

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**LOK SABHA
UNSTARRED QUESTION NO. 630**

**TO BE ANSWERED ON FRIDAY, THE 20th JULY, 2018
ASHADHA 29, 1940 (SAKA)**

TAXES ON FOREIGN COMPANIES

630. SHRI MOHITE PATIL VIJAYSINH SHANKARRAO:
SHRI DHANANJAY MAHADIK:
SHRIMATI SUPRIYA SULE:
SHRI SATAV RAJEEV:
SHRI P.R. SUNDARAM:
DR. HEENA VIJAYKUMAR GAVIT:
DR. J. JAYAVARDHAN:

Will the Minister of FINANCE be pleased to state:

- (a) whether foreign companies are taxed only on income which arises from operations carried out in India;
- (b) if so, the quantum of taxes collected during the last three years from foreign companies;
- (c) whether the Government has notified rules for computation of Income Tax for foreign companies, if so, the details thereof and the objective behind the move;
- (d) whether the notified rules are likely to bring transparency and collection of more taxes, if so, the details thereof; and
- (e) whether Central Board of Direct Taxes (CBDT) has also notified that a company will be treated as foreign even after it becomes headquartered in India and if so, the details thereof and the reasons therefor?

ANSWER

**MINISTER OF STATE IN THE MINISTRY OF FINANCE
(SHRI SHIV PRATAP SHUKLA)**

- (a) As per provisions of the Income-tax Act, 1961 (the Act) a foreign company is liable to tax on all income from whatever source derived which is received or is deemed to be received in India or accrues or arises or is deemed to accrue or arise in India. However, the taxation of a foreign company under the Act is subject to the provisions of the Double Taxation Avoidance Agreement, if any, between India and the country of which the foreign company is a resident.

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(b) Quantum of taxes collected during the last three years from foreign companies as per the return of income are as under:

A.Y 2015-16 = Rs. 25,800.30 Cr.

A.Y 2016-17 = Rs. 24,541.74 Cr.

A.Y 2017-18 = Rs. 27,561.43 Cr.

(c) A notification No 29/2018 under section 115JH of the Act has been issued vide SO 3039(E) dated 22.06.2018 providing for exceptions, modifications and adaptations, with which provisions of the Act relating to the computation of total income, treatment of unabsorbed depreciation, set off or carry forward and set off of losses, collection and recovery and special provisions relating to avoidance of tax shall apply, in a case where a foreign company is said to be resident in India on account of its Place of Effective Management (PoEM) in India under sub-section (3) of Section 6 of the Act for the first time and the said company has never been resident in India before.

The notification being an aid to the PoEM provisions, has the objectives of providing clarity, ensuring certainty and facilitating ease of compliance.

(d) With the objectives of providing clarity, ensuring certainty and facilitating ease of compliance as also PoEM being an anti-abuse, anti-base erosion measure, the rules are likely to bring transparency and they may also result in additional revenue.

(e) The notification provides that the foreign company shall continue to be treated as a foreign company even if it is said to be resident in India and all the provisions of the Act shall apply accordingly. Consequently, the provisions specifically applicable to-

(i) a foreign company, shall continue to apply to it;

(ii) non-resident persons, shall not apply to it; and

(iii) the provisions specifically applicable to resident, shall apply to it.

Further, in case of conflict between the provision applicable to the foreign company as resident and the provision applicable to it as foreign company, the later shall generally prevail. Therefore, the rate of tax in case of foreign company shall remain the same, i.e., rate of income-tax applicable to the foreign company even though residency status of the foreign company changes from non-resident to resident on the basis of PoEM.