



# The Indian Journal for Research in Law and Management

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## POEM AND ABOI

As the name suggests, Place of Effective Management means “place where key management and commercial decisions that are necessary for the conduct of the business of the entity as a whole are, in substance made”.

It is introduced in the budget 2015 by Arun Jaitley (Finance Minister), but due to lack of guiding principles, its applicability is deferred from A/Y 2016-17 to A/Y 2018-19.

While determining the residential status of a company sec 6(3) comes into force and it says that:

Company is Resident if:

- Indian Company or,
- Place of Effective Management in that year is in India

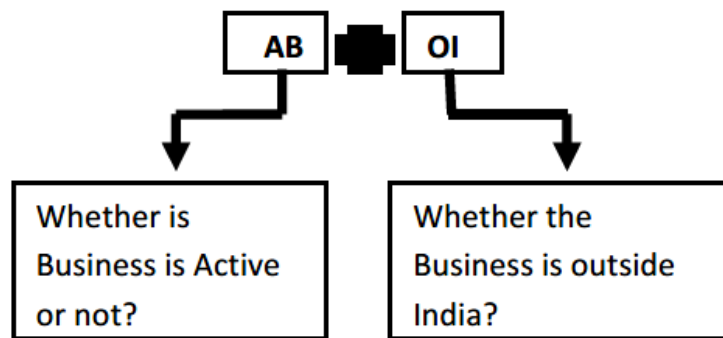
By introducing such provision India is taxing the:-

1. Global Income of its residents
2. The company is treated as tax resident if it has Place of Effective management in India
3. Place of Effective Management, at ANY TIME of the year situated in India, will make company tax resident in India.

As per CBDT vide its Circular No. 06 of 2017, dated 24 January 2017, and has stated that these **guiding principles** shall not apply to companies whose turnover or gross receipts are **Rs. 50 crores or less** than in a financial year.

This Circular also prescribes the Active Business Outside India (ABOI Test) in order to determine POEM.

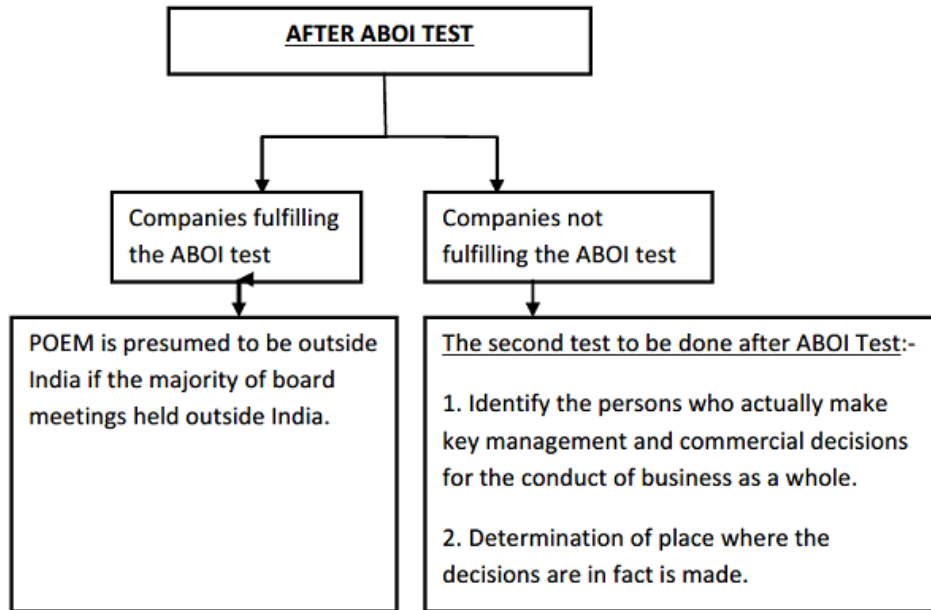
A company is said to be engaged in “ACTIVE BUSINESS OUTSIDE INDIA” if it satisfies all the conditions and hence its POEM is outside India.



- ❖ While determining the “**ACTIVE BUSINESS**” status condition to be considered is:- Passive Income (wherever earned) is less than or equal to 50% of total income.

Note: -Passive Income means income earned from:

1. Royalty, Dividend, Capital gains, Interest (in case of non-banking companies) or Rental Income.
  2. From transactions where BOTH, purchase and sale of goods, is from associated enterprises.
- ❖ While determining the “**OUTSIDE INDIA**” status conditions to be considered are:-
    1. Less than 50% of total assets situated in India (assets test).
    2. Less than 50% of total employees situated in India or are resident in India (employees test).
    3. Payroll expenses or employees situated in India or resident in India is less than 50% of total payroll expenditure (payroll test).



The main reason for the introduction of POEM is to capture the shell companies who are controlling and managing their business from India but incorporated outside India. If a company becomes resident of India it will be taxed at the rate of 30% and in case of the foreign company it will be taxed at the rate of 40%.

**IMPACT:-**

“ The alteration in the residential status in respect of company by including the concept of effective management would go hand-in-hand with the provisions of the Act with the Double Taxation Avoidance Agreements (DTAAs) entered into by India with other countries and would also be in line with international standards. It would also be a measure to deal with cases of shell companies which are incorporated outside India but being controlled and managed from India”.