

ITR notices to MNCs render PAN relaxation ineffective

Two weeks after the Central Board of Direct Taxes relaxed the norm of having mandatory PAN cards so that they can pay lowest domestic tax rates, many have now started to receive notices from the income tax for filing tax returns. It is a Catch-22 situation for the companies; to file returns they need to submit a PAN number, so the relaxation means zilch.

While the total number of notices could not be ascertained, a person close to the development said the government is likely to send out 100 notices including those that have already been dispatched. Any multinational not filing for tax returns under any pretext would have to face further penalties from the Income Tax department.

The Central Board of Direct Taxes (CBDT), about a fortnight back, had given relaxation to multinationals (non-resident companies) from providing PAN number in India while claiming TDS (tax deducted at source) benefits. "While now on, the tax rate under treaty or the Income Tax Act would be deducted on a multinational's income arising from India even if it doesn't have a PAN number, requirement of filing of returns would still be there and hence would nullify the relief from obtaining PAN," said Amit Maheshwari, Partner, Ashok Maheshwary & Associates LLP.

"Requirement to file return of income is independent of the TDS requirement and if any company doesn't file the return, the tax authorities could initiate proceedings under section 148 of the Act levying interest and penalty, as this means the income is escaping scrutiny," said Rakesh Nangia, managing partner, Nangia & Co.

Until now, tax would be withheld from the income earned by multinationals from any source in India. However, the multinational can take advantage of lower tax rates if it is coming from a country with which India has a tax treaty. But to avail the tax treaty rates, the multinational has to provide their PAN number.

Not doing so would mean Income Tax department can slap domestic rates at around 20%. This at a time tax applicable under treaties would be about 10%.

Many multinationals that dealt with Indian companies on a one-time basis, preferred not to submit PAN details. Some multinationals have also demurred from submitting the details for other reasons. In many cases multinationals did have a PAN card. However, the CBDT in the circular issued about a fortnight back, said multinationals do not need to submit their PAN number to get benefits from the tax treaties.

Industry trackers say that there are also practical difficulties for a multinational caught in the situation. This is mainly because if these companies do not have a PAN number but taxes are deducted, the tax credit would not show against the company's name if there is no PAN number and hence discrepancy would arise at the time of processing of tax returns filed by them. "To be fully compliant, it would be advisable to obtain PAN if the income is taxable in India. Though the compliance by MNCs in terms of filing of return is low in such cases, the tax department in its drive to identify non-filers is expected to identify non-filers and ask them to file a return," said Maheshwari.

Experts say that tax is also withheld for salary paid to expatriates and they too are required to file income tax return. Many multinationals and expatriates have also started applying for the PAN in India. For filing income tax return it would be obligatory on part of foreign company and expatriates to apply for PAN in India.

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