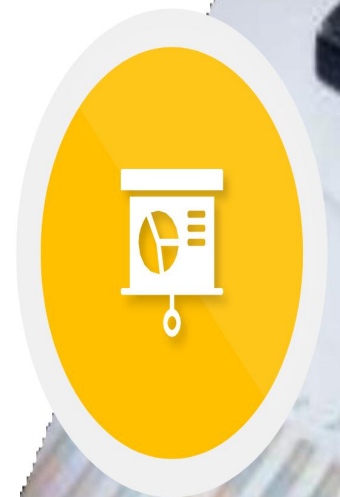


# INDIA EXPERT


## Tax Residency Certificate

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## About Us



*INDIA EXPERT, Chartered Accountants, is one of the leading providers of financial and business advisory, internal audit, statutory audit, corporate governance, & international taxation and regulatory services. With a global approach to service delivery, we are responds to clients' complex business challenges with a broad range of services*

*across industry sectors and national boundaries. The Firm has been set up by a group of energetic, open minded, highly skilled and motivated professionals who have gained experience from top consulting companies and are extensively experienced in their chosen fields has providing a wide array of Accounting, Auditing, Assurance, Risk, Taxation, & Business advisory services to various clients & their stake holders. We have been associated with various national & International recognized associations in the field of our profession; Association of International tax consultants (AITC) is one of them.*

# **INDIA EXPERT**

## Complete Understanding about “Tax Residency Certificate”



### Tax Residency Certificate or TRC:

Tax Residency Certificate is a Certificate issued by an Income Tax Authority of a Country certifying that the person / entity is Tax Resident (Resident for the purpose of Taxation) of that country. Tax Residency Certificate is to verify which country you belong and to check for the tax resident. It may be necessary when you have earnings from more than one country. While you may be tax citizen of one of them, your profit may be payable in the country due to their particular internal laws. To evade giving tax on the corresponding income twice, you may take advantage of the Double Taxation Avoidance Agreement (DTAA) within the nations. TRC assists in establishing which country you are and a tax citizen, so that the proper DTAA may apply to you and you can avail of the advantages declared internally.

Taxation of cross-country transactions is determined as per the provisions of Income Tax Law of respective country and the provisions of Double Taxation Avoidance Agreement (DTAA) entered into between two countries. As the provisions of DTAA are applicable only to residents of that specific country, Income Tax Authorities of the country where the revenue is generated insist on Tax Residency Certificate from the receiver of revenue, to give benefits available under DTAA between two countries.

NRIs expect certain tax relief from the Government in the upcoming Union Budget 2021 to be tabled on February 1, 2021. They want the Government to specify a minimum income threshold for obtaining a Tax Residency Certificate for the NRIs. This would provide relief to small transactions.

Are you finding it hard to receive a Tax Residency certificate? You can get them by submitting the Form 10FA. This form defines the statement of Certificate of residence for an agreement under section 90 and 90A of the Income-tax Act, 1961.



## Form of certificate of residence

The form of the certificate of residence document to be presented by Polish taxpayers for the case of tax inspection also poses significant problems. According to tax authorities, taxpayers should obtain a printout of an original document. All copies thereof need notarial certification. The form of a computer file is also acceptable for such documents, if this is how they have been issued by the tax administration of the country of residence (and preferably provided with an electronic signature). Tax offices often question copies of certificates of residence obtained via e-mail or from websites, despite this form being the easiest for taxpayers.

## Validity of certificates of residence

Regulations binding since 2015 were to eliminate doubts regarding the expiration date of certificates of residence with no indicated validity period. Pursuant to current regulations, such certificates remain valid 12 months of the issue date. Thus, if a foreign counterparty changes its registered office and fails to inform its Polish counterparty about the fact, no additional tax will be due from the Polish business. The principle does not apply, though, if the Polish taxpayer has learned about the change of the registered office address, e.g. from invoices received from that counterparty.

In light of the current regulations, therefore, it is unclear whether certificates with no validity period indicated confirm the tax residence of a counterparty prior to its issue.

## Relevant statements preventing from tax collection.

Additionally, dividends, interest and license fees payable to foreign capital group companies may be tax exempted upon obtaining relevant statements from counterparties. The current law provides for a variety of statements to be obtained, depending on the type of payment and capital relationship with the Polish company.

Here you can find more information regarding dividends, interest and license receivables being exempted from withholding tax and the planned amendments.

## Process of Obtaining a Tax Residence Certificate in India

If a person wishes to avail of tax relief under Double Tax Avoidance Agreements, then they need to have a document called Tax Residence Certificate. The document is issued by the country of which you are a resident and is furnished only to those foreign countries with whom the home country has a DTAA agreement.

In India, the authority for issuing the certificate rests with the Income Tax Department. For understanding the criteria of being a resident in India you can go through the following points. An individual is said to be a resident:

- If they stay in India for 182 days or more in the previous year.
- If they stay in India for 60 days or more in the current financial year and have stayed in India for 365 days or more in the preceding four years.

Such an assessee should make an application in Form No. 10FA to the assessing officer, for meeting the agreement requirements referred to in section 90 and 90A. On the receipt

of the application by the assessing officer as referred to in sub-rule (3), he shall satisfy himself by scrutiny of documents submitted. On complete compliance, the officer will issue the certificate for the assessee.

A lower limit of 120 days gets applicable in place of 182 days if an NRI's income from Indian sources is above Rs 15 lakh in the said financial year. If an NRI's Indian taxable income is less than Rs 15 lakh, the 182-day threshold will continue to apply.

## Type of Foreign Incomes on which DTAA applies



Here are the different types of foreign income on which DTAA applies:

- Interest on fixed deposits
- Capital gains from Foreign country
- Income from lease of assets
- Income earned from freelancing or consultancy work
- Interest on Saving bank account
- Salary received in Foreign Country
- Agricultural revenue
- Share and Mutual Fund dividends

Tax residency certificate to claim tax relief under an agreement referred to in sections 90 and 90A is specified under rule 21AB of the Income Tax Act.

## Tax residence certificate for non-resident Indians

An assessee who is a non-resident in India should obtain the Tax Registration Certificate from the Government of the country or the territory of which he/she is a legal resident. This certificate shall contain the following information.

- Name of assessee
- Status (Individual/ HUF/ Company)

- Nationality (in case of an individual)
- The country or the specific territory of registration
- Residential status for tax purposes
- The period till which the certificate is applicable
- The specified address for the validity of the certificate
- The Tax Identification Number in the specified country or noted territory, or a unique identification number by the government of such territory, in case of unavailability of TIN.

All the above information should be provided in Form 10F by the assessee.

The certificate mentioned in sub-rule (1) must be verified by the government of the country or noted territory for verifying the genuineness of assessee in the tax payment system.

Subject to the provisions of sub-rule (2), for sub-section (5) of section 90A and sub-section (5) of section 90, the below-mentioned information should be provided by an assessee in Form 10F

- Status (HUF/ Individual/ Company)
- Nationality, in case of an individual or the country or area of registration, in case of any person other than an individual.
- The residential status period
- Address of assessee in India or the territory outside India, during the time for which the certificate is applicable.
- The TIN of assessee in the country or the territory of residence. If the TIN is not available then the unique number used for verifying the identity of the person in the specified region.

There is no requirement of providing the information or any such part thereof if it is already mentioned in the certificate referred to in sub-section (4) of section 90A or 90.

The assessee should keep the documents that are necessary to substantiate the provided rule under sub-section (1) and the Income-Tax authorities necessitate providing of said documents about the claims for any kind of relief under an agreement referred to in the sub-section (1) of section 90A and section 90.

## **STEP-WISE PROCEDURE - TAX RESIDENCE CERTIFICATE FOR NON-RESIDENT INDIANS**

1. Document requirement for TRC Certificate:the Central Board of Direct Taxes finally issued Rule 21AB, outlining the format that the TRC should take. The Documents or information required on TRC are as follows:

- (1) Certificate particulars



- (i) Name of the taxpayer;
- (ii) Status (individual, company, firm etc.) of the taxpayer;
- (iii) Nationality (in case of individual);
- (iv) Country or specified territory of incorporation or registration (in case of others);
- (v) taxpayer's tax identification number in the country or specified territory of residence or in case 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;
- (vi) Residential status for the purposes of tax;
- (vii) Period for which the certificate is applicable; and
- (viii) Address of the applicant for the period for which the certificate is applicable;

Find your assessing officer (AO) on the web through the official website by entering the registered mobile number and PAN.

Prepare a document that explains your in and out movement through the stamped passport. If your check-in or check-out is made online, then the air tickets should be retained for providing proof to the assessing officer.

(2) The certificate referred to in sub-rule (1) shall be duly verified by the Government of the country or the specified territory of which the taxpayer, referred to in sub-rule (1), claims to be a resident for the purposes of tax.

(3) Download the Form 10FA and then submit it physically to the assessing officer. It is necessary to disclose the reason for the tax resident certificate. You also need to attach a copy of the Passport with all the stamps of departure and arrival. A taxpayer, being a resident in India, shall, for obtaining a certificate of residence for the purposes of an agreement referred to in section 90 and section 90A, make an application in Form No. 10FA to the Assessing Officer.

(4) The Assessing Officer on receipt of an application referred to in sub-rule (3) and being satisfied in this behalf, shall issue a certificate of residence in respect of the taxpayer in Form No. 10FB. After all the submissions, the officer may ask you to visit him to discuss the documents. After complete satisfaction, the assessing officer will finally issue the TRC in Form 10FB.

The certificate will help you avoid double taxation on your income as per the above-mentioned DTAA agreement.

## FAQS ON TAX RESIDENCY CERTIFICATE



### **Q.: What requirements should be met by such certificate?**

The certificate of residence confirms the location of a counterparty's registered office for tax purposes. The document is issued by tax authorities of the country of residence upon taxpayer's request. The definition included in PIT Act and CIT Act is of general nature and does not indicate all formal requirements that such a certificate should meet. According to Polish tax authorities, the document should be issued by a competent foreign office and its contents should clearly indicate the tax residence of a given firm and the date of issue or validity period.

Not all countries, though, issue certificates of residence that meet these requirements. Please note that not all documents issued by foreign tax authorities shall be accepted by Polish ones. Confirmation of registration for VAT purposes, of foreign counterparty's tax identification number or its legal form shall not be deemed to meet the statutory requirements concerning the certificate of residence.

### **Q.: How to Claim Double taxation avoidance agreement (DTAA) benefit?**

The Incomes that are generally covered in DTAA which NRIs can claim relief on are:

- Capital gains
- House property
- Interest Income
- Royalty Income
- Salary earned in India
- Income from Services provided in India

One has to go through the DTAA treaty between India and their Country of Residence and find out TDS rates that are settled between them.



To claim the benefit of the lower TDS rates, the assesses have to submit the tax residency certificate, **declaration form 10F** and PAN card copy with the respective institution. In case of TDS on Rental income, NRI assesses have to file application u/s 195(3) to jurisdictional tax officer to obtain a certificate of NON-deduction of TDS or Lower TDS.

But do keep in mind that this is just the reduction of TDS in the source country, and this will have to show at the time of tax filing with the resident country and pay the remaining taxes as per the Tax rules over there. However, due to DTAA, the TDS deduction can be claimed as Tax Credit there.

There is also a certain Income which is Exempted to be taxed in the Source country. Refer the agreement or consult some expert on this subject.

### **Q.: What are the requirements to file Form 10FA?**

Taxpayers who are citizens or residents of India can instantly get a TRC by producing a request in Form 10FA to the tax professionals. The form needs information such as surname, address of taxpayers, basis for maintaining residency in India, purpose and the duration for which TRC is required. Upon receipt of the application form, along with the approving documents, the tax experts will check the data and then publish a TRC in Form 10FB.

### **Q.: How do I file a 10FA?**

An assessee, holding a citizen in India, for getting a certificate of residence for an agreement related to in Section 90 and Section 90A, make an appeal in Form No. 10FA to the Assessing Officer. The Assessing Officer (AO) on the discharge of a statement attributed to in rule no.3 and is performed in this behalf, shall issue a certificate of residency concerning the assessee in Form No. 10FB.

### **Q.: How can I get 26as from Bank Online?**

- Go to <https://incometaxindiaefiling.gov.in> and log in by your income tax department username and password.
- Register your details of DOB, PAN number, and other features.
- Go to My Account click on View Form 26AS in the dropdown menu.
- Click Confirm so that you will get the redirection to the website.
- Choose the box on the page and click on Proceed from the page or website.
- Now, from the bottom of the page, click the link. Further, click View Tax Credit (Form 26AS) to see your Form 26AS.
- Select the Assessment Year and the composition in which you need to recognise the Form 26-AS. If you require to view it online, leave the form as HTML. You can also prefer to download as a PDF. After you have selected your option, enter the verification code and agree to View/Download.

- To present the document you must enter the password. Form 26AS key or password is your DOB in DDMMYYYY format. Now, your IT Form 26AS will begin.

### **Q.: Can form 10FA be filed online?**

You have to submit this form to tax professionals in charge. Further, you have to take this form from the tax officials of the country in which you are a citizen or resident. You cannot present it online in India.

### **Q.: Where should I submit Form 10FA?**

A resident taxpayer can register an appeal in Form 10FA to the jurisdictional Assessing Officer ('AO') for getting a TRC in India. The application form simultaneously with maintaining documents or certificates has to be submitted to the AO.

### **Q. :How I get a tax residence certificate from India?**

For obtaining TRC, Application in Form 10FA shall have to be submitted to your Assessing Officer, who shall in turn issue TRC in Form 10FB.

The documents to be attached with the Form are not prescribed. It is advisable to attach such documents that could substantiate the details provided in the application. The AO may ask for any other documents, if required.

Basis of such status shall be the number of days of your stay in India, so as to prove the residency. A copy of relevant pages from the passport can be provided as a proof.

### **Conclusion:**

DTAA is a very good tax planning tool. How it applies to you, and will it be of any benefit to you that needs to be seen. India has Double taxation avoidance agreement with more than 90 countries. And every agreement is different, rates decided are different, so what applies in your case depends on that specific agreement with your country of Residence.

In India an application is made to the Income Tax Officer (International Taxation) to obtain the Certificate, which is generally issued within a week time. There are no filing fees or other costs involved.

Tax resident certificate help to avoid double taxation on an income. For an Indian resident, his global income will be chargeable to tax and the foreign country will also

charge tax on the income earned in that country but at a concessional tax rate as per the DTAA agreement.

GET YOUR TAX RESIDENCY CERTIFICATE:Rajput Jain and Associates provides expert services in obtaining a Tax Residency Certificate from the Income Tax Department.

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## CORPORATE OFFICE

P-6/90, Connaught circus  
Connaught Place New Delhi 11001  
Phone no.9555555480  
Email.info@indiaexpert.in  
www.indiaexpert.in

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