

Chapter - 19

Treatment of Salary of Foreign Citizen

Salary of a foreign citizen is generally not exempt in India. However, in the following cases specific exemptions have been proved in case of special foreign citizens.

1. Salary of diplomatic personnel : [Section 10(6)(ii)]

Section 10(6)(ii) of the Act provides that the remuneration received by him (a foreign citizen) as an official, by whatever name called, of an embassy, high commission, legation, commission, consulate or the trade representation of a foreign State, or as a member of the staff of any of these officials, for service in such capacity will be exempt from tax if corresponding Indian official in that foreign Country enjoys a similar exemption:

PROVIDED that the remuneration received by him as trade commissioner or other official representative in India of the Government of a foreign State (not holding office as such in an honorary capacity), or as a member of the staff of any of those officials, shall be exempt only if the remuneration of the corresponding officials or, as the case may be, members of the staff, if any, of the Government resident for similar purposes in the country concerned enjoys a similar exemption in that country:

PROVIDED FURTHER that such members of the staff are subjects of the country represented and are not engaged in any business or profession or employment in India otherwise than as members of such staff.

2. Salary to foreign employees : [Section 10(6)(vi)]

Section 10(6)(vi) of the Act provides that the remuneration received by a foreign national as an employee of foreign enterprise for services rendered by him during his stay in India is exempt from tax provided the following conditions are fulfilled:—

- (i) the foreign enterprise is not engaged in any trade or business in India;
- (ii) his stay in India does not exceed in the aggregate a period of ninety days in such previous year; and
- (iii) such remuneration is not liable to be deducted from the income of the employer chargeable under this Act.

3. Salary received by a ship's crew : [Section 10(6)(viii)]

Section 10(6)(viii) of the Act provides any income chargeable under the head "Salaries" received by or due to any such individual being a non-resident as remuneration for services rendered in connection with his employment on a foreign ship where his total stay in India does not exceed in the aggregate a period of ninety days in the previous year.

4. Remuneration of a foreign national as a trainee : [Section 10(6)(xi)]

Section 10(6)(xi) of the Act provides that the remuneration received by him (a foreign national) as an employee of the Government of a foreign State during his stay in India in connection with his training in any establishment or office of, or in any undertaking owned by,—

- (i) the Government; or
- (ii) any company in which the entire paid-up share capital is held by the Central Government, or any State Government or Governments, or partly by the Central Government and partly by one or more State Governments; or
- (iii) any company which is a subsidiary of a company referred to in item (ii); or
- (iv) any corporation established by or under a Central, State or Provincial Act; or
- (v) any society registered under the Societies Registration Act, 1860 (14 of 1860), or under any other corresponding law for the time being in force and wholly financed by the Central Government, or any State Government or State Governments, or partly by the Central Government and partly by one or more State Governments.

5. Remuneration or fees received by non-resident consultants : [Section 10(8A) – Applicable up to Assessment year 2022-23]

As per section 10(8A) of the Act, the following two incomes in the case of a consultant are exempt from tax:—

- (a) any remuneration or fee received by him or it, directly or indirectly, out of the funds made available to an international organization under a technical assistance grant agreement between the agency and the Government of a foreign State; and
- (b) any other income which accrues or arises to him or it outside India, and is not deemed to accrue or arise in India, in respect of which such consultant is required to pay any income or social security tax to the Government of the country of his or its origin:

Provided that nothing contained in this clause shall apply to such remuneration, free and income of the previous year relevant to the assessment year beginning on or after the 1st day of April, 2023.

[Inserted by the Finance Act, 2022, w.e.f. 01-04-2023]

“CONSULTANT” means—

- (i) any individual, who is either not a citizen of India or, being a citizen of India, is not ordinarily resident in India, or
- (ii) any other person, being a non-resident, engaged by the agency for rendering technical services in India in connection with any technical assistance programme or project, provided the following conditions are fulfilled, namely:—
 - (1) the technical assistance is in accordance with an agreement entered into by the Central Government and the agency; and
 - (2) the agreement relating to the engagement of the consultant is approved by the prescribed authority for the purposes of this clause.

6. Remuneration or fees received by foreign employees of non-resident consultants : [Section 10(8B) – Applicable up to Assessment year 2022-23]

Section 10(8B) of the Act provides that in the case of an individual who is assigned to duties in India in connection with any technical assistance programme and project in accordance with an agreement entered into by the Central Government and the agency—

- (a) the remuneration received by him, directly or indirectly, for such duties from any consultant referred to in section 10(8A); and
- (b) any other income of such individual which accrues or arises outside India, and is not deemed to accrue or arise in India, in respect of which such individual is required to pay any income or social security tax to the country of his origin, provided the following conditions are fulfilled, namely:—
 - (i) the individual is an employee of the consultant referred to in section 10(8A) and is either not a citizen of India or, being a citizen of India, is not ordinarily resident in India; and
 - (ii) the contract of service of such individual is approved by the prescribed authority before the commencement of his service:

PROVIDED that nothing contained in this clause shall apply to such income of the previous year relevant to the assessment year beginning on or after the 1st day of April, 2023. [Inserted by the Finance Act, 2022, w.e.f. 01.04.2023]

Withdrawal of Exemption Under Section 10(8), (8A), (8B) and (9) [By the Finance Act, 2022, with effect from Assessment year 2023-24]

- The exemptions are withdrawn in line with the policy of the Government to phase out exemptions and tax incentives for simplification of tax laws.
- Pertinently, the Shome Committee recommended withdrawal of the exemption since there was no economic rationale for the exemption and that several countries tax such income.
- The proposed amendment shall result in income of aforementioned individuals being taxable in India.
- The individuals may, however, claim relief, with respect to the taxes paid in India, in their country of residence