

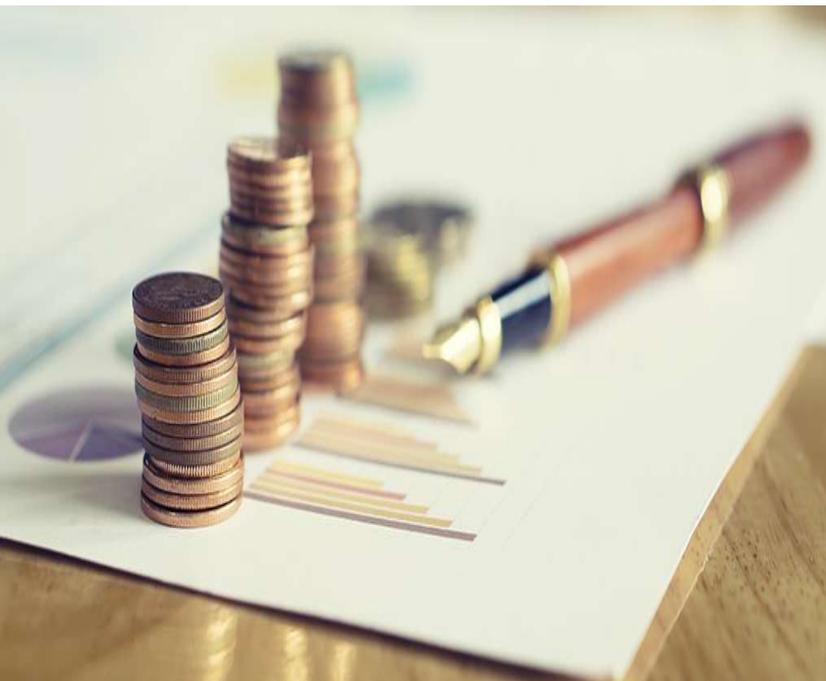


NEWSLETTER

March 2020

D N V & Co.
Chartered Accountants

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DIRECT TAX

TAX BENEFIT FOR EMPLOYING “ADDITIONAL EMPLOYEES”

The Income Tax Act vide **Section 80JJAA** under Chapter VI-A, has provided special deduction for employment of additional employees by assessee. It will be interesting to under that under what circumstances and how much can be the benefit available under this section. We have summarised this special beneficial clause in the following FAQ format:

1. Who is eligible to claim the benefit?

Any assessee who is required to get its accounts audited under section 44AB of The Income Tax Act ie. Tax audit. Tax audit is primarily applicable to Companies whose total sales, or gross receipts in the business exceed Rs. 1 crore. For professionals, the tax audit is applicable if their gross receipts in the profession exceed Rs. 50 Lakhs.

2. What is the benefit?

The eligible assessee will be entitle to claim an additional deduction of an amount equal to 30% of the additional employee cost incurred in the previous year. The deduction can be claimed for the relevant assessment year and two more assessment years.

3. What is the meaning of “Additional Employee”?

Additional employee means an employee who has been employed during the year and whose employment has the effect of increasing the total number of employees employed by the employer as on the last day of the year over the last year.

4. What is the meaning of “Additional Employee Cost”?

Additional employee cost means the total emoluments paid or payable to additional employee employed during the year.

5. What are the conditions to avail benefit?

To avail this benefit, following conditions will need to be satisfied:

- a) The business should not be formed by splitting up or reconstruction of an existing business;
- b) The business should not be acquired by transfer from other person or as a result of any business reorganisation;
- c) There must be increase in number of employees from the total number of employees employed in the last year;
- d) All the emoluments are paid by account payee cheque or bank draft or any other electronic mode;
- e) The total monthly emolument of these additional employees are Rs. 25,000/- or less;
- f) Entire contribution under Employees’ Pension Scheme should not be paid by Government;
- g) The additional employee should participate in the recognised provident fund;
- h) The employee should be employed for at least 240 days during the previous year. In case of businesses engaged in manufacturing of apparel or footwear or leather products, the 240 days should be read as 150 days.
- i) The Company must obtain a report from a Chartered Accountant in Form 10DA certifying all the information and details as mentioned in that form. This report needs to be furnished along with the Tax Return of the Company.

Other explanations:

- For a new business, total emoluments paid to employees employed during the year shall be deemed to be the additional employee cost. Accordingly, full amount of emolument will be eligible for benefit of additional deduction of 30% under this section.
- In case where an employee is employed for a period of less than 240/180 days, as the case may be, during the previous year, but he is employed for a period of 240/180 days in the subsequent year, he shall be deemed to have been employed in the subsequent year. Accordingly, the benefit of this additional deduction shall be available in the subsequent year/s.
- The total emolument does not include any contribution paid or payable by employer to any pension fund or provident fund or any other fund;
- The total emolument does not include any lumpsum payment to employee at the time of termination of his service or superannuation or gratuity, severance pay, leave encashment, retirement benefits etc.

Compiled by CA Malay Damania, Partner DNV & Co.

INTERNATIONAL TAX

SETTING UP A COMPANY ABROAD? CHECK OUT PLACE OF EFFECTIVE MANAGEMENT (POEM) FOR YOUR COMPANY.

The CBDT has given guiding principals for determination of Place of Effective Management (POEM) of a Company. Therefore, if you are planning to or have already incorporated a company outside India, it is extremely important for you to understand the concept of POEM and how it affects your tax liability in India, even with regards to your overseas entity.

History and Background:

In normal parlance, Companies incorporated and situated outside India would be regarded as a non-resident entity and it will be liable to taxation only in the country in which it is incorporated or situated. It however has to pay tax on the income that accrue or arises in India or the income is earned through a business connection or permanent establishment in India. In case where a Company is resident in India, India has right to tax it on its worldwide income and will give credit for the taxes it has paid in other country/ies.

The Indian Income Tax Act provided that a Company incorporated outside India will be regarded as resident in India if the control and

management of its affairs is situated wholly in India. The Companies were escaping residential status by artificially shifting insignificant or isolated events related to control and management outside India, thereby limiting the scope for the Indian tax authorities to making it resident in India.

To address this concern, the section 6(3) was amended with effect from Assessment Years 2017 – 18, to provide that a Company is said to be resident in India if its Place of Effective Management (POEM) in that year is in India.

POEM is defined to mean *“a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance, made.”*

The CBDT also issued a guiding principal notification to determine the situation of POEM. This notification is applicable only for the companies having turnover of **more than INR 50 crores.**

Active Business Outside India (ABOI):

If a Company is engaged in ABOI, the POEM is considered to be outside India if majority of its board meetings are held outside India.

The Company is considered to be engaged in ABOI if;

- i) Its **“Passive Income”** is not more than 50% of its total income;
- ii) 50% or more of its **total assets** are situated outside India;
- iii) 50% or more of its **total number of employees** are situated outside India or they are not resident in India and
- iv) **Total Payroll cost** of such employees are less than 50%.

Passive Income of a company would mean income from:

- a) Transactions where both the purchases and sales of goods is from/to its related enterprises and
- b) Royalty, Interest, Dividend, Rental income, Income from Capital Gains etc.

It is clarified that the value of assets shall be its value as per its books of accounts maintained. In case of depreciable assets, the value shall be its average value for the tax purpose at the beginning and at the end of the previous year. It is also clarified that the number of employees shall be the average number of

employees at the beginning and at the end of the previous year.

The data to be considered for the purpose of above calculation shall be the data of **Three years** ie. the previous year in question and two years prior to that year. In case of existence of the company for a shorter period, the data of such period shall be considered.

If Active Business is NOT Outside India:

If a Company does not have ABOI, the POEM will be determined in two stages:

- 1) Identification of the person/s who actually make the key management and commercial decisions for the conduct of the company’s business as a whole
- 2) Determination of place where these decisions are made.

The place where these decisions are made are more important than the place where they are implemented and therefore the place where such decisions are made would constitute POEM for the company.

In case the company does not have ABOI, following ‘guiding principals’ needs to be taken into consideration in determination of POEM:

- The location where the Companies’ Board regularly meets and takes key management decisions;

- In case the Companies' board has delegated some of its authority to an executive committee consisting of some key members of management, the location where the executive committee meets and formulates key strategic and policies on behalf of the board;
- The location where the Company's senior management and their support staff are based and that location is held out to public as Company's principal place of business or its Headquarter.
- It is quite prevalent that the members of senior level management operate from different locations. They participate in the board meetings via video conferencing. In such situation, the Head Office would normally be considered to be the location where highest level of management like Managing Director and CFO and their support staff are located.

Following factors DO NOT determine location of POEM:

- ❖ The fact that a foreign entity is wholly owned by an Indian company
- ❖ The fact that there exists a Permanent Establishment of a foreign entity in India;
- ❖ The fact that one or some of the directors of foreign company reside in India;
- ❖ The fact that some of the support functions that are preparatory and auxiliary in nature are performed from India.

One may conclude by stating that the above principals are for guidance purpose only. No single principal is conclusive in itself. All the relevant facts related to the management and control of the company (and not some isolated facts or events) need to be seen over a period of time during that financial year. The principal of POEM is based on the premise of "Substance over Form".

Compiled by CA Malay Damania, Partner DNV & Co.

Companies (Auditor's Report) Order 2020

New Audit disclosures – Simplified

A new order has been passed as on 25th February, 2020 to be called **the Companies (Auditor's Report) Order, 2020**. These orders are applicable for the financial year commencing April 1, 2019.

It seems that government intent to bring under regulatory scanner the financial risk involved in the Company. Accordingly, the auditors have to analyse information and report with due care on representation of funds, transfer of properties, ability to discharge liabilities, and disclosures on loans, guarantees, and investments of a company.

Applicability:

CARO is applicable to EVERY company including a foreign company **except-**

- **Banking company** as per the Banking Regulation Act, 1949.
- **Insurance company** as per the Insurance Act, 1938.
- **Section 8 Company** as per the Companies Act, 2013.
- **One Person Company** and a **small company** as per the Companies Act, 2013.
- **Private Limited Company,**

- Not being a subsidiary or holding company of a public company, and
- Having a paid up capital and reserves and surplus not more than one crore rupees **as on the Balance Sheet date,** and
- Does not have total borrowings exceeding one crore rupees from any bank of financial institution **at any point of time during the financial year,** and
- Does not have a total Revenue exceeding ten crore rupees during the financial year **as per financial statements.**

In short CARO is applicable to -

- A Public Company.
- Private companies with a paid-up capital of more than one crore rupees.
- Private companies which are a subsidiary or holding company of a public company.
- Private companies having a borrowing of more than one crore rupees from any bank and financial institution at any point of time during the financial year.
- Private companies which have a total revenue exceeding ten crore rupees during the financial year.



Comparative Analysis between CARO 2016 and CARO 2020
(Changes are in Bold letters).

Clause	Companies (Auditor's Report) Order, 2016	Companies (Auditor's Report) Order, 2020
(i)(a)	Reporting on maintenance of proper records of Fixed Assets .	Reporting on maintenance of proper records of Property, Plant, Equipment and Intangible Assets .
(i)(b)	Reporting on Physical verification of Fixed Assets .	Reporting on Physical verification of Property, Plant, Equipment and Intangible Assets .
(i)(c)	Reporting on Title Deeds of all immovable properties .	Reporting on Title Deeds of all immovable properties (other than properties where the company is the lessee and the lease agreements are duly executed in favour of the lessee) disclosed in the financial statements are held in the name of the company, if not, provide the details thereof in the specified format . 1) Description of property. 2) Gross carrying value. 3) Held in name of. 4) Whether promoter, director or their relative or employee. 5) Period held- indicate range where appropriate. 6) Reason for not being held in name of company- *Also indicate if in dispute
(i)(d)	N.A.	Reporting on Revaluation of Property, Plant, Equipment and Intangible Assets , if any, specify the change if more than 10% .
(i)(e)	N.A.	Reporting on Disclosure of any Proceedings of Benami Property under Benami Transactions (Prohibition) Act, 1988.

(ii)(a)	Reporting on Physical verification of Inventory .	Reporting on Physical verification of Inventory, its coverage and procedure , its disclosure if discrepancy is 10% or more in aggregate for each class of inventory.
(ii)(b)	N. A.	Disclosure if sanction of working capital limits in excess of 5 Crores , in aggregate, from banks and financial institutions on the basis of security of current assets.
(iii)	Reporting of grant of any loans or advances , secured or unsecured.	Reporting of Investments in, provided any guarantee or security or granted any loans or advances .
(iii)(a)	Terms and conditions of such grant of loans.	A) Aggregate amount during the year, outstanding at the balance sheet date with respect to such loans and advances to subsidiaries, joint ventures and associates . B) Aggregate amount during the year, outstanding at the balance sheet date with respect to such loans and advances to parties other than subsidiaries, joint ventures and associates .
(iii)(b)	Schedule of repayment of principle and interest and whether the receipts are regular.	Terms and conditions of such grant of loans. Schedule of repayment of principle and interest and whether the receipts are regular.
(iii)(c)	Total amount overdue for more than 90 days.	Total amount overdue for more than 90 days.
(iii)(d)	N. A.	Specify the amount of any Renew or Extension or Fresh Loan granted to settle the overdues of existing loans given to same parties.
(iii)(e)	N. A.	Reporting of any loan granted which are repayable on demand or without specifying any terms or period of payment .
(iv)	Reporting in respect of loans, investments, guarantees and security that whether Compliance of Section 185 & 186 of the Companies Act, 2013.	Reporting in respect of loans, investments, guarantees and security that whether Compliance of Section 185 & 186 of the Companies Act, 2013.
(v)	Reporting in respect of deposits accepted by the Company, as per provisions of Section 73 to 76 of the Companies Act, 2013 or any other relevant provisions.	Reporting in respect of deposits or deemed to be deposits which are accepted by the Company, as per provisions of Section 73 to 76 of the Companies Act, 2013 or any other relevant provisions.
(vi)	Maintenance of Cost records.	Maintenance of Cost records.

(vii)(a)	Whether the Company is regular in depositing undisputed statutory dues to appropriate authorities.	Whether the Company is regular in depositing undisputed statutory dues to appropriate authorities.
(vii)(b)	Reporting of amount and forum where dispute is pending , if any.	Reporting of amount and forum where dispute is pending , if any.
(viii)	N.A.	Reporting on disclosure of transactions that not recorded in the books but have been surrendered or disclosed as income in tax assessments.
(ix)(a)	Reporting on default in repayment of loans or borrowings . If yes, then amount and period of default to be reported.	Reporting on default in repayment of loans or borrowings . If yes, then amount and period of default to be reported as per the specified format . 1) Nature of borrowing including debt securities 2) Name of lender 3) Amount not paid on due dates 4) Whether principle or interest 5) No. of days delay or unpaid 6) Remarks, if any.
(ix)(b)	N.A.	Reporting on whether the company is a declared wilful defaulter by any bank or financial institution or other lender;
(ix)(c)	N.A.	Reporting on whether term loans were applied for the purpose for which the loans were obtained ; if not, the amount of loan so diverted and the purpose for which it is used may be reported;
(ix)(d)	N.A.	Reporting on whether funds raised on short term basis have been utilised for long term purposes , if yes, the nature and amount to be indicated;
(ix)(e)	N.A.	Reporting on whether the company has taken any funds from any entity or person on account of or to meet the obligations of its subsidiaries, associates or joint ventures , if so, details thereof with nature of such transactions and the amount in each case;
(ix)(f)	N.A.	Reporting on whether the company has raised loans during the year on the pledge of securities held in its subsidiaries, joint ventures or associate companies , if so, give details thereof and also report if the company has defaulted in

repayment of such loans raised;

(x)(a)	Reporting of moneys raised by way of IPO or further public offer and term loans , if any, were applied for the purpose for which they were intended.	Reporting of moneys raised by way of IPO or further public offer and term loans , if any, were applied for the purpose for which they were intended.
(x)(b)	Whether any preferential allotment or private placement of shares or convertible debentures has been made, if yes, then compliance with relevant sections has been done or not.	Whether any preferential allotment or private placement of shares or convertible debentures has been made, if yes, then compliance with relevant sections has been done or not.
(xi)	Reporting of any fraud by or on the company by its officers or employees, if yes, then amount and nature of the same.	Reporting of any fraud by or on the company , if yes, then amount and nature of the same.
(xi)(b)	N.A.	Whether any report under sub-section (12) of section 143 of the Companies Act, 2013 has been filed by the auditors in Form ADT-4 .
(xi)(c)	N.A.	Whether auditor has considered whistle-blower complaints , if any.
(xii)(a) & (xii)	Whether Nidhi Company has complied with net owned funds to deposits in the ratio of 1:20 to meet the liability. & Whether it is maintaining 10% unencumbered term deposits to meet the liability.	Whether Nidhi Company has complied with net owned funds to deposits in the ratio of 1:20 to meet the liability.
(xii)(b)	N.A.	Whether Nidhi Company is maintaining 10% unencumbered term deposits to meet the liability.
(xii)(c)	N.A.	Whether there has been any default in payment of interest on deposits or repayment thereof for any period, if any, then details thereof.
(xiii)	Whether all related party transactions are in compliance with Section 177 & 188 of the Companies Act, 2013.	Whether all related party transactions are in compliance with Section 177 & 188 of the Companies Act, 2013.
(xiv)(a)	N.A.	Whether Internal Audit System is commensurate with the size and nature of the Company.
(xiv)(b)	N.A.	Whether reports of Internal Auditors were considered by the Statutory Auditor.

(xv)	Whether any non-cash transactions with directors or persons connected with him were entered into, if yes, then whether provisions of Section 192 of the Companies Act, 2013 have been complied with.	Whether any non-cash transactions with directors or persons connected with him were entered into, if yes, then whether provisions of Section 192 of the Companies Act, 2013 have been complied with.
(xvi)(a)	Whether the company is required to be registered u/s 45-IA of the Reserve Bank of India Act, 1934 , if yes, whether the registration is obtained or not.	Whether the company is required to be registered u/s 45-IA of the Reserve Bank of India Act, 1934 , if yes, whether the registration is obtained or not.
(xvi)(b)	N.A.	Whether any non-banking financial or housing finance activities without a valid certificate of registration from RBI has been made.
(xvi)(c)	N.A.	Whether the Company is a Core Investment Company (CIC) , if yes, whether it fulfils the criteria of CIC.
(xvi)(d)	N.A.	Whether the group has more than 1 CIC as part of the group , if yes, then indicate the numbers of CIC's.
(xvii)	N.A.	Whether the company has incurred any cash losses in the F.Y., if yes, then its amount.
(xviii)	N.A.	Whether there has been any resignation of statutory auditors during the year , if any, whether the auditor has taken into consideration the issues, objections or concerns raised by the outgoing auditors.
(xix)	N.A.	Whether On the basis of financial ratios, ageing and expected dates of realization of financial assets and payment of financial liabilities. Whether the auditor is of the opinion that no material uncertainty exists as on the date of audit report that the company is capable of meeting its liabilities existing at the balance sheet date as and when they fall due within a period of 1 year from the balance sheet date.
(xx)(a)	N.A.	Whether in respect of other than on-going projects, the company has transferred unspent amount to a fund specified in Schedule VII to the Companies Act, 2013 within a period of 6 months of the expiry of F.Y.
(xx)(b)	N.A.	Whether any amount remaining unspent has been transferred to special account .

(xxi) N.A.

Whether there have been any **qualifications or adverse remarks by the auditors in the CARO reports** of the companies included in the CFS, if yes, indicate the details of the companies and the Para nos. of the CARO report.

❖ **Reasons to be stated for unfavourable or qualified answers:**

(a) Where, in the auditor's report, the answer to any of the above-mentioned points are unfavourable or qualified, the auditor's report shall also state the basis for such unfavourable or qualified answer, as the case may be.

(b) Where the auditor is unable to express any opinion on any specified matter, his report shall indicate such fact together with the reasons as to why it is not possible for him to give his opinion on the same.

Compiled by : Pavan Gudisagar, Article clerk, Audit

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