



President  
Vipul K. Choksi

Hon. Jt. Secretaries  
Ketan L. Vajani | Haresh P. Kenia

Vice President  
Anish M. Thacker

Treasurer  
Parag S. Ved

Imm. Past President  
Hinesh R. Doshi

5<sup>th</sup> May, 2020

To,  
Shri Pramod Chandra Mody,  
The Chairman  
The Central Board of Direct Taxes ('CBDT')  
Government of India.  
North Block,  
New Delhi 110 001.

Dear Sir,

**Sub: Representation for allowing the benefits under Double Tax Avoidance Agreements between India and other nations, without Tax Residency Certificate (TRC)**

## **I. *Background of The Chamber of Tax Consultants***

1. The Chamber of Tax Consultants (CTC), Mumbai was established in 1926. CTC is one of the oldest voluntary non-profit making organisations in Mumbai formed with the object of educating and updating its members on tax and other Laws. It has robust membership strength of about 4000 professionals, comprising of Advocates, Chartered Accountants, and Tax practitioners.
2. The Chamber also has created a niche with the Government and other regulatory agencies, where representations by the Chamber are received with all seriousness and continues this commitment for more than 90 years now.

## **II. *Purpose of representation***

Relief under a DTA is available provided the non-resident has a TRC. Due to Covid19 pandemic, it has become extremely difficult to obtain a TRC. We therefore have requested for relaxation in the requirement of TRC till the pandemic is over. Details are given below.

3. Section 90(2) of the Income-tax Act, 1961 ('the Act') provides an option to a non-resident taxpayer to be governed by the provisions of the Act or the Double Taxation Avoidance Agreement ('DTAA'), whichever is beneficial.
4. Section 90(4)<sup>1</sup> of the Act states a non-resident taxpayer shall not be entitled to claim benefits under the DTAA unless a Tax Residency Certificate ('TRC') of the country in which he is a tax resident is provided.
5. TRC is a document that is required to be obtained by a non-resident/foreign company by making an application to the tax authorities of the country in which it is a tax resident. It is obtained every year covering the period for which it is a tax resident.
6. Owing to the outbreak of the COVID-19 pandemic, many government offices around the world are not functional. Non-residents/foreign companies are unable to obtain the TRC for the calendar year 2020.
7. Prima facie, non-furnishing of TRC would lead to denial of relief of the applicable DTAA for a non-resident/foreign country. An Indian party making payment to a foreign person is left with no choice but to withhold tax at the rate of tax under the Act, even though it may be higher than the rates prescribed under the DTAA.
8. As you are aware that as per the circular issued by the CBDT, an option has been given to the payer to approach either tax authorities or Chartered Accountants for determining tax rate while making remittance to the non-residents. In fact, when the payer approaches a Chartered Accountant for the purpose of issuance of Form 15CB while making remittance to a non-resident, the Chartered Accountant is stepping into the shoes of the tax officer and performs his judicious duty in determining appropriate withholding tax on such remittance. Therefore, in absence of a valid TRC even he will not be able to grant the benefits to the non-resident taxpayer under the DTAA.

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<sup>1</sup> Section 90(4) was inserted by Finance Act 2013 with effect from financial year starting from 1 April 2012.



**The Chamber of  
Tax Consultants**  
Mumbai | Delhi

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9. For the benefit of all our members, we request CBDT to issue an order permitting benefits under the DTAA to non-resident tax payers based on any set of documents which reasonably prove tax residency of the tax payer. Alternatively, we request the CBDT to provide relaxation in claiming DTAA benefit in cases, where a TRC is available for the previous year or an application has been made with respective tax authorities for obtaining TRC, till the time the normalcy resumes.
10. We would like to draw your honour's attention to the recent order passed on 31 March 2020 by your honour wherein you have recognised the practical difficulty in these unprecedented trying times and have provided extensions/clarifications for lower or nil tax deduction/collection at source under section 195/197/206C of the Act for the financial year 2020-21.
11. The clarification/order on the relaxation for the furnishing of TRC will be of great relief in the case of genuine non-residents/foreign companies who are eligible to claim DTAA benefit.

Thanking you,

Sincerely,

For The Chamber of Tax Consultants

Sd/-

Shri Vipul K. Choksi  
President

Sd/-

Shri Mahendra Sanghvi  
Chairman  
Law and Representation Committee