

All About Form 49C

If you are a foreign company having presence in India by way of a 'Liaison Office' (LO) (also called 'Representative Office'), you are required to prepare and submit Form 49C with the income-tax authorities in India on an annual basis.

This bulletin captures an insight into the legal requirement of form 49C, its applicability, origin and some common questions relating to the form. We hope it is a useful read for you.

<p>What is Form 49C, Who is required to submit it and by When?</p>	<p>Why is Form 49C required to be submitted?</p>	<p>How to prepare and submit Form 49C?</p>
<ul style="list-style-type: none"> Form 49C is required to be filed by foreign companies, having Liaison Office in India as per RBI guidelines. It is required to be filed online with the India tax authorities as per section 285 of the Income-tax Act, within 60 days of the end of financial year (for example, for year ended 31 March 2016, it is required to be filed by 30 May 2016). The law was introduced in 2011. The purpose of Form 49C is similar to corporate tax return in case of a branch office or India subsidiary of a foreign company. 	<p>As per RBI regulations, the role of an LO must be limited to acting as a communication channel between headquarters and Indian companies. Hence, an LO is not permitted to undertake any commercial activity in India, directly or indirectly, and is not supposed to earn any income in India.</p> <p>Over the last couple of decades, however, the activities of India LOs have been under scrutiny by the tax department. It was observed in certain cases, that LOs were undertaking commercial activities or earning income in India which would constitute a taxable presence of its parent company / headquarters in India.</p> <p>Thus, the reporting requirement in form 49C was introduced by the Government in 2011 to monitor activities of LO, by requiring regular information from foreign companies regarding activities in India and to seek a better enforcement if the activities are creating a taxable presence in India.</p> <p>Presently, there is no specific penal provision attached with failure / non-submission of form 49C as the requirement is barely 5 years old. However, failure / non-compliance to do so is likely to give rise to a situation wherein the matter is picked for scrutiny by the tax department. It may be viewed as similar to non-filing of corporate tax return.</p>	<ul style="list-style-type: none"> Log on to www.incometaxindiaefiling.gov.in Go-to "e-file" Click on "Prepare and Submit online Form (other than ITR) Select Form 49C Select Assessment Year Fill in the Form 49C (Pages 1,2, Verification) followed by "Attachments" page Submit online

Nature of Information required to be filled in Form 49C	Annual Activity Certification
<p>The information to be filled in Form 49C can be classified into following categories:</p> <ol style="list-style-type: none"> 1. General details about the Foreign Company / LO, such as name, address, PAN, details of RBI approval granting permission to set up LO in India, etc. 2. Details of annual activity certificate issued / to be issued by the Chartered Accountant (in case the annual activity certificate is yet to be issued on the date of submitting form 49C, an estimated future date by which the compliance is likely to be complete may be mentioned) 3. Details of receipts, income, expenses of the foreign company from India 4. Details of purchases / sales of material / services from/to Indian parties by the foreign company 5. Details of employees working with LO and salaries paid to them outside India for services rendered in India 6. Details of agents / representatives / distributors of the foreign company in India 7. Details of India companies with which the LO has been prominently liaising on behalf of parent company 8. Details of products / services for which liaison is done 9. Information regarding parent company / other group entities for which liaising is done by the LO in India 	<p>As per RBI guidelines, LO is required to file annual activity certificate from a Chartered Accountant (certifying that the activities carried on by the LO during the year were in consonance with RBI's approval) and audited financial statements for the year ended 31 March with the Bank on or before 30 September (for example, for year ended 31 March 2016, it is required to be filed by 30 Sep 2016).</p> <p>To this extent, it might be termed as an inconsistency because Form 49C is required to be filed within 60 days of the financial year while time limit permitted for annual activity certification is 6 months.</p> <p>On the other hand, however, it could be seen as possible legislative intent that income tax compliance has to be independent of that of RBI.</p>
Conclusion	
<p>Form 49C is a strong tool in the hands of tax department to procure information about the activities of LO to evaluate claim of the LO that its presence in India is non-taxable.</p> <p>The questions asked in the form are categorical, precise and to-the-point leaving limited scope for non-disclosure of any information which might be useful for the tax department to form an opinion as to whether the LO is limiting itself to the activities permitted by the RBI from a tax perspective or not.</p> <p>Further, it is a detailed record for LOs in the repository of the Government keeping in mind that the present format of annual activity certification by chartered accountant as per RBI guidelines is pretty limited and does not give any details as to 'How' the activities of LO are limited to the terms and conditions subject to which RBI approval has been granted.</p> <p><i>For any further information, guidance or support in relation to Form 49C, please feel free to contact us</i></p>	