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DIRECTORS MOBILITY & POEM



PLACE OF EFFECTIVE MANAGEMENT (POEM)

Managing Tax Residence in a Mobile, Digital Era:

- the rise of **remote work**, accelerated by the COVID-19 pandemic
- transformed business operations
- companies **decentralize management** and adopt **flexible work arrangements**
- determining corporate tax residence under the place of effective management (POEM) rule has become more complex

Traditionally, POEM relies on **physical presence**, but this approach is increasingly inadequate in a digitalized world where key decisions can be made from anywhere.

Major risk: unintended POEM and residence relocation.



WHY EXECUTIVES SHOULD CARE

DIGITAL TRANSFORMATION
OF MANAGEMENT

RESIDENCE

Corporate tax
residence =
worldwide tax
liability

NEW TRIGGERS

director mobility,
remote/virtual
decision-making

CONSEQUENCES

dual residence, denial of
treaty benefits, double
taxation, exit tax, compliance
cost, investor uncertainty



POEM (PRE-2017 RULE)

DEFINITION

POEM = the place where key management and commercial decisions that are necessary for the conduct of the entity's business as a whole are in substance made.

This concept emphasizes management and operational substance over formal criteria (the company's place of incorporation) to reflect the **genuine locus of decision-making**.

MISSION

Pre-2017 OECD Model Art. 4(3): POEM as tie-breaker for dual residence.

One POEM at a time (a company may have many "places of management" (domestic laws), but only one POEM) – **autonomous interpretation** across jurisdictions intended.





2017 SHIFT: FROM POEM TO MAP

TIE-BREAKER TRENDS: TREATY COMPARISON

2017 OECD MODEL

replaced automatic POEM tie-breaker with MAP (competent-authority negotiation)

MAP TRADE-OFF

Flexibility ↑ but certainty ↓; if no agreement: treaty benefits at risk / double taxation risk

REALITY

many treaties still use POEM (52%+9%), and even under MAP, POEM factors remain central

·No agreement ⇒ treaty benefits can be denied; double taxation risk rises (real “limbo” cost for multinationals).

OECD SAW THE PROBLEM EARLY (2001-2003)

Today's "virtual boardroom" risk has been on the OECD radar for 20+ years.



- 2001 TAG draft: communications revolution undermines location-based POEM; classic board-room proxies no longer robust.
- 2003 TAG: two practical refinements:
 - If decisions are substantively made outside formal board meetings, attribute POEM to where they're truly made.
 - If a majority shareholder effectively makes key decisions, POEM follows that person's locus.

TAG 2003: A HIERARCHY THAT WAS NEVER ADOPTED

HIERARCHY

Proposed order:

- POEM → Economic ties → Primary business activity → Senior executive decisions → Legal status → MAP (final).
- OECD members rejected the hierarchy as “unnecessary,” but it’s a useful triage framework for risk reviews.





HOW POEM IS ASSESSED

3 LENSES

SUBSTANTIVE

Which management activities are critical to the company's business as a **whole**?

TERRITORIAL

Where are those decisions actually made (substance over form; location of formal meetings is rebuttable)

PERSONAL

Who makes those decisions (board/executives vs. oversight)?

Corporate residence rules follow two approaches: the Anglo-American "**central management and control**" (CMC) model, which emphasizes **high-level strategic decisions**, and the Continental European "**place of management**" model, which focuses on **day-to-day operations**.



MANAGEMENT LEVELS

RESPONSIBILITY: WHO IS ACCOUNTABLE WITHIN THE LEGAL ENTITY

SHOP-FLOOR

(operational supervision): direct supervision and oversight of daily operational tasks

DAY-TO-DAY

making and implementing key management decisions related to the company's business, as well as handling routine operations

STRATEGIC

(board/top executives): decisions about the company's long-term policies and overall direction

The distinction between different levels of management becomes less significant when the same individuals are responsible for both strategic and day-to-day activities. If the supervisory body merely approves decisions made by the management body, it is the management body that should be considered decisive

COUNTRY APPROACH TO MULTI-TIERED HIERARCHIES

WHICH LEVEL OF MANAGEMENT SHOULD TAKE PRECEDENCE WHEN ESTABLISHING CORPORATE RESIDENCE UNDER POEM

- **Strategic-centric:** UK (CMC), Spain, Netherlands → top-level decisions decisive.
- **Operational-centric:** Austria (Ort der Geschäftsleitung), Germany, Poland → day-to-day management carries more weight.
- **Formal-centric:** US → place of incorporation (domestic rule; treaty context varies).
- **Hybrid:** India → POEM + secondary factors (board, senior execs, ops).
- **Head-office criterion legacy:** China, Japan (older treaties).



DIRECTORS' MOBILITY & REMOTE WORK: THREE RISK TIERS

These levels are differentiated by factors such as the roles of the individuals involved, the frequency and consistency of remote decision-making, and whether key management decisions are materially shifted or relocated to another jurisdiction



LIMITED

ordinary employees remote; incidental, sporadic decisions ⇒ POEM stable

MODERATE

regular telework by some directors; proof burden rises; risk of blurred locus

HIGH

CEO/CFO/board consistently decide from another state ⇒ POEM shift plausible

TRIANGULAR CASES

SCENARIO

- Treaty A–B uses POEM, but actual POEM is in C.
- Bilateral treaty cannot award residence to C; it must choose A or B only.
- Implication for groups: structures with regional HQs and roaming executives can fall into $A \leftrightarrow B$ conflict that never reflects C (the real center).





REMOTE WORK & POEM: 2 SCENARIOS

DEPENDING ON WHETHER THE POEM IS INFLUENCED BY REMOTE WORK OR REMAINS UNCHANGED

POEM SHIFT

key managers or decision-makers primarily work remotely: POEM shift \Rightarrow change of residence; exit tax in prior home state; dual filing, double-tax risk

PE CREATED

the company's key managers work remotely from the remote work state, but the extent and significance of their activities are insufficient to cause a shift in the POEM. The company's central management remains based in its home country, where major strategic decisions are still made

No shift but PE created (remote management as a "place of management") \Rightarrow source-state taxation



RED FLAGS

PATTERNS TO WATCH

- Permanent remote working by key decision-makers (CEO/CFO/board)
- “Fly-in/fly-out” boards or meetings in arbitrary locations
- Rubber-stamping of decisions made elsewhere; minutes don’t match reality
- Decision logs (emails/VCs) show the actual locus is outside the claimed state
- Formal board in State A, but controlling shareholder (or de facto top exec) directs strategy from State B → POEM risk in B.

PRACTICAL CONTROLS

STRENGTHENING TRADITIONAL AND DIGITAL DOCUMENTATION

- Fix board cadence & venue; discourage ad-hoc “airport decisions”
- Define escalation thresholds for strategic decisions (must be taken in X)
- Role design: split strategic vs. operational roles; avoid “accidental” relocation
- Monitoring: track days/locations of key executives; pre-clear remote periods, VC logs & digital trails: meeting metadata
- Minutes: show substantive debate and decision locus (not just signatures)
- Pre-MAP file: contemporaneous dossier to defend POEM if challenged
- Evidence Rule: Where a Decision Is “Substantively Reached”
- Practical test to teach boards: Count a decision where it is substantively reached, irrespective of where it is later formalized/recorded.
- Documentation checklist: show substantive debate + who decided + from where (minutes, VC logs, memo trails).
- Decision charters: who decides what, where, and how + ensure substantive decisions occur (and are evidenced) in the intended state. Exceptions documented.





EXIT TAX

POEM SHIFT

many states treat as emigration of the company ⇒
exit tax on latent gains

TRIGGERS

consistent strategic control abroad; minutes &
evidence misaligned

AVOIDANCE

early mobility impact assessment; governance
changes; advance rulings/MAP readiness; model cash
impact under exit-tax rules



ADVISORY OPPORTUNITIES (WHAT YOU CAN “SELL”)

- POEM/PE Mobility Audit (risk scoring + governance redesign)
- Board Protocol Pack (decision charters, minutes templates, VC logging)
- Remote-Work Policy for Executives (de minimis, pre-clearance, approvals)
- Exit-Tax Early-Warning Model (scenario analytics + mitigation)
- MAP-Ready Evidence Binder (for rapid engagement with authorities)

POLICY OUTLOOK:

DE MINIMIS THRESHOLDS

- e.g., remote strategic work < X days ⇒ no POEM impact

SAFE HARBOURS

- for non-critical remote tasks / virtual board attendance

VIRTUAL MANAGEMENT

- re-focusing POEM on where strategic decisions are implemented, not where webcams are

Call for “guidelines that are more detailed” in OECD Commentary: examples, level-of-management tests, split-location illustrations.

Goal: reduce divergent interpretations; give companies operational clarity.





LITERATURE

- M. Hemdan, K. Tetlak, Place of Effective Management as a Treaty Tie-breaker Rule: Historical Evolution, Challenges, and Future Perspectives, Intertax 2025
- M. Hemdan, K. Tetlak, The Influence of Remote Work on the Place of Effective Management under Article 4(3) of the OECD Model: Remote Work, Remote POEM?, Bulletin for International Taxation 2025



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THANK YOU

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KEY TAKEAWAYS

- Residence follows substance — and mobility moves substance
- Design governance + evidence to keep residence where you intend
- Expect more guidance (de minimis/safe harbours); prepare now with policies and proof

MINI CASE

SCENARIO

HQ in Country A; CEO & CFO work mostly from Country B; board meets quarterly in A; strategy working groups run weekly on VC from B.

RISKS

POEM drift to B; PE in B; exit tax in A.

CONTROLS

re-anchor strategic decisions in A; re-sequence approvals; institute VC logging & travel caps; document exceptions with board ratification referencing substantive debate in A

