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Furnishing of annual statement to tax department in relation to Liaison Offices of non-residents

The Finance Act, 2011 introduced section 285 in the Income Tax Act, 1961 (the Act) requiring non-residents with liaison offices (LO) in India to submit an annual statement of their activities in India in a prescribed form. Though section 285 was made effective from 1 June 2011, the form in which the annual statement was to be submitted had not been notified.

Recently, the Central Board of Direct Taxes (CBDT), *vide* a Notification¹, introduced rule 114DA in the Income-tax Rules, 1962 providing that the annual statement as provided under section 285 of the Act, should be submitted in Form 49C (the annual statement).

¹ CBDT Notification No. 5/2012 dated 6 February, 2012

The annual statement is to be submitted in electronic form within 60 days from the end of the financial year (FY), duly verified and digitally signed by a chartered accountant or a person authorised by the non-resident.

Key information required to be supplied in the annual statement

- Details of the LO – date of setup, nature of activities undertaken, date of approval with the Reserve Bank of India (RBI), etc.
- Date of submitting the annual activity certificate (AAC) of the LO to the RBI (along with details of the chartered accountant signing the AAC).

- India specific financial details i.e. receipts, income and expenses for the FY of the non-resident person (not only of the LO) from, or in, India.
- Details of all purchases, sales and services from, or to, Indian parties during the year by the non-resident person (not limited to transactions made by the LO).
- Details of any salary or compensation of any sort payable outside India to any employee working in India or for services rendered in India.
- The total number of employees working in the LO during the year and particulars of employees drawing salary of INR 50,000 or above per month specifying their name, designation and sitting location.
- Details (with complete addresses including the permanent account number (PAN)) of agents/representatives/distributors of the non-resident person in India.
- Names and addresses of the top five parties in India with whom the LO has been doing the liaisons.
- Details of products or services for which liaisons activity is done by the LO
- Details of any other entity (including PAN) for which liaisons activity is done by the LO.
- Details (with addresses and PAN) of group entities present in India as branches or incorporated entities and their business activities.
- Details (with addresses and PAN) of other LO(s) of the group entities
- Other group entities operating from the same premises as the office of the LO.

Our comments

- While section 285 requires the annual statement to be filed within 60 days from the end of the FY, the expression financial year is not defined in the Act. However, the expression financial year is defined in the General Clauses Act, 1897, to mean the year commencing on the first day of April. Thus non-residents having a LO in India shall be required to file the annual statement for the financial year ending on 31 March, 2012 by 30 May, 2012.
- While the date of submitting the AAC to the RBI has to be specified in the annual statement, this data may not be practically available to submit as the time limit of submitting the AAC to the RBI is six months from the end of the balance sheet date and the annual statement has to be submitted to the tax authorities within two months from the end of the financial year.
- While details of the top five parties with whom the LO has been liaising with are sought, the quantitative measure of determining the top five parties has not been specified yet.
- There is a large volume of data that the annual statement is seeking to capture and this could be a detailed/cumbersome exercise.
- The details sought to be submitted in the annual statement are not restricted to the activities of the LO and cover all the activities of the non-resident having any relation with India, such as details of income, expenses, etc. of the non-residents from, or in, India, details of purchases, sales of services/products from/to Indian parties, etc.
- There is no provision prescribed in the Act for filing a belated annual statement. Similarly, there are no provisions for revising the annual statement. Therefore, it remains to be seen whether a belated filing would be considered valid or whether a revised statement would be accepted by the tax authorities.
- The procedure for filing the Annual Statement is yet to be notified.

Conclusion

Exchange Control regulations in India permit LOs to act as a channel of communication between head offices outside India and parties in India. The LOs are not allowed to undertake any business activity or earn any income in India.

The annual statement seeks to collect extensive details about activities of the non-resident from India or their operation in India.

The non-residents would be required to obtain and file a large volume of information relating to their operations from or in India. Furthermore, they would be required to document the role played by their LO in the overall operations since the tax authorities may use the information from the annual statement to ascertain the taxability of the non-residents in India.

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