

## India

# Permanent Account Number (PAN)

## Information and Procedure

### Swiss Business Hub India / SKP Group India

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#### Are you doing business with India and not filing a tax return?

If yes, we would recommend you to read the text below about filing tax returns in India.

#### Which foreign companies or firms are required to file tax returns?

If you are earning income from any of the following sources you are required to file tax return:

- Royalty
- Service Income (like consultancy fee, technical fee, support services fee, etc.)
- Installation Income
- Projects in India for a long duration
- Services in India through its employees
- Interest income on rupee denominated loans
- Capital Gains on sale of shares
- Permanent establishment in India

#### Filing tax returns in India

In order to file tax returns in India, a tax registration number i.e. Permanent Account Number (PAN) is required. Accordingly, any company having a PAN in India is required to file tax returns here with the following exceptions. You are not required to file tax returns in India if your income is earned from:

- Interest on foreign currency loans granted to an Indian borrower
- Dividend on which an Indian company has paid dividend distribution tax
- Pure sale of goods in India - no business connection in India
- Purchase of goods from India

#### Implications of not filing a tax return

The tax officer can levy a penalty of INR 5'000 for not filing a tax return. In cases where tax returns are not filed, the revenue authorities would issue a notice to the company asking it to file tax returns. Tax returns filed in response to the notice are audited by the revenue authorities. This tax audit process would entail providing various details as well as replying to the revenue authorities' questions. However, if a tax return is filed voluntarily by the taxpayer, the tax authorities scrutinise only those cases that are selected based on certain parameters.

## Way forward - What should you do?

1. Evaluate your transactions with India to see if they fall within any of the above parameters.
2. If yes,
  - Prepare a proper response for not having filed tax returns yet
  - Alternatively, you may also consider filing a delayed/belated tax return

## Procedure and documentation for procuring a Permanent Account Number (PAN) in India

### Background

Currently, foreign companies earning incomes from sources within India are subjected to withholding taxes at the rates prescribed under the Indian Income Tax Act (ITA) or India's treaty with the relevant foreign country; whichever is more beneficial to the taxpayer.

As per the Indian tax laws, every recipient including a non-resident/foreign company is required to furnish a Permanent Account Number (PAN) to the payer in India. If the recipient fails to provide the PAN, the applicable withholding tax rate in respect of payments / credit after 1st April 2010 would be higher of the following rates:

- Rate specified in the relevant section depending on the nature of payment
- Rates in force (rate specified in the ITA or under the tax treaty)
- Rate of 20%

**Effective from 1st June, 2016**, this provision had been amended to provide relaxation from the applicability of a higher rate of withholding tax on payments to foreign companies or non-residents. Thus, even in absence of PAN, benefit of treaty rate can be availed inter-alia by foreign companies or non-residents subject to providing the following details/ documents:

- Name, email ID, contact number
- Address
- Tax Residency Certificate (TRC)
- Tax Identification Number (TIN) or a unique number on the basis of which the non-resident is identified by the government of that country

The aforesaid relaxation is available only for payments made in the form of interest, royalty, fees for technical services and transfer of capital asset. In case of any other payment, the requirement of obtaining PAN would still continue to apply.

Further, it is pertinent to note that this amendment is from the perspective of withholding of tax at a rate as per ITA or tax treaty, whichever is lower, on the aforesaid payments. The tax authorities have also incorporated changes in withholding tax statement to be filed by the payer in India, and in cases where a foreign company does not have a PAN the payer will be able to declare in the said statement "PAN Not Available". However, this does not absolve a foreign company from its obligation of filing tax returns if their income is chargeable to tax in India.

As per the Income Tax Act, every company is required to file a tax return in India (unless it is covered by the exceptions as mentioned above). For filing of tax return and to avail the credit for taxes withheld in India, foreign company is required to obtain PAN in India. Thus, irrespective of the amendment in the provisions of ITA, it is advisable that the foreign companies obtain a PAN and file their tax returns in India.

## Implications of obtaining PAN

- Filing tax returns in India - Although technically liable, practically, many overseas companies are not filing tax return in India. Once PAN is obtained by a foreign company, the tax authorities can easily scrutinize the compliances by such foreign company based on the PAN allotted to it
- Transfer pricing compliance in India - obtaining a certificate from a CPA certifying the arm's length nature of pricing policy in case of related party transaction
- Representation before the Indian tax/transfer pricing authorities - in case the tax return filed is selected for detailed revenue audit
- Maintenance of books of accounts/tax audit subject to prescribed thresholds. The applicability of these provisions is not clear in respect of foreign companies which otherwise do not have a taxable presence in India

## Details required for completing the PAN application form

- Exact name of the company
- Address of the company as mentioned in the Certificate of Incorporation
- Registration Number
- Date of Incorporation
- Email ID of company
- Phone number of company
- Full name of the person authorised to sign the PAN application along with his designation

## Documents required

A copy of the registration certificate (*preferably certificate of incorporation*) of the overseas company, duly attested by the Indian Embassy / High Commission or Consulate in the country where the applicant is located. Documents certified by 'Apostille' in respect of countries which are signatories to the Hague Apostille Convention of 1961 are also accepted.

The certificate should specify:

- Complete name
- Address
- Date of registration of the company
- Registration number of the company
- In case document is in foreign language, the document would have to be translated in English and also to be attested by Indian Embassy

## Timeframe for procurement of PAN

- Compilation of PAN application - 48 hours from the date of receipt of complete details
- In general, the tax authorities take around 2-3 weeks for allotting PAN

Source: skpgroup