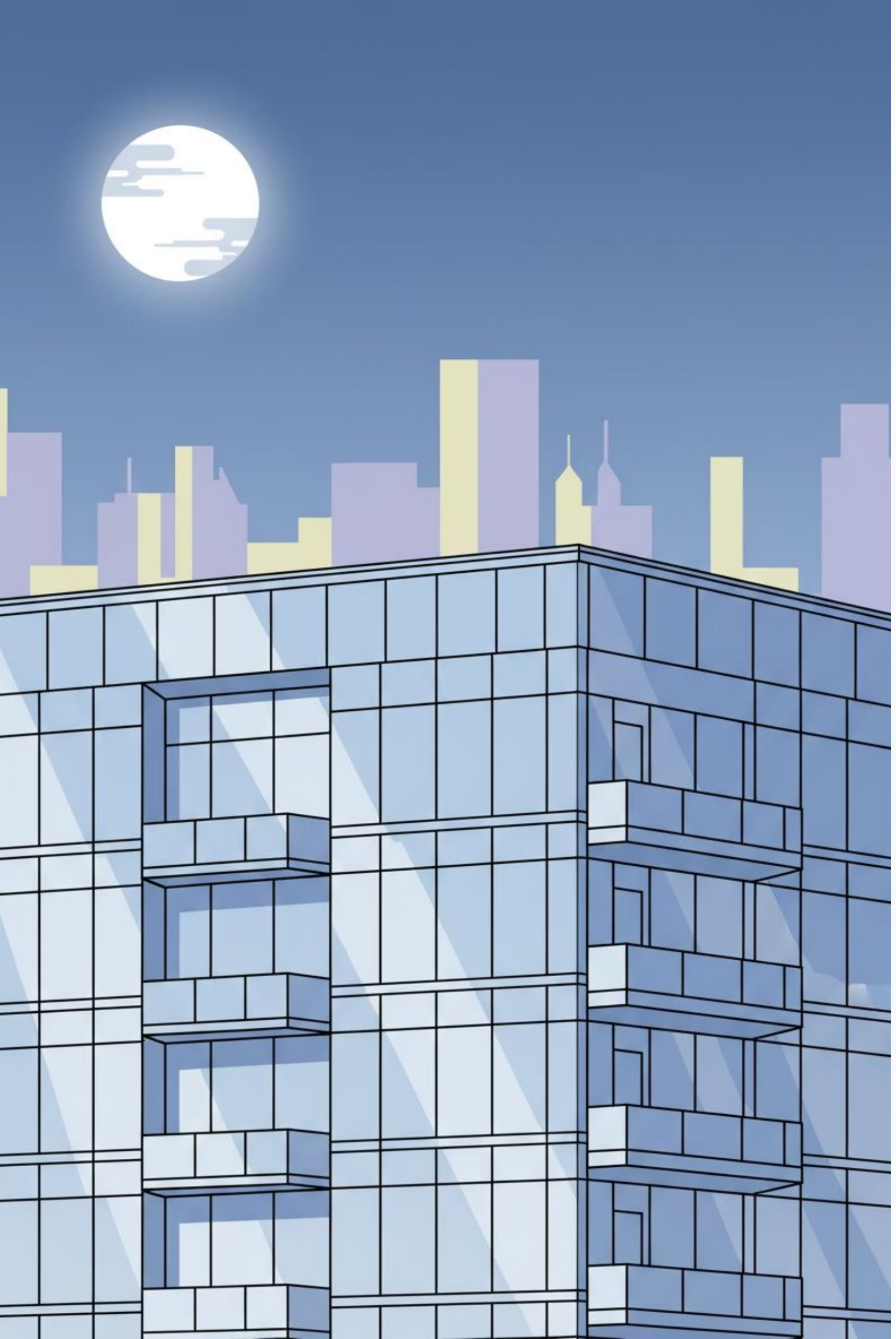

POEM in 2026: When Is Your Foreign Company Tax-Resident in India?

Section 6(3) to Section 6(10) of the Income-tax Act 2025 - A cross-border structuring guide for founders, CAs and global groups

POEM | INCOME-TAX ACT 2025 | SECTION 6(10) | CROSS-BORDER | FEMA

What is Place of Effective Management?

POEM is the residence test for companies. India taxes a resident company on its worldwide income and a non-resident only on income arising in or received in India.

An Indian-incorporated company is always resident. A company incorporated abroad becomes resident in India in a year if its effective management, in substance, sits in India during that year.

The statutory definition, from the Income Tax Department text of Section 6(10)(b) of the Income-tax Act 2025: "a place where key management and commercial decisions necessary for the conduct of business of the company as a whole are, in substance, made."

The two words that decide cases: **"key"** and **"in substance."** Not where routine operations run or a paper board meets, but where the real strategic decisions are actually taken.

The Section Moved. The Test Did Not.

The substantive definition of POEM is identical in both Acts. Only the section number and the governing statute changed.

1

FY 2025-26 and Earlier

Section 6(3), Income-tax Act 1961

Governs AY 2026-27 and earlier. Cite this provision for all pre-2026 residence positions.

2

1 April 2026

Transition Date

Income-tax Act 2025 comes into force. New section numbering takes effect.

3

FY 2026-27 Onward

Section 6(10)(a) and (b), Income-tax Act 2025

Governs company residence via POEM from this financial year forward.

⚠ Period-aware citation is now mandatory: cite Section 6(3) of the 1961 Act for pre-2026 years, and Section 6(10) of the 2025 Act from FY 2026-27.

When Is a Foreign Company Tax-Resident in India?

The founder question is the same in both periods: where is my foreign company actually managed from?

Financial Year	Governing Provision	Resident If
FY 2025-26 and earlier	Section 6(3), Income-tax Act 1961	It is an Indian company, or its POEM that year is in India
FY 2026-27 onward	Section 6(10)(a) and (b), Income-tax Act 2025	It is an Indian company, or its place of effective management is in India in that tax year

The ABOI Test and the Rs 50 Crore Relief

Active Business Outside India Safe Harbour

CBDT Circular 6/2017 dated 24 January 2017 built the Active Business Outside India safe harbour. Broadly, a company has active business outside India where its passive income is not more than 50 percent of total income and less than 50 percent of assets are in India, with further tests on the share of employees and payroll in India.

Passive income means: royalties, dividends, interest, capital gains and related-party income.

The Rs 50 Crore Relief

CBDT Circular 8/2017 dated 23 February 2017 keeps the POEM guidelines out of reach for a company with turnover or gross receipts of Rs 50 crore or less in a financial year.

Important Caveat

Both circulars were issued under the 1961 Act. The 2025 Act carries the POEM definition forward unchanged, so this guidance continues to inform analysis.

Confirm Before Relying

Confirm whether CBDT re-issues or updates the ABOI test and the Rs 50 crore relief under the new Act before relying on them for FY 2026-27 and later.

What POEM Residence Actually Costs You

If your foreign company is held to have its POEM in India, it is a resident company. This is a live risk for founders who incorporate a holding company abroad for fundraising or IP, then run every real decision from India.

Worldwide Taxation

Taxed in India on its worldwide income, not just India-sourced income.

Indian Tax Filing

Must comply with Indian corporate tax filing requirements.

Transfer Pricing

Falls within the transfer pricing and withholding regime.

Treaty Tie-Breaker

Foreign tax credit rules and the tie-breaker article of the relevant tax treaty become critical to avoid double taxation.

What This Means for You

Founders

A foreign flip or holding structure only protects you if the company is genuinely managed abroad. Substance, not paperwork, decides POEM.

CAs and Advisers

The 2025 Act renumbering is a prompt to revisit residence positions taken under the old Section 6(3) and confirm the file supports them.

Cross-Border Groups and Family Offices

POEM sits alongside your FEMA and transfer pricing exposure. The cheapest time to fix a weak structure is before an assessment, not during one.

Action Checklist: Keep Management Where It Belongs

1. **Map Real Decision-Making**

   Map where key decisions are actually made, not where the registered office or accountant sits.

2. **Hold Real Board Meetings**

   Hold real board meetings in the home jurisdiction, with directors who genuinely participate, and keep minutes.

3. **Appoint a Genuine Local Director**

   Appoint at least one director genuinely resident and active in that jurisdiction, with real authority.

4. **Local Financial Controls**

   Keep local bank signatories and financial approvals in the home jurisdiction.

5. **Document Major Decisions**

   Document major decisions and maintain a board pack that stands up to a POEM enquiry.

6. **Test Against ABOI and Rs 50 Crore**

   Test yourself against the ABOI factors and the Rs 50 crore threshold, and take a position in writing.

7. **Check the Treaty Tie-Breaker**

   Check the tie-breaker article of the applicable tax treaty.

Key Takeaways and Next Step

Residence Test

A company is resident in India if it is Indian, or if its Place of Effective Management is in India that year.

Cite the Right Provision

From FY 2026-27, cite Section 6(10) of the Income-tax Act 2025; for earlier years, Section 6(3) of the 1961 Act.

Rs 50 Crore Relief

Small overseas holding companies may fall outside the detailed guidelines via the Rs 50 crore relief, but the statutory residence test always applies.

Substance Beats Paperwork

Fix a weak structure before an assessment, not during one.

Ready to review your cross-border structure?

Book a Call with A S Banka Advisors