Income Tax Laws and Practices

BBA 405

13. Income of Employees of Consultant [Section 10(8B)]

In case of an individual who is assigned duties in India under technical assistance programme—

1. the remuneration received by him directly or indirectly from any consultant as referred u/s 10 (8A) above and
2. any other income accruing or arising to him outside India (which is not deemed to accrue or arise in India) and which is subject to income-tax or social security tax in foreign country. shall be fully exempted provided
3. such individual is not a citizen of India ; or
4. if citizen but is not ordinarily resident and
5. the contract of service is approved by the competent authority.

Conditions laid down for Tax Exemption U/s 10(8B)

A. The individual should be an employee of consultant referred to in clause 8A above.
B. His contract of service is approved by the prescribed authority.
C. The remuneration is received in connection with technical assistance programme referred to in clause 8A.
D. Any other income which accrues or arises outside India is subjected to any income or social security tax in other state.

The prescribed authority for clauses 8A & 8B are : The Additional Secretary, Department of Economic Affairs in Ministry of Finance, Government of India, in concurrence with members CBDT

14. Income of any member of the family of individuals working in India under co-operative technical assistance programmes [Section 10(9)]

As per section 10(9), the income of any member of the family of any such individual as is referred to in section 10(8)/(8A)/(8B) accompanying him to India, which accrues or arises outside India and is not deemed to accrue or arise in India, in respect of which such member is required to pay any income or social security tax to the Government of that foreign State or country of origin of such member, as the case may be, is exempt from tax.

15. Gratuity [Section 10(10)]

Gratuity is a payment made by the employer to an employee in appreciation of the past services rendered by the employee. Gratuity can either be received by:

(a) the employee himself at the time of his retirement; or

(b) the legal heir on the event of the death of the employee.

Gratuity received by an employee on his retirement is taxable under the head "Salary" whereas gratuity received by the legal heir of the deceased employee shall be taxable under the head "Income from other sources". However, in both the above cases, according to section 10(10) gratuity is exempt upto a certain limit. Therefore, in case gratuity is received by employee, salary would include only that part of the gratuity which is not exempt under section 10(10).

A. Death-cum-retirement gratuity received by Government servants [Section 10(10)(i)]

Section 10(10)(i) grants exemption to gratuity received by Government employee (i.e., Central Government or State Government or local authority).

B. Gratuity Received by a Non-Government Employee covered by Payment of Gratuity Act, 1972 [Section 10(10)(ii)]

Minimum of the following 3 limits:
(1) Actual gratuity received, or
(2) 15 days salary for every completed year, or part thereof exceeding six months 7 days salary for each season in case of employee in seasonal establishment; or
(3) ₹. 10,00,000

Meaning of Salary:
(i) Basic salary plus dearness allowance.
(ii) Last drawn salary. Average salary for preceding 3 months in case of piece rates employees
(iii) No. of days in a month to be taken as 26

C. Any other Employee

Minimum of the following 3 limits:
(1) Actual gratuity received
(2) Half months average salary of each completed year of service.
(3) ₹. 10,00,000

Meaning of Salary:
(i) Basic Salary plus D.A. to the extent the terms of employment so provide Commission, if fixed percentage of turnover.
(ii) Average salary of last 10 months preceding the month in which event occurs.
(iii) Only completed year of service is to be taken.

1. Where an employee had received gratuity in any earlier year(s) and had claimed exemptions under section 10(10) in respect of the gratuity received earlier also, he will still be entitled to this exemption but the limit which at present is `10,00,000 shall be reduced by the amount of exemption(s) availed in the earlier year(s). There will be no change in the other two limits.
2. The words "completed service" occurring in section 10(10) should be interpreted to mean an employee's total service under different employers including the employer other than the one from whose service he retired, for the purpose of calculation of period of years of his completed service, provided he was not paid gratuity by the former employer. CIT v P.M. Mehra (1993) 201 ITR 930 (Bom).
3. Any gratuity paid to an employee, while he continues to remain in service with the same employer is taxable under the head "Salaries" because gratuity is exempt only on retirement or on his becoming incapacitated or on termination of his employment or death of the employee. In this case, however the assessee can claim relief under section 89.
4. The CBDT vide its instruction in F. No. 194/0/73-IT, dated 19.6.1973 has clarified that the expression "termination of employment" would cover an employee who has resigned from the service.

16. Commuted value of Pension Received [Section 10(10A)]

Govt. employees, employees of local authorities and employees of statutory	Any other employee

corporations	
Fully Exempt	(a) If gratuity is not received Commuted value of half of pension which he is normally entitled to receive. (b) If gratuity is also received Commuted value of 1/3rd of pension which he is normally entitled to receive.
Pension received by the employee is taxable under the head "Salaries". However, the family pension received by the legal heirs after the death of the employee is taxable in the hands of the legal heir under the head "Income from other sources" because in this case there is no relationship of employer and employee. Treatment of family pension is discussed in detail under the head 'Income from other sources'.	

17. Amount received as Leave Encashment on Retirement [Section 10(10AA)]

Govt. employee i.e. Central and State Govt. employees	**Any other employee**
Fully Exempt	Minimum of the following four limits: 1. Leave encashment actually received; or 2. 10 months average salary; or 3. Cash equivalent of un-availed leave calculated on the basis of maximum 30 days leave for every year of actual service rendered; or 4. `.3,00,000
Meaning of salary : 1. Basic salary plus D.A. to the extent the terms of employment so provide plus Commission, if fixed percentage of turnover. 2. Average salary of last 10 months immediately proceeding the date of retirement.	

18. Retrenchment Compensation received by Workmen [Section 10(10B)]

Any compensation received by a workman at the time of his retrenchment, under the Industrial Disputes Act, 1947 or under:

1. any other Act or rules or any order or notification issued there under; or
2. any standing order; or
3. any award, contract of service or otherwise,

shall be exempt to the extent of minimum of the following limits:

1. Actual amount received;
2. 15 days' average pay for every completed year of service or part thereof in excess of 6 months;
3. Amount specified by the Central Government, i.e. ₹. 5,00,000.

Compensation received in excess of the aforesaid limit is taxable and would, therefore, form part of Gross Salary. However, the assessee shall be eligible for relief under section 89 read with rule 21A.

1. Where retirement compensation is received by a workman in accordance with any scheme which the Central Government having regard to the need for extending special protection to the workman in the undertaking to which such scheme applies, has approved in this behalf, the entire amount of compensation so received shall be exempt under section 10(10B).
2. Where retrenchment compensation received by a workman exceeds the amount which qualifies for exemption under the new clause, he will be entitled to relief under section 89 read with rule 21A of the Income-tax Rules, in respect of such excess.

19. Payment received under Bhopal Gas Leak Disaster (Processing of Claims) Act 1985 [Section 10 (10BB)]

Any amount received under the provision of such Act or any scheme framed there under shall be fully exempted but in case payment is received against a loss or damage, for which deduction has been claimed ealier, it shall be taxable.

19. Compensation received in case of any disaster [Section 10(10BC)]

Any amount received from the Central Government or State Government or a Local Authority by an individual or his legal heirs as compensation on account of any disaster is exempt from tax. However, no deduction is available in respect of the amount received or receivable to the extent such individual or his legal heirs has been allowed a deduction under the Act on account of loss or damage caused due to such disaster. Disaster here means any disaster due to any natural or man-made causes or by accident/negligence which results in substantial loss of human life or damage to property or environment and the magnitude of such disaster is beyond coping capacity of community of the affected area

20. 'Retirement Compensation' from a Public Sector Company or any other Company [Section 10(10C)]

The compensation received or receivable by the employee of the following, on voluntary retirement, under the golden hand shake scheme, is exempt under section 10(10C):

1. a public sector company; or
2. any other company; or
3. an authority established under a Central, State or Provincial Act; or
4. a local authority; or
5. a co-operative society; or
6. a University established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a University under section 3 of the University Grants Commission Act, 1956; or
7. an Indian Institute of Technology within the meaning of clause (g) of section 3 of the Institutes of Technology Act, 1961; or
8. such institute of management as the Central Government may, by notification in the Official Gazette, specify in this behalf;
9. State Government;
10. Central Government;
11. Institutions having importance throughout India or in any State or States as may be notified.

Exemption shall be available, subject to the following conditions:

1. The compensation is received only at the time of voluntary retirement or termination of his services in accordance with any scheme or schemes of voluntary retirement or in the case of public sector company, a scheme of voluntary separation. Even if the compensation is received in instalments, the exemption shall be allowed.

2. Further, the scheme of the said companies or authorities or societies or universities or the institutes referred to in clauses (vii) and (viii) above, as the case may be, governing the payment of such amount, are framed in accordance with such guidelines (including inter alia criteria of economic viability) as may be prescribed. In the case of public sector companies, if there is a scheme of voluntary separation, it shall also be according to the said prescribed guidelines.

Quantum of Exemption:

1. The amount of exemption is the actual amount of compensation received
2. or ₹. 5,00,000,

whichever is less.

1. The exemption is available to an employee only once and if it has been availed for an assessment year it shall not be allowed to him for any other assessment year.

1. The assessee shall not be eligible for relief under section 89 in case he has claimed exemption under section 10(10C). On the other hand, if he claims relief under section 89, he cannot claim exemption under section 10(10C).