

Did you know?

Not having a PAN may mean paying more tax



British
High Commission
New Delhi



Issue 1: Implications of section 206AA of the Income-tax Act, 1961 (the Act) in the hands of non-residents

Section 206AA of the Indian Income-tax Act, 1961 (the Act) provides that if PAN is not furnished by the payee, the withholding tax rate would be 20% or the rate in force, whichever is higher.

The mandatory requirement to furnish PAN poses an undue hindrance for non-residents. It must be appreciated that many foreign companies enter into one-off transactions with Indian entities for provision of services or goods. Such a transaction may not attract any withholding tax implication or a withholding tax rate of lower than 20% under the relevant DTAA. As the transaction may be one-off, such foreign companies may not have obtained a PAN or may be unaware of the requirements under the Indian tax laws. However, in the absence of PAN, the payer would not have any resort but to withhold tax at the rate of 20% or even higher as applicable to foreign companies. Such excess withholding causes undue hardship for foreign companies (by increasing administration cost of obtaining PAN and filing a return of income in India) or the Indian company in case the contract is tax-protected for the foreign company.



Impact

In most cases, the foreign supplier is unable to recover or offset such higher withholding tax and builds it into the cost of supplies to the Indian buyer. This pushes the cost of adopting and using technology up and discourages the setting up of manufacturing businesses in India.

Proposed solution

- PAN should not be mandatory in the case of non-residents where adequate taxes have been deducted. Accordingly, section 206AA should not be applicable in such cases.
- The requirement of PAN and the provisions of section 206AA of the Act should not be applied to non-residents where the contract with the Indian resident is net of tax and the tax is borne by the Indian resident.
- A threshold should be prescribed for non-residents, below which the provisions of section 206AA of the Act would not be applicable.
- PAN should not be required for any foreign entity that has tax registration in the home country and furnishes the self-certified copy of the same to the payer and uploads it on the website of the income-tax department, quoting the TAN number of the payer.

PwC-India British High Commission joint tax project seeks to understand direct tax issues faced by UK-based companies in India