

DIRECT TAX CIRCULARS

Circular No. 21 of 2019

Date - 27.08.2019

Clarifications in respect of filling-up of the ITR forms for the Assessment Year 2019-20

The Income-tax Return (ITR) forms for the Assessment Year (A.Y.) 2019-20 were notified vide notification bearing G.S.R. 279(E) dated the 01st day of April, 2019. Subsequently, instructions for filing ITR forms were issued and the software utility for e-filing of all the ITR forms were also released. After notification of the ITR forms, various queries were raised by the stakeholders in respect of filling-up of the ITR forms. The queries were examined in the Board and a clarification was issued vide Circular No. 18 of 2019 dated 08.08.2019 to address the concerns raised.

Subsequently, further representations have been received on certain issues relating to filing of ITR Forms. Accordingly, following clarifications are issued in partial modification of Circular No. 18 of 2019.

In ITR Form-2 and ITR Form-3, in Part-A General, at column (h), the taxpayer is required to state whether he was Director in a company at any time during the previous year. In case of an affirmative answer, the taxpayer is further required to disclose following information relating to each company in which he was a Director:-

- (a) Name of Company
- (b) PAN
- (c) Whether its shares are listed or unlisted
- (d) Director Identification Number (DIN)

Representation has been received stating that non-residents are required to pay tax only in respect of income received in India or income accruing or arising in India. Nonresidents are not required to disclose their assets outside India. Therefore, non-residents should not be required to disclose details of directorship in foreign companies. The disclosure requirement in ITR forms should be limited only to assets and incomes which have a nexus with India.

In this regard, it is stated that the disclosure requirement in ITR forms in respect of directorship in a company is meant only for the purpose of reporting. The details entered in this column are, in general, not relevant for computation of total income or tax liability of the assessee. As such, the requirement to disclose directorship in a foreign company by a non-resident taxpayer, does not tantamount to disclosure of any foreign source income or foreign asset held by such taxpayer.

However, to allay the apprehensions in the minds of non-resident taxpayers, it is hereby clarified that a non-resident shall not be required to disclose details of his directorship in a foreign company, which does not have any income received in India, or accruing or arising in India. In other words, a non-resident taxpayer who is Director only in a foreign company, which does not have any income received in India, or accruing or arising in India, should answer the relevant question in the negative, whereupon he would not be required to disclose details of such foreign company. It is further clarified that a non-resident taxpayer, who is Director in

a domestic company and also in a foreign company, which does not have any income received in India, or accruing or arising in India, should answer the relevant question in the affirmative, and provide details of directorship in the domestic company only. It is also clarified that a resident taxpayer would continue to be required to disclose details of his directorship in any company, including foreign company, in the relevant column.

Further, in ITR Form-2, ITR Form-3, ITR Form-5, ITR Form-6 and ITR Form-7, in Part-B-TTI, before the verification part, a taxpayer, who is resident in India, is required to state whether he had any time during the previous year:-

(a) held, as beneficial owner, beneficiary or otherwise, any asset (including financial interest in any entity) located outside India; or

(b) had signing authority in any account located outside India; or

(c) had income from any source outside India?

In case of an affirmative answer, the taxpayer is required to fill up the Schedule FA. In Schedule FA, the taxpayer is required to disclose the details of foreign assets etc. held at any time during the relevant accounting period.

Representation has been received citing example of cases where the foreign assets have been acquired after the end of "relevant accounting period" (in foreign jurisdiction) but before the end of "previous year" (in India). In such cases, the taxpayer would have to answer the question in Part-B-TTI in the affirmative, and consequently, would be required to fill up the details of foreign assets etc. in Schedule FA. Since the assets were acquired after the end of relevant accounting period, no amounts would be required to be reported in Schedule FA. However, if the taxpayer reports Nil amount in all tables of Schedule FA, the ITR form does not get validated.

In this regard, it is hereby clarified that a taxpayer shall be required to answer the relevant question in the affirmative, only if he has held the foreign assets etc. at any time during the "previous year" (in India) as also at any time during the "relevant accounting period" (in the foreign tax jurisdiction), and fill up Schedule FA accordingly.