Legal heirs need to file returns for deceased

They do not have to pay tax from their own pocket and their liability is limited to the assets they inherit

It's that time of the year when individuals get ready to file their income tax returns. But, it's not only the living who have to pay their taxes. If one of your family members has died during the financial year and s/ he was liable to pay tax, you might need to file a return on his or her behalf.

Section 159 of the Income- Tax Act lays down the liabilities of the legal representatives of a deceased person. In most cases, the individuals spouse or eldest son/ daughter assumes the status of legal heir or representative. This is unless the will mentions another person to be the executor or administrator of the estate.

"As a legal heir, you have to file the return on behalf of the deceased for income earned till the date of death. Any income earned after the date of death is taxable in the hands of the legal heir or executor of the deceased's estate," says Rakesh Nangia, partner, Nangia & Co. The returns have to be filed as if the deceased had not died, in the same manner and extent as the deceased did.

Tax liability

By section 159, the legal heir or representative is deemed the assessee. As such, s/ he will have to pay taxes liable to be paid by the deceased, including advance tax and self assessment tax. If s/ he chooses not to file the return, the tax authorities could levy the same penalty as on the deceased. However, the money for paying the taxes does not go out of the legal heirs pocket.

"The amount for paying the tax has to go out from the deceased's estate. Liability of the legal representative is limited to the extent the estate is capable of meeting the liability," says Nangia. Adds Suresh Surana, founder, RSM Astute Consulting Group: "The legal heir is not responsible for paying taxes from his own pocket with respect to inherited assets to which they don't have access." In other words, the liability of the legal heir would be limited to the assets of the deceased which are or might come into his possession. For example, if a person receives Rs. 5 lakh as his share from his father's estate and his father's tax liability was Rs. 7.5 lakh, the former cannot be made liable to pay more than Rs. 5 lakh. "The liability of the legal heir shall be limited to the value of the asset charged, disposed of, or parted with," says Surana.

Hurdles

There could be a few challenges in filing such returns. "It might be difficult to obtain details of the income earned by the deceased person during the year and tax deducted/ remitted on the same," says Rajesh Srinivasan, partner, Deloitte Haskins & Sells.

Where the person has died intestate, all the surviving persons may be treated as legal representatives.

“A dispute might arise if there is no unanimity on the division of the estate among the legal heirs and this can pose a problem in doing the tax compliance on time, for and on behalf of the deceased,” says Nangia.

Organising funds to meet the liability can also be a problem. “ If the sum is significant and the legal representative does not have the bandwidth or access to the assets of the deceased, it might be difficult to remit the tax dues,” says Srinivasan.

Adds Nangia: “ In case there is any pending tax litigation or tax arrears and if the deceased does not have sufficient liquidity to discharge these, the legal representative might be left with no other choice but to sell the asset.” According to Surana, since the tax deduction certificate might be issued in the name of the deceased due to non- updation of record, the legal heir might find it difficult to claim the tax credit deducted in respect of the income of the deceased as clubbed in his hand.

Declaration of foreign assets

In case the deceased has foreign assets/ income, these would have to be included in the return of income for the relevant year. In such cases, mandatory e- filing of return shall be required. In case these relate to previous years but have not been disclosed or are from unexplained sources of investment, the legal representative would have to declare these under the new Black Money Act. For this purpose, the representative can use the compliance window notified recently and remit the taxes along with penalty. Refund The legal representative can receive the refund while processing the return of income of the deceased. Usually, the refund is directly credited to the bank account provided at the time of filing the return. The account may be of the legal representative or the joint account held by the legal representative and the deceased person jointly or any such other arrangement agreed upon by the legal representatives.

(Business Standard)