

President CA Ameet Chheda
Vice President CA Jeenal Savla
Secretary CA Vinit Gada
Treasurer CA Harsh Dedhia
Jt. Secretary CA Gautam Mota



Established 1973

CVO Chartered & Cost Accountants' Association

19th September 2022

To,

1. Smt. Nirmala Sitharaman,

Hon'ble Finance Minister,
Government of India,
North Block,
Delhi – 110 001

2. Shri Tarun Bajaj

Hon'ble Revenue Secretary,
Central Board of Direct Taxes (CBDT),
North Block,
Delhi – 110 001

3. Shri Nitin Gupta

Hon'ble Chairman,
Central Board of Direct Taxes,
North Block,
Delhi – 110 001

Respected Madam / Sir,

Sub: **Relaxation from compulsory online filing of Form 10F**

Ref: **CBDT Notification No. 3/2022 dated 16th July 2022 and Section 90(5) of the Income-tax Act, 1961 ('the Act')**

About C.V.O. Chartered & Cost Accountants' Association

C.V.O. Chartered and Cost Accountants' Association (CVO CA) is a five-decade old, non-profit professional organization established in 1973. It has acclaimed a premier position in society. Its objective is to disseminate knowledge in the field of Taxation, Accounting, Finance and Allied laws. It has membership strength of more than 1850+ members. Members of the Association have acclaimed respectable position in the CA practice and industry where they serve. It also organizes general public awareness program. One of the flagship programs is on Union Budget, which is organized in Gujarati Language for general public. The Association also publishes monthly Newsletter which is called 'CVO CA News & Views'. Besides these activities Association also supports needy students who are pursuing CA, CS & CWA by providing them financial assistance.

Our association regularly takes up initiatives to act as a bridge between our members and concerned regulatory bodies in order to convey genuine grievances and attempt to effectively implement the laws. This representation is made with reference to the Notification No. 03/2022 dated 16th July 2022 ('Notification') issued by Directorate of Income Tax (Systems) New Delhi mandating, inter alia, online furnishing of Form 10F. This representation seeks to highlight the

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practical difficulties faced by non-residents not having Permanent Account Number ("PAN") in complying with this Notification.

1. Background

As per section 195 of the Act, a person making payment to a non-resident ('NR') is required to withhold taxes before making payment to the non-resident. Practically, the payees claim the benefit of tax treaty and hence the withholding is done at the lower rate mentioned in the treaty. However, in order to claim treaty benefits, the NR payee needs to submit a Tax Residency Certificate ('TRC') and Form 10F (in cases where TRC does not contain details required in Form 10F), to the payer to enable him to withhold tax at the treaty rates. Prior to the aforesaid notification, the NR payees used to submit the hard/soft copy of the TRC and Form 10F to the payer so that he can withhold taxes at the treaty rates. These documents were also required by the Chartered Accountant while issuing certificate in Form 15CB.

Going forward, the Form 10F will have to be filed electronically by the NR payee to comply with the aforesaid Notification. This requirement of filing Form 10F electronically has resulted in administrative burden for the NR to obtain a Permanent Account Number ("PAN") in India. Further, an issue may arise on whether the NR payee would be eligible to claim treaty benefit if Form 10F is not filed electronically and whether the payer can withhold tax at the treaty rate if he has not received the online Form 10F. We have summarized these practical difficulties and issues as follows:

2. Practical difficulties faced by the taxpayers

1. Facility of filling of Form 10F is available on income-tax portal only for registered users. In order to file Form 10F electronically, one will have to obtain PAN and create an e-filing account on the income-tax e-filing portal. NRs holding valid TRC may not be able to furnish Form 10F online, which may result into denial of treaty benefit in genuine cases. Mandatory PAN to file online Form 10F and avail treaty benefit has caused compliance hardships mainly in case of infrequent payments to non-residents governed by relevant tax treaties.
2. The requirement of obtaining PAN is in conflict with the exception provided in section 206AA read with rule 37BC. Section 206AA provides for a higher rate of tax for payees who do not have a PAN. However, as an exception, the higher rate does not apply to non-residents if prescribed documents are furnished in line with rule 37BC. Now, with the introduction of online filing of Form 10F and indirect obligation to mandatorily obtain PAN, this exemption granted by rule 37BC indirectly gets diluted and redundant.
3. In cases of net-of tax contracts, the resident payer is liable to bear withholding taxes payable in India, if any. Difficulty in filling online Form 10F may result into denial of concessional treaty rates and may result into additional tax cost for the resident payer.

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Further, the payer may not be able to get refund of the higher withholding taxes borne by him which may add to the overall cost of doing business with NR and act as a deterrent for cross border transactions.

4. Moreover, a digital signature certificate (DSC) is required for furnishing online Form 10F. However, non-corporate taxpayers are typically not required to obtain a DSC and this creates a further compliance burden. In case of income-tax returns, the non-corporate taxpayers can electronically transmit the data and submit the physically-signed acknowledgment copy thereafter with the Centralized Processing Center. But, in case of Form 10F, they will have to obtain a DSC apart from a PAN. In case of non-individual taxpayers, 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.

3. Prayer

It is humbly prayed to adopt one of the following alternatives:

1. Dispense with the online filing of Form 10F
2. Alternatively, create a mechanism to file Form 10F electronically without creating a PAN-based e-filing account on the income-tax e-filing portal.
3. Alternatively, the payer should be allowed to obtain a physical/soft copy of Form 10F from the payee and thereafter attach the same along with TRC while filing Form 15CA.

We request the CBDT to consider our representation and provide relief to the concerned taxpayers.

Thanking You,
Yours Sincerely,

For CVO Chartered and Cost Accountants' Association

CA Ameet Chheda
President
CVO Chartered & Cost Accountant Association

CA Hetal Gada
Convenor
Publication, Training &
Representation Committee

CC:

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