

## India imposes requirement to obtain a Permanent Account Number

Effective April 1, 2010, every non-resident that receives income from India is required to obtain a Permanent Account Number ("PAN") from the Indian Income Tax Authorities and provide it to the Indian payor. In the absence of this tax identification number, the payor is required to withhold taxes at a minimum rate of 20% or the higher applicable rate. In extreme cases, the maximum tax withholding rate that may be applicable to a non resident is 42.23%. The maximum rate that may be applied in case of a U.S. law firm that is an LLP is 30.9% (33.99% if income exceeds INR 10 million) assuming all members of the firm/ LLP are individuals. However, an application may be made to the Indian Tax Authorities by the payor or payee to determine in advance the appropriate withholding tax rate.

A payor's failure to withhold can result in disallowance of that expense on its tax return and exposes the payor to interest, penalties, and liability for the tax amount. Accordingly, Indian clients may take a more cautious route and, it is expected that India payors will at least withhold 20% tax on all payments where a PAN is not provided by the non-resident payee.

Obtaining a PAN and providing it to payor does not automatically make the recipient eligible to receive a payment without tax withholding. Even if a PAN is provided to a payor in India, there may still be a withholding obligation if the amount is chargeable to tax in India. Under Article 15 of the U.S. - India Tax Treaty, no tax is due in India unless the U.S. law firm has either a permanent establishment in India, or personnel have been present in India on business for 90 days or more in the relevant taxable year (April 1st through March 31st).

If a client withholds and the firm believes that no tax is owed, it must file a tax return for a refund of the tax withheld.

Although the PAN is intended solely to create a taxpayer identification number, it is anticipated that by obtaining a PAN the firm will be entered into the database of Indian Tax Authorities and will be subject to increased monitoring. In light of this, firms that obtain a PAN should consider filing an income tax return in India. The statute of limitations for returns is seven years from the end of the year for which the return is filed. Accordingly, the tax authorities may open/ reopen a case for the past seven years if they have reason to believe that certain income of the taxpayer has escaped assessment. To counter potential arguments that the firm either has a permanent establishment or has spent more than 90 days in-country, documentation such as records of time sheets for employees that travel to India for work, copies of invoices along with contracts entered with Indian clients and copies of passports with entry and exit stamps meeting applicable requirements of Indian Tax Authorities should be maintained by the firm.

PricewaterhouseCoopers' team of professionals is ready to assist its law firm clients in providing services to clients in India and in evaluating whether obtaining a PAN is the appropriate strategy for the firm. Please contact Stanley Kolodziejczak at (646) 471-3160, Gregg Sincoff at (646) 471-1335 or Nancy Regan at (646) 471-6104 in New York; or Rahul Garg at +91 124 3306515, Ajay Rastogi +91 124 3306805, or Shailendra Gupta +91 124 3306848 in India.

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