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Discard Form 10F (eform) requirement for unhindered foreign payments

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Foreign payments and treaty benefits

Section 195 insists for deduction of tax at source for foreign payments if they are chargeable to tax. There is further obligation upon the payer to obtain a certificate in Form 15CB from a Chartered Accountant who on the basis of his verification of documents certifies the rate applicable to the transaction. Among those documents is tax residency certificate (TRC) of the non-resident to gain the benefit of concessional tax treatment under Double Tax Avoidance Agreement.

A sample TRC issued by the Department of treasury, Internal Revenue Service intheir prescribed form in home jurisdiction of such non-resident containing name, address, Tax Identification Number (TIN), status and residence and tax year with following cerification:

> " I certify that the above named Corporation (status) is a U. S. Corporation , and a resident of United States of America for U. S. taxation."

These when providedby the non-resident entitle him to the benefit of treaty provisions in terms of section 90 of the Income Tax Act.

Walk to Relevant Section and Rule

Section 90 (4) and (5)

Agreement with foreign countries or specified territories.

> (4) An assessee, not being a resident, to whom an agreement referred to in sub-section (1) applies, shall not be entitled to claim any relief under such agreement unless a certificate32 of his being a resident in any country outside India or specified territory outside India, as the case may be, is obtained by him from the Government of that country or specified territory.

(5) The assessee referred to in sub-section (4) shall also provide such other documents and information, as may be prescribed33.

Rule 21 AB (1) (2) (2A)

Certificate for claiming relief under an agreement referred to in sections 90 and 90A.

21AB. (1) Subject to the provisions of sub-rule (2), for the purposes of sub-section (5) of section 90 and sub-section (5) of section 90A, the following information shall be provided by an assessee in Form No. 10F, namely:—

(*i*) Status (individual, company, firm etc.) of the assessee;

(*ii*) Nationality (in case of an individual) or country or specified territory of incorporation or registration (in case of others);

(*iii*) Assessee's tax identification number in the country or specified territory of residence and in case there is no such number, then, a unique number on the basis of which the person is identified by the Government of the country or the specified territory of which the asseessee claims to be a resident;

(*iv*) Period for which the residential status, as mentioned in the certificate referred to in sub-section (4) of section 90 or sub-section (4) of section 90A, is applicable; and

(*v*) Address of the assessee in the country or specified territory outside India, during the period for which the certificate, as mentioned in (iv) above, is applicable.

(2) The assessee may not be required to provide the information or any part thereof referred to in sub-rule (1) if the information or the part thereof, as the case may be, is contained in the certificate referred to in sub-section (4) of section 90 or sub-section (4) of section 90A. (emphasis supplied)

(2A) The assessee shall keep and maintain such documents as are necessary to substantiate the information provided under sub-rule (1) and an income-tax authority may require the assessee to provide the said documents in relation to a claim by the said assessee of any relief under an agreement referred to in sub-section (1) of section 90 or sub-section (1) of section 90A, as the case may be.

Additional Requirement

Beginning April 2013 an added compliance is provided by sub-section (5) of section 90 by which it is also necessitated upon the non –resident to furnish details of particulars of his residence over and above the certificate of residence in Form 10F. In other words, a duplicate procedure is desired to be gone through by the non-resident.As long as this form 10F was not an e-form there had not been much of an issue in submitting it. However, the Central Board of Direct Taxes (CBDT) vide notification No. 03/2022, dated 16-07-2022 made it compulsory for the non-resident to furnish Form 10F electronically with digital signatures. However, non-residents who don't have PAN are facing difficulties in fulfilling this statutory compliance requirement forcing CBDT time and again to allow non-residents who are not required to have a PAN under the Income-tax Act, 1961 to manually file Form 10F till 30 September 2023.

Plain reading of the rule 21AB (1) and (2)

Now under the law to gain benefit under the Double Tax Avoidance Agreement (DTAA) applicable to him the non-resident is only required to obtain a certificate of his residence from his assessing authority in the tax jurisdiction in his home country. Rule 21AB heading and section 90 (4) make reference to such certificate. Since the certificate is issued in foreign jurisdiction there can be no set format. To meet the basic test for non-residency the board has prescribed additionally Form 10F declaration for non-residents to forward five

details viz., name and address, status, nationality, TIN, period and submit it online. Interestingly, the form in the second paragraph also warrants a declaration of having also obtained a TRC in foreign jurisdiction. Thus No TRC meaning No 10F declaration meaning No treaty benefit.

Basically this Form 10F is gathering of TRC information only in a tabular e-form. As a non-resident not necessarily may have PAN the e-filing has thus not been successful with date extensions been given from time to time latest till September 30.

Sub-rule (2) of rule 21AB further states that if the TRC in hand sufficiently provide information on all given five points or even part thereof then it shall be a sufficient compliance. That means a non- resident cannot be deprived of DTAA benefit as long as the TRC contains even part of the details necessitated by Form 10 F. Thus the vital document is TRC to be shared with the payer or tax deductor. The treaty advantage can be given on the basis of the same. Form 10F is no substitute of the TRC but only complementary for data collection and data capture by the systems. Unless there is any rule or order or notification that directs the payer to hold treaty benefits for non-furnishing of e-form 10F the deductor should extend the treaty benefit based on recently issued TRC document of the current year or immediate preceding year.

Best Scenario

Vide rule 21AB (2) it is provided that the TRC submitted by the non-resident shall be considered as Form 10F compliant if the information or the part thereof, as the case may be, as required in sub-rule (1) is contained in the certificate. In other words, there shall be no further requirement to furnish Form 10F in such a scenario. In the best scenario therefore Form 15CB/15CA may be enabled to have TIN/TRC details. Form 10F (eform)requirement be dropped for easy processing of foreign payments as it is a just a mere duplicity task. One can't extra burden the non-resident especially when there is no extra burden upon him by law to seek Permanent Account Number.When to start transaction or business a non-resident need not necessarily to have a PAN there shall be no requirement to obtain a PAN to gettreaty benefit or payment. That would be an overreaching proposition and hinder trade.

Let Form 10F added requirement be scrapped to ease international trade as it is well within the powers of the board keeping note of the provisions of sub rule (2) of rule 21AB.