

Furnishing of Annual Statement by a Non-Resident having a Liaison Office in India



Background:

The Finance Act, 2011 introduced section 285 into the Income-tax Act, 1961 w.e.f. 1-6-2011 for non-residents having Liaison Office ('L.O.') in India. As per the said section, every non-resident having a L.O. in India, set up in accordance with the Reserve Bank of India ('RBI') guidelines under the Foreign Exchange Management Act, is required to submit to the jurisdictional Assessing Officer a statement within sixty days from the end the relevant financial year, in such form and containing such particulars as may be prescribed.

Introduction to Rule 114DA

Pursuant to section 285, the Central Board of Direct Taxes ('CBDT') has introduced Rule 114DA vide **Notification No. 5/2012, dated 6-2-2012** prescribing the form and manner for furnishing the relevant particulars. This rule would come into effect from the current financial year i.e. F.Y. 2011-12 relevant to Assessment Year 2012-13.

The salient features of the newly introduced Rule 114DA are as under:-

- 1.The annual statement as provided in Section 285 is to be furnished in Form 49C.
2. The annual statement is required to be verified by a Chartered

Accountant **or** by the person authorised in this behalf by the non-resident.

- 3.The annual statement is required to be submitted in electronic form and signed digitally.
- 4.The Director General of Income-tax (Systems) shall specify the procedure for filing of the annual statement and shall also be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to statements so furnished.

Salient features of Form 49C:

The following information is required to be submitted in the Form 49C:-

- Financial year for which statement is being submitted;
- Name and Principal Address of the non- resident person in India;
- Head office address of the non resident person;
- Permanent Account Number (if allotted);
- Tax identification Number, if any, of country of incorporation or residence;
- L.O. Registration No. granted by RBI;
- Nature of activities undertaken by L.O.;
- Date of opening L.O. in India;
- Date of RBI approval for L.O. opening;

- Address of L.O. in India;
- Date of submitting the Annual Activity Certificate (AAC) for the financial year to RBI;
- Name, address and Membership No. of the Chartered Accountant signing the AAC as prescribed by RBI;
- India specific financial details for the financial year i.e., receipts, income and expenses of the non-resident person from or in India (not only of the L.O.);
- Details of all purchases, sales of material, and services from/to Indian parties during the year by the non-resident person (not limited to transactions made by a L.O.);
- Name & designation of officer In charge for each office of the non-resident person in India;
- Details of any salary or compensation of any sort payable outside India to any employee working in India or for services rendered in India;
- Total number of employees working in the LO/L.O.s during the year and particulars of employees drawing salary of Rs. 50,000 or above per month specifying their Name, Designation and sitting location;
- Details (with complete addresses including PAN) of agents/representative/distributors of the non-resident person in India;
- Names & addresses of the top five parties in India with whom the L.O. has been doing the liaisoning;
- Details of products or services for which liaisoning activity is done by the L.O.;
- Details of any other entity (including PAN, if any) for which liaisoning activity is done by the L.O.;
- Details of group entities (with addresses and PAN, if any) present in India as branch office/company/LLP etc., incorporated in India and nature of their business activities;
- Details (with addresses) of other L.O.s of the group entities in India;
- Other group entities operating from the same premises as the office of the L.O.

SKP Comments and Conclusion:

- Since the above requirements are to be mandatorily submitted by all L.O.s in their annual statements, it is important that every L.O. should maintain the necessary records.
- The information called in this form is very voluminous and therefore, it would be advisable to start gathering the same at the earliest.
- It may be noted there is no clarification by the CBDT as to whether the introduction of Form 49C is a substitute for the Income tax returns that are to be filed by L.O. in India for every financial year.
- It is pertinent to note that the due date for furnishing Form 49C is sixty days of from the end of the financial year wherein LO has to mention date of submission of AAC; however, as per RBI regulations, AAC is required to be submitted within six months from the date of the balance sheet. Therefore, to that extent there appears to be an anomaly in the said requirement.

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Sudit K Parekh & Co
Chartered Accountants

2nd Floor, Ballard House
Adi Marzban Path
Ballard Estate
Mumbai 400 001
Tel +91 22 66178000
Fax: +91 22 66178002

Offices also at Delhi,
Hyderabad and Pune.

For further queries
e-mail - alerts@skparekh.com