Corporate Residency

Tax → Residential.
→ Source.

Person → Individual
→ Corporate

Approaches — Residential Status of Co → Legal approach → Place of incorp.
→ Economic approach → Place of mgmt.

India → Combination → 6 ITA.

Co. — Resident

Incorporated → Indian Co → Resident

"POEM" of the Co. is in India → "Control & mgmt. of the Co."

Foreign Co.

"C&M → wholly in India" → Co.-Resident of India.

IT Act 1922 → 2015 → FA 2015

"POEM" – in India

Resident in India.

⇒ Y do we need Residential status?

Resident

Source → India

Sec 5 of the IT Act – scope of income

Income

"II"

Resident as well as NR.

source.

$\boxed{\text{FI}}$ → "source"

"Resident Rule"

Residents.

NR → Resident

NR → FI → source

R NR

II → ✓ ✓ → "source"

FI → ✓ × — "Resident"

ITA 1922 — § 4(3)(a) & (b)

Residential status of Co → § 6(3)

Otr Co

"Indian Co" → "incorporated"

FA 2015

"POEM" is in India.

⇓

Key mgmt & commercial decision

⇓

"Control & Mgmt"

POEM — ~~CM~~

→ contain — Shell Co.

→ Tax avoidance.

→ 2 justification → Int·all recog. & well acknowledged

→ align domestic laws with that of DTAA

Tie Breaker rule.

Residential → "ITA 1922" → CM Test.

↓

ITA 1961

"FA 1958" Omitted

"S4(c)(b)" → deemed resident if its income arising in British India exceeded its income o/s of Br. Ind. 4 the rel. year.

1961 → Residential

↓

"Control & Mgmt"

↓

"Common law test"

↓

"Central Mgmt & Control"

↓

Resident.

' VVRNM Subbayya Chettiar v CIT

↓

"CM test" → Central mgmt & ctrl.

↓

UK.

De Beers Consolidated Mines Ltd v Howe.

Calcutta Jute Mills Co Ltd v. Nicholson.

Br. Firms — operating in India
X
India not foreign.

Co. based in the colonies → UK
"rule"

CM → Head & Brain

Key issue → Co. policy.
Fin mat.
Disposal & profits.

Residential Co

Indian Co

CM is wholly situated in India

Taxed

POEM

Substance over form.

Radha Rani Holdings (P) Ltd V DIT.

100 shares

99 shares — "G" — Ind Res

1 share — "J" — singer

Shell Co. → O/s India Tax Haven
- → operation India
- → incorporated O/s Ind
- → BOD → same mutt

⇓

"WHOLLY" → × Resident

⇓

CM Test × → "POEM" test.

POEM → Key mgmt & commercial decisions.

necessary 4 d conduct of an entity as a whole, as

in substance made.

w.e.f 1 April 2016.

How to determine POEM?

2010
DTC Bill 2010

"POEM → FA 2015
↳ CBDT - guideline 2015

Active Business outside India. (ABOI) ✓

Other than ABOI

AI + PI

and

✓ (a) Passive income ≤ 50% of TI

✓ (b) Assets located in India < 50% of total Assets of Co.

✓ (c) No. of employee resident in India / situated in India < 50% of total no. of emp

✓ (d) Payroll exp of above employees in India < 50% of total payroll expenses

"Passive Inc" →
- Inc from trans where both purchase & sale are from/to AE
- Royalty / Dividend / CG / Rent / Interest.

ABOI ✓

Majority of meeting held O/S India.

Yes

NR

POEM — O/S India

NR.

Other than ABOI

① Person

Key decision

② Place from where such decision are made.

India

Resident

POEM in India

O/S India → POEM O/S India

NR

POEM

Substance

in India

In India — Indian Resident

Global Inc.

taxable in India

O/s India → NR

Income – source is in India

taxable.

CM – wholly in India

Resident in India

POEM → Guidelines – CBDT

OECD.

Binding.

Helping aid

POEM – presumed to be in

POEM - in India → Resident

POEM

Rebuttable → POEM

Not totally in

DTAA → Shell CO →

A – Resid

B – Residn

POEM

A

B

clean

clear set of guideline

Indian

A

B

CBDT guideline

DTAA

Breaking tie

OECD POEM