

# New tax norms target shell firms

## Fresh PoEM guidelines will affect pharma, energy, automobiles, manufacturing and software companies

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The government on Tuesday issued guidelines to plug tax evasion by shell companies or foreign firms set by groups in India to retain income outside the country, dashing hopes of industry that implementation of these norms would be deferred to next year.

The rules will affect companies in industries like pharmaceuticals, automobiles, energy, manufacturing and software. The guidelines have a few safeguards that were not present in draft norms issued in 2015 such as a collegium of officers to vet whether companies are to be taxed on the basis of their place of effective management (PoEM) and test of active business.

However, experts warned even then there could be subjectivity in establishing PoEM.

The rules outline companies incorporated overseas but with effective control of business and majority of board meeting in India will be considered a tax resident. The rules will not apply to companies with a turnover or gross receipts of ₹50 crore or less in a financial year.

"The intent is to target shell companies and companies created for retaining income outside India although real control and management of affairs is located in India," the Central Board of Direct Taxes (CBDT) said in a release.

The rules will come into effect from assessment year 2017-18, which essentially means the current financial year. Tax consultants pitched for a deferment

### PoEM IN A NUTSHELL

ILLUSTRATION: AJAY MOHANTY



- **Goes after shell companies** and others created for retaining income outside India even as real control and management of affairs is located in India

- **Not against Indian MNCs** engaged in business activity outside India

- **Will not apply to companies** having turnover or gross receipts of ₹50 crore or less in a financial year

- **Those with active business** outside India not to come under tax net

raising compliance concerns because the rules were issued in the tenth month of the financial year.

A few companies have started restructuring operations to ensure that key decisions are made outside the country and the decision-makers are out of the country at the time to ensure compliance.

"The place where these management decisions are taken would be more important than the place where such decisions are implemented. For the purpose of determination of PoEM, it is the substance which would be conclusive, rather than the form," the CBDT said.

"The government has closed the tax avoidance opportunities for companies who sought to artificially escape the residential status by shifting insignificant or isolated events related with control

and management outside India," said Rakesh Nangia, managing partner, Nangia and Co.

The government had announced PoEM in the Budget for 2015-16, by including the concept of effective management to deal with shell companies outside India. It was subsequently deferred by a year in the Budget for 2016-17 to provide companies time to prepare.

A tax officer will need approval of a three-member collegium prior to invoking the rule. "This will reduce subjectivity. Though other subjectivities still remain," said Amit Maheshwari, partner, Ashok Maheshwari & Associates.

The PoEM has been defined as where key management and commercial decisions necessary for the conduct of the business as a whole taken.