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NEWSFLASH: RELIEF FROM HIGHER WITHHOLDING TAX UNDER SECTION 206AA TO A NON-RESIDENT

New tax rule prescribes alternative documents to PAN

(Notification no. 53/2016, dated 24 June 2016)

Background

Normally, non-residents receiving payments from India are subjected to withholding tax at the lower of the tax rate provided under the Income Tax Act, 1961 ('the IT Act') or the rate given in the relevant Double Taxation Avoidance Agreement ('the DTAA'). However, section 206AA of the IT Act prescribes that if the recipient of any sum or income (*other than interest payment on long term bonds referred to in Section 194 LC*) fails to furnish his Permanent Account Number (PAN) to the deductor in India, the tax shall be withheld at the higher of the following:

- Rate prescribed in the relevant provisions of this Act; or
- Rates in force; or
- 20%

The Tax Authorities have been arguing that the provisions of section 206AA even overrides the provisions of the DTAA although there have been recent decisions* favouring the taxpayers. This has compelled non-residents receiving payments from India to obtain a PAN in India resulting in an unnecessary compliance burden.

As a measure towards improving the ease of doing business, the Finance Act, 2016 has relaxed the rigour of section 206AA to provide that the higher withholding tax rate under section 206AA shall not be applicable to a non-resident (i.e. henceforth furnishing of PAN shall not be required) subject to such conditions as may be prescribed.

New rule notified on 24.06.2016 allows Non-residents to furnish alternative documents to PAN

Recently, the Central Board of Direct Taxes (CBDT) vide its Notification dated 24 June 2016 introduced a new rule 37BC to the Income Tax Rules, 1962 requiring a non-resident to furnish alternative documents to PAN so that the higher withholding tax under section 206AA shall not be applicable.

The salient features of the new rule are as under:

Relevant for Non-Resident recipient

- **Applicability.** It is applicable from the date of its publication in the official gazette.
- **Only four types of payment specified:** The provisions have been eased only in respect of following payments namely:
 - Interest
 - Royalty
 - Fees for technical services
 - Payments on transfer of any capital asset
- **Alternative documents to PAN:** In respect of the above payments, the non-resident is required to furnish the following details to the deductor (i.e. payer in India):
 - Name, e-mail id, contact number
 - Address in the country of which the non-resident is a resident
 - Tax Residency Certificate (TRC) if the law of the relevant country provides for issuance of such certificate
 - Tax Identification Number, if such number not available then a unique number on the basis of which the non-resident is identified by the Government of that country.

Relevant for Deductor (i.e. Payer in India)

Form 27Q, i.e. Quarterly statement of deduction of tax in case of payments made to non-residents (other than salary) modified

The Form 27Q has been amended to cover the following:

- Payments covered under section 194LBA, section 194LBB and 194LBC have been included
- Email id, contact number, address Tax Identification Number of deductee should be mentioned
- In the case of deductees covered under Rule 37BC, "PAN NOT AVAILABLE" should be mentioned.

* *Deputy Director of Income-tax (IT -II), Pune v. Serum Institute of India Ltd. [2015] 56 taxmann.com 1 (Pune - Trib.); Deputy Commissioner of Income-tax, (Intl. Taxation) Circle -1(1) Bangalore v. Infosys BPO Ltd. [2015] 60 taxmann.com 465 (Bangalore - Trib.)*

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This newsflash is general in nature. In this newsflash, we have summarised the CBDT Notification no. 53 / 2016 dated 24 June 2016 introducing new rule 37BC to the Income Tax Rules, 1962 requiring a non-resident to furnish alternative documents to PAN. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the respective circulars and notifications and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

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