



## CVO CA UPDATES

### Addressing mismatch in taxation of Foreign Retirement Benefit Account

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1. Individuals employed in foreign countries open retirement benefit accounts and on returning to India, continue to hold such foreign retirement benefit accounts which may earn income every year. Generally, retirement benefit accounts may be taxed on withdrawal in such foreign countries, while on an accrual basis in India resulting in a mismatch in taxation of accrued income.
2. To address this mismatch, Finance Act, 2021 inserted Section 89A in the Income Tax Act, 1961 w.e.f. F.Y. 2021-22 to provide for taxation of the income accrued on foreign retirement accounts maintained in notified countries. **CBDT has recently notified Rule 21AAA vide notifications<sup>1</sup> to provide an option to individuals to tax such income on withdrawal/redemption basis instead of accrual basis. The said option is effective from F.Y. 2021-22 onwards.**
3. Presently, only retirement benefit accounts maintained in the **United States of America, United Kingdom of Great Britain and Northern Ireland and Canada** (*notified countries*) are covered under this option (*specified account*) where income from such account is taxable on withdrawal/redemption instead of accrual basis.
4. Individuals eligible for this option should be Resident in India, who have opened the specified account in a notified country while being Non-Resident in India and Resident in that country (*specified person*).
5. **The option once exercised, applies to all specified accounts held in notified countries and cannot be withdrawn anytime.**
6. At the time of withdrawal/redemption of the specified account, following income shall be excluded for taxability in India:
  - a) Income already offered to tax on accrual basis in earlier years
  - b) Income was not taxable in India in earlier years due to following reasons
    - Residential status being Resident but Not Ordinarily Resident or Non-Resident or
    - Application of Double Tax Avoidance Agreement, if anyAlso, credit of foreign taxes paid on such excluded income shall not be available in India.
7. **Form 10-EE has to be electronically filed and verified by EVC or Digital Signature Certificate to exercise the option. The Form has to be filed on/before due date of filing income tax return u/s 139(1).**

<sup>1</sup> CBDT Notification No. 24/2022 and Notification 25/2022 dated 4<sup>th</sup> April 2022



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8. Few significant details to be mentioned in the Form include:
- Details of the specified account – Retirement Benefit Fund Name, Account Number, Account Opening Date
  - Tax treatment of income accrued in foreign country,
  - Year in which accrued income can be withdrawn from the account as per foreign regulations,
  - Details of income not included in the total income of any earlier years due to residential status of specified person or application of DTAA provisions
9. Further, following documents are to be furnished along with the Form:
- Statements of retirement benefit account
  - Supporting for tax treatment of such accrued income in foreign country
  - Computation of income in India for all the earlier years since the date when specified account was opened
  - Reconciliation statement of all earlier years' computation of income with that of the current year when the option is exercised
10. After exercising the option, when a specified person becomes Non-Resident in India, it shall be deemed that the above option was never exercised. Consequently, income accrued on such retirement benefit account(s) will be taxable in India from the F.Y. in which option was exercised till the F.Y. preceding the relevant F.Y. in which the person becomes Non-Resident. Tax on such income shall be paid on/ before due date of filing income tax return of relevant F.Y. in which person becomes Non-Resident.

e.g. The option is exercised in F.Y. 2021-22 when the Individual is a Resident. In future, if such individual becomes Non-Resident for F.Y. 2023-24, the income accrued from F.Y. 2021-22 and F.Y. 2022-23 will be taxable and tax on such income can be paid up to due date of filing income tax return for F.Y. 2023-24.

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