

CBDT notifies conditions for non-resident deductees to avail relaxation from higher withholding tax rule in absence of PAN

June 28, 2016

In brief

The Central Board of Direct Taxes (CBDT) has recently notified a new Rule 37BC specifying the conditions to be fulfilled by non-resident deductees to obtain relaxation from higher withholding tax rate under section 206AA of the Income-tax Act, 1961 (the Act) in the absence of Permanent Account Number (PAN) in India.

In detail

Background

- The existing provisions of section 206AA of the Act, *inter alia*, provide that any person who is entitled to receive any amount on which tax is deductible at source, shall furnish his PAN to the deductor, failing which a higher withholding tax rate will be applicable.
- In order to reduce compliance burden, the Finance Act, 2016 amended the provisions of section 206AA of the Act (w.e.f. June 1, 2016) to provide relaxation from higher withholding tax rate while making payment to non-resident deductees in the absence of PAN, subject to fulfillment of prescribed conditions.
- For this purpose, CBDT has notified a new Rule 37BC in the Income-tax

Rules, 1962 (the Rules) vide Notification No. 53/2016, F.No.370 142/16/2016-TPL to specify the conditions to avail the aforesaid relaxation.

CBDT notification

- Rule 37BC of the Rules provides that the provisions of section 206AA of the Act shall not apply on following payments made to non-resident deductees who do not have PAN in India:
 - 1) Interest;
 - 2) Royalty;
 - 3) Fee for Technical Services; and
 - 4) Payments on transfer of any capital asset
- In respect of the above specified payments, the non-resident deductee shall be required to furnish following details and documents:
 - 1) Name, e-mail id, contact number;
 - 2) Address in the country of residence;
 - 3) Tax Residency Certificate (TRC), if the law of country of residence provides for such certificate; and
 - 4) Tax Identification Number (TIN) in the country of residence. Where TIN is not available, a unique identification number is required to be furnished through which the deductee is identified in the country of residence.
- To capture and report the details specified in the notification, corresponding changes have also been made in the quarterly withholding tax return (i.e. Form 27Q) applicable for

reporting withholding tax on payments made to non-resident deductees.

The takeaways

This is a much-awaited notification that has provided guidance to non-resident deductees to avail the relaxation provided by Finance Act, 2016 from applicability of higher withholding tax rate under section 206AA of the Act in the absence of PAN.

The prescribed conditions are in line with expectations, and do not impose any additional burdensome requirements.

Most of the details required are already being furnished by non-resident deductees in TRC/Form 10F, which is a pre-requisite to avail beneficial treaty provisions.

The notification will provide much relief to non-resident recipients and will encourage non-residents to enter into transactions in India without much hassle or fear of higher withholding tax or providing any cumbersome information, particularly for one-off transactions.

Overall, it is a welcome step by the Indian Government to

promote ease of doing business in India.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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