The Institute of Cost Accountants of India

(Statutory body under an Act of Parliament)

Tax Research Department

CERTIFICATE COURSE ON INTERNATIONAL TRADE

Date: 06.05.2023

International Taxation

Double Taxation Relief (DTAA)

Double Taxation means the same income is taxed twice

Why: Based on Two Rules

1. **Source Rule:** Where the income is earned in that country – Income is Taxable
2. **Residence Rule:** Based on Residential Status - the same income is Taxable again

Ex: Mr. Dhoni went to Australia and played cricket match

He got an amount of Rs 10,00,000/- & Tax paid Rs 1,00,000 in Australia

Income is Taxable in Australia ---- Based on **Source Rule**

Above Income is Taxable again in India ---- Based on **Residence Rule**

IMP:

For a Resident: **Global Income** is Taxable in India

For a NR: **Only Indian income** is Taxable in India

DTAA

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1. **Bi-lateral Relief:**

- when there is DTAA **exists** between Two countries
- S.90 & 90A
- Relief will be given under Two Methods
    I. **Tax Exemption Method:** Tax is Exempted in India
    II. **Tax Credit Method:** Tax credit will be given

2. **Unilatertal Relief:**

- Section 91
- When there is no DTAA between countries
- Relief u/s 91

Conditions:

- Assessee must be Resident of India
- He should have earned income outside India
- He should have paid tax outside India
- India should **not** have DTAA with other country

How to compute Relief u/s 91

Step-1: Compute Total Income including Foreign Income

Step-2: Compute Tax on Step-1 (including Health & Education Cess @ 4%)

Step-3: Compute Foreign Income

Step-4: Compute Tax on Step-3 (Tax paid in Foreign Country)

Step-5: Compute Average Indian Tax Rate (Step-2 /Step-1)*100

Step-6: Compute Average Foreign Tax Rate (Step-4 /Step-3)*100

Step-7: Select Lower of Step-5 (or) Step-6

Step-8: Relief u/s 91 = Foreign Income (Step-3) * Step-7

Step-9: Tax Payable: Step-2 (-) Step-8

V.V.IMP Note on Relief:

- In order to claim relief u/s 90,90A or 91 Filing of **Form 67** is **Mandatory**

- Such Form shall be filed **before** Filing of relevant ITR Form

- Attach Form 1042-S / any other relevant document while filing the Form-67 as a proof of foreign source income and withhold of tax deducted by the U.S / Foreign Country

- Even single day delay will not be accepted by the department, and department would deny granting of relief under respective section

- Department it may convert in to demand outstanding

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INCOME TAX PROVISIONS - EXPORTS

TAX HOLIDAY FOR UNITS ESTABLISHING IN SPECIAL ECONOMIC ZONES (SEZ) S.10AA OF IT ACT, 1961

Introduction:

- Section 10AA is a provision under the **Income Tax** Act which allows taxpayers to take deductions for businesses which are established in Special Economic Zones (SEZ).

- A deduction of profits and gains which are derived by an assessee being an entrepreneur and

- Engaged in the business from the **export of article or things** (manufacturing activity) **or providing any service**, shall be allowed from the total income of the assessee u/s 10AA.

- In April 2000, with a view to attracting foreign investment in India, the Government announced that tax concessions would be provided for entrepreneurs who set up the specified businesses in Special Economic Zones.

- Accordingly, initially, SEZs were instituted to function under the provisions of the Foreign Trade Policy.

- However, gradually, the SEZ Act and SEZ rules were formed and made effective from the year 2006.

- Income tax benefit or Section 10AA deduction is available to SEZ and the corresponding provisions are contained under section 10AA of the Income Tax Act.

Eligibility for Section 10AA Deduction

In order to claim deduction under section 10AA of the Income Tax Act, SEZ units are required to satisfy the following conditions:

1. The entrepreneur should be covered within the provisions of section 2 (j) of the Special Economic Zone Act, 2005;
2. SEZ unit should have commenced its manufacturing activity or provision of service, as the case may be, during the previous year relevant to any assessment year commencing on or after 1st April 2006 i.e., AY 2006-07 or any subsequent year but not later than AY 2020-21.

3. SEZ unit is not formed by any splitting up, or the reconstruction of the business that is already in existence;
4. SEZ unit is not formed by any transfer of plant or machinery, previously used for any purpose, to a new business; and
5. Units who have already enjoyed the benefit of deduction under section 10A of the Income Tax Act for a continuous period of 10 years are not eligible to claim deduction under Section 10AA of the Act.

Amount of Deduction:

The amount of deduction available under this section shall be as follows:

- **100% of export profit** is eligible for the deduction for the first five years.
- **50% of export profit** is eligible for the deduction for the next five years.
- **Lower of**

✓ **50% of export profit**

(Or)

✓ Amount Invested in "Special Economic Re-Investment Reserve A/c"

[Amount not exceeding **50% of export profit** as is debited to the Profit and Loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account (to

be called as "Special Economic Re-Investment Reserve Account") to be created and utilized in the manner laid down u/s 10AA(2) for the next five consecutive years.

Example 11: *An undertaking is set up in a SEZ and begins manufacturing on 15.10.2007. The deduction under section 10AA shall be allowed as under:*

(a) 100% of profits of such undertaking from exports from A.Y.2008-09 to A.Y.2012-13.

(b) 50% of profits of such undertaking from exports from A.Y.2013-14 to A.Y. 2017-18.

(c) 50% of profits of such undertaking from exports from A.Y.2018-19 to A.Y.2022-23 provided certain conditions are satisfied.

The condition for allowance of the deduction is that the same has to be debited from the Statement of Profit and Loss and credited to 'Special Economic Zone Reinvestment Reserve Account'.

Also, Section 10AA deduction is allowable from the assessment year relevant to the previous year in which the SEZ unit commences its manufacturing process or commences provision of service, as the case may be.

Imp Note:

The assessee should furnish in the prescribed form, before the date specified in the section 44AB i.e., one month prior to the due date for furnishing return of income u/s 139(1), the report of a chartered accountant certifying that the deduction has been correctly claimed.

Example: An individual, subject to tax audit u/s 44AB, claiming deduction u/s 10AA is required to furnish return of income on or before

31.10.2022 and the report of a chartered accountant before 30.9.2022, certifying the deduction claimed u/s 10AA.

Special Economic Zone Reinvestment Reserve Account:

There are certain conditions to be followed by the assessee, in order to claim a deduction of the last 5 years (i.e., amount not exceeding 50% of the export profit), as detailed above.

The conditions for utilization of amount credited in 'Special Economic Zone Reinvestment Reserve Account' are summarized hereunder:

1. The amount credited to 'Special Economic Zone Reinvestment Reserve Account' is required to be utilized only for the purpose of purchase of plant or machinery.
2. Such newly acquired plant or machinery should be first put to use before the expiry of 3 years following the previous year in which the said reserve has been created.
3. Further, the amount credited to 'Special Economic Zone Reinvestment Reserve Account', until the acquisition of the plant or machinery as mentioned in point 1 above, can be used for the purpose of the business of the undertaking.
4. However, the same cannot be used for

    - ✓ distribution by way of dividend (or) profits (or)
    - ✓ for remittance of profits outside India (or)
    - ✓ for creation of any assets outside India.

The following are the consequence in case the reserve fund is not used as per the directions of the Income Tax Act:

- The amount credited to 'Special Economic Zone Reinvestment Reserve Account' would be deemed to be profitable in the year immediately following the period of three years in case the amount is not utilized for the purchase of plant or machinery as directed.

- Further, the amount credited to 'Special Economic Zone Reinvestment Reserve Account' would be deemed to be profitable in the year in which the amount has been utilized for a purpose other than directed.

Calculating Section 10AA Deduction:

Section 10AA Deduction has to be calculated on the basis of the following formula:

$$\text{Profits of Unit in SEZ} \times \frac{\text{Export turnover of Unit SEZ}}{\text{Total turnover of Unit SEZ}}$$

Note:

Meaning of Export turnover: It means the consideration received in India or brought into India by the assessee in respect of export by the undertaking being the unit of articles or things or services.

However, it does not include

- ✓ freight
- ✓ telecommunication charges
- ✓ insurance

attributable to the delivery of the articles or things outside India or

expenses incurred in foreign exchange in rendering of services (including computer software) outside India

The issue had been examined by CBDT and it is clarified, in line with the above decision of the Supreme Court, that **freight, telecommunication charges and insurance expenses are to be excluded both from "export turnover" and "total turnover', while working out deduction admissible under section 10AA to the extent they are attributable to the delivery of articles or things outside India.**

Similarly, expenses incurred in foreign exchange for rendering services outside India are to be excluded from both "export turnover" and "total turnover" while computing deduction admissible under section 10AA.

- ❖ Export turnover of the unit means consideration relating to export by the undertaking received in or brought into India.
- ❖ Such turnover/consideration does not include freight, telecommunication charges or insurance expense incurred for the delivery of a product or consumable item outside India or any other expense incurred in foreign exchange for the rendering of services outside India.

Amalgamation or Merger

Following would be the consequence in case the unit entitled for deduction under section 10AA has been transferred to another undertaking, before the expiry of deduction period, in a scheme of amalgamation or demerger –

1. The deduction will not be available under section 10AA to the amalgamating or demerged unit, as the case may be, for the previous year in which the amalgamation or demerger has taken place; and
2. Further, provisions of section 10AA should be applied to the amalgamated or demerged unit assuming no amalgamation or demerger has taken place.

Circular No. 1/2013, dated 17.01.2013 provides certain clarifications in respect of following issues arising out of the said provisions:

	Issue	Clarification given by the CBDT
(1)	Would "On-site" development of computer software qualify as an export activity for tax benefit under section 10AA?	The software developed abroad at a client's place would be eligible for such benefit, because these would amount to 'deemed export'. However, it is necessary that there must exist a direct and intimate nexus or connection of development of software done abroad with the eligible units set up in India and such development of software should be pursuant to a contract between the client and the eligible unit.
(2)	Would receipts from deputation of technical manpower for such "On-site" software development abroad at the client's place be eligible for deduction under section 10AA?	*Explanation 2* to section 10AA clarifies that profits and gains derived from 'services for development of software' outside India would also be deemed as profits derived from export. Therefore, profits earned as a result of deployment of technical manpower at the client's place abroad specifically for software development work pursuant to a contract between the client and the eligible unit should not be denied benefit under section 10AA provided such deputation of manpower is for the development of such software and all the prescribed conditions are fulfilled.
(3)	Is it necessary to have separate master service agreement (MSA) for each work contract?	As per the practice prevalent in the software development industry, generally two types of agreement are entered into between the Indian software developer and the foreign client. Master Services Agreement (MSA) is an initial general agreement between a foreign client and the Indian software developer setting out the broad and general terms and conditions of business under the umbrella of which specific and individual Statement of Works (SOW) are formed. These SOWs, in fact, enumerate the specific scope and nature of the particular task or project that has to be

		rendered by a particular unit under the overall ambit of the MSA. Clarification has been sought whether more than one SOW can be executed under the ambit of a particular MSA and whether SOW should be given precedence over MSA. It is clarified that the tax benefits under section 10AA would not be denied merely on the ground that a separate and specific MSA does not exist for each SOW. The SOW would normally prevail over the MSA in determining the eligibility for tax benefits unless the Assessing Officer is able to establish that there has been splitting up or reconstruction of an existing business or non-fulfillment of any other prescribed condition.
(4)	Would tax benefit under section 10AA continue to be available in case of a slump sale of a unit?	The answer to this issue would depend on the facts of each case, such as how a slump-sale is made and what is its nature. It will also be important to ensure that the slump sale would not result into any splitting or reconstruction of existing business. It is, however, clarified that on the sole ground of change in ownership of an undertaking, the claim of exemption cannot be denied to an otherwise eligible undertaking and the tax holiday can be availed of for the unexpired period at the rates as applicable for the remaining years, subject to fulfillment of prescribed conditions.
(5)	Can tax benefits under section 10AA be enjoyed by an eligible SEZ unit consequent to its transfer to another SEZ?	It is clarified that the tax holiday should not be denied merely on the ground of physical relocation of an eligible SEZ unit from one SEZ to another in accordance with Instruction No. 59 of Department of Commerce, if all the prescribed conditions are satisfied under the Income-tax Act, 1961. It is further clarified that the unit so relocated will be eligible to avail of the tax benefit for the unexpired period at the rates applicable to such years.
(6)	Whether new units set up in the same location where there is an existing eligible unit would amount to expansion of the existing unit?	This issue is a matter of fact requiring examination and verification. However, it has been clarified that setting up of such a fresh unit in itself would not make the unit ineligible for tax benefits, provided – the unit is set-up after obtaining necessary approvals from the competent authorities; it has not been formed by splitting or reconstruction of an existing business; and it fulfils all other conditions prescribed under section 10AA.

ABC Ltd. furnishes you the following information for the year ended 31.3.2022:

Particulars	*₹ (in lacs)*
Total turnover of Unit A located in Special Economic Zone	*120*
Profit of the business of Unit A	*45*
Export turnover of Unit A	*60*
Total turnover of Unit B located in Domestic Tariff Area (DTA)	*225*
Profit of the business of Unit B	*25*

Compute deduction under section 10AA for the A.Y. 2022-23, assuming that Y Ltd. commenced operations in SEZ and DTA in the year 2017-18.

SIGNIFICANT SELECT CASES

<table>
<tr><th>S.No.</th><th colspan="2">Case Law</th></tr>
<tr><td rowspan="2">1.</td><td colspan="2">CIT v. HCL Technologies Limited (2018) 404 ITR 719 (SC)</td></tr>
<tr><td>Issue</td><td>Decision</td></tr>
<tr><td></td><td>Can expenditure incurred in foreign exchange for provision of technical services outside India, which is deductible for computing export turnover, be excluded from total turnover also for the purpose of computing deduction u/s 10AA?</td><td>Deduction u/s 10AA is based on the profit from export business, thus, expenses excluded from “export turnover” must also be excluded from “total turnover”, since one of the components of “total turnover” is export turnover. Expenses incurred in foreign exchange for providing the technical services outside are thus, to be excluded from total turnover also.

If deductions in respect of freight, telecommunication charges and insurance attributable to delivery of articles, things etc. or expenditure incurred in foreign exchange in rendering of services outside India are allowed only against export turnover but not from the total turnover for computing deduction u/s 10AA, then, it would give rise to inadvertent, unlawful, meaningless and illogical results causing grave injustice, which could have never have been the intent of the Legislature. Hence, such expenditure incurred in foreign exchange for providing technical services outside India is deductible from total turnover also.</td></tr>
</table>

2.	*CIT v. Kribhco (2012) 349 ITR 0618 (Delhi)*	
	Issue	**Decision**
	Is section 14A applicable in respect of deductions, which are permissible and allowed under Chapter VI-A?	Deductions under Chapter VIA are different from the exclusions/exemptions provided under Chapter III. Section 14A is applicable only if an income is not included in the total income as per the provisions of Chapter III of the Income-tax Act, 1961. Therefore, **no disallowance can be made u/s 14A in respect of income included in total income in respect of which deduction is allowable u/s 80C to 80U.**

Section 80QQB Deduction of Income Tax Act, 1961

- Section 80QQB is a facility introduced in the Income Tax Act for providing a tax-incentive to Indian authors.

- The section permits taxpayers to claim tax deductions on royalty earned from the sale of books.

- Only resident Indian authors are eligible to claim deduction under Section 80QQB.

- For claiming a deduction under the section, a maximum limit of Rs.3 lakhs is applicable.

- Royalty on literary, artistic and scientific books are eligible for tax deduction.

- However, royalties from textbooks, journals and diaries **do not qualify** for any tax deduction.

- In case an author is obtaining royalties from abroad, the royalty should be brought into the country within a specified time period in order to avail tax benefits.

Who can avail section 80QQB tax deduction?

Section 80QQB tax deduction can be availed by authors in India earning royalty income. To claim deduction under Section 80QQB, the following two conditions must be satisfied:

1. The taxpayer should be an individual who is a resident of India.
2. The taxpayer should be an author or joint-author of a book which is a work of literary, artistic or scientific nature.

Amount of Deduction under Section 80QQB

Under section 80QQB, authors can avail income tax deduction of upto Rs.3 lakhs or up to the amount of royalty income received, whichever is lower.

Conditions to Avail a Deduction

- To avail section 80QQB deduction, the taxpayer must be an individual resident or resident but not ordinarily resident in India. However, the assessee may be an Indian citizen or a foreign citizen. The taxpayer must have authored or co-authored a book that falls under the category of literary, artistic or scientific work.

- Authors of books would not include brochures, commentaries, diaries, guides, journals, magazines, newspapers, pamphlets, textbooks for school and other similar publications.

- The taxpayer must **file income tax return** to claim the deduction and obtain Form 10CCD from the person/entity making the royalty payment. Form 10CCD need not be attached to the income tax return. However, it must be maintained along with the books of accounts maintained by the assessee and produced if requested by an Assessing Officer along with the tax-audit report.

- If the income of the author is not a lump sum payment, then 15% of the value of books sold in the year (before allowing any expenses) should be ignored. Additionally, if the income is earned outside India, the deduction is allowed on income when it is brought to India within 6 months from the end of the year or within the period defined by the **Reserve Bank of India** (RBI).

Form 10CCD Format

Form 10CCD format must be obtained by the taxpayer for availing deduction under section 80QQB.

Form 10CCD needs to be completed and signed by the person or entity making the royalty payment to the taxpayer.

The following Form 10CCD format can be used for claiming deduction under this section.

Form No. 10CCD

[*See* rule 19AC]

Certificate under sub-section (3) of section 80QQB for Authors of certain books in receipt of Royalty income, etc.

1. Details of the book:
   - (*i*) Title
   - (*ii*) Language
   - (*iii*) Whether Scientific/Literary/Artistic (Please indicate)
   - (*iv*) Whether the book is in the nature of a brochure, commentary, guide, diary, journal, magazine, text-book for schools, tracts, etc. (Yes/No)
2. Name and address of the author of the book:
3. Books sold during the previous year ending on 31st day of March:

	In India	*outside India*
(*i*) No. of books published		
(*ii*) Value of books sold in Indian rupees		

4. Details of agreement with the author:
   - (*a*) Whether any lump-sum payment made during the year in lieu of all rights in the book?
     - (*i*) Yes/No (Please indicate)
     - (*ii*) If yes, state the amount paid (in Indian rupees)
     - (*iii*) If no, the nature of payment (mark ✓ where applicable)
       - (*a*) assignment or grant of any of the interest of author in the copyright of the books
       - (*b*) Royalty or copyright fee
5. Details of payment:
   - (*i*) Payment received in Indian rupees
   - (*ii*) Payment received in foreign currency (value in Indian rupees)
   - (*iii*) Total Payment received
   - (*iv*) If in foreign currency, details of payment in the following proforma :

Total amount payable during the year	*Amount actually paid*	*Date of payment*	*Mode of payment*

6. Verification:

This is to verify that I/We,_____S/o is/are the publisher of the book titled_____authored by Shri/Smt./Ms. in the capacity of proprietor/partner/director of the publishing house named having PAN No._____, and have during the previous year, made the payment equivalent of Rs._____, as copyright fee/royalty or as payment in lieu of all rights in the said book to him/her.

- By

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