



**Bombay Chartered
Accountants' Society**

IMC

**Chamber of Commerce
and Industry**

28th August, 2018

**Shri Sushil Chandra,
Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
Government of India,
North Block,
New Delhi – 110 001.**

Subject: Representation on Gratuity Exemption Limits

We draw your attention to a divergence that has crept in the notified exemption limits under clauses (ii) and (iii) of Section 10(10) of the Income-tax Act, 1961 (the Act), dealing with exemption of gratuity.

Background

1. Section 10(10)(i) of the Act deals with exemption of gratuity payable to employees of the Government.
2. Section 10(10)(ii) of the Act deals with exemption of gratuity payable under the Payment of Gratuity Act, 1972. Effective from 29th March, 2018, the Government of India notified the limit of gratuity under the Payment of Gratuity Act, 1972 at Rs. 20 lakhs (this has been done to bring the amount in alignment with the limit under the 7th Pay Commission changes applicable to Government employees). A copy of the Press Release issued by the Government is attached. As a result, the exemption limit under Section 10(10)(ii) stands automatically increased to Rs. 20 lakhs.
3. Section 10(10)(iii) of the Act deals with gratuity not falling under clauses (i) and (ii) of Section 10(10) and limits the exemption amount to the amount notified, by the Central Government, from time to time. The notification [No. SO 141(E) dated June

11, 2010] fixing the exemption limit at Rs. 10 lakhs was issued in June 2010 for cases of retirement , etc. falling on or after 24th May, 2010. Prior to this notification, the limit was Rs. 3,50,000/-, both earlier and new limits being consistent with the then prevailing limits under the other two clauses of Section 10(10).

As a result of the amendments to the Payment of Gratuity Act, 1972 having the effect of raising the limit under clause (ii) of section 10(10), and with no corresponding notification under section 10(10)(iii), the exemption limit under clause (ii) of Section 10(10) stands at Rs. 20 lakhs whereas that under clause (iii) continues at the earlier limit of RS. 10 lakhs notified in June 2010.

This adversely affects employees of small enterprises (typically being employers having less than 10 employees), to whom the Payment of Gratuity Act does not apply. Many employers, which are micro or small enterprises, pay gratuity to their long time employees, even though the Payment of Gratuity Act, 1972 does not apply to such employers. These employees, who, as it is, get very few benefits, have the further disadvantage of now being denied the higher tax exemption of Rs 20 lakh available for gratuity available to employees of enterprises which have more than 10 employees. This seems to be unintended, and puts such micro and small enterprises, which form a significant part of the economy and account for a large part of the employment, at a disadvantage when seeking to hire competent employees.

Recommendation

In order to bring about consistency between clauses (ii) and (iii) of Section 10(10), the exemption limit under Section 10(10)(iii) may be increased to Rs. 20 lakhs for all cases of gratuity, where the separation happens on or after 29th March, 2018, by issuing an appropriate notification.



Raj Nair
President,
IMC Chamber of Commerce and Industry



Sunil Gabhawalla
President,
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