

CORPORATE UPDATE

FOR CLIENT CIRCULATION ONLY

No. 01/05

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INCOME TAX

I. Certificate for claiming deduction under section 80G

The CBDT has clarified in Circular no. 2/2005 dated 12.01.2005, that in cases where employees make donations to the Prime Minister Relief Fund, the Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund through their respective employers, the claim in respect of such donations will also be admissible under section 80G of the Income Tax Act, 1961 on the basis of the certificate issued by the Drawing and Disbursing Officer (DDO)/Employer in this behalf.

II. Clarification Regarding Tax Holiday to 100% EOU's under section 10B

CBDT has issued Circular No. 1/2005 dated 06.01.2005 clarifying that exemption u/s 10B of the Income Tax Act, 1961 is

available to an undertaking setup in Domestic Tariff Area (DTA) which is subsequently converted and approved as 100% Export Oriented Unit (EOU). Such EOU Unit is eligible for exemption from the year in which it gets approval and shall be available only for the remaining period of 10 consecutive assessment years, beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce article or things as a DTA unit provided, however, that the deduction will not be available after the assessment year 2009-2010. The relevant circular is reproduced on page no. 5.

III. Form No. 10CCB

Form No. 10CCB-Form of audit report for claiming deduction under section 80I, 80IA, 80IB or 80IC has been substituted with new Form 10CCB. (Notification no. 43/2005 dated 04.02.2005).

IV. Amendment in Form 7

Form No. 7 is issued by Assessing Officer for serving notice of demand on the assessee under section 156 of the Income Tax Act, 1961, when any tax, interest penalty, fine or any other sum is payable by that assessee in consequence of any order passed under the Act.

In exercise of the powers conferred by Section 295 of the Income Tax Act, 1961, CBDT has vide Notification No. 2/2005 [F.No. 142/13/2004-TPL] dated 07.01.05 made certain amendments in the said form to provide for quoting of PAN compulsorily.

V. Rebate in respect of Securities Transaction Tax

Insertion of Rule 20AB, Form No. 10DB and Form No. 10DC – Notification 18th No. 1/2005 [F.No. 142/23/2004-TPL] DATED 06.01.2005 .

Section 88E of the Income Tax Act provides for deduction of securities transaction tax paid by assesses in respect of taxable securities transactions subject to furnishing of evidence in the prescribed form.

CBDT has now inserted new Rule 20AB to provide for the evidence of payment of security transaction tax which is required to be furnished along with the return of income.

For transactions entered into by the assessee in a recognized stock exchange it shall be in Form No. 10DB and in respect of transactions of sale of units of equity oriented funds to mutual funds it shall be in Form No. 10DC.

COMPANY LAW

I. Effective date of Resignation of Director

In a recent case of L.Sinivasan V Rasi Nidhi Ltd on the issue, the Company Law Board, (Southern Region Bench) Chennai has ruled that “where there is no provision to the contrary in the Articles of Association of the Company, the resignation of a director takes effect from the date of the resignation letter where the director makes his clear intention to resign from the post. It is the duty of the Company and its directors to file Form No.-32 with the Registrar of Companies”.

II. Simplified Exit Scheme-2005 (SES 2005)

The matter regarding striking off/removal of the names of the defunct companies from the Register of Companies has been considered by the Ministry of Company Affairs once again and the Govt has decided to launch a fresh scheme to enable defunct companies to get their names struck off from the Registrar of Companies. The present scheme is open from February 1, 2005 to July 31, 2005.

The following Companies are eligible to avail of this scheme:

- (i) All defunct companies which are registered under the Companies Act, 1956 can apply under this Circular, except Section 25 Companies, subject to fulfillment of conditions laid down hereinafter.
- (ii) More particularly, the following companies are eligible to apply under this scheme:
 - (a) Companies that did not carry out any business at any time;
 - (b) Companies that carried out some business activity but discontinued the same thereafter.

SERVICE TAX

NOTIFICATION NO GSR 25(E) [NO. 01/2005-SERVICE TAX] DATED 14.01.2005

In exercise of the powers conferred by sub-section (1), read with sub-section(2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Service Tax Rules, 1994, namely:-

1. (i) These rules may be called the Service Tax (Amendment)Rules, 2005.
 - (ii) They shall come into force on the date of their publication in the Official Gazette.
2. In the Service Tax Rules, 1994, in rule 6, in sub-rule(1), in the proviso, for the words "Provided further that" the words "Provided that" shall be substituted and after the proviso so as amended, the following proviso shall be inserted, namely:-

"Provided further that the Service Tax on the value of taxable services received during the month of March or the quarter ending March, shall be paid to the credit of the Central Government by the 31st day of March of the calendar year".

POINT TO REMEMBER

1. The final installment of Advance Tax for Financial Year 2004-05 for all assesseees is to be deposited on or before 15th March, 2005.

**Circular No. 01/2005
F.No. 149/194/2004-TPL
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Direct Taxes)**

New Delhi, the 6th January, 2005

To

All Chief Commissioners/

Directors General of Income-tax.

Sub:- Tax holiday under section 10B of the Income-tax Act to 100% Export Oriented Undertaking – Certain clarification – reg.

1. Section 10-B of the Income-tax Act provides for 100% deduction of profits derived by a hundred per cent Export Oriented Undertaking, from export of articles or things or computer software manufactured or produced by it. The deduction is available for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things or computer software. However, no deduction under section 10-B is available after assessment year 2009-10.
2. The deduction u/s 10-B is available to an undertaking which fulfils all the following conditions:-
 - (i) it manufactures or produces any article or thing or computer software;
 - (ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence except in the circumstances specified under section 33B of the IT Act.

- (iii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.
3. Representations have been received from various quarters as to whether an undertaking set up in Domestic Tariff Area, which is subsequently approved as 100% EOU by the Board appointed by the Central Government in exercise of powers conferred under section 14 of the Industries (Development and Regulation) Act, 1951, is eligible for deduction u/s 10B of the Income-tax Act.
4. The matter has been examined and it is hereby clarified that an undertaking set up in Domestic Tariff Area (DTA) and deriving profit from export of articles or things or computer software manufactured or produced by it, which is subsequently converted into a EOU, shall be eligible for deduction u/s 10B of the IT Act, on getting approval as 100% export oriented undertaking. In such a case, the deduction shall be available only from the year in which it has got the approval as 100% EOU and shall be available only for the remaining period of ten consecutive assessment years, beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things or computer software, as a DTA unit. Further, in the year of approval, the deduction shall be restricted to the profits derived from exports, from and after the date of approval of the DTA unit as 100% EOU. Moreover, the deduction to such units in any case will not be available after assessment year 2009-10.
5. To clarify the above position, certain illustrations are given as under:-

- (i) Undertaking 'A' is set up in Domestic Tariff Area and starts manufacture or production of computer software in Financial Year 1999-2000 relevant to assessment year 2000-01. It gets approval as 100% EOU on 10th September, 2004 in the Financial Year 2004-05 relevant to assessment year 2005-06. Accordingly, it shall be eligible for deduction under section 10B from assessment year 2005-06 i.e., the year in which it fulfils the basic condition of being a 100% EOU. Further, the deduction shall be available only for the remaining period of ten years i.e. from A.Y. 2005-06 to A.Y. 2009-10. This deduction under section 10B for A.Y. 2005-06 shall be restricted to the profits derived from exports, from and after the date of approval of the DTA unit as 100% EOU.

- (ii) Undertaking 'B' set up in Domestic Tariff Area, begins to manufacture or produce computer software in financial year 96-97 relevant to assessment year 1997-98. It gets approval as 100% EOU in financial year 2007-08 relevant to assessment year 2008-09. No deduction under section 10B shall be admissible to undertaking B as the period of 10 years expires in F.Y.2005-06 relevant to A.Y. 2006-07, prior to its approval as 100% EOU.

- (iii) Undertaking 'C' is set up in Domestic Tariff Area in the financial year 2000-01 relevant to assessment year 2001-02 and engaged in the business of providing computer related services, other than those notified by the Board for the purposes of section 10B. In financial year 2002-03, it acquires more than 20 % of old plant & machinery and starts manufacturing computer software. It also gets approval as 100% EOU in financial year 2002-03. Undertaking 'C' shall not be eligible for deduction under section 10B, as there has been transfer of old plant and machinery.

- (iv) Undertaking 'D' is set up and starts producing computer software in financial year 2003-04 relevant to AY 2004-05. It gets approval as 100% EOU in FY 2006-07 relevant to AY 2007-08. It shall be eligible for deduction u/s 10B from AY 2007-08. However, the deduction shall not be available after AY 2009-10.

- (v) Undertaking 'E' is set up and starts producing computer software prior to 31.3.1994. It gets approval as 100% EOU in FY 2004-05 relevant to AY 2005-06. Undertaking 'E' shall not be eligible for deduction u/s 10B as the period of deduction of 10 years expires prior to A.Y.2005-06.

(Chandrajit Singh)
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