

SATURDAY INTERNATIONAL TAX GYAN !!!

#taxmadeeasy



Form 10F: Relaxation from e-filing?

SITG No.
132

Date: 17.12.2022

Jain Shrimal & Co.

Notification Dated 12.12.2022

F. No. DGIT(S)-ADG(S)-3/e-Filing Notification/Forms/2022/3227

Government of India
Ministry of Finance
Central Board of Direct Tax
Directorate of Income Tax (Systems), New Delhi

New Delhi, 12th Dec 2022

Partial relaxation with respect to electronic submission of Form 10F by select category of taxpayers in accordance with the DGIT (Systems) Notification No. 3 Of 2022.

Reference is invited to Notification No. 03/2022 dated 16th July 2022 issued by Directorate of Income Tax (Systems) New Delhi in exercise of powers conferred under Rule 131(1)/(2) of the Income-tax Rules mandating, inter alia, furnishing of Form 10F electronically.

2. On consideration of the practical challenge being faced by non-resident (NR) taxpayers not having PAN in making compliance as per the above notification, and with a view to mitigate genuine hardship to such taxpayers, it has been decided by the Competent Authority that such category of Non-resident taxpayers who are not having PAN and not required to have PAN as per relevant provisions of the Income-tax Act, 1961 read with Income-tax Rules, 1962, are exempted from mandatory electronic filing of Form 10F till 31st March 2023. For the sake of clarity, it is reiterated that such category of taxpayers may make statutory compliance of filing Form 10F till 31st March 2023 in manual form as was being done prior to issuance of the DGIT (Systems) Notification No. 3 of 2022.

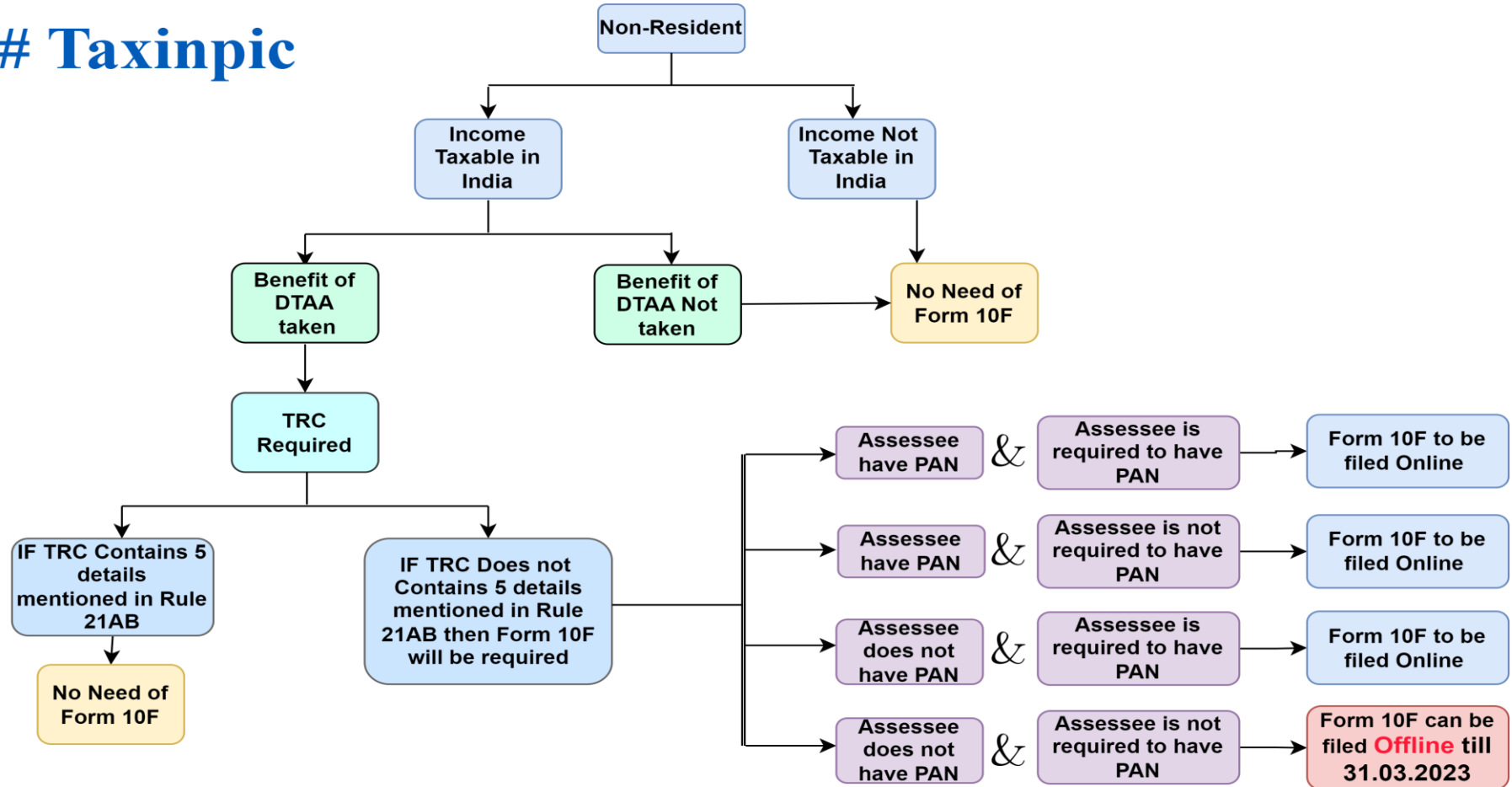


(Y K Singh)

DGIT (Systems)-1, CBDT

Who Needs to File Form 10F and what mode it needs to be filed?

Taxinpic



Who is Required to Have a PAN in India?

❖ **Sub-section 1 of Section 139A** mandates **every person**,-

- i. If Total income of such person > maximum amount of income not chargeable to tax.
- ii. **Turnover** of Business or Profession > **Rs. 5,00,000**, or
- iii. who is required to furnish a return of income under sub-section (4A) of section 139; or
- iv. being an **employer**, who is required to furnish a return of fringe benefits under section **115WD**, or
- v. **A resident**, not being an individual, if he enters into any financial transaction > **Rs. 2,50,000 in a FY**
- vi. who is the managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of the person referred to in clause (v) or any person competent to act on behalf of the person referred to in clause (v); or
- vii. who intends to enter into such transaction as may be prescribed by the Board in the interest of revenue,

and who has not been allotted a permanent account number shall, within such time, as may be prescribed, **apply to the Assessing Officer for the allotment of a permanent account number.**

Class of Person to whom Section 139A does not Apply-

- ❖ **Rule 114AAB** provides that, **section 139A is shall not be applicable on non-residents** other than companies who has, during a previous year, made investment in a specified fund if the **following conditions are fulfilled**, namely:—
 - i. the non-resident does not earn any income in India, other than the income from investment in the **specified fund** during the previous year;
 - ii. any income-tax due on income of non-resident has been deducted at source and remitted to the Central Government by the specified fund at the rates specified in section **194LBB of the Act**; and
 - iii. he non-resident furnishes the following details and documents to the specified fund, namely:
 - a) Name, email id & Contact number
 - b) Address of his resident country
 - c) Declaration that he is a resident of a country outside India
 - d) TIN of the country he is resident of.
- ❖ The provisions of section 139A shall not apply to a non-resident, being an **eligible foreign investor**(it refers to NRs who operates in accordance with SEBI, who has made transaction only in a capital asset referred to in clause (viia) of section 47.

This **specified Fund** (it is a fund established in India which have been granted the certificate under specific categories by specified authorities which includes **CAT I and CAT II of AIF**) shall furnish quarterly statements in Form 49BA to specified people containing details of Clause iii.

NRI who are not required to file Income Tax Return in India

❖ **Section 115A subsection 5 provides-**

- It shall not be necessary for a **non-resident** (not being a company) or of a **foreign company** to furnish under sub-section (1) of section 139 a return of his or its income if—
 - a) his or its total income in respect of which he or it is assessable under this Act during the previous year **consisted only of income referred** to in clause (a) [or clause (b)] of sub-section (1) i.e., **dividends, interest from Government or Infrastructure debt fund, etc.**
 - b) the tax deductible at source under the **provisions of Part B of Chapter XVII** has been deducted from such income and the rate of such deduction is not less than the rate specified under clause (a) or, as the case may be, clause (b) of sub-section (1) i.e., **5%.**

❖ **Section 115G also provides provisions regarding not filing of Income tax in certain cases in case of NRI if-**

- a) his total income in respect of which he is assessable under this Act during the previous year consisted only of investment income or income by way of long-term capital gains or both; and
- b) the tax deductible at source under the provisions of Chapter XVII-B has been deducted from such income.

OUR COMMENTS

- ❖ Here, it can be seen that, NRs are exempted from filing the Income tax return under various provisions of Income Tax Act but those sections don't give any exemption from taking PAN.
- ❖ Thus, NR who falls in the ambit of Section 139A, are required to have a PAN even if they are not required to file Income Tax Return In India.
- ❖ Also, we suggest that, NRs can be provided following other options to submit Form 10F online:
 1. Login through TIN (Tax identification number) or
 2. Deductor should be asked to file Form 10F online.

Disclaimer

- ❖ This presentation has been prepared on the basis of information available in the public domain and is intended for guidance purposes only.
- ❖ Jain Shrimal & Co. has taken reasonable care to ensure that the information in this presentation is accurate. It however accepts no legal responsibility for any consequential incidents that may arise from errors or omissions contained in this presentation.
- ❖ This presentation is based on the information available with us at the time of preparing the same, all of which are subject to changes which may, directly or indirectly impact the information and statements given in this presentation.
- ❖ Neither Jain Shrimal & co., nor any person associated with us will be responsible for any loss however sustained by any person or entity who relies on this presentation. Interested parties are strongly advised to examine their precise requirements for themselves, form their own judgments and seek appropriate professional advice.