

## **Does a foreign company need to obtain a PAN in India?**

s. 139A of the Income Tax Act 1961 ('ITA') elaborates the provisions in respect of Permanent Account Number. As per s. 139A, every person -

- i. If his total income or the total income of any other person in respect of which he is assessable under the ITA during any previous year exceeded the maximum amount which is not chargeable to income tax; or
- ii. carrying on any business or profession whose total sales, turnover or gross receipts are likely to exceed INR 5 lacs in any previous year; or
- iii. who is required to furnish return of income under s. 139(4A) of the ITA;
- iv. being an employer, who is required to furnish return of fringe benefits under s. 115WD, or
- v. being a resident, other than an individual, which enters into a financial transaction of an amount aggregating to INR 2,50,000/- or more in a financial year; or
- vi. who is a managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of the person referred to in clause (v) or any person competent to act on behalf of the person referred to in clause (v); or
- vii. who intends to enter into such transaction as may be prescribed by the Board in the interest of revenue.

Further, sub-section 5 of s. 139A states as under:

*every person shall –*

- a. *Quote such number in all his returns to, or correspondence with, any income-tax authority;*
- b. *Quote such number in all the challans for the payment of any sum due under this Act;*
- c. *Quote such number in all documents pertaining to such transactions as may be prescribed by the Board in the interest of the revenue, and entered into by him.*

Thus, as per s. 139A(5)(c), a person is required to quote number in such documents as prescribed by the Board. Rule 114B of the Income Tax Rules provides certain conditions under which *any person* is required to quote it's PAN :

Under Rule 114B, ***any person*** that sells or purchases shares of an unlisted company in excess of INR 1,00,000/- per transaction is required to obtain a PAN. A foreign company is included under the definition of ***any person*** as per the definition of s. 2(31) of the Income tax Act 1961.

Thus, if a foreign company invests in the shares of a domestic company in excess of INR 1,00,000/-, it is required to obtain a PAN.

### **Statement of Financial Transactions (SFT)**

In order to keep a watch on high value transactions undertaken by certain classes of taxpayers, the concept of ***statement of financial transactions or reportable account*** has been framed under the income tax laws. As per s. 285BA of the ITA, specified entities (filers) are required to furnish a statement of financial transactions in respect of specified financial transactions or any reportable account registered/recorded/maintained by them during the financial year to the income-tax authority or such other prescribed authority.

A reporting entity is required to furnish such statement in case it issues shares to any person (including a foreign company) of an amount aggregating INR 10 lacs or more in a financial year for acquisition of shares (including share application money) issued by a company.

Accordingly, in view of the provisions of s. 139A & s. 285BA of the ITA and Rule 114B of Income Tax Rules, it is mandatory for a foreign company investing in shares in an unlisted company in excess of INR 1,00,000/- to obtain a PAN.