

**Official Assignee appointed under an Order of Insolvency is an ‘artificial juridical person’
under the Income tax Act, 1961
(Circular No. 4 dated 28.01.2019)**

On January 28, 2019, the CBDT¹ has issued Circular No. 4 clarifying the liability and status of Official Assignees under the Income-tax Act, 1961. The said Circular provides that:

1. Where the Court passes an Order of Insolvency against a debtor, the property of the debtor gets vested with the Court-appointed Official Assignee.
2. Since the Official Assignee does not receive income nor does he manage the property on behalf of the debtor, he cannot be considered as a 'Representative Assessee' of the debtor under S. 160(1)(iii) the Income tax Act.
3. For purpose of discharge of tax-liability under the Act, the status of Official Assignees is that of an 'artificial juridical person' as prescribed in section 2(31)(vii) of the Act.
4. Accordingly, an Official Assignee is required to obtain PAN² and file income tax return for each insolvent separately under the category of an 'artificial juridical person'.

Annexure: CBDT Circular No. 4 dated 28.01.2019

¹ Central Board of Direct Taxes

² Permanent Account Number

Annexure

Circular No. 04/2019

Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

North Block, New Delhi, the 28th of January, 2019

Subject: Clarification regarding liability and status of Official Assignees under the Income-tax Act-reg.-

Under provisions of the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920, where an order of Insolvency is passed against a debtor by the concerned Court, property of the debtor gets vested with the Court appointed Official Assignee. The Official Assignee then realizes property of the insolvent and allocates it amongst the creditors of the insolvent. Consequentially, Official Assignee has the responsibility to handle income-tax matters of the estate assigned to him. In this regard, a clarification has been sought regarding applicability of clause (iii) of section 160(1) of the Income-tax Act, 1961 (Act) which applies on a 'Representative Assessee' in the case of an Official Assignee. Further, clarity regarding status of the Official Assignee's i.e. their fallibility in the appropriate category of 'persons', as defined in section 2(31) of the Act, has also been sought.

2. As per provisions of section 160(1)(iii) of the Act, a 'Representative Assessee' amongst other situations specified therein, becomes liable in respect of any income which the Assignee receives or is entitled to receive while managing the property for benefit of any person. As per the two insolvency Acts, Official Assignee manages the property of the debtor for the benefit of the creditors. Further, the Insolvency Act, 1909, in unambiguous terms, provides that an insolvent ceases to have an ownership interest in the estate once an order of adjudication is made under section 17 of the Insolvency Act. Thus, it is hereby clarified that since Official Assignee does not receive the income or manage the property on behalf of the debtor, they cannot be considered as a 'Representative Assessee' of the debtor under the Act while computing the tax-liability arising from the estate of the debtor.

3. As property of the insolvent is vested with the Official Assignee as per specific provisions of the Act/Law regulating functioning of the Official Assignee's, they have to be treated as a 'juristic entity' for purposes of the income-tax Act. Hence, it is clarified that for purpose of

discharge of tax-liability under the Act, the status of Official Assignees is that of an 'artificial juridical person' as prescribed in section 2(31)(vii) of the Act, not being one of the 'persons' falling in sub-clauses (i) to (vi) of section 2(31) of the Act.

4. Therefore, Official Assignee is required to file income-tax return electronically in the ITR Form applicable to 'artificial juridical person' separately for each of the estate of the insolvent and the income shall be taxed as per the rates applicable in a particular year to an 'artificial juridical person'.

5. In view of the above position, Official Assignees would have to obtain a separate PAN for each of the estate of the insolvent.

6. Hindi version to follow.

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(Rajarajeswari R.)
Under Secretary (ITA.II), CBDT

(F.No. 225/427/2018/ITA.II)

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