

Foreign Retirement Benefit Account – Indian Taxation

Recently, the Government has notified the Rule to address the mismatch in taxing the income accrued on foreign retirement accounts by providing an option to individuals to tax such income on withdrawal/ redemption basis instead of accrual basis

BACKGROUND



- A retirement benefit plan, most commonly known as individual retirement account (IRA), takes care of post-retirement days and helps individual to lead a stress-free life. IRA is not only an investing tool but also can help in tax optimization.
- In the current era of globally integrated markets, ample opportunities are available for individuals for employment in foreign countries. Every country has its own set of rules and regulations for social security welfare contributions.
- A large number of individuals living in India who have retired or have returned to India post employment in foreign countries and continue to hold their foreign IRAs, require clarity about the taxation issues in India for such IRA

ISSUES



- Individuals during the course of employment in foreign countries open retirement benefit accounts for making contributions which are generally taxable on withdrawal / redemption in the foreign countries.
- However, when these individuals return to India and continue to hold such retirement benefit accounts, there can be Indian tax and reporting implications when such individuals become Resident and Ordinarily Resident (ROR)¹.
- In case of ROR individuals, global income is taxable in India and hence, in absence of specific provisions, income earned from such retirement benefit accounts may be taxed on year on year basis in India while continuing to be exempt or taxed on withdrawal basis in foreign countries.

This Article features the details of the option available to address such tax mismatch and reporting compliance along with **key actionables** for residents or individuals planning to return to India, who hold IRA(s) in foreign country.

¹ For determining residential status, you can refer our detailed article [here](#).

BASICS OF WHAT YOU NEED TO KNOW



Which type of retirement benefit accounts are covered ?
(Specified Account)

All Retirement Benefit Accounts where income is taxable on withdrawal/redemption in notified countries instead of accrual basis

Countries covered
(Notified Countries)

Presently, only Retirement Benefit Accounts opened in **USA, UK and Canada**

Option available to Individuals

To tax income accrued on retirement benefit account at the time of withdrawal/redemption instead of accrual basis

Who shall be covered?
(Specified person)

Indian Resident during the year



Opened retirement benefit account when

- a. Non-resident in India
- +
- b. Resident in notified country

Nature of Income

Interest, Dividend, Salary and any other income accrued on retirement benefit account

■ Option effective from F.Y. 2021-22 (1st April to 31st March)

■ Option applies to all such IRA(s) and once exercised, shall be applicable for all subsequent years and cannot be withdrawn

**Exclusions from
Income at the
time of
withdrawal/
redemption**



1. Income already offered to tax on accrual basis in earlier years
2. Income not taxable in India in earlier years due to following reasons:
 - a. Residential status being Resident but Not Ordinarily Resident (RNOR) or Non-Resident (NR)
 - or
 - b. Availed any Tax Treaty (DTAA) benefit

■ Credit of foreign taxes paid on such excluded Income shall not be available in India

What happens when you become Non-Resident in India after exercising the option?

▶ Option shall be treated as never exercised

▶ Income accrued on such account(s) will be taxable (from the FY in which option was exercised till the FY preceding the FY in which person becomes NR)

▶ Tax on above income shall be paid on/ before due date of filing Indian Tax return of FY in which person becomes NR

For Example

Financial Year	Residential status	Impact
2021-22	ROR	Option exercised
2022-23	ROR	-
2023-24	ROR	-
2024-25	NR	<ul style="list-style-type: none"> • Option treated as never exercised • Income accrued from FY 2021-22 to FY 2023-24 will be taxable in India in FY 2024-25

PROCEDURE



To exercise
the option

Submission of Form no. 10-EE with supporting documents **before due date of filing Indian Income Tax Return**

1

Important Information in Form 10-EE

1. Basic Details of the Account
(*name of the retirement fund, account number, closing account balance, year of opening, etc.*)
2. Tax treatment of income accrued in foreign country (*taxability on accrual, receipt or any other basis*)
3. Year in which accrued income can be withdrawn from the account as per foreign regulations
4. Income already taxed in India in earlier years
5. Details of income not included in the total income of any earlier year due to residential status of specified person or application of DTAA provisions

2

Key Documents to submit along with Form 10-EE

1. Statements of Retirement Benefit Account
2. Documentary evidence supporting tax treatment of such accrued income in foreign country
3. Computation of Income in India for all the previous years
4. Reconciliation statement of all previous years' computation of income with that of the current year when option is exercised

■ The Form has to be electronically filed and verified by EVC or Digital Signature Certificate

ACTIONABLES



No matter how complicated the procedural aspect seems like, following action points will surely give a quick head start to exercise the option:-

- Determine residential status for current year and when the retirement account was opened (under Indian as well as foreign country's domestic tax laws)
- Identify eligible retirement benefit account(s) held in USA, UK or Canada
- Document taxability of income accrued on such retirement benefit account under foreign country's domestic tax laws
- Analyse the Indian tax treatment for earlier years
- Obtain Retirement Benefit Account Statements, foreign country tax returns and other forms filed along with evidence of taxes paid in foreign country for future tax inquiries
- Prepare the reconciliation statement based on previous Indian Income Tax Return filings
- Check whether Income Tax Account on the portal is EVC enabled or digital signature certificate (DSC) is available for filing the form
- **Disclose all foreign Retirement Benefit Accounts in Indian Income tax Return under Foreign Assets and Income Schedule failing which penal consequences may arise under Black Money Act**

CONCLUSION



All individuals who are holding retirement benefit accounts (IRAs) and planning to return to India or have already returned/ posted in India after their employment in foreign countries should start maintaining robust documentation including data of income earned on year on year basis so as to be equipped when such income needs to be offered in India on withdrawal basis.

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We Win!



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