

POEM- PLACE OF EFFECTIVE MANAGEMENT-IMPACT ON INDIAN COMPANIES IN SINGAPORE

Residential status for companies – change in definition

Existing Provisions under the Income Tax Act	Proposed Provisions under Finance Act 2015 (Income Tax Act)
A company is said to be resident in India if:	A company is said to be resident in India if:
<ul style="list-style-type: none">• It is an Indian company• During that year, the control and management of its affairs is situated wholly in India	<ul style="list-style-type: none">• It is an Indian company• Its place of effective management in that year is in India

POEM as per Section 6 of Income Tax Act

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



Place of Effective Management

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.

Place of Effective Management

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

Draft guiding principles for determination of POEM of a company was issued on 23rd December 2015 by Government of India-Ministry of Finance.

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.



Place of Effective Management

The decisions made by shareholder on matters which are reserved for shareholder decision under the company laws are not relevant for determination of a company's place of effective management.

These decisions typically affect the existence of the company and are therefore, generally not relevant for the determination of a company's place of effective management.

It may be clarified that day to day routine operational decisions undertaken by junior and middle management shall not be relevant for the purpose of determination of POEM.

POEM & its Applicability

- Decision Test
- Necessity Test
- Pervasiveness Test
- Substance Test

Applicable from 1st April 2018 onwards

Determination of POEM on a year on year basis

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.



Certificate of Residency (COR)-Singapore

The COR is issued by the Tax Department in Singapore

To obtain COR one has to furnish the following:

- Reasons for incorporating the company in Singapore
- Details of the shareholders (up to ultimate holding company) of the company & their respective shareholdings.
- Details of Key employees (eg. CEO, CFO, COO) based in Singapore (If none, please explain why)
 - Name
 - Identification Number
 - Designation & executive duties
 - Residential address
- Copy of the notes of the board of directors meeting. Expected frequency & location of the board meeting.
- Name & tax reference number of a related company that is a tax resident of Singapore, has business activities in Singapore or provides one with support or administrative services (if none, to state so)
- If there were no board meetings held in Singapore, then need to explain the basis for claiming that the company's control & management was exercised in Singapore. Following particulars to be furnished:
 - elaborate on strategic decisions made during the year
 - documentary evidences on strategic decisions made
 - name, designation, duties & place of residence of the persons who made the strategic decisions
 - explain in what way the strategic decisions are considered as being made in Singapore
- Confirm that the company has not claimed tax residency in other countries.

