

# ***AWARENESS AND EFFECTIVENESS (IN THE OPINION OF TAX CONSULTANTS AND AUDITORS) OF THE NEW AMENDMENT IN INCOME TAX ACT, “PLACE OF EFFECTIVE MANAGEMENT” WITH SPECIAL REFERENCE TO BENGALURU***

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## **Abstract**

*This paper examines the awareness and effectiveness of the new amendment in IT Act, Place of Effective Management (PoEM). The main objective of this amendment is to bring all those companies which were incorporated outside India but operated from India in order to evade tax. This article examines the data collected with correlation and anova test. With the results we could infer that the respondents were aware about the new amendment and the respondents expect the amendment to be effective. The article concludes by showing that this amendment will bring in the necessary changes in determining the residential status of a company.*

**Keywords:** *New amendment, Awareness, PoEM, Income tax Act, residential status of companies.*

## **I. INTRODUCTION**

The finance Act 2015 made an amendment for determining the residential status of companies by implementation of Place of Effective Management (PoEM). PoEM tests the residential status of the company for taxation in India during any of the given

previous year. Earlier the company was termed to be resident company in India only if the company was incorporated in India or the management of its affairs is done completely in India. But the recent amendment would bring the many foreign companies under the previews of the Indian taxation system if any one of the PoEM factor is met.

The main motive behind the implementation of this amendment is to reduce the amount of shell companies that are operating in India. All these years, those companies which are not incorporated in India were not under the tax bracket of India. As a result there were many companies which were incorporated outside India and controlled from India. It was an easy way to evade from the tax purview of India. But this amendment brings all such companies which have their key managerial decisions taken in India under the tax bracket of India.

From April 1st 2016 as per the new amendment a company is said to be a resident company of India during the previous year of its operation if,

- The company's key decision making about the production or any other commercial activity's decision in terms of conducting the business are taken in India.

OR

- If the company is incorporated in India.

The new amendment is said to be effective from the 1st of April 2017 for the assessment year 2018 and the following assessment years. CBDT has given guiding principles for this amendment with its circulars.

## II. REVIEW OF LITERATURE

Also it exclaims PoEM as a "Tie Breaker Rule for companies set up outside India but managed from India" (Sayta, 16 October 2015)(Kotha, 2015)(Agarwal, 2015)also described the various rates prevailing for domestic and foreign companies under PoEM. It is easy to create a shell company by mere incorporating the company outside the country and controlling it from India. But introduction of PoEM refined this predominant factor by bringing such companies under the tax bracket of India (Sanghvi, 2015). (Kotha, 2015) Tries to compare the previous Control and Management test (CM test) of CBDT (Central Board of Direct Taxes) with that of PoEM which was introduced for a similar purpose and upon comparison it hopes for a better enforcement and effectiveness from PoEM.Government has justified that PoEM is acknowledged by the OECD (Organisation for Economic Co-operation and Development) and it also helps India to align with DTAA (Double Taxation Avoidance

Agreement's)(Agarwal, 2015)(Kotha, 2015). The difficulties that e-commerce business face with the concept of PoEM is clearly visible and even though PoEM could be manipulated it is better amendment than the other laws with similar objectives(Oguttu, March 2008).

## III. STATEMENT OF THE PROBLEM

PoEM is a new amendment which is in effect from 1st of April 2017 in India. The study on this new amendment is limited. Most of the studies are done prior to the implementation of PoEM and also before CBDT issued its guiding principles.Hence most of the studies were probabilistic in nature.

Hence this study is conducted after the implementation of PoEM. This study tries to find out the awareness about the new amendment among CA students and also an attempt is made to find out the opinion of the Tax Consultants and Auditors regarding the effective implementation of this amendment.

## IV. OBJECTIVES

1. To find out if the CA IPCC/Final students are aware of this new amendment.
2. To find out in the opinion of tax consultants and auditors the effectiveness of the PoEM amendment in the country.

## V. RESEARCH METHODOLOGY

The sampling technique used in this study is Intensity sampling. This study has considered the primary data collected from the tax professionals, Auditors and CA-IPCC/CA-Final students in the city of Bengaluru using Google forms.

## VI. ANALYSIS

Correlation		Occupation	Awareness	Changes
Occupation	Pearson Correlation	1	-.111	-.422**
	Sig. (2-tailed)		.444	.002
	N	50	50	50
Awareness	Pearson Correlation	-.111	1	.386**
	Sig. (2-tailed)	.444		.006
	N	50	50	50
Changes	Pearson Correlation	-.422**	.386**	1
	Sig. (2-tailed)	.002	.006	
	N	50	50	50

### Interpretations

The table clearly shows that there is negative correlation between occupation and awareness about this PoEM amendment among the respondents. This also clearly shows that there is significant correlation between the awareness and changes that have taken place after the implementation of PoEM. With this we can conclude that occupation will not have any impact about the awareness about this amendment. 96% of the respondents were aware about this new amendment, with this we can infer that there is awareness about this new amendment.

### Hypothesis

$H_0$ - There is no significant relationship between Awareness of PoEM and Effectiveness of PoEM.

$H_1$ - There is significant relationship between Awareness of PoEM and Effectiveness of PoEM.

### Anova<sup>a</sup>

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	.403	1	.403	4.383	.042 <sup>b</sup>
	Residual	4.417	48	.092		
	Total	4.820	49			

- Dependent Variable: Awareness
- Predictors: (Constant), Effectiveness

### Interpretations

With the above Anova test we can find out that there is relationship between Awareness of PoEM and Effectiveness of PoEM since the significance value is 0.042 at 5% significance level. With this we can reject the Null hypothesis. From this we can infer that those who are aware about this amendment have also said that this amendment will be effective.

## VII. FINDINGS AND CONCLUSION

With the above study we can conclude that this amendment has brought required changes in deciding the residential status of the company. No doubt it has brought in certain changes but there are certain issues in effective implementation of this amendment. From the literature review we can conclude that if a

company holds its meetings outside India, it can still escape from the tax bracket of India. But it is said to be better than its previous laws which were implemented with similar objective.

The respondents are aware about PoEM and various rules laid down by ICAI and CBDT for the determination of residential status of the company.

But in future the laws need to be updated as per the requirement. As the opinion of the professionals there has been a change but they are not sure about the effectiveness of this amendment. As this is a statutory requirement all the companies need to follow the guidelines but how far it is changing the status of companies when professionals themselves have several way outs.

#### **VIII. REFERENCE**

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