

F.No.178/84/2012-ITA.I
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, the 8th October, 2014

Circular..(4...)/2014

Subject : Clarification regarding allowability of deduction under section 10 A/10AA on transfer of Technical Man-power in the case of software industry.

CBDT had issued Circular No.12/2014 dated 18th July, 2014 to clarify that mere transfer or re-deployment of existing technical manpower from an existing unit to a new SEZ unit in the first year of commencement of business will not be construed as splitting up or reconstruction of an existing business, provided the number of technical manpower so transferred does not exceed 20 per cent of the total technical manpower actually engaged in developing software at any point of time in the given year in the new unit.

2. Representations have been received stating that the aforesaid limit of 20% is inadequate and restrictive since it impacts the competitiveness of Indian Software Industry in global market in terms of quality of product and delivery time-lines. Global competitiveness can be ensured only when highly skilled and experienced manpower is deployed for software development. Requests have, therefore, been made seeking enhancement of the limit of 20% in line with the recommendation of Rangachary Committee, which was set up to review the taxation of IT Sector and Development Centers.

3. The matter has been re-examined by the Board. In supersession of the Circular No.12/2014 dated 18th July, 2014, it has now been decided that the transfer or re-deployment of technical manpower from existing unit(s) to a new unit located in SEZ, in the first year of commencement of business, shall not be construed as splitting up or reconstruction of an existing business, provided the number of technical manpower so transferred as at the end of the financial year does not exceed 50 per cent of the total technical manpower actually engaged in development of software or IT enabled products in the new unit.

4. Further, in the alternative, if the assessee (enterprise) is able to demonstrate that the net addition of the new technical manpower in all units of the assessee (enterprise) is at least equal to the number that represents 50% of the total technical manpower of the new SEZ unit during such previous year, deduction under section 10A/10AA would not be denied provided the other prescribed conditions are also satisfied.

5. For the sake of clarity, it is stated that the assessee will have a choice of complying with any one of the two alternatives given in Paras 3 and 4 above.

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एस-II
एस-III
एस-IV
एस-V
आयकर अधुना
अति०/समुक्त प्रशासनिक
अति०/समुक्त तकनीकी

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आयकर निदेशक (पञ्जाब)
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6. It is also clarified that this Circular shall be applicable only in the case of assessee engaged in the development of software or in providing IT Enabled Services in SEZ units eligible for deduction u/s 10A or u/s 10AA of the Act.

7. This Circular shall not apply to the assessments which have already been completed. Further, no appeal shall be filed by the Department in cases where the issue is decided by an appellate authority in consonance with this Circular.

sd/-

(Deepshikha Sharma)

Deputy Secretary to the Government of India

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3. The Director General of Income-tax, NADT, Nagpur
4. Director (PR, PP & OL) Mayur Bhawan, New Delhi for printing in the quarterly tax bulletin and for circulation as per usual mailing list (100 copies).
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Deepshikha

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Deputy Secretary to the Government of India