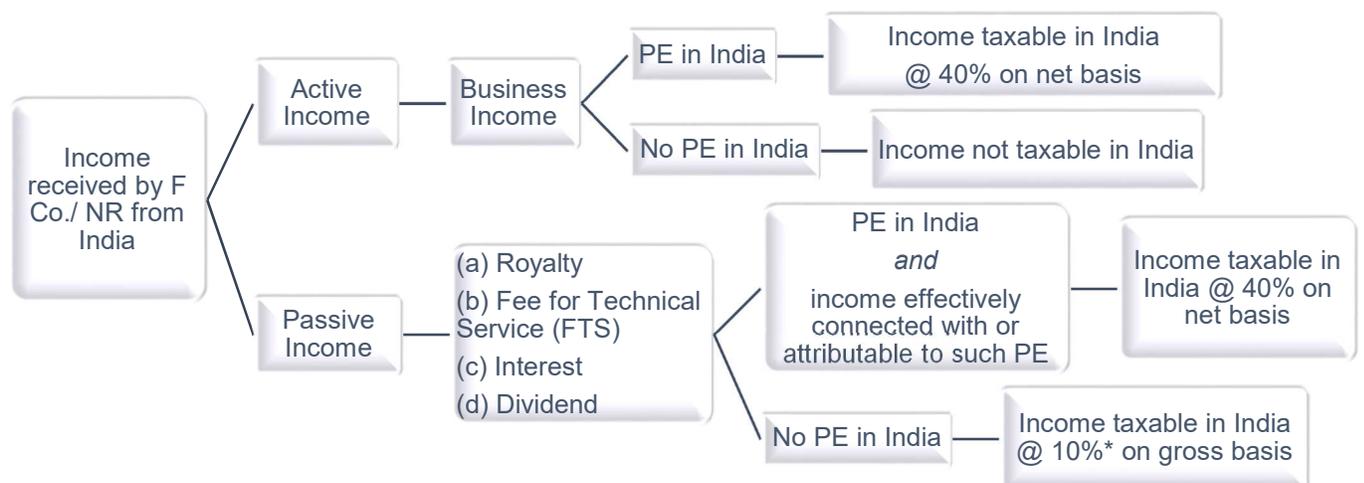


## Form 10F – Information to be provided by Foreign Company / Non-Resident

### Background

Income received from India by a Foreign Company (F Co.) / Non-Resident (NR) could be taxable in India and if so, requires withholding of tax at source by the Indian payer. The responsibility to withhold tax at source at the correct applicable rate and deposit the same timely with the Indian tax authorities, lies with the Indian payer. The natural reason behind this is that in case of any default or loss to exchequer, it is always easy for the Indian Government to catch hold of the Indian payer rather than the F Co. / NR.



\* 10% inclusive of surcharge and cess if income is taxable as per Double Taxation Avoidance Agreement (DTAA)

\* 10% exclusive of surcharge and cess if income is taxable as per section 115A of Income-tax Act, 1961

The withholding tax rate depends on following factors:

- Legal status of the NR (such as individual, company, limited liability entity, etc.)
- Nature of payment (such as business income or ancillary income in hands of recipient such as Royalty, FTS, Interest, etc.)
- Existence of Permanent Establishment (PE) in India and whether or not the income is effectively connected with or attributable to such PE in India

Unlike payments to tax residents of India which carry a pre-defined rate of withholding tax mentioned in the different provisions of the Income-tax Act (such as 10% for FTS u/s 194J, 5% for commission u/s 194H, etc.), withholding tax rate on payments to F Co. / NR is usually equivalent to the applicable tax rate in India on such income. This again, is for the reason that *after* a payment is remitted to the F Co. / NR, it is difficult for the Indian tax authorities to recover any outstanding tax liability from the F Co. / NR, especially if such F Co. / NR does not have any presence or asset base in India. Thus, the Indian tax authorities always want to make sure that *before* a payment is remitted from India to outside India, the applicable withholding tax on the same is deducted and deposited in India, so that the Government is spared the hassle to run after the F Co. / NR for recovery of any outstanding tax liability in India.

Given the above, the Indian tax law provides for ways and means to ensure that *before* a remittance is made by an Indian payer to F Co. / NR, the applicable withholding tax is deducted at source and deposited with the Indian tax authorities. This casts a high degree of responsibility on the Indian payer to ascertain the correct tax liability in India on a payment to be made by it to an overseas payee and withhold the same and deposit with the Indian tax authorities. To this extent, the Indian payer steps into the shoes of a tax officer in India and makes an independent prima-facie assessment of the tax liability in India arising in hands of F Co. / NR on the said income and withholds tax accordingly. Of course, there could be (and in fact *are*) many situations when the payment is not taxable in India and hence in such cases, there is no need to withhold tax by the Indian payer though the Indian payer is required to maintain necessary documentation for this purpose.

The ways and means as per Income-tax law to ensure that appropriate tax has been withheld at source by the Indian payer on overseas payment include:

- Onus on the remitting bank to ensure that necessary documentation (including withholding tax) is in place before the funds are remitted by the Indian payer to overseas jurisdiction
- A self-declaration by the Indian payer in Form 15CA undertaking that appropriate withholding tax has been deducted at source and manner of arriving at the withholding tax rate
- A certificate by an Indian Chartered Accountant in Form 15CB undertaking that appropriate withholding tax has been deducted at source and manner of arriving at the withholding tax rate
- Reporting and disclosure by tax auditor in the annual tax audit report of the Indian payer whether withholding tax has been deducted or not on overseas payments made during the year

### **Provisions of the Income-tax Act, 1961 or DTAA to apply to F Co. / NR, whichever is more beneficial**

Given how important it is for the Indian payer to estimate the correct tax liability of the F Co. / NR in India, the next step involves determining the applicability of provisions of DTAA to the F Co. / NR.

India has signed DTAA's with more than 80 countries globally so that the income earned by an F Co. / NR from India is taxed only once and that too at beneficial tax rates prescribed under the

relevant DTAA (compared to the tax rates mentioned in the Income-tax Act of India). As per section 90(2) of the Income-tax Act, 1961, the provisions of DTAA or the domestic tax law of India (i.e, the Income-tax Act) *whichever is more beneficial*, is applicable to an F Co / NR. In most cases, the provisions of DTAA are more beneficial to an F Co. / NR (compared to Income-tax Act) and hence F Co / NR prefers to be governed by the DTAA. For example, the tax rate on FTS earned by F Co. / NR from India is taxable @ 10% under both Income-tax Act (section 115A) as well as DTAA (with most countries), however, the said tax rate of 10% under DTAA *includes* surcharge and cess but the same tax rate under the Income-tax Act *excludes* surcharge and cess. This is just one of the examples.

### What is Form 10F?

Given the above, it is evident that in most cases, F Co. / NR would prefer to be governed by the relevant DTAA instead of the Income-tax Act in relation to taxability of its income in India. For this reason, Government has put in place checks and balances to ensure that benefit under DTAA with a particular country is given only to genuine tax-residents of those country. These checks and balances include the following:

- Requirement to obtain *Tax Residency Certificate (TRC)* from the F Co / NR, as per section 90(4) of the Income-tax Act. TRC is issued by the Government of home country to which the F Co. / NR belongs to.
- Requirement to obtain *additional information in Form 10F*, as per section 90(5) of the Income-tax Act, namely:
  - ✓ Legal Status of the foreign recipient of income (such as individual, company, firm, etc.)
  - ✓ Nationality (in case of an individual) or Country of incorporation (in case of others)
  - ✓ Permanent Account Number (PAN) of the foreign recipient of income (if allotted by Indian Government)
  - ✓ Tax Identification Number (TIN) in the home country of the foreign recipient of income
  - ✓ Period (year) for which the TRC and above information is valid
  - ✓ Address of the foreign recipient of income in home its home country

To the extent any of the above information is already mentioned in the TRC, such information need not be reproduced in the TRC

In a nutshell, Form 10-F is nothing but a self-declaration by F Co. / NR to the Indian Government / Payer that the foreign recipient of income is an NR in India and is entitled to lower tax rates mentioned in the DTAA with relevant country, for the relevant period / year. The information furnished in Form 10-F helps the Indian Government / Payer evaluate genuineness of the claim of the foreign recipient of income regarding its tax residential status in India and ensure that benefit under the relevant DTAA is provided to the rightful recipient of income.

**FORM NO. 10F**

[See sub-rule (1) of rule 21AB]

**Information to be provided under sub-section (5) of section 90 or  
sub-section (5) of section 90A of the Income-tax Act, 1961**

I, ..... \*son/daughter of Shri..... in the capacity of ..... (designation) do provide the following information, relevant to the previous year..... \*in my case/in the case of..... for the purposes of sub-section (5) of \*section 90/section 90A:—

Sl.No	Nature of information	:	Details #
(i)	Status (individual, company, firm etc.) of the assessee	:	
(ii)	Permanent Account Number or Aadhaar Number of the assessee if allotted	:	
(iii)	Nationality (in the case of an individual) or Country or specified territory of incorporation or registration (in the case of others)	:	
(iv)	Assessee's tax identification number in the country or specified territory of residence and if 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	:	
(v)	Period for which the residential status as mentioned in the certificate referred to in sub-section (4) of section 90 or sub-section (4) of section 90A is applicable	:	
(vi)	Address of the assessee in the country or territory outside India during the period for which the certificate, mentioned in (v) above, is applicable	:	

2. I have obtained a certificate referred to in sub-section (4) of section 90 or sub-section (4) of section 90A from the Government of ..... (name of country or specified territory outside India)

Signature: .....

Name: .....

Address: .....

Permanent Account Number or Aadhaar Number .....

**Verification**

I ..... do hereby declare that to the best of my knowledge and belief what is stated above is correct, complete and is truly stated.

Verified today the ..... day of.....

Signature of the person providing the information

Place: .....

**Notes :**

1. \*Delete whichever is not applicable.

2. #Write N.A. if the relevant information forms part of the certificate referred to in sub-section (4) of section 90 or sub-section (4) of section 90A.

## Requirement to submit Form 10F electronically by 31 March 2023

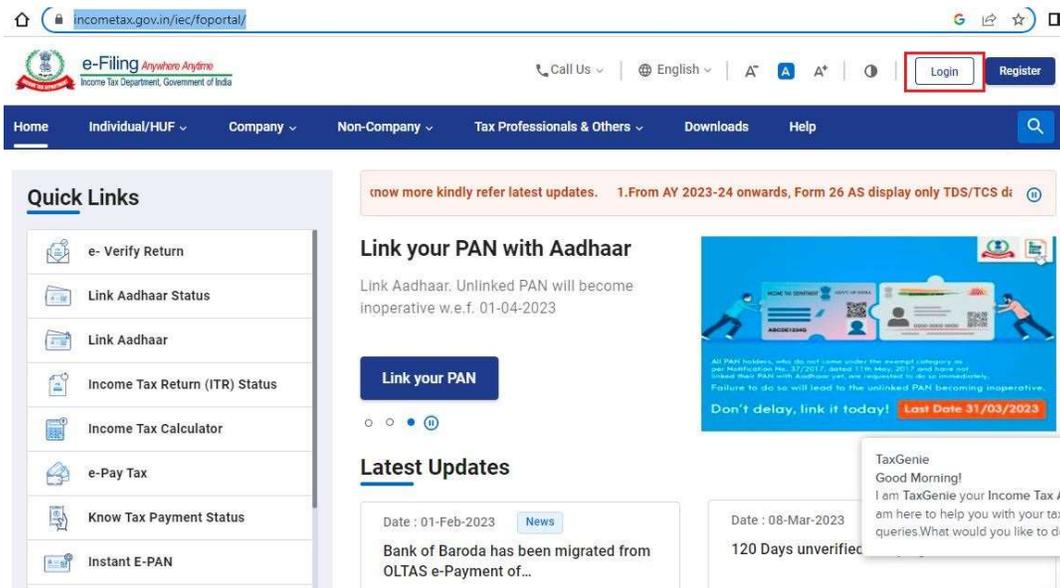
By virtue of Notification no.3 dated 16 July 2022 issued by the Central Board of Direct Taxes (CBDT), Form 10F is required to be submitted electronically on the income-tax portal. This is possible only if the F Co / NR has an existing PAN, because otherwise, it is not possible to log-in to the income-tax portal. Hence, this led to a major inconvenience for F Co. / NR who were otherwise not required to obtain PAN as per the Income-tax Act of India.

## Relaxation issued by CBDT on 12 December 2022

In order to address the above issue, CBDT has allowed those F Cos. / NRs who do not have an existing PAN or are not required to have a PAN as per Income-tax Act, to submit Form 10F manually (instead of electronically) till 31 March 2023.

## How to submit Form 10F electronically on the Income-tax portal by F Co. / NR having PAN

Step 1: Login on to e-filing website <https://www.incometax.gov.in/iec/foportal/>



The screenshot shows the homepage of the Income Tax e-filing portal. The URL in the browser is [incometax.gov.in/iec/foportal/](https://www.incometax.gov.in/iec/foportal/). The page features a navigation menu with options like Home, Individual/HUF, Company, Non-Company, Tax Professionals & Others, Downloads, and Help. A 'Quick Links' section on the left includes options such as e-Verify Return, Link Aadhaar Status, Link Aadhaar, Income Tax Return (ITR) Status, Income Tax Calculator, e-Pay Tax, Know Tax Payment Status, and Instant E-PAN. A prominent banner in the center reads 'Link your PAN with Aadhaar' and states 'Link Aadhaar, Unlinked PAN will become inoperative w.e.f. 01-04-2023'. Below this, there is a 'Link your PAN' button. To the right, there is a 'Latest Updates' section with two entries: 'Bank of Baroda has been migrated from OLTAS e-Payment of...' dated 01-Feb-2023, and '120 Days unverified' dated 08-Mar-2023. A 'TaxGenie' chatbot is also visible in the bottom right corner.

Step 2: Enter login credentials and click continue



**Login**

PAN : [REDACTED]

Secure Access Message

**Login**

Please confirm your secure access message displayed above \*

Enter password for your e-Filing account

Password \*

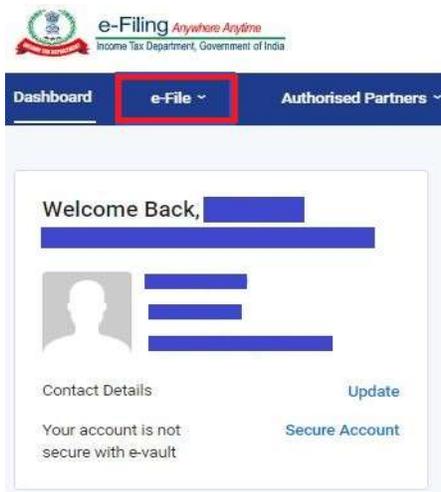
..... [REDACTED]

[Forgot Password?](#)

**Continue >**

< Back

Step 3: Select the option 'e-File'



 **e-Filing** *Anywhere Anytime*  
Income Tax Department, Government of India

Dashboard **e-File** Authorised Partners

Welcome Back, [REDACTED]

[REDACTED]

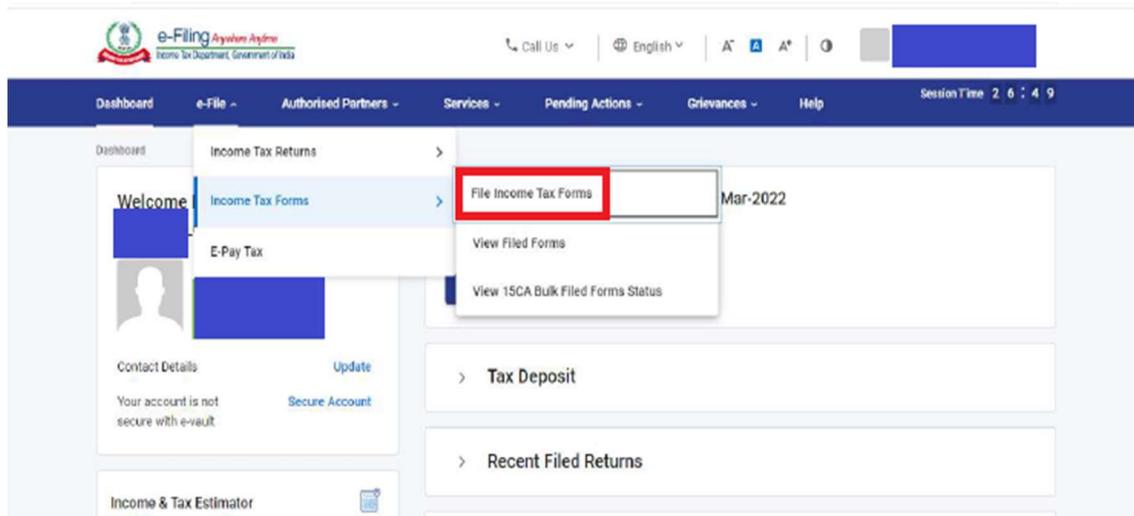
[REDACTED]

[REDACTED]

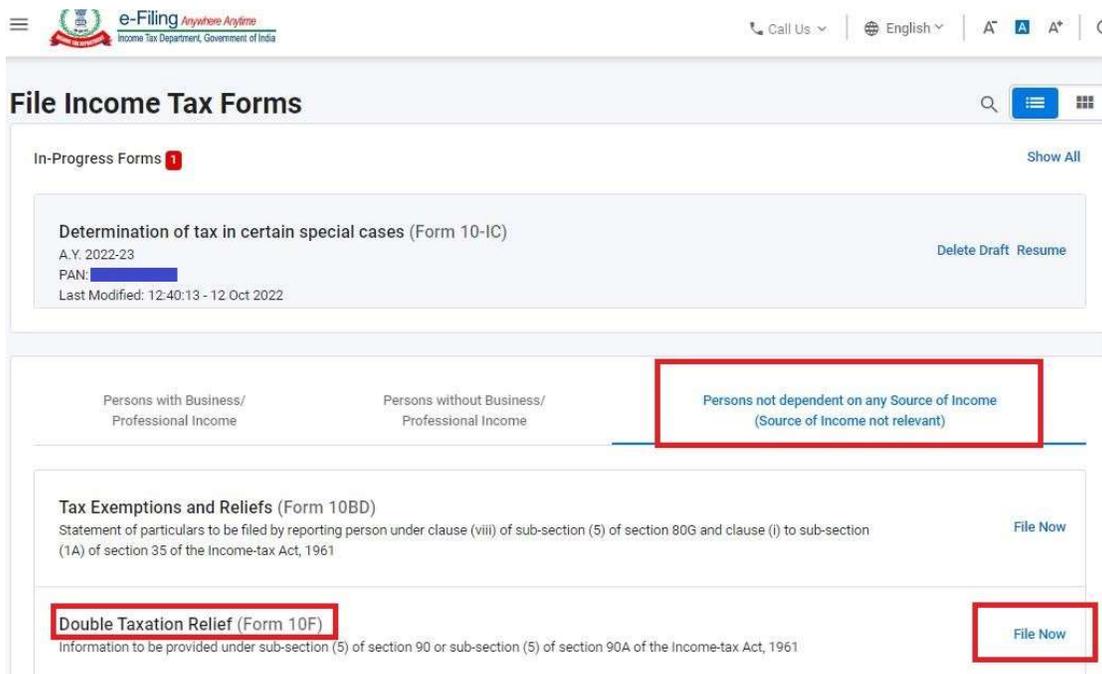
Contact Details [Update](#)

Your account is not secure with e-vault [Secure Account](#)

Step 4: Select the option 'File Income Tax Forms'



Step 5: Select the tab 'Person not dependent on any source of Income'. Select 'Double Taxation Relief (Form 10F)', 'File Now'.



Step 6: Select the Assessment Year for which Form 10F is to be submitted.

Act, 1961. This form is in compliance with Rule 21AB.

\* Indicates mandatory fields

PAN [Redacted]

Submission Mode  
Online

Filing Type  
Original

Assessment Year (A.Y) \*

2023-24

2022-23

< Back

Continue >

Step 7: Fill the Form. Keep the Tax Residency Certificate handy as it needs to be attached along with the Form.

Information to be provided under sub-section (5) of section 90 or sub-section (5) of section 90A of the Income-tax Act, 1961. This Form is in compliance with sub-rule (1) of rule 21AB.

[Redacted] Select \* of Shri [Redacted] \*

In the capacity of DIRECTOR do provide the following information, relevant to the previous year 2022-23 in the case of

[Redacted] for the purposes of sub-section(5) of [Redacted] Select \*

**Nature of information**

(i) Status (individual, company, firm etc.) of the assessee \*

Company

(ii) Permanent Account Number

(iii) Country or specified territory of incorporation or registration \*

(iv) Assessee's tax identification number in the country or specified territory of residence and if 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 \*

(v) Period for which the residential status as mentioned in the certificate referred to in sub-section (4) of section 90 or sub-section (4) of section 90A is applicable

From \*

to \*

(vi) Address of the assessee in the country or territory outside India during the period for which the certificate, mentioned in (v) above, is applicable

Country \*

Flat / Door / Building \*

Road / Street / Block / Sector

PIN Code \*

Post Office \*

Area / Locality \*

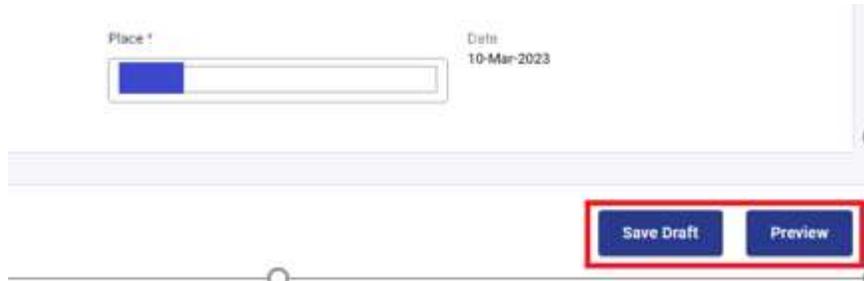
District \*

State \*

### Verification

I  do hereby declare that to the best of my knowledge and belief what is stated above is correct, complete and is truly stated.

Tax residence certificate \*

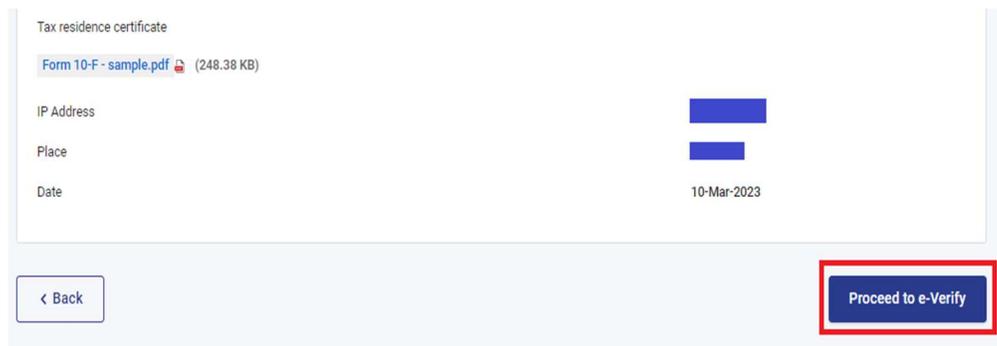


Place \*

Date  
10-Mar-2023

Save Draft Preview

Step 8: Proceed to e-verify the Form using digital signature and click continue. Form shall be submitted post verification.



Tax residence certificate

Form 10-F - sample.pdf (248.38 KB)

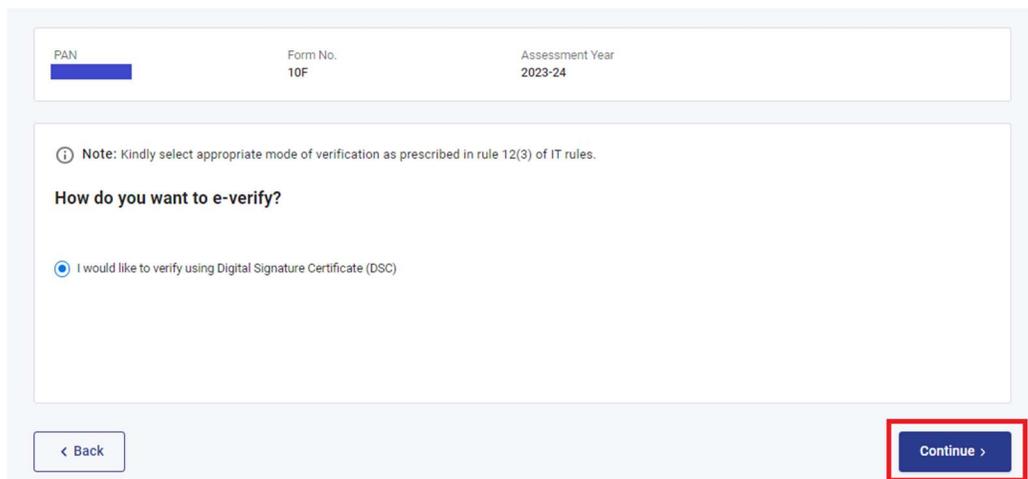
IP Address

Place

Date  
10-Mar-2023

< Back Proceed to e-Verify

Step 9: Proceed to e-verify the form using DSC



PAN Form No. Assessment Year  
10F 2023-24

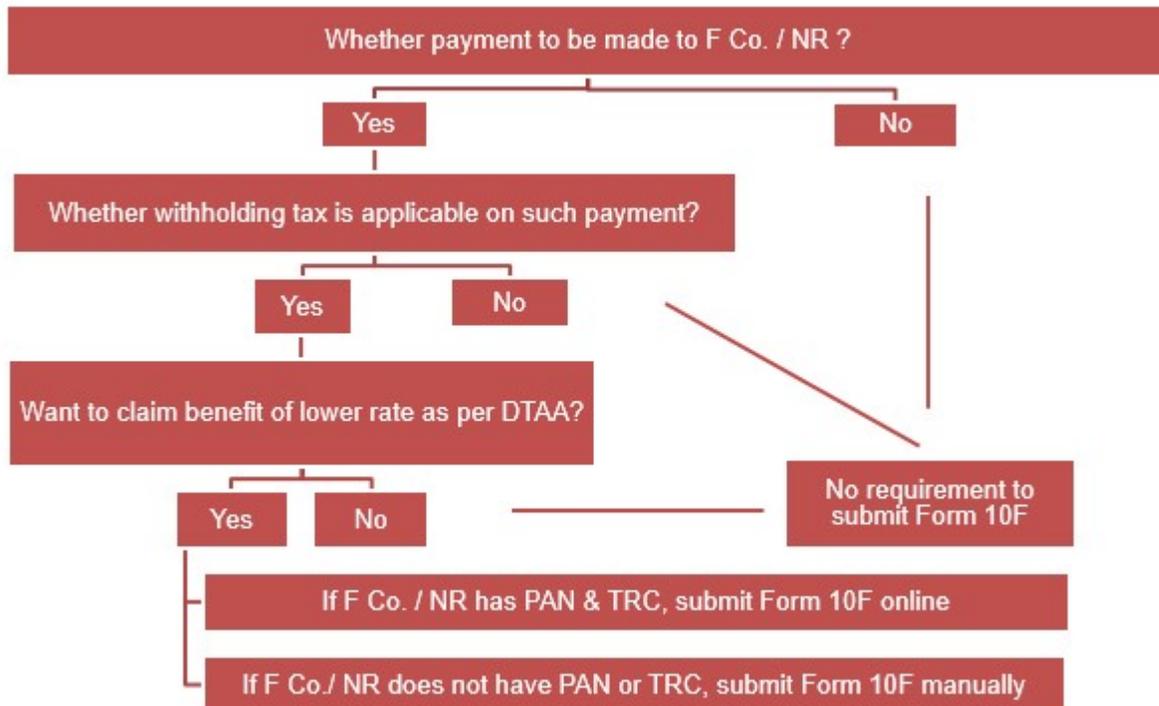
Note: Kindly select appropriate mode of verification as prescribed in rule 12(3) of IT rules.

How do you want to e-verify?

I would like to verify using Digital Signature Certificate (DSC)

< Back Continue >

### Applicability to submit Form 10F in a given case



Situations	Whether Form 10F for Financial Year (FY) 2022-23 is required to be submitted or not?	
	NR has PAN and TRC	NR does not have PAN or TRC
Payment made during FY 2022-23 on which withholding tax was applicable and <ul style="list-style-type: none"> <li>Benefit of lower tax rate as per DTAA is claimed</li> <li>Benefit of lower tax rate as per DTAA is <u>not</u> claimed</li> </ul>	Yes, Online No	Yes, Manually No
Payment made during FY 2022-23 on which withholding tax was <u>not</u> applicable, such as <ul style="list-style-type: none"> <li>(a) Reimbursements</li> <li>(b) Off-shore supply</li> </ul>	No	

## Frequently Asked Questions (FAQs)

*Question 1 -* How to submit Form 10F if F Co. / NR does not have PAN and to who?

*Answer 1 -* Manually, to the Indian payer. There is no requirement to submit Form 10F with the Indian tax authorities, though the tax authorities may require the Indian payer to produce the same at a later point of time

*Question 2 -* Whether TRC is compulsory to submit Form 10F online?

*Answer 2 -* Yes. It is mandatory to attach soft copy of the TRC while submitting Form 10F online (please refer step 7 above)

*Question 3 -* Whether Digital Signature is compulsory to verify and submit Form 10F online?

*Answer 3 -* Yes (please refer step 9 above). This is a practical difficulty / added responsibility for F Co. / NR because manual submission of Form 10F does not require Digital Signature. Obtaining Digital Signature by an F Co. / NR may be a task. Thus, if F Co. / NR wants, it may delegate the authority to a person in India for administrative convenience

*Question 4 -* What is the time limit submit Form 10F?

*Answer 4 -* Ideally Form 10F must be obtained by the Indian payer from F Co. / NR *before* remitting the payment to overseas. However, there is no clarity in terms of time line to submit the Form online. So, it is preferable to submit the same latest before the end of relevant FY. For example, for FY 2022-23 the Form should be submitted latest by 31 March 2023, whether online or manually.

*Question 5 -* Is it necessary for F Co. / NR to have an address in India to submit Form 10F?

*Answer 5 -* No.

*Question 6 -* What is the relationship between TRC and Form 10F?

*Answer 6 -* Form 10F is required to be obtained from F Co. / NR only to the extent that the details mentioned therein is not available / mentioned in the TRC. This is for the natural reason that different countries have different formats for issue of TRC and Indian tax authorities want to ensure that no critical detail is missed out in case it is not mentioned in the TRC.

*Question 7 -* Is Form 10F required to be issued separately for each year?

*Answer 7 -* Yes. Both Form 10F and TRC are required to be issued separately for each year.

*Question 8 -* What is the risk / penal consequence of not filing Form 10F?

*Answer 8 -* The F Co. / NR would not be entitled to benefit of lower tax rate as per relevant DTAA

*Question 9 -* Whether Form 10F is to be obtained irrespective of payment to related or unrelated enterprise?

*Answer 9 -* Yes. It does not matter whether payment is made to an associated enterprise or independent 3<sup>rd</sup> party. So far as payment is made to an F Co. / NR *and* benefit under DTAA is claimed, it is necessary to obtain Form 10F.

**Question 10** - How to submit Form 10F after 31 March 2023 by F Co. / NR not having PAN? Online or Manually?

**Answer 10** - Clarification awaited from CBDT, though as per current situation it is fair to assume that form of submission would be manual.

### How KrayMan can support

- Analysis of tax liability in India on cross border transactions and requirement to withhold tax at source in India
  - Advise on documentation to be obtained from F Co. / NR
  - Assistance in obtaining nil / lower withholding tax certificate from Indian tax authorities
  - Analysis of PE exposure in India
  - Assistance in obtaining PAN, Digital Signature in India
- .....

*Article authored by CA Manan Agarwal (Partner) & CA Garima Verma (Manager, Tax & Regulatory), KrayMan Consultants LLP. For any queries, please feel free to write to us at [communications@krayman.com](mailto:communications@krayman.com).*



*This publication contains information of general nature. The information is only for general guidance and is not meant to be a substitute for professional advice in any manner. In case the reader requires any specific inputs / suggestions / advice from our end, please contact us separately.*

### About KrayMan

KrayMan Consultants LLP (KrayMan) is an accounting and consulting firm headquartered in the National Capital Region of India and serving Clients across India. We specialize in India-entry, Accounting, Tax, Regulatory, M&A, Transaction Advisory, HR & Payroll services. We are a team of Chartered Accountants, Company Secretaries, Advocates and MBAs. For details, please visit our website [www.krayman.com](http://www.krayman.com).