

Notice to NRI Customers Availing Double Taxation Avoidance Agreement

The Double Taxation Avoidance Agreement (DTAA) benefit is provided to NRIs as per the provisions of Section 90 of Income Tax Act 1961. In the recent Union budget of 2012, there has been an amendment in Section 90 of the Income Tax Act 1961.

With regard to the amendment, all NRIs who wish to avail DTAA benefit on NRO deposit for the financial year (FY) 2012-2013 onwards will have to mandatorily provide **Tax Residency Certificate (TRC)** to the Deductor (Bank). TRC is issued by the tax/government authority of the country where the NRI is Tax Resident. As there are specific provisions in the Income Tax Act for TRC, no other document in lieu of TRC shall be considered for availing the DTAA.

In case you wish to avail DTAA benefit from FY 2013-14 onwards; kindly provide an updated copy of your Tax Residency Certificate (TRC) to the Deductor (Bank)

Please note that in case of non receipt of the Tax Residency Certificate, interest earned on your NRO account will be taxed at 30.90%. Furthermore, Tax Deducted at Source (TDS) once deducted cannot be refunded.

Central Board of Direct Taxes (CBDT), vide Finance Act, 2012 has prescribed following contents to be captured on the Tax Residency Certificate (TRC) on the basis of which benefit of DTAA can be availed:

1. Name of the assessee;
2. Status (individual, company, firm etc.) of the assessee;
3. Nationality (in case of individual);
4. Country or specified territory of incorporation or registration (in case of person other than individual);
5. Assessee'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;
6. Residential status for the purposes of tax;
7. Period for which the certificate is applicable; and
8. Address of the applicant for the period for which the certificate is applicable

Please find below regulation relevant to the Double Taxation Avoidance Agreement (DTAA).

CHAPTER IX
DOUBLE TAXATION RELIEF

Existing - Section 90

Agreement with foreign countries or specified territories.

7390. (1) The Central Government may enter into an agreement with the Government of any country outside India or specified territory outside India, –

- (a) For the granting of relief in respect of –
 - (i) income on which have been paid both income-tax under this Act and income-tax in that country or specified territory, as the case may be, or
 - (ii) income-tax chargeable under this Act and under the corresponding law in force in that country or specified territory, as the case may be, to promote mutual economic relations, trade and investment, or
- (b) for the avoidance of double taxation of income under this Act and under the corresponding law in force in that country or specified territory, as the case may be, or
- (c) for exchange of information for the prevention of evasion or avoidance of income-tax chargeable under this Act or under the corresponding law in force in that country or specified territory, as the case may be, or investigation of cases of such evasion or avoidance, or
- (d) For recovery of income-tax under this Act and under the corresponding law in force in that country or specified territory, as the case may be, and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.

(2) Where the Central Government has entered into an agreement with the Government of any country outside India or specified territory outside India, as the case may be, under sub-section (1) for granting relief of tax, or as the case may be, avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of this Act shall apply to the extent they are more beneficial to that assessee.

(3) Any term used but not defined in this Act or in the agreement referred to in sub-section (1) shall, unless the context otherwise requires, and is not inconsistent with the provisions of this Act or the agreement, have the same meaning as assigned to it in the notification issued by the Central Government in the Official Gazette in this behalf.

Explanation 1. – For the removal of doubts, it is hereby declared that the charge of tax in respect of a foreign company at a rate higher than the rate at which a domestic company is chargeable, shall not be regarded as less favourable charge or levy of tax in respect of such foreign company.

Explanation 2. – For the purposes of this section, “specified territory” means any area outside India which may be notified⁷⁴ as such by the Central Government.]

Amended – Section 90

31. In section 90 of the Income-tax Act, –

(a) After sub-section (2), the following sub-section shall be inserted with effect from the 1st day of April, 2013, namely: –

– (2A) notwithstanding anything contained in sub-section (2), the provisions of Chapter X-A of the Act shall apply to the assessee, even if such provisions are not beneficial to him.;;

(b) After sub-section (3) and before Explanation 1, the following sub-section shall be inserted with effect from the 1st day of April, 2013, namely: –

“(4) An assessee, not being a resident, to whom an agreement referred to in sub-section (1) applies, shall not be entitled to claim any relief under such agreement unless a certificate, containing such particulars as may be prescribed, of his being a resident in any country outside India or specified territory outside India, as the case may be, is obtained by him from the Government of that country or specified territory.”;

(c) after Explanation 2, the following Explanation shall be inserted and shall be deemed to have been inserted with effect from the 1st day of October, 2009, namely:--

–Explanation 3.--For the removal of doubts, it is hereby declared that where any term is used in any agreement entered into under sub-section (1) and not defined under the said agreement or the Act, but is assigned a meaning to it in the notification issued under sub-section (3) and the notification issued there under being in force, then, the meaning assigned to such term shall be deemed to have effect from the date on which the said agreement came into force.