

Partners:
Rashmin C. Sanghvi

Naresh A. Ajwani

Rutvik R. Sanghvi

Rashmin Sanghvi & Associates
Chartered Accountants

220, 2nd floor, Arun Chambers, Tardeo Road, Mumbai - 400 034, India.
☎ :(+91 22) 2351 1878, 2352 5694 • Fax: 2351 5275
Website: www.rashminsanghvi.com • E-mail: rashmin@rashminsanghvi.com

14th Feb., 2017

Shri Rasmi Ranjan Das,
Joint Secretary,
TPL 1. CBDT,
Finance Ministry,
Government of India.
New Delhi.

Dear Shri Rasmi Ranjan Dasji,

Re: POEM

Many thanks for your kind clarifications during our talks. The clarifications give a good positive relief. This year, we can see a distinct approach of excluding small assesseees from difficult provisions. Thanks. However, as discussed, I am presenting my queries to you in writing so that the legal - technical issues are properly brought out.

Can you kindly clarify?

1. [POEM guidelines](#) are issued by circular No. 6 of 24th January, 2017. The [Press Release](#) dated 24th January provides that: "The POEM guidelines shall [not apply](#) to companies having turnover or gross receipts of [Rs. Fifty crore](#) or less in a financial year." Such a provision is not given in the [circular](#) No. 6. Can an assessee [rely on the Press Release](#)?

2. You have clarified that it is the department's intention to provide relief in case of this new provision. Even Press Release relief is available to the assessee. In such a case, what is the exact implication of saying that the guidelines shall not apply? I will clarify my query:

[Press Release gives a relief](#). If the foreign company has a turnover of less than Rs. 50 Crore, then it won't be considered to be an Indian resident. If the guidelines don't apply then section 6(3) (ii) will apply; and even a company with small turnover can be considered Indian resident.

The purpose of Press Release together with Circular is to exclude small companies from the rigours of POEM. By not applying the guidelines, Section 6(3)(ii) will be applicable to small companies. They will be considered Indian

residents & liable to Indian tax & compliance responsibility. Then this non-application may be counter - productive.

3. SPV & Turnover: A foreign SPV may be a holding company - holding shares in other companies or properties. The SPV may have no turnover. Gross receipts: in some years, the SPV may have some receipts & in some years it may have no receipts. Is the exemption of turnover of Rs. 50 Cr applicable to SPVs or only to trading companies having turnover?

4. Onus on Assessee or AO? If we apply S. 6(3)(ii), a foreign company having POEM in India should suo moto pay advance tax, file return & comply with Indian tax law. However, if we read the guidelines, it appears that it is for the Assessing Officer to initiate the proceedings for considering a company as Indian resident, get approval from the Principal Commissioner & the Collegium; and then only start the proceedings of applying POEM.

This confusion about whether the assessee should suo moto comply with Income-tax Act remains even under S. 115H introduced last year.

I understand that:

The relief that -

“Foreign companies having turnover or receipts of Rs 50 Crore or less shall not be considered as Indian residents” -

is available to all companies including SPVs.

And unless the AO serves a notice, the foreign company does not have to suo moto file the tax return.

If you can kindly clarify this matter; it will avoid considerable concern at professional and corporate levels.

Best Regards,
For Rashmin Sanghvi & Associates,
Partner

Rashmin Sanghvi