



Ministry of Finance

CBDT issues Guiding Principles for determination of Place of Effective Management (POEM) of a Company

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The concept of Place of Effective Management (POEM) for deciding the Residential Status of a company was introduced by the Finance Act, 2015. It is effective from 01.04.2016 and accordingly shall apply from assessment year 2017-18 onwards. The guidelines for determining the POEM has been uploaded on website of the Income-tax Department (www.incometaxindia.gov.in). These guidelines of POEM have been finalised, after placing draft guidelines in public domain for seeking comments from stakeholders and general public, and with extensive consultations thereafter.

The Final Guidelines on POEM contain some unique features. Active Business outside India (ABOI) test has been provided, so as not to cover companies outside India which are engaged in active business. The intent is not to target Indian Multi Nationals which are engaged in business activity outside India. The intent is to target shell companies and companies which are created for retaining income outside India although real control and management of affairs is located in India. It is emphasised that these guidelines are not intended to cover foreign companies or to tax their global income, merely on the ground of presence of Permanent Establishment or Business connection in India.

Adequate administrative safeguards have been incorporated in the guidelines by mandating that the Assessing officer (AO), before initiating inquiry for POEM in a case of a taxpayer, will seek approval from Principal Commissioner of Income Tax/ Commissioner of Income-tax. The AO shall also obtain approval from Collegium of Principal Commissioners of Income-tax before holding that POEM of a non-resident company is in India.

It has been further decided that the POEM guidelines shall not apply to companies having turnover or gross receipts of Rs. Fifty (50) Crore or less in a financial year.

The guidelines also contain illustrations to clarify the situations whether POEM shall or shall not apply.

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