

## What are tax rules for foreign retirement accounts?



iStockphoto3 min read . Updated: 06 Apr 2022, 10:43 PM IST **Gautam Nayak**

- Income that was not taxable in India due to DTAA, would not be taxed in India at all

For non-residents who have worked abroad and have thereafter returned to India and become tax residents here, or expatriates who have become tax residents in India, taxation of their foreign retirement accounts (FRAs) has long been a sore point. While the foreign country in which they have their FRAs generally taxes such income only on withdrawal, there was no such provision in Indian tax laws. They had to pay tax on such income for the years in which the income was earned and credited to their retirement accounts.


This mismatch in the year of taxation also led to a loss of credit for taxes paid in the foreign country. Such tax was deducted at source at the time of withdrawal in the foreign country, whereas the income would already have been taxed in India in an earlier year at which point of time there was no tax deduction, and therefore no tax credit. This resulted in double taxation—once in India and then, in a foreign country. In last year's budget, an enabling provision was enacted to eliminate such problems. This covered a person resident in India who opened a retirement account in a foreign country, when he was non-resident in India and a resident of that country, where the income from the retirement account was not taxable on an accrual basis but only at the time of withdrawal or redemption. The rules on this have just been framed and notified, and the relevant countries (the USA, UK, and Canada) have also been notified.

# Taxation on FRAs


A person can have income from an FRA taxed in the year of withdrawal, by filing a form 10EE before the due date of filing his I-T return.

## PROBLEM

**A** has \$100,000 in his retirement account in country X 

**IT** earns an income of \$5,000 per annum 


**A** moves to India 

**THIS** income was taxable in India even if it was not withdrawn by A 

## CONDITIONS


**FILE** Form 10EE 

**DISCLOSE** all such retirement accounts 


**OPTION** can be exercised only once and cannot be changed subsequently 

**RESTRICTED** to retirement accounts in USA, UK and Canada 

## CHANGE

**A** can defer the tax to the year of withdrawal 

**TAXES** of country X on withdrawal can be adjusted against Indian taxes 

**INCOME** on retirement a/c earned before A moves to India not taxable 

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The new rule, which applies from 2021-22, provides that a person can exercise an irrevocable option to have income from such an FRA taxed in the year of withdrawal or redemption, by filing a form 10EE before the due date of filing the income tax return. This option has to be exercised for all FRAs of an individual, and the form requires disclosure of all of them.

Income that has been taxed earlier will not be taxed at the time of withdrawal or redemption. Also, income that was not taxable in India in the year of accrual due to the person being a non-resident or due to a Double Taxation Avoidance Agreement (DTAA), would not be taxed in India at all. However, the tax credit would not be allowed for foreign taxes paid on such income which is not taxable at the time of redemption or withdrawal.

This is a significant relief for people holding FRAs and this option should certainly be exercised by affected persons. They would now get credit against their Indian tax

liability for the taxes paid in the foreign country on withdrawal or redemption. However, this applies only prospectively from 2021-22. If any income has been offered to tax in earlier years when the income accrued, the person would lose the benefit of claiming credit of the foreign tax. In contrast, a person who has not offered such income to tax in the earlier years of accrual, though taxable, seems to be placed better off. This does seem unfair, as the compliant taxpayer ends up paying double tax for no fault of his.

Also, one would now have to reconcile the income from such FRAs at the time of withdrawal, to exclude the incomes accrued when the person was a non-resident or when the income was not taxable due to a tax treaty. The relevant foreign tax withholding and payment would have to be bifurcated between that paid on taxable income before 2021-22, taxable income from 2021-22 and income not taxable in India, to claim tax credit only for taxable income from 2021-22.

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