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PERMANENT ACCOUNT NUMBER (PAN)

Since mid-2016, foreign enterprises are no longer required by law to obtain a Permanent Account Number ("PAN") to receive certain funds from India with a 10% tax withholding rate applied. Earlier, a PAN had to be presented to the Indian payer / customer in order to avoid an increase of the tax withholding rate to 20%. However, despite the relaxation the requirement to prepare and file an Income Tax Return in India still makes it necessary and highly recommendable to have a PAN.

The following frequently asked questions are aimed at Austrian enterprises and individuals to clarify the need for and consequences of a PAN and Income Tax Return for their business with India.

What is a PAN?

The PAN is a ten-digit Income Tax identification number similar to the "Steuernummer" in Austria issued by the Income Tax Authority of India. The PAN serves as unique number for Income Tax purposes in India. The PAN is national and permanent.



PAN Card

Which income is subject to Indian Income Tax ?

Whether a certain income is subject to Income Tax in India or not is defined by national Indian tax law which is itself limited by the Double Taxation Avoidance Agreements ("DTAAs") India has entered into with other countries, including Austria.

Withholding tax also known as "Tax Deduction at Source" ("TDS") is an Income 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 following percentage of TDS applies as per national Indian law and the DTAA India-Austria:

Interest	10.0% (approx. 5% in some cases)
Royalties	10.0%
Fees for Technical Services	10.0%

The term "Fees for Technical Services" has a very wide connotation which makes virtually every payment for services (technical, managerial or consultancy in nature) subject to TDS. Exemptions apply for e.g. assembly service charges. TDS may also apply on consideration received for the sale of certain assets in India (e.g. shares in an Indian company or immovable property located in India). The rate of TDS in such cases is not limited by the DTAA Austria-India.

The application of the above rate (of 10.0% / approx. 5%) requires that the Austrian enterprise:

- either has and provides a valid PAN; or
- provides the following information to the Indian payer / customer:

- Name, e-mail ID, phone number
- Address in Austria
- Tax Residency Certificate (“TRC”, “steuerliche Ansässigkeitsbescheinigung”) issued by the Austrian tax administration
- Tax identification number

In addition, a so called Form 10-F has to be filled in.

If neither a PAN nor the above information is provided, the withholding rate increases to 20% (plus Surcharge and Education Cess).

Note: In case the Austrian enterprise has a Permanent Establishment (“PE”) in India, e.g. due to assembly performed in India for more than 6 months period (project duration), the TDS rate is approx. 43 %. It can however get reduced by way of an application to the Indian tax administration based on the estimated profit of the PE.

When is TDS due ?

TDS becomes due at the time the payer / customer accounts for the liability (or a corresponding provision) 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.

Do we get a proof for the deposit ?

Yes. The payee, i.e. the Austrian enterprise has to insist on a tax withholding certificate (Form 16A) to be provided by the India payer. Without such certificate, the payee cannot prove to the tax department that taxes have been paid. Further the payee needs to present it to the Austrian tax administration in order to get a credit of taxes.

Do we get the taxes back in Austria ?

No. Austria only allows a limited credit against Austrian Income Tax payable on the (taxable) income from India. We thus suggest to understand Indian TDS as a cost. Especially where the income is received by an Austrian corporation (e.g. GmbH).

Are we also required to file an Income Tax Return in India?

Yes. All persons having taxable income in India including a person (individual / GmbH etc.) resident in Austria. Such income can be income from salary, interest, royalties, technical services, consultancy services or capital gains.

The tax return needs to be filed irrespective of whether taxes have already been paid on that income by way of

TDS by the payer, either at the rate of e.g. 10% or at a higher rate. Where all taxes have been duly deposited by the payer, the tax return will show NIL tax payable.

Tax returns must be filed in India by 30 September (31 July for partnerships or natural persons) 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 enterprise to its Indian subsidiary) the tax return has to be filed together with a short transfer pricing report (“Form 3CEB”) of the Austrian enterprise issued by an Indian Chartered Accountant. In this case the tax return 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 tax returns may have serious consequences, especially where the foreign enterprise has a Permanent Establishment in India.

Due to the fact that for filing a tax return, the Austrian enterprise would need to have a PAN, the relaxation mentioned above (no higher TDS in case no PAN is provided), has no effect but to ease the payment and tax deposit procedure. A PAN is still very much required for full compliance with Indian law.

We are an Austrian enterprise 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 DTAA (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 enterprise to provide its PAN or similar information 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 enterprise. The Austrian enterprise 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 enterprise may request a refund of the excess 10% from the Indian tax authorities by way of filing its tax return in India once it has obtained its PAN.

When should we 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. Otherwise, the TDS could not be deposited against the PAN of the Austrian enterprise which would make it difficult to properly declare its income and taxes already deposited for it.

What happens if I do not apply for a PAN?

The Austrian enterprise will fail to comply with its obligation to file its ROI in India.

Can a non-resident individual also apply for a PAN?

Yes. A non-resident individual like a freelancer or salaried person can and should apply for a PAN in India if he has income taxable in India, e.g. if he renders technical services charged to India or if he earns salary income subject to tax in India. He also is under the obligation to file an Income Tax return.

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 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.

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.

What documents do I need for the PAN application?

Information about the documents needed to apply a PAN card can be found on the Embassy of India website under: <https://www.eoivienna.gov.in/pages.php?id=24>

Do I need to change my PAN if there is a 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 multiple PANs?

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

Can I apply for PAN in the Embassy of India or its consulates in Austria?

No.

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 or not.
- 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 consequences 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

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➤ The Embassy of India 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 on Austria, which is targeted at Indian business readers and trade corporates. The same can be received via email by registering with the Embassy's Commercial wing.

Besides the online presence, the Embassy also has a Business Centre Facility, located on the first floor of the Main Chancery Building. Business people and parties interested in requesting, exchanging or providing information on India-related business matters are cordially invited to visit us. 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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