

EY Tax Alert

CBDT notifies new Form 10DA for claiming new employment incentive deduction under section 80JJAA

Tax Alerts cover significant tax news, developments and changes in legislation that affect Indian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor.

Executive summary

This Tax Alert explains significant changes made in Form 10DA of Income Tax Rules, 1962 by Notification^[1] issued by the Central Board of Direct Taxes^[2].

Form 10DA is a report to be issued by a practising Chartered Accountant certifying the amount of deduction to be claimed by a taxpayer under section (s.) 80JJAA of the Indian tax laws (ITL). S.80JJAA is an incentive deduction provision for encouraging recruitment of new employees. It grants deduction of 30% of additional employee cost incurred by the taxpayer for three tax years starting from the tax year in which such employment is provided.

The changes in Form 10DA are largely consequential to the amendment made by Finance Act, 2018 (FA 2018) in respect of new employees, who do not complete 240 days^[3] in first year but complete 240 days in second year, to treat them as new employees in second year. The changes also clarify the legal position that in any tax year, the taxpayer is entitled to deduction in respect of new employees employed over three years viz. current tax year and two preceding years.

^[1] Notification No. 104/2019 dated 18 December 2019

^[2] The apex body of direct tax administration in India.

^[3] 150 days in case of taxpayer-employer engaged in business of manufacturing of apparel or footwear or leather products. Accordingly, reference to '240 days' may be read as '150 days' for such businesses throughout the Alert.

Background

- ▶ S. 80JJAA grants incentive deduction to a taxpayer who derives profits and gains from business and is liable to get his accounts audited under s.44AB^[4] of the ITL. It grants deduction of 30% of additional employee cost incurred by the taxpayer for three tax years starting from the tax year in which such employment is provided.
- ▶ There are certain formative conditions to ensure that the deduction is restricted to a new business.
- ▶ The terms “additional employee cost”, “additional employee” and “emoluments” are defined (Refer Annexure A).
- ▶ Two conditions (amongst others) applicable to qualify as “additional employee” relevant for the purposes of understanding the changes in Form 10DA are:

(a) the additional employee must be one whose employment has the effect of increasing the total number of employees employed by the employer as on the last day of preceding tax year; and

(b) the additional employee must be employed for a period of 240 days or more during the tax year

The second condition raised a practical difficulty in case of additional employees who are recruited during the second half of the tax year since they could not complete 240 days in that year. On a literal interpretation, there was a possibility that they could never qualify as “additional employees” in any tax year since they did not complete 240 days in first year and are not new employees in subsequent years. Recognising this difficulty, the FA 2018 amended s.80JJAA with effect from tax year 2018-19 to provide that such employees who do not complete 240 days in first year but complete 240 days in second year shall be deemed to be employed in second year and the provisions of s.80JJAA shall apply accordingly (“spill over employees”).

- ▶ Taxpayer claiming deduction under s. 80JJAA is required to furnish report of practising Chartered Accountant in Form 10DA along with return of income.

^[4] The requirement of audit applies if total sales, turnover or gross receipts in business exceed INR 10m in a tax year (subject to certain exceptions).

Significant changes made in Form 10DA

- ▶ The erstwhile Form 10DA, notified prior to amendment made by FA 2018, did not deal with “spill over employees”. The new Form 10DA specifically requires reporting of number and emoluments paid to “spill over employees” in line with FA 2018 amendment.
- ▶ S.80JJAA deduction is available for three tax years beginning with the tax year in which additional employee is recruited. Thus, for any tax year, the taxpayer is entitled to deduction in respect of new employees employed over three years viz. current tax year and two preceding years.

The erstwhile Form 10DA required reporting of particulars only for the first year and did not require reporting of deduction in respect of emoluments paid/payable to additional employees in respect of preceding two years. The new Form 10DA addresses this lacuna and requires reporting of particulars for three years viz. current tax year and two preceding years.

Other changes

- ▶ The erstwhile Form 10DA required reporting of Permanent Account Number (PAN) of the taxpayer. The new Form 10DA requires reporting of either PAN or Aadhar. This will be relevant only for individuals carrying on business who are now permitted to quote Aadhar instead of PAN since both are linked together in the income tax database.
- ▶ The erstwhile Form 10DA required certification of deduction determined on the basis of additional employee cost incurred “*in the previous year*” (i.e. current tax year). The new Form 10DA omits the reference to “*in the previous year*”. The significance of this omission requires further evaluation.
- ▶ The note to erstwhile Form 10DA explaining the meaning of “additional employee”, *inter alia*, referred to the condition ‘*whose employment has the effect of increasing the total number of employees employed by the employer as on the last day of the preceding year*’. The new Form 10DA omits this reference. However, this being a statutory condition of s.80JJAA, the omission in the note to Form 10DA may not dilute the applicability of statutory condition.

- ▶ The definition of “additional employee cost” (Refer Annexure A) contains a condition that, in case of existing business, the additional employee cost shall be *nil* if emoluments are paid otherwise than by an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account. The Finance (No.2) Act 2019 (FA 2019) recently amended this condition to include any other electronic mode as may be prescribed by CBDT.

The erstwhile Form 10DA reproduced the above referred condition, as it stood prior to FA 2019 amendment, as part of footnotes. The corresponding footnote in the new Form 10DA, apart from incorporating FA 2019 amendment, mentions that the total emoluments *shall not include* the emoluments paid otherwise than by permitted modes.

The change in the footnote indirectly supports the interpretation of the condition that if any part of the emoluments is paid in cash, it will not disqualify the whole of the emoluments (including the portion paid by permitted modes). The cash portion alone shall be excluded and not qualify for deduction.

Effective date of new Form 10DA

- ▶ The Notification states that it shall come into force from the date of publication in Official Gazette i.e. 18 December 2019. It appears that the new Form 10DA shall be applicable for report to be filed on or after 18 December 2019 for any tax year whether as part of revised return for past year or original return to be filed for tax year 2019-20 and onwards. However, this aspect will become more clear from the online utility to be provided by the Tax Authority for e-filing of Form 10DA.

Comments

S.80JJAA is significant since it is one of the few provisions by which incentive deductions still permitted to be availed by domestic companies who opt for lower corporate tax regime by giving up all other tax incentives and deductions ^[5].

Taxpayers and practising Chartered Accountants issuing Form 10DA will need to take note of the changes and comply with the new requirements accordingly.

By requiring reporting of particulars for three years, the new Form 10DA addresses a lingering lacuna which persisted between the statutory provision which clearly grants benefits for three years whereas the erstwhile Form 10DA required reporting of particulars for one year only. The other changes are largely in line with recent statutory amendments to s.80JJAA.

^[5] Refer our Tax Alerts dated 20 September 2019 “Government slashes corporate tax rates for domestic companies” and dated 26 November 2019 “Government introduces Amendment Bill to replace Ordinance on new lower corporate tax regime”.

Annexure A

► Additional employee cost

"additional employee cost" means the total emoluments paid or payable to additional employees employed during the previous year:

Provided that in the case of an existing business, the additional employee cost shall be nil, if—

(a) there is no increase in the number of employees from the total number of employees employed as on the last day of the preceding year;

(b) emoluments are paid otherwise than by an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account [or through such other electronic mode as may be prescribed]^[6]:

Provided further that in the first year of a new business, emoluments paid or payable to employees employed during that previous year shall be deemed to be the additional employee cost;

► Additional employee

"additional employee" means an employee who has been employed during the previous year and whose employment has the effect of increasing the total number of employees employed by the employer as on the last day of the preceding year, but does not include—

(a) an employee whose total emoluments are more than twenty-five thousand rupees per month; or

(b) an employee for whom the entire contribution is paid by the Government under the Employees' Pension Scheme notified in accordance with the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952); or

(c) an employee employed for a period of less than two hundred and forty days during the previous year; or

(d) an employee who does not participate in the recognised provident fund:

Provided that in the case of an assessee who is engaged in the business of manufacturing of apparel [or footwear or leather products]^[7], the provisions of sub-clause (c) shall have effect as if for the words "two hundred and forty days", the words "one hundred and fifty days" had been substituted:

[**Provided further** that where an employee is employed during the previous year for a period of less than two hundred and forty days or one hundred and fifty days, as the case may be, but is employed for a period of two hundred and forty days or one hundred and fifty days, as the case may be, in the immediately succeeding year, he shall be deemed to have been employed in the succeeding year and the provisions of this section shall apply accordingly;]^[8]

► Emoluments

"emoluments" means any sum paid or payable to an employee in lieu of his employment by whatever name called, but does not include—

(a) any contribution paid or payable by the employer to any pension fund or provident fund or any other fund for the benefit of the employee under any law for the time being in force; and

(b) any lump-sum payment paid or payable to an employee at the time of termination of his service or superannuation or voluntary retirement, such as gratuity, severance pay, leave encashment, voluntary retrenchment benefits, commutation of pension and the like.

^[6] Amended by Finance (No. 2) Act, 2019 w.e.f. tax year 2019-20

^[7] Amended by Finance Act, 2018 w.e.f. tax year 2018-19

^[8] Amended by Finance Act, 2018 w.e.f. tax year 2018-19

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