



## FREQUENTLY ASKED QUESTION THROUGH TAXATION HELPDESK

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### **Question –**

Do Indian government incentives for exporters like Duty drawback and MEIS necessarily be taxed at 30 percent for newly established food processing and export company Export Incentives disallowance of 80IB

### **Answer-**

Duty drawback, MEIS or any other incentives whatever in name is called is not a profit derived from business. Basically it is a ancillary income or duty incentive. Under section 75 of Custom Act, duty paid on material used in manufacture or processing of export product is given back to the exporter of finished goods. So duty drawback is an incentive. Duty drawback or any other incentive provided by the Government of India under any scheme should be adjusted from cost of materials or services. It is not profit and is not taxable to income tax as Income from business. Because it is not profit derived from business hence deduction under section 80IB is not available.

### **Question**

Is there any Tax benefit available on deduction of salary of an employee under Group Saving Scheme If yes then under which section

### **Answer-**

One fifth of salary shall be eligible for deduction under section 80C of income tax Act if any deduction of salary from employees for group insurance under any scheme is made. Section 80C(2)(iii) # By way of deduction from the salary payable by or on behalf of the Government to any individual being a sum deducted in accordance with the conditions of his service, for the purpose of securing to him a deferred annuity or making provision for his spouse or children, in so far as the sum so deducted does not exceed one-fifth of the salary.

### **Question**

How do I file income tax return for NRI nonresident Indian persons as ZERO income and under which ITR

### **Answer-**

#### **Tax Liability.**

U/S 5 of IT Act, 1961, Non- resident person is liable for tax if income from any source is received or deemed to be received in India or accrued or deemed to be accrued in India during the previous year , by such person or on behalf of such person.

#### **Filling of Income Tax Return.**

U/S 139(1)(a)- It is compulsory for a Company, Firm to file Income Tax Return regardless to the quantum of income or loss.

139(1)(b)- An Individual or HUF shall file return if income before claiming deduction u/s 10A,10B,10BA, 80C to 80U exceeds exemption limit .

A person other than Individual/HUF/Company/Firm shall file income tax return, if income exceeds exemption limit.

139(4A)- In case of NGO/Charitable or religious trust shall file income tax return if income without giving exemption under section 11 or 12 exceeds exemption limit.

139(4B)- Political party shall file income tax return if income without giving exemption u/s 13, exceeds exemption limit.

139(4C)- Assessee shall file income tax return if income without giving any exemption u/s 10, exceeds exemption limit.

139(4D)- Any University/college/other institution shall file income tax return whether there is income or loss.

### **Return Forms.**

ITR-1: - For an Individual having source of income from Salary/One house property/income from other sources.

ITR-2:- For an individual/HUF having source of income from salary/House property/Capital gain/income from other sources.

ITR-3:-For an individual/HUF having income from business or profession

ITR-4:- For an individual/HUF/Firm(Other than LLP) compute income under business or profession u/s 44AD, 44ADA or 44AE

ITR-5:- For firms, AOPs, BOIs

ITR-6:- For companies

ITR-7:- For persons including companies required to file return u/s 139(4A)/(4B)/(4C)/(4D)

If NRI is a company/firm having zero income, shall furnish return in return form as explained above subject to category of person .

If NRI is a person other than company/firm having zero income is not required to file income tax return. However, he may file return voluntarily in the forms as mention above subject to category of person.

### **Question**

After introduction of IND AS 116 operating leases also should be treated as finance lease In this case assets recognized as Right of use assets in Balance sheet and corresponding liability is to be created as Lease obligation Interest is to be charged in Statement of Profit Loss In this case interest expenditure allowable under Income Tax act and lessee can take depreciation benefit under IT

### **Answer:-**

At present CBDT has not given any specific guideline on tax application as per Ind AS 116. In operating lease, ownership of property is lying with the lessor. Lessee is allowed to use the property for its business or profession against a periodical rent payment.

In IND AS 116, lease rent is reamed as lease interest. Under section 37 of IT Act, expenses not categorically specified in section 30 to 36, can be allowed as business expenditure, subject to conditions provided u/s 37. Lease rent/ Hirer charges are allowed u/s 37 as deduction and since in IND AS 116 lease rent is renamed as interest on lease and on other hand interest on lease is income for lessor. So considering the accounting

treatment of income and expenditure of interest on lease in the account of lessee and lessor, it may be allowed as deduction u/s 37.

To claim depreciation u/s 32, two conditions must be satisfied. One is assessee must be owner of that property and second it is used for the purpose of business or profession. Since in operating lease agreement, ownership is not transferred to the lessee, it is lying with the lessor. So in this case depreciation is not allowable u/s 32 in the hands of lessee.

**Question:-**

Does remittance to USA regarding any consultancy provided to Indian company attracts any TDS, if yes then at what rate.

**Answer:-**

1. Any person, whether resident or non-resident, shall be responsible for deduction of tax at source from payment of interest or any sum which is chargeable to tax, under section 195 of IT Act, 1961.
2. Tax shall be deducted if recipient is a non-resident person or a foreign company and sum received is chargeable to tax in India by virtue of Income tax Act or Double Taxation Avoidance Agreements [DTAA].
3. TDS rate for the income of the previous year 2019-20 in respect of payment for technical service [u/s 195 read with sec. 115A] is 10.4% { TDS: 10%+SC: + HEC: 4%} if Aggregate payment is up to Rs. 1 crore, 10.608% {TDS: 10% + SC: 2% + HEC: 4%} if Aggregate payment is Rs. 1 crore to Rs. 10 crore, and 10.92% {TDS: 10% + SC: 5% + HEC: 4%} if Aggregate payment is above Rs. 10 crore.
4. If income of non-resident is not found to be taxable in India, no tax shall be deducted there from. So DTAA between India and US is important factor to decide whether income received or accrued or arose is taxable in India or not and also for quantification of taxable income.
5. The concessional rate of TDS shall be available if fees for technical services are payable by Government or an Indian concern in pursuance of an agreement approved by the Central Government or where it relates to matter included in the industrial policy, the agreement is in accordance with that policy. However, if fees for technical services are payable to a foreign company under an agreement entered into between April 1, 1961 and March 31, 1976, the rate of TDS shall be 50%.