

CBDT prescribes furnishing of additional information along with Tax Residency Certificate to claim tax treaty benefits

Background

The Finance Act, 2012 introduced section 90(4) mandating that a non-resident taxpayer to whom a tax treaty applies, shall not be entitled to claim any relief under the tax treaty unless a tax residency certificate (TRC) of his/ her being a resident in any country outside India or specified territory outside India, as the case may be, is obtained from the Government of that country or specified territory. Pursuant to this, Rule 21AB was introduced to prescribe the particulars that were required in the TRC.

Since taxpayers found it a challenge to obtain a TRC with the prescribed particulars as different territories had different formats of providing TRC, the Finance Act, 2013 amended section 90(4) omitting the requirement to have such particulars in the TRC itself. However, CBDT has now inserted new Form 10F (which was earlier deleted¹ w.e.f. 19 November 1999) by amending Rule 21AB² w.e.f. 1 April 2013.

Amended Rule 21AB now mandates non-tax-resident taxpayers to certify all such particulars, which were earlier prescribed to be certified in a TRC, to be furnished under a self declaration.

Changes notified in Rule 21AB³

- The taxpayer would be required to furnish the following information in Form 10F:
 - Status of taxpayer (individual, company, firm, etc.)
 - Nationality (individual) or country or specified territory of incorporation or registration (in case of others)
 - Taxpayer'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 specified territory of which it claims to be a resident
 - Period for which the residential status, as mentioned in the TRC

- Address of the taxpayer in the country or specified territory outside India, during the period for which the TRC is applicable
- Taxpayer may not be required to provide the information in Form 10F if the same is contained in the TRC
- The taxpayer shall keep and maintain such documents as are necessary to substantiate the information required in Form 10F and the revenue authority may require the taxpayer to furnish such documents

Way forward

The information prescribed under new Form 10F is essentially the same that were prescribed in the TRC. Accordingly, all non-resident taxpayers desiring to claim tax treaty benefits will need to provide this self certified Form 10F to the revenue authorities - as and when called for. However, deductors who are required to withhold tax at source out of any payouts to non-residents must obtain the said Form upfront.

Having said this, the new Form 10F may not be required in cases where sums are not taxable under the domestic tax laws of India or where specific revenue dispensations (either under section 195(2)/ 197 of the Income-tax Act, 1961) have been obtained.

1. By the Income-tax (Thirty-second Amendment) Rules, 1999
2. By the Income-tax (Eleventh Amendment) Rules, 2013
3. Notification no. 57/ 2013 [F. No. 142/16/2013-TPL]/SO 2331(E), dated 1 August 2013

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