

# Navigating Form 10F and PAN Requirements for Non-Resident Taxpayers

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### 1) Introduction:

According to Notification No. 03/2022 dated July 16, 2022, issued by the Directorate of Income Tax (Systems), taxpayers were mandated to electronically submit Form 10F. Subsequently, the CBDT issued a partial relaxation regarding the electronic submission of Form 10F for non-resident taxpayers who do not possess a PAN and are not required to have one as per the relevant provisions of the Income-tax Act, 1961 (**IT Act**), along with the Income-tax Rules, 1962 (**IT Rules**). This relaxation was initially available until March 31, 2023, and it was later extended until September 30, 2023. However, please note that this relaxation only applied to the electronic submission of Form 10F, and manual filing of Form 10F remained mandatory.

With the introduction of mandatory e-filing of Form 10F for all categories of non-residents, the Central Board of Direct Taxes has streamlined the process for those non-residents who do not possess a PAN and are not required to obtain one. They can now e-file Form 10F on the income tax portal without the need to acquire a PAN, simply by creating an account.

It is noteworthy that the new category of registration on the Income Tax portal is now made available for **'Non-residents not holding and not required to have PAN'**. This functionality is available under Registration Option as part of section "Others".

Thus, before registration under this category of account, the non-residents must carefully evaluate the requirement of holding a PAN in India as the registration and even the relaxation available till 30-Sep-2023 from electronic filing was only for Non-Residents not holding and required to have PAN.

In this article will address the following key questions pertaining to the mandatory electronic filing of Form 10F and the relevant relaxation for portal registration without a PAN:

- The documents required for obtaining DTAA relief?
- What is Form 10F?
- Is Form 10F always mandatory for obtaining DTAA relief?
- Who is required to obtain a PAN?
- Who is exempt from obtaining a PAN?

- Who must file a return of income?

## 2) Documents required for obtaining relief under the Double Tax Avoidance Agreement (DTAA)

This section explores the documents required for obtaining relief under the DTAA and in what situations Form 10F is a mandatory requirement.

The taxation of non-residents when they engage in transactions related to India becomes peculiar because their income may often be subject to taxation in both their home jurisdiction and India. To address this issue, the Central Government of India has the authority to enter into agreements, such as Double Taxation Avoidance Agreements (DTAA), with foreign governments. These agreements aim to prevent double taxation of income.

To avail themselves of this relief, non-resident taxpayers must provide a Tax Residency Certificate (TRC) as proof of their tax residency in a foreign country. This certificate can be obtained from the government of the respective foreign country. TRCs issued by foreign governments and authorities do not follow a standardized format. However, when assessing a non-resident's eligibility for tax treaty benefits or relief, there are certain typical items to analyze. These include:

- Status (individual, company, firm etc.) of the assessee;
- Nationality (in case of an individual) or country or specified territory of incorporation or registration (in case of others);
- Tax/Unique Identification Number in country of residence;
- Period for which the residential status, as mentioned in the TRC, is applicable; and
- Address of the assessee in the country or specified territory, during the period for which TRC, is applicable. [\[1\]](#)

However, since some TRCs issued by foreign governments and authorities may not contain the aforementioned information, the Income Tax Act mandates that non-residents (NRs) also submit Form 10F in addition to the TRC.

Form 10F is a one-pager form that has been prescribed as per Rule 21AB of the IT Rules to obtain the above-mentioned information from the assessee who is looking for obtaining a benefit provided under the relevant DTAA and any one of such details is missing in the TRC.

It is reasonable to infer that a Tax Residence Certificate is mandatory for obtaining a relief mentioned in the DTAA but, Form 10F is mandatory only in situations where the abovementioned details are missing in the TRC.

Practically, it is advisable for the payer responsible for withholding taxes to proactively obtain Form 10F when granting any tax relief under the DTAA. Starting from October 1, 2023, all categories of non-residents are required to electronically file Form 10F, even if they are not obligated to obtain a PAN.

Previously, NRs needed a PAN for registration on the Income Tax portal and electronic filing of Form 10F. However, a new functionality has been introduced, allowing NRs who are not required to obtain a PAN to file Form 10F without one.

The following section explores situations where obtaining a PAN from the assessee is mandatory.

## 3) Requirement of obtaining Permanent Account Number (PAN)[\[2\]](#)

From an NR perspective, the following persons would be required to obtain a PAN:

- Every person if the total income which is assessable under the Act exceeds the maximum amount which is not chargeable to income-tax; or
- Every person carrying on any business or profession whose total sales, turnover or gross receipts are or is likely to exceed five lakh rupees in any previous year.

Additionally, a non-resident person who has invested in a specified fund is exempt from obtaining PAN if the following conditions are fulfilled:[\[3\]](#)

- The non-resident does not earn any income in India, other than the income from investment in the specified fund during the previous year;
- Any income tax due on the income of non-residents has been deducted at source and remitted to the Government at the rates specified in section 194LBB of the Act; and
- The non-resident furnishes the following details and documents to the specified fund, namely:—
  - Name, e-mail id, contact number;
  - Address in the country or specified territory outside India of which he is a resident;
  - A declaration that he is a resident of a country or specified territory outside India; and
  - Tax Identification or unique identification Number

Furthermore, a non-resident is not required to obtain PAN if he is an eligible foreign investor who has made capital asset transactions referred to in 47(viiab) listed in IFSC RSE subject to fulfilment of the following conditions:

- The eligible foreign investor does not earn any income in India, other than the income from the transfer of a capital asset referred to in section 47 (viiab);
- The eligible foreign investor furnishes the following details and documents to the stock broker through which the transaction is made:—
  - name, e-mail id, and contact number;
  - address in the country or specified territory outside India of which he is a resident;
  - a declaration that he is a resident of a country or specified territory outside India; and
  - Tax Identification or Unique Number

It can be observed from the information above that every person with income assessable under the Income Tax Act, 1961, exceeding the amount not chargeable to tax, and every person engaged in a business or profession with a turnover exceeding 5 lakh rupees, is mandated to obtain a PAN in India. Thus, it also includes non-residents who have income that accrues or arises in India. Although, some specific exemptions have been provided to certain categories of non-residents.

#### **4) Requirement to file a return of Income**[\[4\]](#)

Every person being a company, or a firm shall, on or before the due date, furnish a return of his income (including loss) or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner.

Further, especially for NRs, the persons may be exempt from the return filing requirement as per section 115A(5) in case of passive income (like dividend, interest, royalties & fees for technical service) and tax has been deducted at the rates mentioned under section 115A.

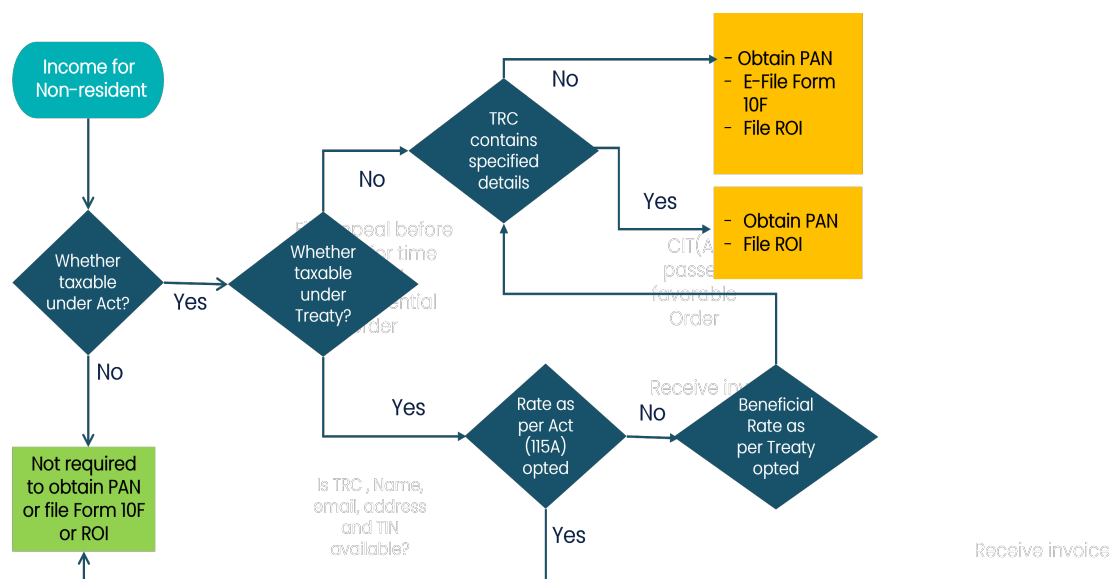
In other words, any non-resident company or firm shall furnish a return of income if it has taxable income in India. However, there is a specific exemption available in the case of passive income if the rate of withholding tax is as per section 115A of the Act.

At this juncture, it is important to note that if the non-resident assessee is taking the withholding tax rate as per the relevant DTAA and not as per rates prescribed u/s 115A, then it becomes imperative to file a return on income in India.

#### **5) Intermediate conclusion - obtaining PAN, filing ITR & Form 10F**

The author holds the opinion that return filing and obtaining a PAN are distinct requirements that should be considered separately. In cases where an assessee is exempt from filing a tax return, it does not automatically exempt them from the requirement to obtain a PAN. Even when the Tax Residency Certificate (TRC) contains all the necessary information, it is still advisable for non-residents (NRs) to submit Form 10F when seeking DTAA benefits. It's worth noting that NRs can also consider taking shelter of Rule 21AB of the Income Tax Rules when filing Form 10F is not feasible.

Below is a decision tree to decide on the final obligations for obtaining a PAN, filing Form 10F & filing of return on Income.



## 6) Conclusion

In conclusion, electronic filing of Form 10F and the associated requirements for acquiring a Permanent Account Number (PAN) and submitting an Income Tax Return are essential components of taxation for non-residents in India.

- The Central Board of Direct Taxes has made significant strides in streamlining the process, particularly for non-residents who neither possess nor are required to have a PAN.
- The introduction of a dedicated registration category on the Income Tax portal exclusively for "Non-residents not holding and not required to have PAN" marks a significant advancement in simplifying compliance for non-residents in India, provided they make this choice after thorough due diligence.
- Form 10F plays a pivotal role in securing relief under the DTAA.
- Furthermore, the obligation to obtain a PAN in India is primarily based on income levels and business turnover in India, as stipulated by the IT Act. When these thresholds are exceeded, non-residents must procure a PAN.

In summary, non-residents must obtain a PAN in India if they intend to avail themselves of beneficial rates or exemptions under the DTAA. There are very few scenarios in which non-residents receiving income from India and seeking DTAA benefits would be exempt from obtaining a PAN. Therefore, it is strongly advised that the new registration category not be misused by non-residents who are legally obligated to obtain a PAN as per the IT Act.

[1] Section 90(4) & 90(5) of the Income Tax Act, 1961 r.w. Rule 21AB(1) & Rule 21AB(2) of the Income Tax Rules, 1962.

[2] Section 139A of the Income Tax Act, 1961

[3] Rule 114AAB of the Income Tax Rules, 1962

[4] Section 139(1) of the Income Tax Act, 1961