 - (b) Place where senior management of foreign company is regularly activated in Russia*
 - (c) Place where key corporate officials are performing their actual daily management activities in Russia. Key corporate officials includes persons like in charge of strategic planning + management + control of company (all) in Russia*
- (ii) Auxiliary criteria's for determining a POEM in Russia:*
 - (a) Place where preparation of accounting + financial statements are made in Russia*
 - (b) Place where operational personnel management is conducted in Russia*
 - (c) Place where books of accounts + mandatory legal records (both) are kept in Russia*



(d) *Place where activities like budgeting + preparing of consolidated financial statements + adoption of group standards + policies are carried out in Russia*

4. Applicability of POEM in Italy

(i) *POEM is applicable where foreign company is having its registered office + main business (both) in Italy for greater part of fiscal year.*

(ii) *POEM is applicable where foreign company is having a place of management + control + exercising relevant influence + satisfying 2 conditions:*

(a) *Where foreign company is directly + indirectly as controlled by Italian resident persons like company + individual (both)*

or

(b) *Where foreign company is consisting of majority of members of board of directors (BODs) of Italian resident persons.*

5. Applicability of POEM in Mexico

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

6. Applicability of POEM in Germany

(i) *Place where registered office or Place of Management (PoM) is located in Germany*

(ii) *Place where person is having final authority to make the decisions for management of business is located in Germany*

7. Applicability of POEM in Australia

- *Place where incorporation + carry the business + central management + control + voting power (all) is located in Australia*

8. Applicability of POEM in Switzerland

- *Place where effective management for day to day affairs + meeting of board of directors + functioning of administration (all) are located in Switzerland*



(E) CONCLUSION

1. *Application of POEM may impact as negative on genuine company operating from outside India*
2. *POEM is perspective for domestic laws be used as factor for determining the residency of foreign company + POEM is perspective for international laws be used as tie-breaker rule for restricting from dual residency to single residency.*
3.
 - (i) *POEM in India is crucial for impacting the multinational groups where decisions of foreign entities are ratified + taken by officials' in India.*
 - (ii) *Moreover the multinational groups are having common directors on board of foreign company + on Indian company (both) are susceptible to applicability of POEM in India.*
 - (iii) *Hence Indian entity to plan to set up a company outside India is required to undertake adequate tax planning.*
4.
 - (i) *CBDT guidelines on POEM through circular no. 06 + 08 + 25 of 2017 for determining of applicability of POEM are not decisive but nature of guiding principles (only).*
 - (ii) *CBDT guidelines on POEM are vague for many terms as used therein.*
 - (iii) *CBDT guidelines on POEM are lacking of definite established legal factors for determination of POEM as likely to lead to tax disputes + existence of POEM in India be subject matter for litigation in many cases*
5.
 - (i) *POEM should determine as based on facts of each case + activities of foreign company in India as 100% or substantial (both).*
 - (ii) *POEM should define the key factors of foreign company + to examine the 100% facts + circumstances on case to case basis.*
 - (iii) *POEM should take into account the facts + locations as necessary to determine single principal place where effective management is located.*
6. *POEM should considered the key factors like place of meeting of BODs + place of residing of key management + share holder influence in key management + commercial decisions + day to day management + etc. for examining to guide in determination of POEM in India.*



Published By



CA. Satish Agarwal

B.com (Hons) FCA

*Practicing Chartered Accountant Since **1985***

+919811081957

9/14 (First Floor) East Patel Nagar, New Delhi- 110008

Email: satishagarwal307@yahoo.com

Website: www.femainindia.com

◆ **Disclaimer**

- 1. Contents of this article are solely for informational purpose. Neither this article nor information's as contained herein constitute a contract or will form basis of contract.*
- 2. Material contained in this article does not constitute or substitute professional advice that may be required before acting on any matter.*
- 3. While every care has been taken in preparation of this article to ensure its accuracy at time of publication.*
- 4. **Satish Agarwal** assumes no responsibility for any error which despite all precautions may be found herein.*
- 5. We shall not be liable for direct, indirect or consequential damage if any arising out of or in any way connected with use of this article or information's as contained herein.*

September-2022

