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Permanent Account Number (PAN)

A new legislation, effective from April 2010, has made it mandatory to mention PAN of the payees on all financial transactions in India. Further mentioning of PAN is mandatory on all outgoing payments from India abroad, subject to withholding tax in India. The primary intention behind this legislation was to constitute a uniform tax database and sound information system for all financial transactions. This step is also indirectly meant to serve as a preventive measure for curbing tax evasion by keeping a track of monetary transactions of high net worth individuals.

The frequently asked questions framed here are aimed at the Austrian Companies and individuals who have existing and/or are planning financial transactions with India.

What is a PAN?

The PAN is a ten-digit number similar to the "Steuernummer" in Austria issued by the Income Tax Authority of India (ITA) to any "person" legal and natural who applies for it. The PAN serves as unique identification number for tax purposes in India.

Why is it essential for non-residents to have a PAN?

For foreign enterprises having taxable income in India, it is mandatory to quote the PAN especially on all invoices sent to the Indian party and on all correspondence it has with the Indian party. If no PAN is presented the tax withholding from payments to the foreign enterprise is increased from the regular 10% (see below in detail) to at least 20%. The foreign enterprise also needs the PAN to file its annual Return of Income ("ROI") in India (see below in detail).

Who is required to have a PAN?

Among others, a PAN must be obtained by all persons having taxable income in India. Such income can be income from salary, interest, royalties, technical services, consultancy services or capital gains. Whether a certain income is subject to tax in India or not is defined by national Indian tax law which is itself limited by the Double Taxation Avoidance Agreements India has entered into with other countries, including Austria. The mere sale of goods to Indian customers is usually not subject to income tax in India (unless the foreign enterprise has a Permanent Establishment in India).

On which financial transactions is it obligatory to mention a PAN?

A PAN also needs to be quoted for certain financial transactions. Including many others the following are relevant

- Opening a bank account in India
- Sale or purchase of immovable property in India (above certain limits)
- Sale or purchase of a motor vehicle or vehicle in India

What is Tax Deduction at Source (TDS) and when is this deducted?

Tax Deduction at Source also known as "withholding tax" is a tax collection method similar to "Quellensteuer" in Austria, whereby a percentage of the payment is deducted by the payee and paid directly to the tax authorities. Especially Fees for Technical Service ("FTS"), royalties and interest payments to non-residents are subject to TDS. The

payee, i.e. the Austrian company has to insist on tax withholding certificates (Form 16A) to be provided by the India payor. Without those certificates, the payee cannot prove to the tax department that taxes due have been paid.

Vice versa, the non-resident may also be in the position to deposit tax at source from payments made by him e.g. to an employee based in India who becomes subject to Indian personal income tax. Being his employer, the foreign enterprise must deposit salary tax. Further, as per Indian law, a foreign enterprise may also be required to deduct and deposit TDS from various fees paid to persons resident in India, e.g. for technical and professional service. TDS at a rate of 10% from the payment amount applies (if the Indian person fails to present his PAN to the payee the tax rate is 20%). Complying with such TDS obligations is especially important for foreign enterprises being subject to tax in India with a Permanent Establishment. Business expenditures (e.g. salary or consultancy fees) cannot be deducted from the income attributed to the Permanent Establishment unless the corresponding TDS has been paid correctly. The non-compliance with regard to TDS payment is further subject to heavy penalties and interest. For being able to deposit TDS, the deductor has to obtain a Tax Deduction and Collection Account Number ("TAN").

When is TDS levied?

The TDS becomes due at the time of credit of such income by the payer or at the time of payment by the payer, whichever is earlier. It must be deposited by the 7th of the month following the month in which the TDS has become due.

What is highest tax rate to be charged as TDS?

The Double Taxation Avoidance Treaty between India and Austria (DTA) has determined the following highest deductible rate for TDS (simplified):

Interest	10% (exemptions exist)
Dividend	10% (currently not applied in India)
Royalties	10%
Fees for Technical Services	10%

The application of these rates requires that the Austrian enterprise has a valid PAN. Otherwise, the withholding rate increases to 20%. In case the Austrian enterprise has a Permanent Establishment in

India the tax rate is not capped at the above rates but may be up to approx. 42%. A certificate for a lower tax withholding rate can be applied for.

We are an Austrian company with customers in India. From our last invoice raised to our customer in India, a total of 20% instead of the fixed rate as per the DTA (10%) was deducted. Am I entitled to receive the difference of 10% from my customer?

The higher tax withholding is likely based on the failure of the Austrian company to provide its PAN to the Indian customer. As per national Indian law, the customer was obliged to withhold and deposit tax at the rate of 20%. Thus, he is not under the obligation to remit the excess 10% to the Austrian company. The Austrian company may also not be in the position to get a tax credit for the amount of 20% from its Austrian income tax due to the fact that the DTAA only allows a tax withholding of 10% max. However, the Austrian company may request a refund of the excess 10% from the Indian tax authorities by way of filing its ROI in India once it has obtained its PAN.

When is it obligatory for an Austrian Company to apply for a PAN?

The PAN should at the latest be applied for before the TDS becomes due, i.e. in most cases before the first invoices are raised to India. At best, it should be present before the underlying contract is signed.

What happens if I do not apply for a PAN?

The tax withholding will remain at 20% and the Austrian company will fail to comply with its obligation to file its ROI in India.

I am a Non-resident without any presence in India. Can I also apply for a PAN?

Yes. You can and you should apply for a PAN in India if you have income taxable in India.

Can a Non-resident freelancer or private person also apply for a PAN?

Yes. Non-resident freelancers or private persons can and should apply for a PAN in India if they have income taxable in India, e.g. if they render technical services charged to India or if they earn salary income subject to tax in India.

Will I be liable in such case for tax in India?

For Non-Residents obtaining PAN is only a procedural requirement and per se will not create any tax liability in India. In other words, applying for the PAN is a consequence of having taxable income in India but not a prerequisite.

Is there a risk of creating a Permanent Establishment (PE) while obtaining a PAN as non-resident?

The PAN is not a determining factor for the constitution of a PE or for other matters of taxability in India. There are separate tests to be followed. However, as always, any business transaction/s should be carefully planned beforehand to avoid any activities, which might be construed as Permanent Establishment in India. In sum, obtaining a PAN per se by a non-resident in India will not create permanent establishment.

Where can I apply for a PAN?

Theoretically an application for PAN can be filed directly online via Internet by an applicant on the website of the Income tax authority of India. (See <http://incometaxindia.gov.in/>). However, documents are required to be attested and apostilled in Austria and from time to time a follow-up with the Indian office handling the applications is required. If you are not really acquainted with Indian tax compliance understanding of technicalities, filing and submission of required documents in the precise manner might prove to be a demanding task. It is recommended to seek professional help for filing the PAN application. A few private service providers can assist you in obtaining your PAN.

Can I apply for PAN at the Indian Embassy?

No. The Indian Embassy in Vienna only attests the legitimacy of the Austrian documents submitted by you. The Embassy does not process the submission of the application itself.

What documents do I need for the PAN application?

In order to apply for the PAN number, you need:

/// Form 49A duly filled (*available for download at http://www.indianembassy.at/?page_id=2277*)

/// Proof of Residence: Copy of the Meldezettel of the applicant

/// Proof of Identity: Copy of the passport of the applicant

/// Company registration documents (Firmenbuchauszug) with apostille stamp from Austrian authorities

Additionally, when submitting your documents for attestation at the Embassy's Consular Section, the following documents are required:

/// Application form for miscellaneous services duly filled (*available for download at http://www.indianembassy.at/?page_id=2277*)

/// Documents that justify the business relation with India and the need for the PAN Application

/// One passport photograph of the applicant

PLEASE NOTE:

If the applicant is a company, the applicant must be a company representative whose name appears in the company registration documents.

Do I need to change my PAN if there is change in my address?

NO, once allotted, the PAN itself remains unchanged. But changes in your address must be notified to the authorities for correct correspondence address.

Can I obtain different PANs?

No, each person (both natural and legal) can obtain only one PAN.

Where shall I mention my PAN?

The PAN must be mentioned on all invoices and all correspondence to India referring to income taxable in India (e.g. invoices for services / contracts for services / etc.).

Which obligations might arise on obtaining PAN in India?

The question may easily be misunderstood and can only be replied to correctly by giving three answers.

/// Actually, having a PAN does not bring along further obligations but to update the tax authorities about changes affecting the PAN registration.

/// Still, any foreign enterprise has to file its ROI in India if it has income taxable in India. It needs to be filed irrespective of whether taxes have already been paid on that income by way of TDS by the payor,

either at the rate of e.g. 10% or at a higher rate. Where no additional tax is levied, the ROI will be a so called NIL return. ROIs must be filed in India by 30 September following the close of the respective Indian financial year (1 April to 31 March). In case of international transactions (taxable in India) between related parties (e.g. service invoices issued by the Austrian company to its Indian subsidiary) the ROI has to be filed together with a short transfer pricing documentation ("Form 3CEB") of the Austrian company. In this case the ROI can be filed at the latest by 30 November. Note, depending on the amount of international transactions, a more detailed transfer pricing study may to be prepared as well. Any late filing of ROIs may have serious consequences especially where the foreign enterprise has a Permanent Establishment in India.

Through the PAN registration, the foreign enterprise will be visible for the Indian tax authorities. All Indian tax related data will be registered under the PAN and the information will be stored by the Indian tax authorities in an organized manner. The Indian tax authorities will closely monitor whether a foreign enterprise has filed its ROI as prescribed

by law. At any time, the Indian tax authorities may also raise further questions especially with the aim to determine whether the foreign enterprise has a Permanent Establishment in India or not.

Against this background, the actual obligations arising on obtaining PAN would vary as per the facts of each case. Therefore it is recommended to take professional advice before applying for a PAN in India to make an informed decision. The information provided above is to make the readers conscious of eventual obligations in India.

DISCLAIMER

This brochure contains general information only and is not intended to be comprehensive. This is not a substitute for professional advice or services, and it should not be acted on or relied upon or used as a basis for any investment or other decision or action that may affect you or your business. Before taking any such decision you should consult a suitably qualified professional adviser. Whilst reasonable effort has been made to ensure the accuracy of the information contained in this publication, this cannot be guaranteed. Neither the Publishers nor the Authors shall have any liability to any person or entity which relies on the information contained in this publication, including incidental or consequential damages arising from errors or omissions. Any such reliance is solely at the utilizer's risk.

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The Indian Embassy Commercial Wing

The website of the Embassy of India, Vienna, offers a wide variety of business related information carefully selected to meet India-Austria's business demands. In our online portal, companies not only have the opportunity to find relevant information on India-related trade matters, but can also interact with the commercial wing of the Embassy by submitting their trade inquiries online.

Additionally, the Embassy compiles a quarterly economic and commercial report for Austria, which is targeted at Indian business readers and trade corporates. The same can be downloaded directly from our Website or received via email by registering in our website.

Besides the online presence, the Embassy also has a Business Centre Facility, located on the first floor of the Main Chancery building. The space is ready to welcome businesspeople and parties interested in requesting, exchanging or providing information on India-related business matters. You can either schedule an appointment with a representative of our commercial wing at the contacts given below or simply visit us during our opening hours Mondays to Fridays from 11AM to 1PM.

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