



## Bombay Chartered Accountants' Society

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August 20, 2022

To,  
**The Chairman,**  
**Central Board of Direct Taxes (CBDT)**  
**Ministry of Finance, Govt. of India**  
**New Delhi.**

Respected Sir,

### **SUB: MANDATORY E-FILING OF FORM 10F - NEEDS RECONSIDERATION**

We wish to draw your kind attention to the difficulties faced by the non-residents in claiming the benefits of the tax treaty as well as to the resident taxpayers while undertaking foreign remittances arising from the recent Notification No. 03/2022 dated 16<sup>th</sup> July 2022 requiring mandatory furnishing of Form 10F (among other forms) electronically. It is humbly prayed to do away with the mandatory electronic mode of furnishing the said form.

### **Background**

The Finance Act, 2012 inserted section 90(4) of the Income Tax Act, 1961 ('the Act') to provide that a non-resident shall not be entitled to the benefit of a Double Taxation Avoidance Agreement ('DTAA') unless such non-resident obtains a Tax Residency Certificate ('TRC') from the Government of the country of which he is a resident. Further, section 90(5) of the Act, inserted vide Finance Act, 2013, along with Rule 21AB of the Income Tax Rules, 1962 ('the Rules') provides for furnishing a self-declaration in Form 10F ("the form") in case the TRC, obtained from the Government of a particular country, does not contain certain details.



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While the TRC obtained from tax authorities generally contains most of the information as required under Rule 21AB (1) of the Rules, Form 10F is furnished by the non-resident taxpayer for the balance information or as a matter of precaution. The form is signed physically by the non-resident taxpayer and furnished along with the TRC to the resident payers for the purpose of determining the withholding tax implications under section 195 of the Act or to the tax authorities during scrutiny proceedings if required.

Notification No. 03/2022 dated 16<sup>th</sup> July 2022 issued by the Director General of Income-tax (Systems), with the approval of the CBDT, mandates that certain forms, including Form 10F, shall be furnished electronically in the manner prescribed under Rule 131(1) of the Rules.

Prior to the above-mentioned notification, it is important to note that there was no specified mode of furnishing the form along with the TRC to obtain the benefits of a Double Tax Avoidance Agreement (DTAA). However, post this Notification, it shall now be mandatory to furnish this Form 10F electronically.

### Issues faced due by the taxpayers due to the Notification

1. If one wishes to file Form 10F electronically, as mandated by the Notification, one is required to create a login id and password on the Income-tax portal, for which obtaining a Permanent Account Number ('PAN') is mandatory. In other words, the portal does not allow a taxpayer who does not have a PAN to file Form 10F.

The Notification, therefore, indirectly mandates all non-resident taxpayers, who wish to claim the benefits of the DTAA, to obtain a PAN in India.



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2. This requirement creates a hurdle for non-resident payees and resident payers, as in certain cases, a non-resident payee is not required to obtain PAN under the Act. Section 206AA of the Act, which prescribes a higher rate of tax for taxpayers who do not have PAN, provides an exception to a non-resident, not being a company, or to a foreign company, from obtaining PAN in the following situations:
  - in case of interest on long-term bonds referred to in section 194LC of the Act; or
  - in case documents as prescribed under Rule 37BC of the Rules, are furnished
3. Section 90 of the Act allows a non-resident payee to claim the benefits of a DTAA if such provisions are more beneficial than those under the Act. There are various situations wherein the benefit of DTAA is availed by a non-resident payee (with the furnishing of the documents such as TRC and Form 10F).
4. Mandating a non-resident payee to obtain a PAN in India creates an unnecessary compliance burden, especially in situations where, after tax deduction at source under section 195 by the resident payer, there is no further compliance required to be undertaken by the such payee.
5. Electronic filing of Form 10F requires one to submit the TRC online too. This creates an increased burden in the following cases:
  - Where TRC would not be available at the time of earning the income, but only later on in the tax year, but such TRC would cover the period when the income is earned by the Non-resident



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- Where Rule 37BC (2) of the Rules requires the TRC to be submitted only if the law of that country or specified territory provides for the issuance of such certificate
6. Further, there are various situations wherein, due to the benefit claimed under the DTAA, no tax is payable by the non-resident payee or deductible by the resident payer. With the increasing scope of income deemed to accrue or arise in India due to the enactment of the Significant Economic Presence ('SEP') provisions, the number of instances wherein no tax is payable by the non-resident payee due to the benefit under the DTAA, have significantly increased.
  7. Further, as per Section 90(4) and Section 90(5), the TRC and Form 10F would be required in instances other than remittances too, for example, when a non-resident files a tax return claiming treaty benefit. However, as per Circular No. 6/2008 dated 18th July 2008, no documents are required to be furnished along with the tax return form. Further, the CBDT has mandated submitting all documents only when called for by the tax officer during assessment proceedings. With the subject notification, it is not clear to non-residents whether Form 10F is required to be filed along with the tax return or later when called for by the tax officer.
  8. Moreover, Rule 131 of the Rules, which deals with the procedure for electronic furnishing of the forms, also requires the forms to be signed either through a Digital Signature Certificate or through the EVC method prescribed. Therefore, now, along with the non-resident payee having to obtain PAN in India, if such payee is a person other than an individual, the partner or director or authorised signatory of such payee, who may also be a non-resident having no income from India, would also be required to obtain a DSC in India.



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This poses practical challenges for the non-resident payees as well as resident payers, who are required to ensure all relevant documents are furnished by the payee while complying with the TDS provisions under section 195 of the Act.

**Such unnecessary compliance requirements are also against the motto of the Government of 'Ease of Doing Business in India'.**

Form 10F only requires basic information of the taxpayer and the TRC, such as the legal status, address, country of incorporation/birth, PAN (if applicable), unique tax identification number in the country of residence and the period for which the TRC is applicable. It is humbly submitted that if the above requirement has been mandated with the need to obtain such data, such data is freely available in today's age of exchange of information amongst the tax authorities. If the need to obtain such data is not the reason for the notification, it is once again humbly submitted that obtaining a PAN in India creates an unnecessary compliance burden, especially in scenarios where the Act does not require the non-resident taxpayer to undertake any further compliance.

### Prayer

**Thus, it is humbly prayed to:**

- a. Do away with the mandatory electronic furnishing of Form 10F - at least for those who do not have PAN.**
- b. Alternatively, it is prayed to of such form can be undertaken electronically without creating a PAN-based login id on the Income tax portal - and ideally by a resident payer instead of the non-resident payee.**



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- c. Clarify that electronic filing of Form 10F is required only for remittances to non-residents and not for claiming relief during the filing of tax returns by the non-residents.

**We trust that the CBDT will act swiftly in the matter and provide much needed relief and clarity to the concerned assesseees.**

Thanking You,

For **Bombay Chartered Accountants' Society**

**CA. Mihir Sheth**  
President

**CA Nitin Shingala**  
Chairman - For International Taxation Committee

**Cc. Ms. Nirmala Sitharaman,**  
**Minister of Finance**