

GENERAL CIRCULAR NO. 41/2011

F. No. 51/19/2011/Insolvency
Government of India
Ministry of Corporate Affairs

5th Floor, A Wing, Shastri Bhavan,
Dr. R.P. Road, New Delhi-110001
Dated 6th July 2011

To

**All Regional Directors
All ROCs
All Official Liquidators**

Subject: E-filing of Income Tax return in respect of companies under liquidation.

The Official Liquidators have reported that they are facing problems in e-filing of Income Tax Returns in compliance as they are required to mention PAN No. of the person who files the return, representing the company in liquidation. In the Regional Directors Conference held on 16-6-2011 also, the Official Liquidators brought to the notice of the Ministry that they are not able to file Income Tax Returns since the verification part of the report require them to mention their personal PAN Card No. even when they file the Return as a representative assessee of the company (in liquidation). It was suggested that a PAN Card should be issued in the name of the office i.e. OL..... This PAN No. should be quoted in respect of all returns filed by him as OL. In this regard, Section 139A read with Form ITR-6 (Rule 12) of the Income Tax Act, 1961 were examined. According to Section 139A of Income Tax Act, 1961, PAN is a must for all assesses for his own income or other income exceeding Rs.5 lakhs. Companies are also required to obtain PAN as well as TAN. Since this IT provision is applicable from 1995 onwards, hence, all companies which have come into liquidation from 1995 onwards are expected to have the PAN No. After the winding up order is passed by High Court, while obtaining Statement of Affairs from the Directors and taking possession of company's rights such as Telephone, Electricity connection, Franking machines, Bank account. Official Liquidator should also take possession of PAN/TAN Numbers and Cards. In case the management fails to handover PAN/TAN Numbers and Cards, Official Liquidator should invoke Rule 130 of Companies (Court Rule) 1959 and obtain the PAN details from Ex-Directors/Officials. Alternatively, wherever no PAN is available, Official Liquidator should apply for PAN Card after his appointment, company-wise. Single PAN in the capacity of Official Liquidator may not be workable. Hence, Official Liquidator should obtain PAN Card for all the companies in liquidation with the approval of Company Judge and meet the expenses in obtaining the PAN Cards from respective company's accounts. However, most of the Official Liquidators have not filed the Income Tax Return because Income Tax Department insist for personal PAN details in the ITR Form.

2. The matter was discussed with CBDT. It was explained from the CBDT side that IT Returns have been developed to enable all assesses to file the return and the Official

Liquidators may quote PAN of the company as well as his personal PAN which is insisted for the purpose of identification of the person who has signed the Return. In order to avoid correspondence/notice issued to individual members, Official Liquidators should give their Office address in Part A-General Information against "address of the representative" column in all correspondence which reach his office. In the circumstances, Official Liquidators are advised to take the following action to avoid receipt of notices and correspondence from the IT Department at his personal address, instead of official address.

3. Thus, the following steps are proposed to be taken by Official Liquidators:-
- 1) To check whether the company which has come in liquidation has a PAN and takes possession along with other records.
 - 2) If PAN is not available in the records, the PAN No. of the company shall be obtained from concerned ITO.
 - 3) There are cases where no certificate of Registration and/or Article of Association/ Memorandum of Association are available. For this following action be taken:
 - (a) If the company has no assets, it must be got liquidated and there is no need to apply for PAN.
 - (b) If the company has assets, the concerned ROC be requested to send documents about the company for applying to concerned ITO for obtaining PAN.
 - 4) In the verification column of the ITR, OL will mention his personal PAN as this is only for the purpose of Verification Number obtained in official designation.
 - 5) As Representative Assessee, (OL) official address should be given in Part A-General Information under column No.(b).i.e. address of Official Liquidator's office would be mentioned as the address of the company under Liquidation.
 - 6) Since this is a regular activity, following actions be taken:
 - (a) Staff be trained to prepare and file application for PAN with outsourced agencies of CBDT namely NSDL and UTI;
 - (b) All IT Returns filing is now on-line. Hence staff be trained to do the same. No CA firms/consultants be employed for above tasks.

(Jaikant Singh)
Director
06-07-2011

Copy to DIT (RSP & OL), Mayur Bhawan, C.P., New Delhi.