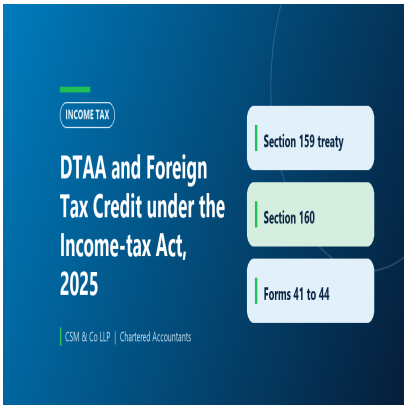

DTAA and Foreign Tax Credit under the Income-tax Act, 2025: Sections 159 and 160, Forms 41 to 44 and Rule 76 (Tax Year 2026-27)

Description

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Quick summary

- A tax treaty (DTAA) under section 159 of the Income-tax Act, 2025 applies to an assessee only to the extent it is more beneficial than the Act (section 159(4)); a non-resident must hold a residence certificate from the other country and provide the documents in Form 41 (the old Form 10F) to claim it (section 159(8), Rule 75).
- A resident of India who pays tax abroad claims foreign tax credit under Rule 76: the lower of the Indian tax on that income and the foreign tax paid, country by country and source by source, with the statement in Form 44 (the old Form 67) furnished within twelve months from the end of the tax year.
- For countries with no agreement, section 160 gives a deduction at the lower of the Indian rate or the foreign rate.
- An Indian resident who needs a residence certificate for a treaty applies in Form 42 to the Assessing Officer, who issues it in Form 43.

Income earned across borders can be taxed twice, once by the country where it arises and again by the country where the earner lives. India avoids this through **Double Taxation Avoidance Agreements (DTAA)** and through **foreign tax credit** rules. In the Income-tax Act, 2025 (from 01/04/2026) these are **sections 159 and 160**, supported by **Rules 75 and 76** of the Income-tax Rules, 2026.

Old and new references

Old	New
Section 90 and 90A (agreements)	Section 159
Section 91 (no agreement)	Section 160

Old	New
Form 10F (information for treaty claim by a non-resident)	Form 41 (Rule 75(1))
Tax Residency Certificate application and certificate	Form 42 (application) and Form 43 (certificate) (Rule 75(3) and (4))
Rule 128 and Form 67 (foreign tax credit)	Rule 76 and Form 44

Section 159: treaties

- The Central Government may enter into an agreement with another country or a specified territory to give relief for income taxed in both, to avoid double taxation without creating chances of non-taxation or reduced taxation through evasion or treaty-shopping, to exchange information and to help recover tax (section 159(1) and (3)).
- Where an agreement applies to an assessee, the Act applies **to the extent it is more beneficial** to the assessee (section 159(4)).
- The special rules in Chapter XI (anti-avoidance) apply even if they are not beneficial (section 159(6)).
- A term defined in the agreement has that meaning; if not, the Act's meaning is used (section 159(7)).
- A non-resident can claim relief under an agreement only when it **obtains a certificate of residence** from the government of its country and provides the **other documents and information** prescribed (section 159(8)). Rule 75 prescribes **Form 41**, and the assessee must keep the documents to support it.

A resident who wants a treaty benefit abroad

A resident of India who needs a certificate of residence applies in **Form 42** to the Assessing Officer, who on being satisfied issues it in **Form 43** (Rule 75(3) and (4)).

Foreign tax credit for a resident (Rule 76)

A resident is allowed credit for foreign tax paid, by deduction or otherwise, in a country or specified territory outside India, in the tax year in which the corresponding income is offered or assessed to tax in India (Rule 76(1)). If the income is offered in more than one year, credit is spread in the same proportion (Rule 76(2)).

- **Foreign tax** means the tax covered by the agreement, where there is one, and otherwise the tax in the nature of income-tax (including excess profits or business profits tax) under the law of that country (Rule 76(3) and section 160(3)(a)).
- **Credit is against** tax, surcharge and cess, and not interest, fee or penalty (Rule 76(4)).
- **Calculation**, source by source and country by country: the lower of the Indian tax on that income and the foreign tax paid on it. Foreign tax above the amount payable under the agreement is ignored (Rule 76(7)(a)).
- **Currency:** the telegraphic transfer buying rate on the last day of the month before the month in which the tax was paid or deducted (Rule 76(7)(b)).
- **Minimum alternate tax:** credit is allowed against the tax under section 206 in the same way, with the excess ignored for the credit under section 206(1)(m) to (p) and 206(2)(e) to (h) (Rule 76(8) and (9)).
- **Disputed foreign tax:** no credit while disputed (Rule 76(5)); allowed later within six months from the end of the month the dispute is settled, with proof of payment and an undertaking that no refund has been or will be claimed (Rule 76(6)).

Documents and time limit

1. **Form 44**: statement of income from outside India offered for tax, the foreign tax on it, the treaty article and rate, and the credit claimed.
2. A **certificate or statement** of the nature of income and the tax, from the foreign tax authority, the person who deducted the tax, or signed by the assessee, with an acknowledgement of payment, bank counterfoil or challan, or proof of deduction.
3. Both within **twelve months** from the end of the tax year in which the income is offered to tax or assessed in India, and the return for that year must have been furnished within the time in section 263(1) or (4) (Rule 76(10) to (12)).

Example. A resident individual earns ?10,00,000 of foreign income from one country, on which ?1,50,000 tax was paid there. The Indian tax on that income (at the average rate on total income) is ?2,00,000, and the treaty allows a maximum of ?1,20,000. The foreign tax above the treaty limit, ?30,000, is ignored, so the foreign tax counted is ?1,20,000, which is lower than ?2,00,000. The credit is ?1,20,000 and the Indian tax payable on that income is ?80,000.

Section 160: no agreement

A resident who has paid income-tax in a country **with which there is no agreement** under section 159, on income that accrued or arose outside India and is not deemed to accrue or arise in India, is entitled to a deduction from the Indian tax of a sum on the doubly taxed income at the **Indian rate or the foreign rate, whichever is lower** (the Indian rate if both are equal) (section 160(1)). The same applies to a non-resident taxed on a share in a registered firm that is resident in India (section 160(2)). The foreign credit rules of Rule 76 apply to credit under section 160 as well.

Practical points

1. **Check the treaty for the particular country and article.** The treaty rate for dividend, interest, royalty and fees for technical services differs by country and can change by protocol, so verify it in the notified text.
2. **Get the foreign paperwork early.** Form 44 needs the foreign tax certificate or statement, and the twelve month limit runs from the end of the tax year.
3. **Residents with foreign assets** also have reporting duties under section 263(1)(a)(ix).

How CSM & Co LLP can help

We prepare Form 44 and the foreign tax documents, advise on treaty rates, residence certificates and Form 41, and file returns with foreign income. Please reach out to our team and we will be happy to assist.

Frequently asked questions

Does a tax treaty always reduce Indian tax?

The Act applies to an assessee to whom an agreement applies only to the extent it is more beneficial (section 159(4)). The provisions of Chapter XI (the general anti-avoidance rules) apply even if they are not beneficial (section 159(6)). A non-resident can claim treaty relief only if it holds a certificate of residence from the government of its country and provides the other prescribed documents and information (section 159(8)).

What replaces Form 10F?

Form 41, under Rule 75(1): the documents and information to be provided by a non-resident assessee claiming double taxation relief under an agreement. The assessee must keep the supporting documents, and the tax authority can call for them to verify the claim (Rule 75(2)).

How does a resident in India get a tax residency certificate?

By applying to the Assessing Officer in Form 42, who issues the certificate of residence in Form 43 (Rule 75(3) and (4)).

How is foreign tax credit calculated?

For each source of income in each country, the credit is the lower of the Indian tax payable on that income and the foreign tax paid on it, and any foreign tax above what the treaty allows is ignored. The foreign tax is converted at the telegraphic transfer buying rate on the last day of the month before the month in which it was paid or deducted. Credit is against tax, surcharge and cess but not interest, fee or penalty (Rule 76(4) and (7)).

What documents are needed to claim the credit, and by when?

A statement in Form 44 (income from outside India offered to tax and the foreign tax on it, verified as the Form says) and a certificate or statement of the nature of the income and the tax, from the foreign tax authority, the deductor or signed by the assessee, with proof of payment or deduction. Both are to be furnished within twelve months from the end of the tax year in which the income is offered to tax or assessed in India, and the return for the year must be furnished within the time in section 263(1) or (4) (Rule 76(10) to (12)).

What if foreign tax is disputed?

No credit is given for the disputed part (Rule 76(5)). If the dispute is settled and tax is paid, the credit is allowed for the year the income was offered to tax, if evidence and an undertaking that no refund has been or will be claimed are furnished within six months from the end of the month in which the dispute is finally settled (Rule 76(6)).

Official sources

- Income Tax Department: Income-tax Act, 2025 (sections 159, 160)
- Income Tax Department: Income-tax Rules, 2026 (Rules 75, 76, Forms 41 to 44)

Related reading

- NRI Taxation in India under the Income-tax Act, 2025: Residential Status, Taxable Income, NRE and NRO Interest and TDS (Tax Year 2026-27)
- Interest for Late Return and Advance Tax Default under the Income-tax Act, 2025: Sections 423, 424, 425 and 411 (Tax Year 2026-27)
- Advance Tax under the Income-tax Act, 2025: Who Pays, Due Dates, Calculation and Self-Assessment Tax (Tax Year 2026-27)

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