

TAX FLASH NEWS

8 April 2022

Tax relief on income arising from foreign retirement funds

Background

Budget 2020-21 had introduced a new Section¹ wherein the income accrued to a resident individual from an overseas retirement benefit account (where income from such account is not taxable on accrual basis but taxable at the time of withdrawal or redemption in the other country) opened by such individual while being a non-resident in India and resident in such overseas jurisdiction, would be taxed in the manner and in the year as prescribed. In this effect, the Central Board of Direct Taxes (CBDT) has now inserted a new Rule² detailing the manner of taxation of income from retirement benefits account maintained in a notified country from tax year 2021-22 onwards.

Manner of Taxation

- As per the notification, where income has accrued to a specified person³ in his specified account(s)⁴ during the tax year 2021-22 or later, then such individual has an option to include such income in his total income in India at the time of accrual for that relevant tax year, or during the year when such income is taxed at the time of withdrawal or redemption in that notified country⁵.
- However, the total taxable income of the specified person shall not include the income from specified retirement account if:
 - Such income has already been included in the total income in any of the earlier previous tax years during which such income had been accrued and appropriate taxes were paid

- Such income was not taxable in India on account of the individual's residential status being Non-resident or Not Ordinarily resident⁶ or on account application of Double taxation avoidance agreement with that notified country.
- Additionally, foreign taxes, if any, paid on income accrued in the specified account is to be ignored for the purposes of computation of the foreign tax credit⁷.

- The option can be exercised by the specified person, for any previous year by furnishing Form No. 10-EE electronically under digital signature or electronic verification code on or before the due date⁸ for filing the return of income for the relevant tax year. Form No. 10-EE requests for information inter-alia pertaining to the details of overseas retirement accounts, incomes accrued in such account, taxability of such income in the overseas jurisdiction along with supporting documentary evidence.
- Also, once the option is exercised by the specified person for his specified account, the said option would apply to all subsequent years and it cannot be subsequently withdrawn.
- Separately, where the specified person qualifies as a non-resident, the option exercised is deemed to have never been exercised with effect from the relevant tax years. However, the income accrued in the specified account from the previous tax years in which the option was exercised shall be taxable in his hand and taxes are to be discharged on or before the due date for filing the return of income for the relevant tax year.

¹ Section 89A in the Income-tax Act, 1961 (the Act)

² Rule 21AAA under the Income-tax Rules, 1962 (Rules)

³ A specified person means a person resident in India who had opened a specified account in a notified country while being a non-resident of India and resident of that other country.

⁴ A Specified account means an account maintained in a notified country by the specified person in respect of his retirement benefits and the income from such account is not taxable on accrual basis but is taxed by such country at the time of withdrawal or redemption

⁵ CBDT vide notification No. 25/2022/F. No. 370142/7/2022-TPL has included Canada, United Kingdom of Great Britain, and United States of America as list of notified countries.

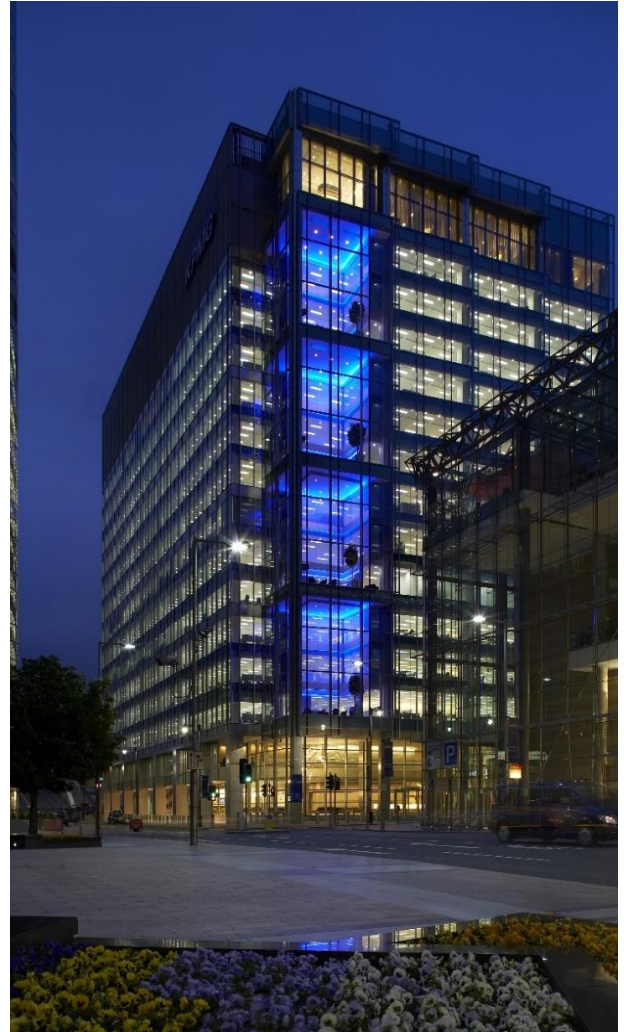
⁶ As per Section 6 of the Act; for NR or NOR, only India sourced income/ accrued would be subject to tax in India

⁷ Rule 128 of the Rules

⁸ Section 139(1) of the Act

Our comments

Taxability of income accrued in foreign retirement accounts has been a subject matter of litigation due to mismatch in taxation periods between jurisdictions. This CBDT notification has provided much need clarity on timing and mode of taxation of such income accrued in foreign retirement accounts of individuals.



KPMG in India addresses:

Ahmedabad

Commerce House V, 9th Floor,
902, Near Vodafone House, Corporate
Road,
Prahlad Nagar,
Ahmedabad – 380 051.
Tel: +91 79 4040 2200

Bengaluru

Embassy Golf Links Business Park,
Pebble Beach, 'B' Block,
1st & 2nd Floor,
Off Intermediate Ring Road, Bengaluru –
560071
Tel: +91 80 6833 5000

Chandigarh

SCO 22-23 (1st Floor),
Sector 8C, Madhya Marg,
Chandigarh – 160 009.
Tel: +91 172 664 4000

Chennai

KRM Towers, Ground Floor,
1, 2 & 3 Floor, Harrington Road,
Chetpet, Chennai – 600 031.
Tel: +91 44 3914 5000

Gurugram

Building No.10, 8th Floor,
DLF Cyber City, Phase II,
Gurugram, Haryana – 122 002.
Tel: +91 124 307 4000

Hyderabad

Salarpuria Knowledge City,
6th Floor, Unit 3, Phase III,
Sy No. 83/1, Plot No 2, Serilingampally
Mandal,
Ranga Reddy District,
Hyderabad – 500 081.
Tel: +91 40 6111 6000

Jaipur

Regus Radiant Centre Pvt Ltd.,
Level 6, Jaipur Centre Mall,
B2 By pass Tonk Road,
Jaipur – 302 018.
Tel: +91 141 - 7103224

Kochi

Syama Business Centre,
3rd Floor, NH By Pass Road,
Vytila, Kochi – 682 019.
Tel: +91 484 302 5600

Kolkata

Unit No. 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata – 700 091.
Tel: +91 33 4403 4000

Mumbai

2nd Floor, Block T2 (B Wing),
Lodha Excelus, Apollo Mills
Compound, N M Joshi Marg,
Mahalaxmi, Mumbai- 400011
Tel: +91 22 3989 6000

Noida

Unit No. 501, 5th Floor,
Advant Navis Business Park,
Tower-A, Plot# 7, Sector 142,
Expressway Noida,
Gautam Budh Nagar,
Noida – 201 305.
Tel: +91 0120 386 8000

Pune

9th floor, Business Plaza,
Westin Hotel Campus, 36/3-B,
Koregaon Park Annex,
Mundhwa Road, Ghorpadi,
Pune – 411 001.
Tel: +91 20 6747 7000

Vadodara

Ocean Building, 303, 3rd Floor,
Beside Center Square Mall,
Opp. Vadodara Central Mall,
Dr. Vikram Sarabhai Marg,
Vadodara – 390 023.
Tel: +91 265 619 4200

Vijayawada

Door No. 54-15-18E,
Sai Odyssey,
Gurunanak Nagar Road, NH 5,
Opp. Executive Club, Vijayawada,
Krishna District,
Andhra Pradesh – 520 008.
Tel: +91 0866 669 1000

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KPMG Assurance and Consulting Services LLP, Lodha Excelus, Apollo Mills Compound, NM Joshi Marg, Mahalaxmi, Mumbai - 400 011
Phone: +91 22 3989 6000, Fax: +91 22 3983 6000

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