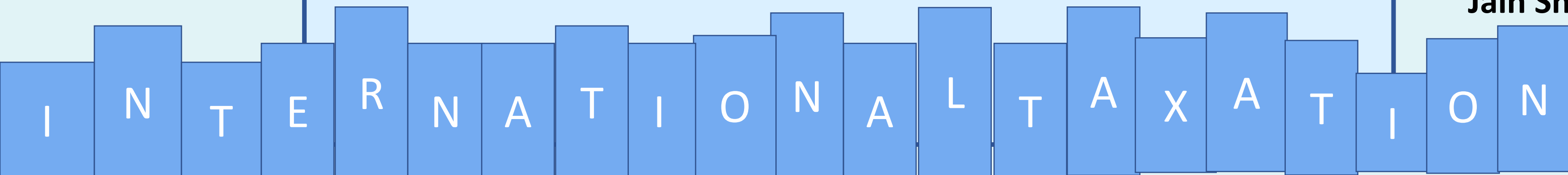


## Relief from taxation on income from retirement benefit account maintained in a country outside India

Income accrued on such retirement plan will be taxable in the year of withdrawal or redemption (Section 89A) at the option of assessee

11.05.2024

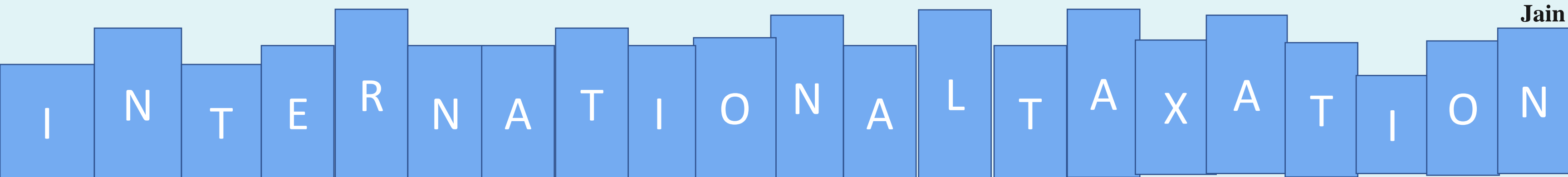
Jain Shrimal & Co.



# Introduction

## Root cause to introduce section 89A:

- Some countries tax Income from retirement benefit accounts **on receipt/withdrawal basis**. However, in India, such income from foreign retirement benefit accounts used to get **taxed on accrual basis**. This used to create **mismatch in the year of taxability, which made it difficult for the assessee to claim foreign tax credit**.
- The Department recognised this issue and introduced section 89A by the Finance Act, 2021, w.e.f. 1-4-2022. According to section 89A, if a specified person has income accrued in a specified retirement benefit account, such **income can be taxed in the year of withdrawal at the option of assessee**.



# Important terms

■ Section 89A defines few important terms which are :-

**1. Specified account** :- Specified account means an **account maintained in a notified country** by the specified person in respect of his **retirement benefits** (such as **401K in USA**) 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.

As of now, only three countries have been notified i.e., **USA, Canada & UK**.

**2. Specified Person** :- Specified Person means a **person resident in India** who **opened** a specified account in a notified country (USA, Canada & UK) **while being non-resident in India and resident in that country**.

Here, it is pertinent to note that the **person should be non-resident in India & resident of that notified country in the year in which such account is opened**.

# Taxability as per the Act

## ▪ Rule 21AAA :-

- This rule prescribes the manner and year of taxability for the income on retirement benefit account specified in the section 89A.
- It prescribes that any income accrued in the retirement benefits account during any previous year, such income shall be taxable, at the option of the assessee, in the year in which withdrawal or redemption is made and taxed on receipt basis in specified country.
- Once the option is exercised, the Income will not be included in the previous year in which such income is accrued **and will be taxable at withdrawal only.**
- **Exclusion of income :-**
  1. The total income of person shall not include income which has **already been included** in the total income of such person in any of the earlier previous years on accrual basis and tax thereon has been paid. or
  2. The total income of person shall not include income which was accrued in the year in which such person was **non-resident in India** or such income was not taxable in India during such year by **application of DTAA.**

**Foreign tax paid on such income shall be ignored and accordingly no foreign tax credit shall be allowed.**

# Taxability as per the Act

- The option shall be exercised by the person **in respect of all the specified retirement benefit accounts** maintained by the such person.
- For exercising the option, such person shall furnish **Form 10-EE on or before the due date** of section 139(1).
- Once a person has exercised the option by filing Form 10-EE, such option shall apply to all subsequent previous years and **cannot be subsequently withdrawn**.
- However, if such person become non-resident in any subsequent previous year after exercising the option, it will be deemed that such option was never exercised with effect from the relevant previous year in which he become non-resident.
- **Taxability in case such specified person later become non-resident :-** If the person become non-resident after exercising the option, income accrued in the retirement benefit account during the period, beginning with the previous year in which the option was exercised and ending with the previous year immediately preceding the year in which such person become non-resident, shall be taxable during the previous year immediately preceding the relevant previous year in which such person become non-resident.
- Tax shall be paid on or before the due date for furnishing the return of income for the relevant previous year in which such person become non-resident.

# Example

- Mr. X was resident of USA (non-resident India) during the period of 2001-2022 and opened a retirement benefit account (401K) and earned Rs. 20,00,000 in the account after that Mr. X becomes resident of India during the previous year 2022-23 and during the year Rs. 2,00,000 accrued in his 401K account during the period 2022-24. Mr. X decided to choose option u/s 89A by filing Form 10-EE and deferred taxation on his accrued income (2,00,000) from such income. Subsequently, in previous year 2024-25, he shifted back to USA and become non-resident in India.
- In the given e.g., Rs. 20,00,000 will not be taxable in India as he was not a resident in India during the period 2001-2022. Further, income accrued which was deferred till withdrawal from retirement benefit account by filing Form 10-EE during the period 2022-24 i.e. 2,00,000 will become taxable in the previous year 2023-24 (**immediately preceding** the relevant previous year **in which Mr. X become non-resident**). **Tax on such income shall be paid on or before due date of filing Income tax return for previous year 2024-25.**



# Particulars required in Form 10EE

- **Some important particulars** as required in Form 10EE are as under:
  - Account number of specified account
  - Name of retirement fund
  - Name of notified country
  - Balance as on last day of previous year prior to which form is filled.
  - Year in which account opened
  - Specify how income from such account is taxable in notified country.
  - Specify the year in which the amount is eligible for withdrawal.
  - Nature of income: Salary, interest, dividend, others etc.
  - Amount of income already included in previous years.

# Our comments

1. Section 89A defines “Specified person” as “**a person resident in India who opened a specified account in a notified country while being non-resident in India and resident in that country**”.

Here, section 89A clearly **excludes all the persons who opened such retirement plan account while being resident of India**. In the given case, if a person is working from home from India and has opened a account in USA, he will not be able to get the benefit of section 89A.

2. If the amount was contributed in retirement before becoming resident and after becoming resident then in case of partial withdrawal before maturity of such retirement account, whether FIFO method will be applicable or average method will be applicable for computing tax on withdrawn amount.

3. Section 89A states that “Where a specified person has **income accrued** in a specified account, such income shall be taxed in such manner and in such year as may be prescribed(Rule 21AAA)”.

Here, income is specifically not defined in this section. Now the question arises that what should be treated as income. Whether the amount paid by his employer as a contribution to retirement plan during the year will also be covered in this section or just Interest/dividend accrued on such account only will be covered under the preview of section 89A.



# Our comments

4. It is pertinent to note that as per article 20(2) of Indo-US DTAA, any social security benefits and other public pensions paid by a Contracting State to a resident of the other Contracting State **shall be taxable only in the first-mentioned State**. Which means **social security benefits paid by USA will be taxable in USA only**. Further, in countries like USA there are different forms of accounts/ schemes and the amount one could receive on retirement is not fixed or earmarked and in such case there could be an issue in determining taxability.

5. As per sub rule (4) of rule 21AAA, if a person becomes **non- resident** in any subsequent year after exercising option under sec. 89A, income **accrued** from such retirement benefit account during the period when he exercised the option till becoming the non-resident, shall be **taxable** in the previous year immediately preceding the relevant year in which he became non- resident.

However, by the time the **specified person becomes non-resident** in a relevant year, he would have **already filed his return of income**. In such cases, there is a clarification required as to how a specified can know if in next year he will become non-resident and offer such income to tax in previous year. He should be allowed an option to offer such income to tax in the year in which he becomes non-resident.

6. Further, this provision is only beneficial if the person retires and stays in India for long term and decides to withdraw money after a long term, otherwise if they will again become non-resident they have to again pay tax on accrual basis.



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