



Press release on partial relief by the Hon'ble Supreme Court for linking Permanent Account Number with Aadhaar

Background

Section 139AA of the Income-tax Act, 1961 (the Act), as introduced by the Finance Act, 2017, provides for mandatory quoting of an Aadhaar number¹/Enrolment ID² by individuals, who are eligible to obtain an Aadhaar, for filing of Income-tax return and for making an application for allotment of Permanent Account Number (PAN) with effect from 1 July 2017. Existing PAN holders also have to link their PAN with their Aadhaar number to keep it active³.

The Press Release dated 5 April 2017 issued by the Central Board of Direct Taxes (CBDT) further reiterated this requirement. As per the Aadhaar Act only a resident individual is entitled to obtain an Aadhaar number. Resident individual means an individual who has resided in India for a period or periods amounting in all to one hundred and eighty-two days or more in the twelve months immediately preceding the date of application for enrolment.

The Central Government issued a notification⁴ stating that the provisions of Section 139AA of the Act shall not apply to an individual who does not possess an Aadhaar number or the Enrolment ID and is:

- Residing in the states of Assam, or Jammu and Kashmir or Meghalaya;
- A non-resident as per the Act;
- Of the age of eighty years or more at any time during the relevant financial year;

¹ 'Aadhaar number' means an identification number issued to an individual under Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (the Aadhaar Act)

² 'Enrolment ID' means a 28 digit Enrolment Identification Number issued to a resident at the time of enrolment for Aadhaar number

³ Press Release dated 11 May 2017 issued by CBDT prescribes the process for linking PAN with Aadhaar number

⁴ Notification No. 37/2017, dated 11 May 2017 issued by Ministry of Finance,

- Not a citizen of India;

The notification shall be effective with effect from 1 July 2017.

Please refer our Flash News dated 15 May 2017 for more details on this requirement on the below link:

<http://www.in.kpmg.com/TaxFlashNews-INT/Aadhaar-number-not-mandatory-for-foreign-national-and-non-resident-for-PAN-and-Income-tax-return-1.pdf>

In the interim a writ petition was filed in the Supreme Court of India challenging the constitutional validity of the Section 139AA. The Supreme Court upheld the validity of Section 139AA and provided a partial relief in relation to consequences of not linking of PAN to Aadhaar in specified circumstances.

Recent Press Release by CBDT

The CBDT issued a press release dated 10 June 2017 to clarify the effect of recently pronounced decision of the Supreme Court⁵ on Aadhaar-PAN linkage as under:

- From 1 July 2017 onwards, every person eligible to obtain an Aadhaar number must quote the same or an enrolment ID for filing of income tax return as well as an application for allotment of PAN;
- Everyone who has been allotted a PAN as on 1 July 2017, and who has an Aadhaar number or is eligible to obtain an Aadhaar number shall intimate the same to income tax authorities for the purpose of linking the two;

⁵ Writ Petition (Civil) No. 247 of 2017 & Others

- The Supreme Court has only given a partial relief to those who do not have an Aadhaar number and who do not wish to obtain an Aadhaar number for the time being from the requirement of linking PAN with an Aadhaar. Consequently, their PAN will not be cancelled so that other consequences under the Act for failing to quote PAN may not arise.

Our comments

The CBDT has stated that the Hon. Supreme Court has upheld the enactment of the new Section 139AA of the Act and its constitutional validity. The press release by CBDT seems to suggest that the Hon. Supreme Court has given only a partial relief vis-à-vis cancellation of PAN due to non-compliance of linking PAN with an Aadhaar number by those individuals who do not already have an Aadhaar number and who do not wish to obtain the same for the time being. This is considering the hardship that may be caused to such individuals due to cancellation of PAN as the same is required for various transactions like opening a bank account, buying a property, etc.

In a situation where an individual eligible to obtain an Aadhaar number and is filing an income-tax return post 30 June 2017, the understanding seems to be that quoting of an Aadhaar number (and hence obtaining one) on the return and linkage with PAN is required.



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