

**SNR** & COMPANY  
CHARTERED  
ACCOUNTANTS

A background image showing a hand holding a gold pen over a calculator. Overlaid on the image are white line graphs and bar charts, suggesting financial analysis or accounting work.

# **INCOME TAX UPDATE**

**09th May 2023**

## Increase in Tax Rate on Royalty and Fees for Technical Services

The Union Budget for 2023-24 received the assent of the President of India on 31 st March 2023. While most of the changes proposed in the finance bill laid before the parliament on 01st Feb 2023 have been accepted, a total of 64 additional amendments to the initially proposed Finance Bill on 01st February 2023 also formed part of the bill that was passed in the parliament and laid before the President for final assent. Out of these 64 amendments, one of the key amendments impacting non-residents/ foreign companies (not having a permanent establishment in India) is the doubling of withholding tax rate on royalties and fees for technical services ('FTS') from the existing 10% to 20%, plus surcharge and cess.

It is an accepted fact that Indian multinationals import technology and high-end services from foreign jurisdictions and pay royalties and FTS for the use of technologies. Section 115A provides a non-obstante clause by which the Income of the nature of royalty and FTS is considered to have arisen in India even if the Foreign Company or a non-resident does not have any place of business in India. Thus, section 115A gives paramount importance to the source rule of taxes. By virtue of this, withholding tax obligations arise in the hands of the Indian payer while remitting any sums which qualify as royalty or FTS. At the same time, it must also be noted that the non-residents/foreign companies do have the option to be taxed either as per the provisions of the Double Tax Avoidance Treaty ('DTAA') entered into between India and the country of residence of the non-resident/foreign company or the Income-tax Act, whichever is more beneficial for them.

Upto 31 st March 2023, section 115A provided that tax at the rate of 10% shall be levied on royalty and FTS received by Foreign Companies from India. This rate was in line with the rate prescribed by most of the Tax Treaties. Now with the increase in the domestic withholding tax rate to 20% (plus surcharge and cess), there will be an additional tax burden on non-residents/ foreign companies from countries where the DTAA rate is higher than 10%.

In addition to this, with the increase in tax rates as per the Indian Income Tax Act, non-residents/ foreign companies willing to be taxed at lower tax rate by availing the benefits of DTAA shall have to undertake additional compliances that shall include but not limited to the following:

- Obtaining a Permanent Account Number (PAN) in India.
- Obtaining a TRC from their resident jurisdictional authorities.
- Furnishing Form 10F electronically. (Appendix-I).
- Filing an Income Tax Returns in India.
- Issuing a 'No Permanent Establishment' declaration to the Indian entity (Appendix-II).

Thus, this increase in tax rates shall have an impact on the non-residents/ foreign companies governed by DTAA's prescribing a rate higher than 10% as well as those non-residents/ foreign companies located in tax jurisdiction with which India does not have a tax treaty.

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**Appendix-I**

**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\*section90/section90A:—

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 the territory of residence and if there is no such number, then, a unique the 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: \_\_\_\_\_

PAN or Aadhar 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.

**Declaration of no PE in India**

*Declaration required u/s 9 of Income Tax Act, and for claiming relief under an agreement referred to in section 90 and 90A i.e. (for claiming the benefit of DTAA - Double Tax Avoidance Treaties)*

To,

\_\_\_\_\_  
\_\_\_\_\_

**Declaration : No PE in India**

Sir,

The following letter is given to satisfy your country's income tax law requirements.

In terms of requirements of the Indian Income-tax Act and Rules, we wish to clarify that

- a) We are a company based in \_\_\_\_\_ (Country).
- b) The income from business with you is taxable in \_\_\_\_\_. We are a regular Income tax assessee in our country as per our rules. Our Income Tax Registration number in our country is \_\_\_\_\_.
- c) We do not have any Permanent Establishment in India [either through self or agent], (as defined under Section 92F (iia) of the Income Tax Act).
- d) Hence, we affirm that our income neither accrues in India, nor arises in India, from a permanent Establishment / Business Connection in India.
- e) We shall hold you indemnified, if in the future, anything is found contrary to the above and your company faces any issues in Indian income taxes for non-deduction of tax.

For \_\_\_\_\_

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

Address: \_\_\_\_\_