**Representations for relaxing mandatory e-filing of Form 10F for non-residents (NRs) whether or not having PAN/e-filing account**

1. This has reference to Notification No. 03/2022 dated 16th July 2022 issued by Directorate of Income Tax (Systems) New Delhi in exercise of powers conferred under Rule 131(1)/(2) of the Income-tax Rules mandating, inter alia, furnishing of Form 10F electronically and verification through electronic verification code (EVC). This also has reference to CBDT notification No 2022/ 9227 dated 12 December 2022 which provided relaxation exempting non-resident (NR) taxpayers from e-filing Form 10F if such NR does not have PAN and is not required to have PAN under provisions of Income tax Act. However, such relaxation is applicable only up to 31 March 2023
2. This representation seeks to highlight practical challenges faced by NR taxpayers, whether or not having PAN, in making compliance of e-filing Form 10F and requests for (a) permanently exempting NR taxpayers not having PAN and not required to obtain PAN from e-filing Form 10F and (b) making e-filing of Form 10F optional for NR taxpayers having PAN.

**Relevance of Form 10F for claiming treaty benefit for TDS purposes**

1. Form 10F is required to be furnished by NR taxpayer along with Tax Residency Certificate (TRC) in terms of s.90(4)/(5) of the Income-tax Act (ITA) read with Rule 21AB in order to claim treaty benefit. This is relevant more particularly for the purposes of tax deduction at source u/s. 195 by the payers while making payment to such NR taxpayers. In absence of TRC and Form 10F (in cases where TRC does not contain details required in Form 10F), payers do not grant treaty benefit to the NR payees since it is a mandatory requirement as per s.90(4)/(5) r.w. Rule 21AB.
2. The practice adopted by the payers prior to mandatory e-filing was to obtain such TRC and Form 10F in hard copy or soft copy from NR payee and keep on its record to be furnished to the Tax Department as and when called upon either in s.201(1) proceedings or assessment proceedings. It is also shared with Chartered Accountant issuing certificate in Form 15CB u/s. 195(6) r.w. Rule 37BB for the purposes of remittance outside India and/or Tax Auditor verifying TDS compliance for the purposes of reporting in Form 3CD.

**No linkage of Form 10F with obtaining PAN under current procedure in line with international practice**

1. Currently, NR taxpayers who obtain PAN and file returns are not required to upload or furnish Form 10F separately as part of return filing compliance.
2. It may be noted that NRs are not required to mandatorily obtain PAN for seeking treaty benefit for TDS purposes. Reference, in this regard, is invited to s.206AA(7) where NR is exempted from applicability of higher TDS in absence of PAN in case of (i) payment of interest on long-term bonds as referred to in s.194LC and (ii) any other payment subject to compliance of conditions prescribed in Rule 37BC. The conditions prescribed in Rule 37BC are substantially similar to those in Rule 21AB like furnishing TRC, Tax Identification Number, etc. The payments covered by Rule 37BC are interest, royalty, fees for technical services, dividend and capital gains.
3. Even where tax is not required to be deducted (eg. business income in absence of PE in India), NR payees furnish TRC, Form 10F and no-PE declaration to the payers and they are not required to obtain PAN.
4. Hence, in majority of cases involving payments to NRs with treaty benefit, the NRs are not required to obtain PAN. This aligns with “ease of doing business” with India where NRs are not burdened with procedural requirement of obtaining PAN for claiming treaty benefit. It is also consistent with international practice followed in other countries. Indian taxpayers are not required to obtain Tax Identification Number in other jurisdictions like US, UK, Singapore, etc to avail the treaty benefit for incomes earned from those jurisdictions. For instance, it is sufficient to furnish W8-BEN in hard/soft copy format in US to claim India-US treaty benefit and there is no requirement to obtain US Tax identification number.
5. The above procedure has been working well and it is well accepted by industry and Tax Department since many years. It is also important to note that the Tax Department gets most of the information contained in Form 10F as part of reporting by the payer/deductor in quarterly TDS statements in Form 27Q.

**Practical challenge caused by Notification No. 3/2022 – Indirect insistence on PAN for furnishing Form 10F**

1. However, with Notification No.03/2022, NR taxpayers not having PAN are facing practical challenge in complying with requirement of mandatory e-filing of Form 10F given the current system of e-filing on incometax.gov.in portal.
2. The Notification can be complied with by only those NR taxpayers who have PAN and hence can log in to their e-filing account on the above referred portal and furnish Form 10F electronically with EVC as required by the Notification.
3. NR taxpayers who do not have PAN cannot log in to the e-filing portal to e-file Form 10F since e-filing account is available only for those taxpayers who have PAN. This resulted in practical challenge and ambiguity for both NR payees and payers for complying with TDS u/s. 195.
4. The payers who have onerous TDS obligation are concerned whether hard/soft copy of Form 10F which was hitherto acceptable has become non-acceptable from 16 July 2022 for NR payees not having PAN. Even if they insist on e-filing compliance, it is not possible for the NR payees to make such compliance in absence of such PAN. If the payers deny treaty benefit on such procedural ground, it will result in significant difficulty of higher TDS – more particularly, where payments are made on ‘net of tax’ basis. The higher TDS amounts will be stuck with Tax Department without any credit or grant of refund in absence of PAN. This will increase the cost of doing business with NRs and become a tax hurdle for import of goods and services.
5. Default in submission of electronic Form 10F is merely a procedural deviation and potential denial of treaty benefit either by the deductor or by the Tax authorities would cause undue tax burden on NR taxpayers despite the fact that all the information is furnished to tax department in manual form 10F.

**No additional information to Tax Department by insisting on PAN for furnishing Form 10F**

1. It may also be reiterated that the Tax Department gets the information contained in Form 10F as part of reporting by payers/deductors in quarterly TDS statements in Form 27Q. Hence, mandatory e-filing of Form 10F by the NR payees/deductees is merely a duplicated requirement which does not provide any additional information to the Tax Department but merely increases the compliance burden for the NR taxpayers of obtaining PAN for furnishing Form 10F. It contradicts the exemption provided in s.206AA read with Rule 37BC.
2. The Government has so far been very conscious of not imposing unnecessary procedural burden of obtaining PAN on NR taxpayers in the interests of projecting India as an attractive place to do business. The provisions like Rule 21AB or 37BC were issued pursuant to industry representations for seeking exemption from obtaining PAN by non-residents. NR investors (sovereign wealth funds) in specified funds eligible for exemption u/s. 10(4D) and NR investors selling securities listed in recognised stock exchange in IFSC are also exempted from obtaining PAN by s.139A read with Rule 114AAB to facilitate doing business in India without significant tax hurdles.

**Notification No 2022/ 9227 dated 12 December 2022 merely provided temporary relief to NR taxpayers not having PAN**

1. It is true that Notification No 2022/ 9227 provided relaxation exempting NR taxpayers from e-filing Form 10F if such NR does not have PAN and is not required to have PAN under provisions of the Act. However, such relaxation is applicable only up to 31 March 2023. There is no clarity on mode of compliance after 31 March 2023 for taxpayers not having PAN.
2. Even where NR taxpayers do have PAN, many of them face practical challenges in e-filing compliance due to requirement of PAN encrypted DSC to electronically verify the Form 10F. NR taxpayers who do not file returns in India are not accustomed to Indian income tax e-filing compliances and it becomes difficult for the Indian payers to explain the requirement when the NR taxpayers do not have any other tax compliance obligation in India. Practically, NR taxpayers have more comfort in providing the necessary documents (TRC or Form 10F) in hard copy or soft copy format to the Indian payers.

**Representation to remove practical difficulty in mandatory e-filing of Form 10F by making e-filing of Form 10F optional for NR taxpayers**

1. Hence, it is represented that the practical difficulty faced by NR taxpayers in mandatory e-filing of Form 10F may be resolved by adopting the following measures :-
	1. Instead of temporary relief till 31 March 2023, NR taxpayers not having PAN and not required to obtain PAN under the Act may be permanently exempted from e-filing Form 10F
	2. Option may be given to NR taxpayers having PAN to furnish Form 10F electronically to Tax Department or in hard/ soft copy to deductors as was being furnished prior to e-filing mandate. This will align with international practice where e-filing of TRC is not mandated to claim treaty reliefs. Alternatively, enable the payer/deductor to e-file Form 10F of the NR payee/deductee as part of Form 15CA compliance

We request the CBDT to consider the above representations favourably and resolve the practical difficulty faced by NR taxpayers on an expeditious basis. This is in view of the fact any hurdle on TDS compliance u/s. 195 impacts the day to day regular business transactions of the industry.