

TAXATION TIMES

January 2023



Contents

1	Introduction	02
2	Article	03
3	Case Laws	05
4	Circulars & Notifications January 2023	08
5	Tax Compliance February 2023	09
6	Tax News from around the World	10

Introduction

In the first edition of 2023 Taxation Times, we will understand what is Form 10F to be filed by the nonresidents and its recent mandatory electronic filing on the Income Tax Portal which makes it nothing but a unnecessary compliance burden.

In this month's Taxation Times, we cover:

1. An article encompassing the recent changes in Form 10F
2. Case Laws from various courts & jurisdictions;
3. Tax Compliance Calendar - February 2023;
4. Circulars & Notifications - January 2023;
5. Tax News from around the world

We hope that you find this month's edition of the Taxation Times useful. In case you have any feedback or need us to include any information to make this issue more informative, please feel free to write to us at info@uja.in

Happy Reading!
Best Regards,
UJA Tax Team



Neha Raheja
Partner - Direct Tax UJA

E-FILING OF FORM 10F – A UNNECESSARY COMPLIANCE BURDEN?

- Section 90(4) and 90(5) of Income-tax Act, 1961 (ITA) prescribes the documents to be maintained by non-residents to avail the benefits of Double Taxation Avoidance Agreements (Tax Treaties) that India has entered with various countries. Section 90(4) of the ITA provides that a non-resident person needs to obtain a Tax Residency Certificate (TRC) from the tax authorities of the Country in which such person resides.
- Apart from the TRC, section 90(5) read with Rule 21AB(1) of the Income-tax Rule, 1962, the non-resident needs to provide the following information in Form 10F which is signed by the Director/Partner/Self of the non-resident person:
 - (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 assessee claims to be a resident;*
 - (IV) *Period for which the residential status, as mentioned in the certificate referred to in subsection (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.*
- Recently, the Central Board of Direct Taxes ("CBDT") issued a Notification no.3/2022 dated 16 July 2022 wherein they have made it mandatory for all the persons to electronically file Form 10F through the e-filing portal of the person. However, in December 2022, the CBDT issued another Notification dated 12 December 2022 wherein the CBDT has relaxed this requirement of electronic filing of Form 10F for non-residents not having a PAN in India. This relaxation is provided only up to 31 March 2023.
- Let's throw some light on how these notifications issued by the CBDT will have an impact on the non-residents and the tax department:

Impact on Non-Residents: -

 - a. The non-residents having PAN in India, but no taxable income in India do not file the return of income in India. In such cases, it becomes difficult for the non-residents to register themselves on the income-tax portal, obtain a DSC and file the Form 10F electronically.
 - b. The non-residents would require to appoint a professional in India to manage this compliance for them.
 - c. Obtaining a DSC in India only for the purpose of filing Form 10F may pose a threat of misuse of the same. Further, they would require the relevant software for using the DSC themselves in the foreign country. To avoid such hassles, the non-residents may consider to issue of Letter of Authority ("LOA") to a professional in India to use his DSC for uploading the Form 10F electronically in terms of the provisions of Section 140 of the ITA read with Rule 131 of the Income-tax Rules, 1962.
 - d. For non-residents not having a PAN in India, would be required to obtain one in India post 31 March 2023 and repeat the entire procedure mentioned above.

- e. To sum up, the non-residents would be required to go through an additional tax compliance burden even for a small payment to be received from India. This might impact the foreign imports in India especially import of services where the remitter is required to obtain Form 15CA/15CB and provide to the banks.

Impact on Income Tax Department: -

- a. This move will ensure that the benefits of Tax Treaties cannot be availed without a Valid TRC and Form 10F.
- b. The Tax department would be able to track all the payments to non-residents through their PAN number (after 31 March 2023).
- c. In case the non-residents do not file return of income in India with respect to the taxable income earned from India, the Tax department may send notices to such non-residents and compel them to file return of income in India.
- d. This move will increase transparency with respect to the payments to non-residents.

Conclusion: -

- a. The non-residents will be required to add one more compliance to be carried out in India i.e. obtaining PAN if not obtained already and filing Form 10F electronically on their e-filing portal.
- b. The non-residents would require assistance from professionals in India to comply with the above requirements.
- c. The mischief of not obtaining valid TRC and Form 10F before making payments to non-residents will stop.
- d. The tax department would be able to tap the transactions with non-residents and track their compliances in India.

Expectations from Union Budget 2023-2024: -

- a. As per the provisions of the Income tax Act, 1961, to claim the benefit of double taxation avoidance agreement (DTAA), a non-resident is required to obtain certificate of residence from home country along with furnishing of Form 10F, as applicable.
- b. Recently, the Central Board of Direct Taxes (CBDT) has issued a notification stating that Form 10F is to be filed electronically. This poses a practical difficulty for the non-residents, requiring them to necessarily obtain a permanent account number (PAN) for the e-filing portal, even in cases where they are not required to file income tax return in India.
- c. To resolve this issue, the earlier system of furnishing manual Form 10F could be restored for non-residents who are not required to obtain PAN in India. Alternatively, a non-PAN based login facility can be enabled over the portal for them.

Case Laws

1

Mayor Foundation V/s Assistant Commissioner of Income Tax (Exemption) [2023] 146 taxmann.com 216 (Amritsar - Trib.)

Section: 68 of the Income Tax Act 1961

Facts: The assessee is a trust and received corpus donations from certain companies the names of which being presently struck off from the record of registrar of companies (RoC).

During the assessment proceedings the Ld. AO added the amount of donation received by the assessee trust from the said companies under section 68 of the Income Tax Act, 1961.

Aggrieved by the addition made by the Ld. AO the assessee filed an appeal before CIT(A).

CIT(A) upheld the addition made by the Ld. AO. The assessee preferred an appeal before Hon. ITAT against the order passed by the CIT(A).

Held: Where assessee trust based in Jalandhar had received donations from 3 private limited companies based in Kolkata whose names were struck off by RoC as defunct companies, and there was no relationship of these companies with trust entities nor these companies had any CSR obligations to satisfy which they would have made these donations, AO and CIT(A) were justified in treating these donated amounts as being received from shell companies and making the additions though these amounts were received through banking channels.

It was not clear why these companies would make these donations as companies exist to make profits and these companies being struck off as defunct companies by RoC meant that identity of these donor companies was not established satisfactorily as assessee-trust brought no material on record to show that any steps were being taken under the Companies Act to reinstate these companies on Register of RoC.

Additions u/s 68 upheld by ITAT in respect of donations received by assessee-trust from shell companies whose names were struck off by RoC as defunct companies

In Favour of: Assessee

2

S.M. Overseas (P) Ltd. V/s Commissioner of Income Tax 2022] 145 taxmann.com 375 (SC)

Section: : 154 read with section 147 of the Income Tax Act 1961

Facts: Normal assessment proceedings were completed against the assessee company but the department initiated the proceedings under section 154 of the Income Tax Act, 1961. During the pendency of the proceedings the department also initiated the proceedings under section 147 of the Income Tax Act, 1961.

Assessee company filed an appeal before CIT(A) against the initiation of proceedings under section 147 of the Act. But CIT(A) rejected the appeal.

Assessee company filed an appeal before Hon. ITAT against the order passed by the CIT(A) but the Hon. ITAT ruled in favour of the assessee company.

The department filed an appeal before Hon. High Court, it ruled in favour of the revenue ignoring the pendency of the proceedings under section 154 of the Act.

Finally, the assessee company filed an appeal before Hon. Supreme Court of India.

Held: Where the proceedings under Section 154 of the Act were not the subject-matter before the High Court and there was nothing on record that the notice under Section 154 of the Act was withdrawn on the ground that the same was beyond the period of limitation prescribed

under Section 154(7) of the Act, it is to be held that, the proceedings initiated under Section 154 of the Act can be said to have been pending and the ITAT was right in holding that it was not permissible for the Revenue to initiate reassessment proceedings u/s 147/148 as proceedings under section 154 were pending and the High Court has committed serious error in observing and holding that the notice under Section 154 was invalid as the same was beyond the period of limitation as prescribed /provided under Section 154(7) of the Act. In the result, impugned order of HC is quashed and set aside and order of ITAT is restored.

In Favour of: Assessee

3 **Monika Chitrasen Patil V/s Income Tax Officer [2023] 146 taxmann.com 99 (Pune - Trib.)**

Section: 40A(3) read with rule 6DD of the Income Tax Act 1961 and Income Tax Rules, 1962

Facts: The assessee is an individual engaged in the business of purchase and sale of agricultural land, plots etc. The assessee filed her return of income for the year under consideration.

During the reassessment proceedings the Ld. AO added to the income of the assessee on account of cash payment in violation of section 40A(3) of the Income Tax Act, 1961.

Aggrieved by the order passed by the Ld. AO the assessee firm filed an appeal before CIT(A) which upheld the order passed.

Against the appellate order passed the assessee firm filed an appeal before Hon. ITAT which ruled in against of the assessee.

Held: Section 40A(3) of the Income-tax Act, 1961 read with rule 6DD of the Income-tax Rules, 1962 - Business disallowance - Cash payment exceeding prescribed limits (Sale consideration) - Assessment year 2012-13 - Assessee purchased land and on demand of sellers made payment in

cash towards part of sale consideration which was incorporated in sale deed - Assessing Officer disallowed impugned payment applying provisions of section 40A(3) - It was noted that sellers were identified and admitted receipt of cash payment before registering authority under due process and Assessing Officer did not dispute same - It was not disputed that assessee made cash payment to sellers as they had no bank accounts standing to their name as on date of registration of sale deed and only after receipt of consideration in part as post dated cheques, sellers opened bank accounts - Payment in cash was made due to business exigency at instance of sellers -Whether, on facts, impugned disallowance of cash payment under section 40A(3) deserved to be deleted.

In Favour of: Revenue

4 **Deputy Commissioner of Income Tax V/s Marubeni India (P.) Ltd. [2023] 146 taxmann.com 98 (Delhi - Trib.) [09-11-2022]**

Section: 92C of the Income Tax Act 1961

Facts: The assessee is resident company and wholly owned subsidiary of Marubeni Corporation, Japan and is engaged in providing agency support services and marketing support services to various group entities. The assessee company operates in two segments. In addition to agency support services provided to related parties, the assessee company also undertakes trading activity is of certain commodities in domestic market. In so far as the trading activity is concerned, it is exclusively with unrelated Parties.

During the transfer pricing proceedings, the Ld. Transfer Pricing Officer (TPO) rejected one of the comparable companies selected by the assessee company citing reason that such company has incurred losses. Accordingly, the Ld. AO made the addition and passed the draft assessment order.

AO the assessee company filed its objections before Hon. Dispute Resolution Panel (DRP) which accepted the objections filed by the assessee company and directed the Ld. TPO to carry the benchmarking as per its guidelines.

The income tax department against the directions of the Hon. DRP filed an appeal before the tribunal.

Held: Computation of arm's length price (Comparability factors - Loss making company) - Assessment Whether where TPO excluded a company on ground that it was a persistent loss making company but assessee had established that said company had shown profit in earlier assessment year, said company, being otherwise functionally similar to assessee, had to be treated as comparable

In Favour of: Assessee

Circulars & Notifications January 2023

A. Circulars:

Extension of time limit for compliance to be made for claiming any exemption under Section 54 to 54GB of the Income-tax Act, 1961 (' Act') in view of the then-Covid-19 pandemic.

<https://incometaxindia.gov.in/communications/circular/circular-1-2023.pdf>

B. Notifications:

Addendum To Notification No. 2 Of 2021: Format, Procedure and Guidelines for Submission of Statement of Financial Transactions (SFT) For Interest Income (Abolishing of Limit of Rs. 5,000)

<https://incometaxindia.gov.in/communications/notification/notification-1-2023-systems.pdf>

Section 35(1)(ii) Of The Income-Tax Act, 1961 - Scientific Research Expenditure - Approved Scientific Research Association/Institution

<https://incometaxindia.gov.in/communications/notification/notification-so-270.pdf>

C. Press Release:

Direct Tax Collections for F.Y. 2022-23 up to 10.01.2023

<https://www.pib.gov.in/PressReleasePage.aspx?PRID=1890420>

Tax Compliance February 2023

7 February 2023

Due date for deposit of Tax deducted/collected for the month of January, 2023.

14 February 2023

Due date for issue of TDS Certificate for tax deducted under section 194-IA/194-IB /194M in the month of December, 2022

15 February 2023

Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of January, 2023 has been paid without the production of a challan

Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending December 31, 2022

Tax News from around the World



Revenue impact of international tax reform better than expected: OECD

<https://www.oecd.org/newsroom/revenue-impact-of-international-tax-reform-better-than-expected.htm>

Microsoft loses lawsuits against IRS over tax audit records

<https://www.reuters.com/legal/transactional/microsoft-loses-lawsuits-against-irs-over-tax-audit-records-2023-01-19/>

U.S. Treasury's Yellen says IRS needs to be 'completely redone'

<https://www.reuters.com/world/us/us-treasurys-yellen-says-irs-needs-be-completely-redone-2023-01-22/>

Bhutan imposes Taxes on vacant land and more

<https://www.taxmann.com/post/blog/world-tax-news-bhutan-imposes-taxes-on-vacant-land-and-more/>

Italy introduces tax on Crypto and indirect transfer and more

<https://www.taxmann.com/post/blog/world-tax-news-italy-introduces-tax-on-crypto-and-indirect-transfer-and-more/>

Taiwan Considering Increase in Minimum Tax to 15% in Line with Pillar 2 Global Minimum Tax

<https://www.orbitax.com/news/archive.php/Taiwan-Considering-Increase-in-51920>

Contact Us

Corporate Office:

PUNE

202, Tower S4, Phase II, Cyber City,
Magarpatta Township,
Hadapsar, Pune - 411 013
91 20 4711 9990
91 20 4711 9991

Branch Offices:

MUMBAI

203, 2nd floor, Mahinder Chambers,
W. T. Patil Marg, Opp. Dukes Factory,
Chembur, Mumbai - 411 071,
91 22 2520 0561
91 22 2520 5992

GURGAON

248, 2nd Floor, Tower-B, Spazedge
Commercial Complex, Sector 47,
Sohna Road, Gurgaon - 122 001
91 12 4407 8407
91 12 4407 9407

BENGALURU

301, Prestige Garnet, Ulsoor Road,
Yellappa Chetty Layout, Sivanchetti Gardens,
Bengaluru - 560042 INDIA
+91 80 4141 1241

International Offices:

FRANCE - PARIS

OCA - Organisation
Conseil Audit 63, Avenue
de Villiers - 75017

MARSEILLE

10 Place de la Joliette - Les Dock -
Atrium 10.6 CS 13543
13567 Cedex 02

SPAIN - TREBEKI

Juan De Ajuriaguerra 6,1, IZQ 0,
48009, Bilbao

UAE - T.C.A. INTERNATIONAL FZE

Office No. 214, Business Centre 2,
Rak Free Trade Zone,
Ras Al Khaimah, UAE

GERMANY - BTU BERATERPARTNER

FELDBERGSTRA E 27-29
D-61440, Oberursel,

VIETNAM - BHG

176 -Doi Can Street,
Ba Dinh District, Hanoi

JAPAN - KOMIYAMA & CO.

3-6-9 Roppongi Minato-KU
Tokyo,- 106-0032

ITALY - Studio Vienna

Via Hoepli 3 - 20121
Milano

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