

**MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF DIRECT TAXES
NEW DELHI**

Circular No. 12/2014, Dated: July 18, 2014

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

Section 10AA of the Income-tax Act, 1961, inter-alia, provides for deduction in respect of the profits derived by a unit set up in SEZ from export of computer software or from providing any ITES services.

The said deduction available to a new SEZ unit is subject to certain conditions including:

- i) it is not formed by the splitting up, or the reconstruction of a business already in existence;
- ii) it is not formed by the transfer to a new business, of machinery or plant previously used for any purpose.

2. In this regard, attention of the Board has been drawn to the issue of transfer/redeployment of technical manpower from the existing units of an assessee engaged in computer software development to its new SEZ unit. This, at times, is considered as splitting up or reconstruction of the existing business by some of the assessing officers resulting in denial of benefit u/s 10AA of the Income-tax Act, 1961 to the assessee.

3. It has been represented by the software industry that there is only a limited pool available with a software developer of skilled, talented and experienced manpower with domain knowledge. Given the highly technical and competitive nature of software development, some technical persons having prior experience are required to manage the critical functions of software development in a new unit. It has thus been submitted that movement of technical manpower from an existing unit to a new SEZ unit should not be a constraint in availing deduction u/s 10AA of the Income-tax Act. Attention has also been drawn to Instruction No.70 dated 09.11.2010 issued by the Ministry of Commerce which states that there is no bar on transfer of manpower to SEZ units. It has also been submitted that while there is a specific prohibition on transfer of plant or machinery from an existing unit to a new SEZ unit [Sec.10AA (4) (iii)], subject to a ceiling of 20 per cent, no such bar on transfer or redeployment of manpower has been explicitly laid down in the Section.

4. The matter has been examined in the Board. It is clarified 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.

5. This Circular shall be applicable only in the case of assesees 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.
F.No.178/84/2012 -ITA.I

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