

EY Tax Alert

CBDT grants relief to payers for past transactions where payee has linked PAN with Aadhaar number by the specified date

Executive summary

EY Alerts cover significant tax news, developments and changes in legislation that affect Indian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor.

This Tax Alert summarizes Circular No. 6 of 2024 dated 23 April 2024 (Circular) issued by the Central Board of Direct Taxes¹ (CBDT), wherein the CBDT has granted relief to taxpayers, being persons responsible for withholding or collection of taxes under the Indian Tax Laws² (ITL) (hereinafter referred to as Payer/Collector), for default in withholding or collection of taxes at a higher rate in respect of transactions undertaken till 31 March 2024 against inoperative PAN³ (i.e., PAN of a taxpayer that has not linked its PAN with Aadhaar number⁴) on the date of the transaction.

The CBDT, vide this Circular, has clarified that no liability of higher withholding or collection of taxes shall be imposed on the Payer/Collector in respect of transactions undertaken till 31 March 2024 if PAN of the counter party becomes operative on or before 31 May 2024 and, consequently, general provisions of the ITL applicable to withholding or collection of taxes shall be applicable.

¹ Apex body for direct tax administration in India

² Income Tax Act, 1961 (ITA) read with Income Tax Rules, 1962 (Rules)

³ Permanent Account Number

⁴ 12-digit random number issued by the Unique Identification Authority of India (UIDAI) to residents of India after satisfying the verification process laid down by the UIDAI under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016



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Background

- ▶ Finance Act, 2017 introduced the Aadhaar-PAN linking provision⁵ in the ITL, with effect from 1 April 2017, which mandated taxpayers, being individuals (barring certain exceptions⁶) who are holding a valid PAN as on 1 July 2017, to intimate their Aadhaar number to the specified income tax authority on or before a sunset date⁷. This was to weed out multiple PANs in the name of a single person and/or single PAN allotted to different persons and/or to weed out bogus PANs.
- ▶ Wherever PAN was not linked with Aadhaar number by 31 March 2022, the PAN would become inoperative from 1 April 2022. However, the consequences prescribed under the ITL operated only w.e.f. 1 July 2023. During the period from 1 April 2022 to 30 June 2023, non-linked PAN remained inoperative, but without any adverse consequences except for payment of fee⁸ for belated linking of Aadhaar number with PAN.
- ▶ **Consequence of PAN becoming inoperative⁹:** The ITL provides for the following adverse consequences where PAN becomes inoperative on account of default in complying with Aadhaar-PAN linking provision: (i.) Non-issuance of refund. (ii.) Non-payment of interest on refund for the period where the default subsists. (iii.) Withholding or collection of taxes at higher rates. These adverse consequences were effective from 1 July 2023 and continue till PAN becomes operative.
- ▶ The CBDT received various grievances from Payers/Collectors that they received notices for short deduction/collection of taxes with respect to such inoperative PANs and were required to deduct/collect taxes as per higher rate as prescribed under the ITL. Consequently, demands were raised against such Payers/Collectors.
- ▶ The CBDT has issued this Circular to redress the grievances of such Payers/Collectors.

Circular

- ▶ The Circular clarifies that for transactions that took place till 31 March 2024 and in cases where PAN of

the counter party becomes operative on or before 31 May 2024, no liability of higher withholding or collection of taxes shall be imposed on the Payers/Collectors on account of non-linkage of PAN with Aadhaar number.

- ▶ Hence, in such cases, general provisions of the ITL regarding withholding or collection of taxes shall apply on the Payer/Collector.

⁵ Under Section 139AA of the ITA, read with Rule 114AAA of the Rules. Under the ITL, every taxpayer (subject to certain exceptions) is required to intimate its Aadhaar number to the specified income tax authority, being Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems) or the person authorized by the said authorities, within a specified due date, failing which, certain specified consequences shall get triggered

⁶ An individual taxpayer who resides in the state of Assam, Meghalaya or Jammu and Kashmir; or an individual taxpayer who is a non-resident as per the ITL or is of the age of 80 years or more at any time during the tax year or is not a citizen of India. Refer EY Tax Alert titled, "Tax implications of Aadhaar-PAN linking deadline of 30 June 2020" dated 22 June 2020

⁷ Initially, the sunset date for linking of PAN with Aadhaar number was specified as 31 March 2020. However, the central government granted multiple extensions due to the COVID-19 pandemic and the last extended date was 31 March 2022. (Refer EY Tax Alerts titled, "Tax implications of Aadhaar-PAN linking deadline of 30 June 2020" dated 22 June 2020, "Central Government announces tax exemption on COVID-19 related payments and extension in timelines for different compliances under Income Tax Laws and other laws" dated 28 June 2021 and "CBDT grants few extensions relating to linking of Aadhaar Number with PAN, completion of penalty proceedings under ITL" dated 20 September 2021.)

⁸ To encourage compliance of linking Aadhaar number with PAN, the ITL was amended vide Notification No. 17/2022 dated 29 March 2022, Press Release dated 30 March 2022 and Circular No. 7/2022 dated 30 March 2022 to introduce a new provision for levy of fees (i.e., INR500 for cases where PAN was linked with Aadhaar number after 31 March 2022 but on or before 30 June 2022 and in other cases, applicable fees is INR1,000) for cases where the taxpayer links their PAN with their Aadhaar number after the sunset date. Refer EY Tax Alert titled, "CBDT notifies fees payable in case of delay in linking Aadhaar with PAN and defers other consequences of non-linking till 31 March 2023" dated 31 March 2022.

⁹ Refer Notification No. 15/2023 dated 28 March 2023 issued by the central government and Circular No. 3 of 2023 dated 28 March 2023 issued by the CBDT

Comments

This is a welcome move by the CBDT and grants relief to Payers/Collectors. However, benefit of the Circular is restricted to transactions which have taken place till 31 March 2024 and is not applicable to transactions carried out after that.

This Circular grants relaxation only for liability arising due to applicability of higher withholding or collection of tax obligation and corresponding interest liability thereon. However, there is no relaxation for base tax withholding or collection of tax obligation as may be applicable otherwise to the transactions and related interest liability for default, if any.

This Circular is silent about cases where the Payer/Collector has already paid the demand (including interest) against the notices so issued prior to issuance of this Circular and where such PANs become operative on or before 31 May 2024. As it appears, such cases would also be entitled to benefit from this Circular. In respect of payments found in excess, the Payer/Collector may be entitled to seek refund of the amount paid or adjustment of such amount against future withholding/collection of tax liability by filing revised withholding/collection of tax returns. This is subject to the fact that the counter party has not already filed tax return for tax year 2023-24 and claimed the credit of such higher taxes. In such cases, the Payer/Collector may be entitled to refund of only interest amount already paid.

If the counter party links its PAN with Aadhaar number on or before 31 May 2024, the Payer/Collector may have to apply to the tax authority for rectification of the demand pursuant to this Circular.

It may be interesting to note that upon linking of PAN with Aadhaar number, it may take one to thirty days to make PAN operative. In such a case, strict application of this Circular may not allow benefit to cases where PAN is linked with Aadhaar number on or before 31 May 2024 and is made operative after 31 May 2024 within the outer time limit of 30 days. Such does not appear to be intent of this Circular. A suitable clarification by the CBDT may avoid undue hardship in such genuine cases.

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