

Tax Alert | Delivering clarity

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Certain non-residents not required to obtain, furnish Permanent Account Number

The Central Board of Direct Taxes (CBDT) has issued Notification No.499 (E) dated 11 August 2020 to notify that non-residents deriving income only from investment in certain specified funds are not required to obtain Permanent Account Number (PAN) on satisfaction of certain conditions. Further, they are not required to furnish the PAN to the payer of income for withholding tax purposes.

Background:

- Permanent Account Number (PAN) [i.e. the Indian tax identification number] is required to be obtained as per the provisions of section 139A of the Income-tax Act, 1961 (ITA) by persons earning income taxable in India and other prescribed categories of persons, unless specified otherwise.
- Further, as per the provisions of section 206AA of the ITA, in the absence of furnishing of PAN by the payee, the payer is required to withhold tax (wherever applicable) at a higher rate i.e. at least at 20% (and at least 5% in case of payment by e-commerce operator to an e-commerce participant).
 - The higher rate of withholding tax is not applicable in case of non-residents who earn income such as interest, royalty, fees for technical services and payments on transfer of any capital asset and if the non-resident furnishes information / documents as prescribed under Rule 37BC of the Income-tax Rules, 1962 (Rules).
- Recently, vide Notification No. 464 (E) dated 24 July 2020¹, the exception to furnishing PAN (under section 206AA of the ITA) to payer for withholding tax purposes was extended to dividend income of non-residents, subject to furnishing information / documents as prescribed under Rule 37BC of the Rules. The amendment is applicable from 24 July 2020.
- The CBDT has now, vide Notification No. GSR 499 (E) dated 10 August 2020 (Notification)², provided further exceptions to certain income of non-residents, with respect to the requirement of:
 - Obtaining PAN as per section 139A of the ITA; and
 - Furnishing PAN to payer for withholding tax purposes under section 206AA of the ITA.

¹ <http://egazette.nic.in/WriteReadData/2020/220673.pdf>

² <http://egazette.nic.in/WriteReadData/2020/221048.pdf>

Highlights of the Notification:

- A new Rule 114AAB has been introduced to provide an exception for a non-resident (who has invested in specified fund during a financial year*), from obtaining PAN under section 139A of ITA, subject to following conditions:
 - Non-resident's income from India (during the relevant financial year) is only from investment in the specified fund*;
 - Withholding tax as applicable under section 194LBB of the ITA is deposited by the specified fund* while making payments to non-residents;
 - The non-resident furnishes the following details and documents to the specified fund*:
 - Name, e-mail id, contact number;
 - Address in the country or specified territory outside India of residence;
 - Declaration that the non-resident is a resident of a country or specified territory outside India; and
 - Tax Identification Number (if not available, then the unique number of identification by the government) in the country or specified territory of residence.
 - The specified fund* needs to furnish a quarterly statement (viz. Form No.49BA), for the quarter in which the above mentioned documents and details are received (from the non-resident) and also upload the declaration (received from the non-resident). The said compliance needs to be undertaken within 15 days from the end of the relevant quarter.

The said Form No. 49BA needs to be furnished with the Principal Director General of Income-tax (Systems) [PDGIS] or Director General of Income-tax (Systems) [DGIS] or his authorised person.

*Specified fund means any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or Category II Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012, and which is located in any 'International Financial Services Centre' (IFSC).

Further, IFSC for this purpose is the one which has been approved by the Central Government as per the provisions of Special Economic Zones Act, 2005 (28 of 2005).

- The notification also provides an exception to the non-resident covered by Rule 114AAB from the requirement of furnishing PAN for withholding tax purposes under section 206AA of the ITA.
- The notification is applicable from 10 August 2020.

Comments:

- The notification will provide relief to qualifying non-residents from the administrative requirement of obtaining and furnishing PAN for Indian tax compliances.



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