

# Place of Effective Management (PoEM)

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# COMPANIES RESIDENT IN INDIA

According to Section 6(3) of the Income Tax Act, 1961,

- A company is said to be resident in India in any previous year, if—

(i) it is an Indian company;

or

(ii) **its place of effective management, in that year, is in India.**

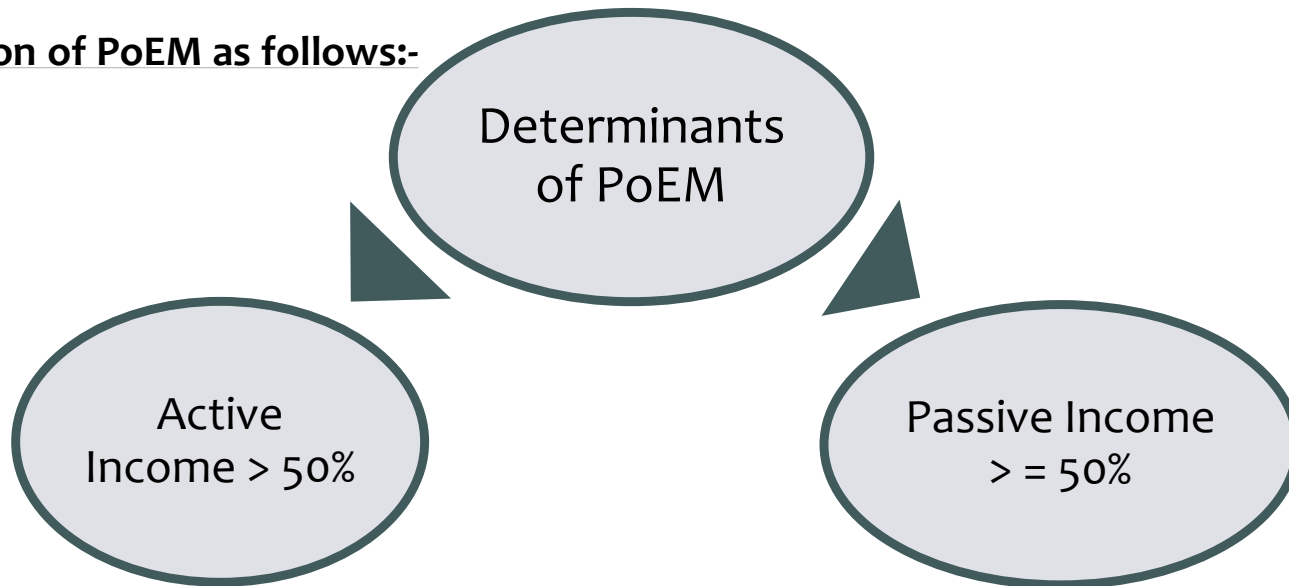
*Explanation.—For the purposes of this clause "place of effective management" means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole, are in substance made.*

- Above definition applicable w.e.f 01-04-2017 (AY 2017-18) (vide Finance Act, 2016).

**POEM guidelines shall not apply to companies having turnover or gross receipts of **Fifty crore or less in a Financial Year****

# DETERMINATION OF POEM

- Explanatory Memorandum to the Finance Bill, 2015 stated that a set of guiding principles to be followed in determination of PoEM would be issued
- Accordingly, CBDT issued draft guiding principles for determination of PoEM of a Company dated 23/12/2015 and thereafter issued final guiding principles for determination of PoEM of a Company dated 24/01/2017
- **Determination of PoEM as follows:-**



› Active income of a company  
Other than Passive Income

› Passive income of a company  
Aggregate of

- income from the transactions where both purchase and sale of goods from/ to its AEs; and
- income of royalty, dividend, capital gains, interest\* or rental income

\* Interest income not to be considered Passive income in case of company engaged in business of banking or public financial institution

# COMPANIES HAVING ACTIVE INCOME > 50%

Company engaged in “active business outside India”

1. Active income >50%; and
2. Total assets are situated in India are <50%; and
3. Employees situated / resident in India <50%; and
4. Payroll expenses on such employees <50%

*(Average Data for the previous three years to be taken)*

Yes

Majority Board Of Directors (BOD) meetings held outside India

Yes

**Minimal/ Limited PoEM exposure in India**

**Exceptions** i.e. PoEM can be considered to be in India

1. If the BOD standing aside and not exercising powers of management and the powers are exercised by:

- Holding company or
- Any other person resident in India

2. Majority BOD meetings held in India

# DEFINITIONS OF IMPORTANT TERMS

- A) the income shall be, -
  - (a) as computed for tax purpose in accordance with the laws of the country of incorporation; or
  - (b) as per books of account, where the laws of the country of incorporation does not require such a computation.
  
- B) the value of assets, -
  - (a) In case of an individually depreciable asset, shall be the average of its value for tax purposes in the country of incorporation of the company at the beginning and at end of the previous year; and
  - (b) In case of pool of a fixed assets being treated as a block for depreciation, shall be the average of its value for tax purposes in the country of incorporation of the company at the beginning and at end of the year;
  - (c) In case of any other asset, shall be its value as per books of account;
  
- C) the number of employees shall be the average of the number of employees as at the beginning and at the end of the year and shall include persons, who though not employed directly by the company, perform tasks similar to those performed by the employees;
  
- D) the term “pay roll” shall include the cost of salaries, wages, bonus and all other employee compensation including related pension and social costs borne by the employer.

# COMPANIES HAVING PASSIVE INCOME $\geq 50\%$

## Stage 1

Identifying / ascertaining **persons** making key management and commercial decisions for the conduct of the company's business as a whole

- BOD if :-
  - Board retains and exercises its authority to govern the Co.
  - Does, in substance make key management and commercial decisions
- If delegation of authority by BOD to:
  - Senior management (may include Managing Director or CEO, Financial Director or CFO, COO or such heads of various other departments)
  - Any other person including shareholder
  - Executive committee (EC)

## Stage 2

Determination of **place** where these decisions are being taken

### Primary Factors

- Place where Board/ senior managers/ other persons regularly meets & makes decisions
- Place where members of EC are based and EC develops and formulates key strategies
- If management centralized - Place of HO
- If management decentralized – Place where senior managers primarily based or normally return to following travel or meet when deciding
- Meeting via telephone or video conferencing – HO where highest level of management and their direct staff located
- Place where majority directors/ persons taking decisions reside

### Secondary Factors

- Place where main activities of the entity carried out
- Place where accounting records kept

- Substance over form concept
- PoEM to be determined on ***year-to year basis***
- Determination of PoEM based on facts and circumstances of a case
- Many places of management but only one PoEM
- **Principles for guidance only - No single principle decisive in itself**
- Snapshot approach not to be adopted - Reference to activities over a period of time
- Decisions made by shareholders on matters reserved for shareholder decision are not relevant for determination of POEM (However other functional decisions made by shareholders may attract POEM provisions)
- POEM of an intermediate holding company is in India the POEM of its subsidiaries shall not be taken to be in India, each subsidiary has to be examined separately
- Active business outside India test to target shell companies and companies which are created for retaining income outside although real control and management of affairs is located in India
- If PoEM in India and also outside India - PoEM in India if mainly / predominantly in India
- Assessing Officer to seek prior approval of Principal CIT/ CIT before taking an adverse view and opportunity of being heard to be provided to the Company by Principal CIT/ CIT



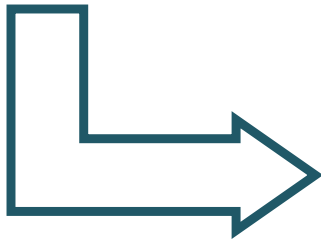
## **Factors that do not matter much :-**

- Formal BOD meetings without de-facto authorities
- Not to target Indian Multi Nationals which are engaged in business activity outside India
- Not to cover foreign companies merely on the ground of presence of Permanent Establishment or Business Connection in India
- Location where operational decisions are taken or Place where decisions are implemented
- Location of head office – if can't be determined due to decentralized management
- Foreign Co. completely owned by Indian Co.
- Director of Foreign Co. residing in India
- Preparatory and auxiliary functions in India
- Local Management situated in India in respect of activities carried out by foreign Co. in India

# HOW SGCO CAN HELP?

## **Understanding**

- Business operations and Group Structure
- Nature of business of Group Companies
- Study of financials of Group Companies
- Authority matrix i.e. Identification of persons taking key management and commercial decisions and place where such decisions taken



## **Analysis**

Assessing & Analyzing extent of PoEM exposure in India



## **Recommendations & Review**

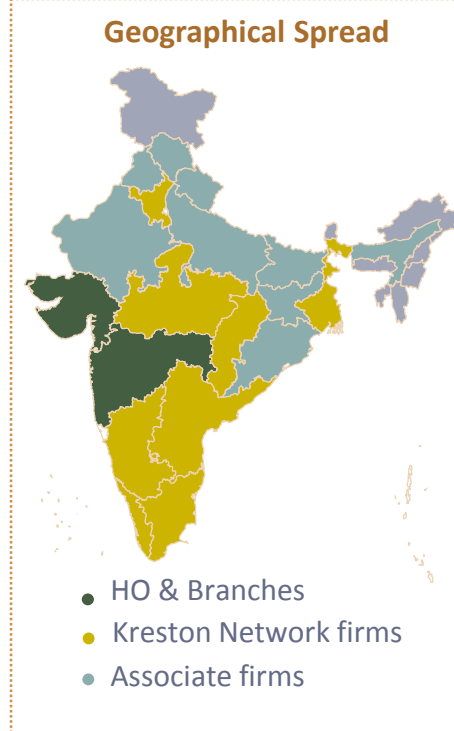
- Providing recommendations/ solutions to limit PoEM exposure in India and on SOPs to be put in place
- Review on on-going basis

# ABOUT S G C O & CO LLP.

- Established in 1992 with a vision to become a “Truly Global Consulting Firm”, having affiliation with Kreston International, headquartered in UK
- A “Multi Disciplinary Chartered Accountants Firm” catering to over 200 client groups across diverse sectors

Factors	Drivers of Quality Professional Services
Service Verticals	6 Service Verticals providing specialized professional services
Partners	13 partners, each vertical lead by two / three partners
Professionals	100+ Qualified Professionals 175+ Executive Staff
Infrastructure	Operates from CBD Andheri, Mumbai and branch at Vadodara.

*Within last two decades, SGCO has grown from 2 to 13 partners and built reputation for providing quality services to mid and large size corporates*



	Resources-300		
	Partner	Professional	Staff
Attest & Compliance	4	30	56
Risk Advisory & Management Assurance	2	35	50
Direct Taxation	2	13	25
Indirect Taxation	2	11	24
Transaction & Business Advisory	2	6	10
Corporate & Allied Laws	1	5	10

### Industry Exposures (Selective)

Media	Power	Retail	Hospitality	Textile	Real Estate/ Infrastructure	Govt.	BFSI	Chemicals	Logistics

**For any assistance / clarification please contact :**

**Mr. Manoj Singrodia (Partner) : [manoj@sgco.co.in](mailto:manoj@sgco.co.in) Cell No.- +91 98210 83062**

4A, Kaledonia-HDIL,  
2nd Floor, Sahar Road,  
Near Andheri Station,  
Andheri (East),  
Mumbai – 400069. India.

Tel.: +91 22 6625 6363  
Fax: +91 22 6625 6364  
E-mail: [info@sgco.co.in](mailto:info@sgco.co.in)  
[www.sgco.co.in](http://www.sgco.co.in)

**Vadodara**  
102 - 103, Shivani Flats,  
B/H Bank Of India,  
Ellora Park, Vadodara,  
Gujarat - 390 023,

Tel.: +91 265 2387747  
Fax: +91 265 2392665  
Vineet Rathi : 098240 45166  
E-mail: [vineet@sgco.co.in](mailto:vineet@sgco.co.in)