

# Change of Definition of “Residence” of companies

The Finance Act, 2015 has changed the definition of residence for companies, and this might result in overseas subsidiaries of Indian companies to be resident of India

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# The definition change

## Old provision( AY 2015-16)

- A company incorporated outside India would be resident in India –if its control and management was entirely in India
- Hence even if part of control and management was outside India, it would be non resident

## Post 1/4/2015 ( AY 2016-17)

- A company incorporated outside India would be resident in India –if its Place of Effective Management (POEM) is in India.
- POEM is defined as-
  - Place where key managerial and commercial decisions
  - Necessary for the conduct of business as a whole
  - are in substance made.

# POEM – How to go about it ?

- POEM is fact dependent
- Definition has yet to be backed up by guidelines which are expected to be notified.
- What are managerial or commercial decisions would vary based on specific facts.
- Following Tests of residence need to be done:
  - Substance Test
  - Person Test
  - Territory Test
- Issues
  - Will Parent company control trigger POEM?
  - Board meeting via Video Conference
  - Onus on person making the claim about residential status



# POEM in India - Implications

- Global Income taxable
- Rate of tax will be 40% as the company is still a foreign company
- Subsidiary still a foreign company hence will attract TDS u/s 195 for payments made to it.
- Concessional rate of tax on dividends u/s 115 BBD not applicable as that section applies only to dividends received by Indian companies
- Denial of past losses, if returns not filed.
- Buy back tax not applicable, as S 115 QA applies only to domestic companies

# POEM status

- Advisable to carry out a POEM check for overseas subsidiaries.
- Do's and Don'ts to be identified.
- SOPs to be laid down.
- Status decisions to be taken and documented for justification.

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