



## CBDT notifies rules with respect to non-furnishing of PAN by non-residents and furnishing of alternative documents

### Background

As per erstwhile provisions of Section 206AA of the Income-tax Act, 1961 (the Act), any person who is entitled to receive any sum on which tax is deductible under Chapter XVII-B of the Act shall furnish his Permanent Account Number (PAN) to the person responsible for deducting such tax. If such PAN is not furnished, the tax shall be deducted at the rate mentioned in the relevant provisions of the Act or at the rate in force or at the rate of 20 per cent, whichever is higher. These provisions also applied to non-residents with an exception in respect of payment of interest on long-term bonds as referred to in Section 194LC of the Act.

In order to reduce compliance burden, the Finance Act, 2016 amended Section 206AA of the Act to provide that the provisions of this Section shall not apply to a non-resident, not being a company, or to a foreign company, in respect of any other payment, other than interest on bonds, subject to such conditions as may be prescribed.

Recently, the Central Board of Direct Taxes (CBDT) has issued a Notification<sup>1</sup> and introduced Rule 37BC in the Income-tax Rules, 1962 (the Rules) in relation to relaxation from deduction of tax at source at a higher rate under Section 206AA of the Income-tax Act, 1961 (the Act). Rule 37BC of the Rules provides that a non-resident deductee without a PAN, shall not be subject to higher withholding tax under Section 206AA, in respect of payments in the nature of interest, royalty, fees for technical services and payments on transfer of any capital asset, if the

deductee furnishes the specified details and the documents to the deductor. The Rules are summarised as follows:

### **Rule 37BC - Relaxation from deduction of tax at higher rate under Section 206AA**

- As per Rule 37BC(1), in the case of a non-resident, not being a company, or a foreign company (the deductee) and not having PAN, the provisions of Section 206AA shall not apply in respect of payments in the nature of interest, royalty, fees for technical services and payments on transfer of any capital asset, if the deductee furnishes the details and the documents specified in sub-rule (2) to the deductor.
- Rule 37BC(2) specifies that in respect of payments specified therein the deductee shall furnish the following details and documents to the deductor:
  - name, e-mail id, contact number;
  - address in the country or specified territory outside India of which the deductee is a resident;
  - a certificate of his being resident in any country or specified territory outside India from the government of that country or specified territory, if its law provides for the issuance of such certificate;
  - Tax Identification Number of the deductee in the country or specified territory of his residence. In case no such number is available, then a unique number on the basis of which the deductee is identified by the government of that country or the specified territory of which he claims to be a resident.

<sup>1</sup> CBDT Notification No. 53 /2016, F.No.370 142/16/2016-TPL, dated 24 June 2016

- Consequential changes have been introduced in Form No. 27Q, which is a quarterly statement of deduction of tax under Section 200(3) of the Act, in respect of specified payments. Accordingly, the information mentioned in the Rule 37BC needs to be furnished in the Form No. 27Q.

## Our Comments

The issue with respect to deduction of tax at source at the rate of 20 per cent under Section 206AA of the Act where the tax treaty benefit is available has been a matter of debate before the Tribunal. While Tribunal<sup>2</sup> in some of the cases has held that beneficial tax treaty rate should be allowed as tax treaty is overriding the provisions of Section 206AA of the Act. On the other hand, the Tribunal<sup>3</sup> has held that the higher tax rate specified under Section 206AA of the Act should be applied even if the tax treaty benefit is available.

The 'Income Tax Simplification Committee' (the Committee) under the Chairmanship of Justice R.V. Easwar in its report recommended that it should suffice if the non-resident furnishes to the deductor, in lieu of such PAN, his tax identification number in the country or the specified territory of residence. In case there is no such number, then, a unique number on the basis of which the person is identified by the government of the country or the specified territory of which such person claims to be a resident should also suffice.

In line with the Committee's recommendations, the Finance Minister in his speech for Budget 2016-17 mentioned that on furnishing of alternative documents, the higher rate would not apply under the relevant provisions. Accordingly, the provisions of Section 206AA were amended, and CBDT has now issued much-awaited conditions by way of the introduction of Rule 37BC. This is a welcome step, and it may promote ease of doing business in India and simplify the tax procedures relating to Section 206AA of the Act.

It seems Rule 37BC read with Section 206AA, indicates that if a non-resident taxpayer not having a PAN does not furnish the specified documents then the provisions of Section 206AA may apply. Whether placing reliance on the above-referred decisions in the case of Preecol Ltd and Wipro Ltd, the taxpayer can contend that when a foreign recipient is eligible for the benefit of the tax treaty, deduction of tax at source should not be done at the higher rate of 20 per cent under Section 206AA.



<sup>2</sup> DCIT v. Pricol Ltd (ITA No. 56 & 57/Chny/2014), Wipro Ltd. v. ITO (2016-TII-27-ITAT-BANG-INTL) [ IT (IT) A. Nos.1544 to 1547/Bang/2013], DCIT v. Serum Institute of India Ltd. [2015] 56 taxmann.com 1 (Pune)

<sup>3</sup> Bosch Ltd v. ITO [2012] 141 ITD 38 (Bang)

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