



Bombay Chartered Accountants' Society



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Date: 1st June 2017

To,

The Commissioner of Income Tax (CPC),
Centralized Processing Cell,
Bengaluru – 560500

Dear Sir/Madam,

**Sub: Issues in Authentication of address and bank accounts of
Non-Residents and Foreign Companies**

In the last few days, Centralised Processing Cell (CPC), Bengaluru has been sending letters for Authentication of Bank account & Address to many assessee claiming refund of tax in their income-tax returns for AY 2016-17. These letters are being sent even to non-residents and foreign companies, who do not have any presence in India.

The letter requires the assessee to authenticate the bank account and the address mentioned by him in the Income-Tax Return Form. The authentication is by way of response sheet along with necessary attachments as proof of bank accounts (cancelled cheque) and address (copy of proof).

We understand that this is on account of the requirement to link bank accounts with PAN, as is being done in the case of Aadhaar numbers.

However, many non-residents or foreign companies find it impossible to comply with this requirement, for the reasons listed below:

1 No Indian Bank Account:

CPC requires the non-resident to provide details of a bank account, including IFSC, along with a copy of cancelled cheque. IFSC is available only for Indian bank accounts. However, many non-residents and foreign companies, who do not have any presence in India, do not have a bank account in India. Hence, they cannot comply with this requirement.

In fact, foreign companies which do not have a business in India, and only receive incomes from India, do not need to open a bank account in India, nor are they legally required to do so.

At best, such persons can furnish details of their foreign bank accounts, with SWIFT Codes of such banks, if required.

Further, in respect of their foreign bank accounts, many of the foreign companies do not have a cheque book, as most transactions are by electronic transfers. It is therefore not possible to furnish a copy of a cancelled cheque, as required by the notice.

2 No Indian Address:

CPC requires that the refund cheque should be dispatched at an Indian address of the assessee only. For authenticating this requirement, it requires the non-resident to attach documentary proof for Indian address which should contain address in the name of the assessee.

However, many non-residents and foreign companies do not have an Indian address. They operate only from the foreign country.

There is no legal requirement for an Indian address, either while applying for Permanent Account Number (PAN) or while filing the income-tax return. Foreign addresses can be used for the same. However, CPC requires that an Indian address is provided. Even a letter of authority provided in favour of a CA or Authorised Representative in India is not acceptable to CPC.

3 Filing of physical signed response:

Procedure for Authentication requires the assessee to take a print of the response sheet attached to the e mail, fill in the details of Bank account / Address in the response sheet; and attach necessary documentary proofs. This response sheet has to be physically sent by post to CPC.

It is extremely difficult and cumbersome for non-residents to file the response sheet by mail from their foreign address, even if they have all the required documents with them. It is also a costly affair in quite a few cases.

The response sheet does not provide a facility for the same to be done online by logging on to the portal or by sending email. The response has to be sent by physical post to the CPC.

On discussion with CPC Helpline, it has been informed that CPC requires an address and bank account, which should contain the details as provided in the response sheet in the name of the non-resident assessee only.

Filing of response sheet along with documents is impossible to comply with if the non-residents or foreign companies do not have an Indian address or bank account. This process will only delay or result in denial of the issuance of refund. This will only create a negative image amongst foreign companies and non-residents.

We would like to point out that, in most such cases, the refund arises to the non-resident or foreign company as a result of TDS being deducted by the resident payer out of abundant precaution, or at times, even out of ignorance of the correct classification of the income. In many cases, such payment is not taxable in India, on account of a double taxation avoidance agreement, or on account of decisions of the High Courts.

In the past, many such cases were taken up for assessment under section 143(3), and refunds issued after verification of the contention of the non-resident or foreign company. In such cases, the refunds were being issued by cheque in the name of the assessee, after deducting tax at source on the interest component. The cheque would bear the name and PAN of the assessee, and were being sent by post to the address of the authorised representative in India of such non-resident or foreign company.

The non-resident or foreign company would then make arrangements with a bank in India to collect the amount of cheque on their behalf. Such bank would collect the proceeds of the cheque, hold it in Suspense Account, carry out the KYC of the non-resident or foreign company with their overseas bankers, and then remit the funds to the overseas bank account of the non-resident or foreign company.

It is submitted that besides the unnecessary cost of hiring space in India, which space is really not required, there are other adverse consequences in India to a foreign company of having an address in India. Besides triggering off permanent establishment taxation in India, having such an address would also result in such foreign companies having to comply with various onerous requirements of the Companies Act, 2013, including preparation and filing of accounts and annual returns in India. That is the reason why a foreign company, whose operations do not require a presence in India, would prefer not to have any address in India.

Further, operation of a bank account in India from overseas is a difficult proposition for most foreign companies, besides resulting into potential tax exposure on account of receipt of incomes in India.

The income tax return in Form 6 clearly has a clause which requires a company to state whether it is an Indian company or a foreign company. Further, under filing status, there is a clause requiring the company to state whether it has a permanent establishment in India or not. Further, the address of the company has to be stated in the form. Therefore, from the return form itself, it is evident whether a foreign company has a presence in India or not.

Similarly, in case of non-residents other than companies, the address is available from the PAN records. Often, the address of an Indian authorised representative is mentioned in the form for convenience of correspondence with the tax authorities. If a non-resident has business income, he is required to state whether he has a permanent establishment in India in the form of the return of income. Here also, from the form and database itself, it would be evident as to whether the non-resident has a presence in India or not.

Recommendation:

We therefore strongly suggest that:

1. Non-residents and foreign companies which do not have a permanent establishment or any other physical presence in India should be exempted from the requirement of providing details of bank account in India or address in India; if required, details of foreign bank accounts can be requested. A bank statement or certificate from the foreign bank can be accepted as proof of such bank account, instead of a cancelled cheque.
2. Refunds may be issued to such non-residents and foreign companies by physical cheques sent to the address mentioned in their returns of income, without mentioning any bank account number; alternatively, their foreign bank account numbers may be mentioned on the cheques.

We trust the above matter is acted upon expeditiously, to avoid unnecessary delay in issue of refunds to such non-residents and foreign companies.

Thanking you,

Yours sincerely,

For Bombay Chartered Accountants' Society



Chetan Shah
President



Gautam Nayak
Chairman, International Taxation Committee