

## GUIDANCE NOTE

### Form 40 – Form to exercise the option under Section 159 of the Act

#### **Purpose:**

Form 40 is prescribed under Rule 74 and is required to be filed by Indian residents to claim tax relief under **Section 159 of ITA 2025** for income accrued in a foreign retirement account maintained in a notified country (e.g., USA, UK, Canada, Australia). This form allows for the deferral of taxation until the income is withdrawn or redeemed in the foreign country.

The purpose of the provision is to prevent double taxation on income from a foreign retirement fund that might be taxed both on an accrual basis in India and on a withdrawal basis in the foreign country. By allowing the relief claimed through this form, tax is deferred in India until the year of withdrawal from the foreign account, aligning the tax treatment in both jurisdictions.

#### **Who Should File:**

The form is to be filed by a "specified person" (resident Indian) who has a retirement account in a "notified country", to claim tax relief under Section 159 of the Income Tax Act.

The applicant should **not have previously exercised this option**, because the option, once exercised, is **irrevocable**, and it applies for **all future years** and **all specified accounts**.

#### **When and How to File:**

1. The form shall be filed on e-filing portal.
2. The form shall be furnished electronically either under digital signature or through electronic verification code verified by the resident Indian.
3. The form must be filed on or before the due date for furnishing the income tax return (ITR) for the relevant tax year.
4. The form must be verified by the resident Indian.

#### **Filing Count:**

The number of Form 40 filed over the past five years is 977.

### **Structure of Form 40:**

- Basic Details: Name, PAN, address, Tax year, residential status,
- Details of Specified Retirement Benefit Account(s): Country's name, account number,
- Income details: Nature of income, amount accrued, withdrawn etc.
- Declaration of option
- Formal verification by the applicant.

### **What are the documents required to file the Form 40?**

Following documents are required for filing Form 40:

- Specified Account or Foreign Retirement Account details - Account number(s), Date of account opening, Account balance at the end of the previous tax year.
- Name of the retirement fund and the notified country.
- Details of income already taxed in India in earlier years, if any. A copy of instrument of trust evidencing the formation of the fund.
- Copy of statement of the specified account having above details.
- Document showing how the income from specified account has been taxed or is taxable in the notified country including relevant statutory provision of the notified country or any other relevant document.
- Computation of income for all the tax years in which the income from specified account has already been included in the total income. A reconciliation statement of the computation of income with the return of income for the said tax years.

### **What is the process flow of filing Form 40?**

The process flow includes following steps

- Prepare the application: Fill Form 40, ensuring all columns are complete with accurate details.
- Attach mandatory documents.
- Sign/verify: Application, annexures, and all attached statements must be signed or digitally signed or electronically verified by the Resident Indian.
- Submit online on the e-filing portal.

### **Outcome of processed Form 40:**

- Where the declaration is accepted, the applicant is taxed in India **only when** withdrawals happen from the specified retirement accounts, **not** on annual accruals.
- This gets applicable for all successive tax years.

**Key updates include the following**

- Dropdown has been provided to in data fields relating to nature of income, and manner of taxation of income in the notified country.
- Data field relating to address of specified person has been omitted.
- Declaration has been substituted by Verification, and language has been simplified.

**Improved Applicant Experience, Expedited Process:**

The language of the Form has been simplified. The data fields sought to be captured have been rationalized and standardised, viz. dropdown etc.

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