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Dear Readers,

Greetings for the season!

Hope all of you have adopted to the new normal. The beauty of our race is 'adaptability' and this is the only reason that our species still survive. I pray that every one of you out there are safe and healthy.

In this edition, we bring you the guidelines and various reports/returns to be made by an international group having presence in India. The article on CbCR and MF provides the reader the gist of various compliances under the said guidelines and layouts broad details such forms contains. The article on in-sights into in-bound warehousing and manufacturing facility deals with the welcome and positive regime for the importers who can defer the payment of import taxes till they are cleared for home consumption. The article also deals with various procedures to be adopted, if one wishes to opt for such warehousing. The next article is on one of most asked area qua individual taxation, the frequently asked questions on deductions under Section 80D of Income Tax Act.

I hope that you will have good time reading this edition and please do share your feedback. I will also urge clients to mail us topics or issues on which you want us to deliberate in our future editions, so that we can contribute to the same.

Thanking You,

Suresh Babu S
Founder & Chairman

INDIRECT TAXATION

INSIGHTS INTO IN-BONDWAREHOUSING& MANUFACTURING FACILITY

Contributed by CA Sri Harsha & CA Manindar

Introduction:

The concept of warehouse manufacturing available under Customs Act, 1962 is an age-oldduty deferment and export benefit scheme useful for both domestic suppliers and exporters. It is less popular among exporters when compared to EOU[1] , EPCG[2] and Advance Authorization schemes under the FTP[3] . All these schemes allow exporters to import capital goods and inputs to procure domestically without payment of customs duties and IT[4] . Such duty saved amounts shall stand waived when the specified export obligations are fulfilled. On the contrary when such obligations are not fulfilled within the stipulated time, the duty saved amounts proportionate to unfulfilled export obligation shall be recovered along with interest which is payable from the date of actual import of goods under the above schemes. The option of warehouse manufacturing is also worthy for exporters to consider as it does not impose any condition of export obligation and there will be a remission of duty payable on imported goods if the final goods are exported. If the final goods are cleared for domestic consumption, then the duty payable on original imported goods that was not paid at the time of their import can be paid without interest at the time of such removal. In addition to the condition of export obligation, there are no stipulations about minimum investment, minimum area and is of less administrative burden.

Further, it is important to note that this option is not only meant for exporters. It can also be used by those who supply their final goods in domestic market. Effectively, the option of warehouse manufacturing is a duty deferment scheme which help domestic suppliers and exporters in saving working capital cost for the time lag involved in the importation and subsequent sale or exportation as the case may be. The Government has recently launched a revamped and streamlined this warehousing facility with a vision to attract more investments into India and to strengthen 'Make in India' vision. In this article, an attempt is made to discuss in detail the concept of warehousing provided under Customs Law.

Types of Warehousing under Customs Law:

In terms of section 2(11) of Customs Act, 1962, a warehouse is also considered as customs area where both imported goods and export goods are kept before clearance from customs authorities. Upon importation of goods, the importer can either file bill of entry for home consumption or for warehousing of goods in a warehouse. Under Customs law, there are three types of warehouses viz. Public warehouse, Private Warehouse and Special warehouse.

[1]Export Oriented Undertaking
[2]Export Promotion Capital Goods
[3]Foreign Trade Policy
[4]Integrated Goods and Services Tax

a. Public Warehouse:

Public warehouse is a warehouse licensed under the provisions of section 57 of the Customs Act. As indicated by the name, it is intended to warehouse the dutiable goods of public at large upon importation by charging fee which includes fee towards storage and transaction handling. The person applying for this license is required to provide solvency certificate and undertake to abide by all regulations. The license will be given upon satisfaction of required conditions and is valid till it is cancelled or revoked. The license granted shall not be transferrable.

b. Private Warehouse:

A private warehouse means a site or building which is licensed as warehouse under section 58 of the Customs Act, wherein the dutiable goods of the licensee alone are permitted to be stored. The license is not transferable. The license is valid till cancelled or surrendered. Regulations make provisions for cancellation and surrender of license.

c. Special Warehouse:

A special warehouse is a warehouse licensed under section 58A of the Customs Act, which is meant for storage of specified goods. This type of warehousing is introduced with effect from 14.05.2016. The following goods are notified to be kept in a special warehouse:

i. Gold, silver, other precious metals and semi-precious metals and articles thereof
ii. Goods warehoused for the purpose of supply to duty free shops in customs area, supply as stores to vessels, aircrafts and supply to foreign privileged persons.

In case of public warehouse and private warehouse, the customs authorities will not exercise physical control. The control shall be exercised through records verification by way of audit. Whereas in case of special warehousing, physical control shall be exercised by Customs Authorities. Further, manufacturing, and other operations are permitted only in private warehouse while such activities are not permitted in a public warehouse. With this brief idea on types of warehousing, we will now discuss about private warehouse, manufacturing in private warehouse and other related aspects.

Private Warehouse without Manufacturing Facility:

Private warehouses can also be broadly classifiable into two categories viz. without or with manufacturing facility. Private warehouses can be set-up by obtaining license from Principal Commissioner or Commissioner of Customs under section 58. In case a person wants to establish private warehouse with manufacturing facility, special permission is required from Principal Commissioner or Commissioner of Customs under section 65.

Private warehousing without manufacturing facility is useful to traders whose business involves import of goods for trading. In these cases, the trader can import the goods and get the goods stored in private warehouse without payment of customs duty i.e., both BCD[5] and IT. As and when the trader identifies customers, he can remove the goods from the private warehouse by paying BCD and IT. No interest is payable by the trader for delayed payment of BCD and IT by keeping the imported goods in private warehouse. This will help the trader in saving working capital as he can avoid paying BCD and IT at the time of import and can pay the same only after identifying customer at the time of removal from private warehouse.

Sometimes manufacturers import raw material in bulk quantity for the purpose of manufacturing. The entire quantity imported material may not be used immediately. In such cases, instead of clearing the imported raw material for home consumption by paying applicable BCD and IT, the same can be stored in a private warehouse without paying duties and taxes. The raw material imported can be removed from private warehouse in various installments as and when such material is needed for manufacturing facility. This implies that though raw material was imported in bulk quantity, by depositing in private warehouse, BCD and IT can be paid in installments to the extent of quantity removed for manufacturing. As mentioned above, there is no requirement to pay any interest for the delayed payment of BCD and IT by depositing the goods in private warehouse. Thus, private warehousing will save working capital.

Private Warehouse with Manufacturing facility:

As mentioned above, in terms of section 65, by obtaining prior permission of Principal Commissioner or Commissioner, the owner of warehoused goods can undertake manufacturing and other operations on such goods. Manufacturing facility is available even if the goods manufactured are completely removed for sale in India without exporting. The salient features of this facility are provided as under. These are based on various regulations, FAQs and circulars released.

1. **Eligibility for Manufacturing Facility in Warehouse:**

   All persons being citizens of India or an entity incorporated in India are entitled to make application to obtain license under the scheme. A person who has already been granted license under section 58 can also make application to obtain permission for undertaking manufacturing and other operations under the scheme. Similarly, a person who is yet to obtain a warehouse license under section 58 can make a combined application for warehousing license and also for undertaking manufacturing and other operations in such warehouse.

2. **A Domestic Supplier is also entitled for Manufacturing Facility:**

   A manufacturer of goods importing raw material for manufacturing and supply within India without any exports is also entitled for warehouse license with permission for manufacturing facility. This facility is not upon the condition that it will be given for exporters and there is no restriction that the extent of sale in domestic market should not extend beyond a specified quantity or value.

[5]Basic Customs Duty

3. An existing manufacturing facility is also eligible:

An existing DTA unit is also eligible for making an application for manufacture and other operations in a bonded warehouse. Thus, an old factory unit located in DTA is also eligible for warehousing along with manufacturing facility.

4. Nature of Premises Permissible for obtaining License:

The regulations do not mandate that a fully enclosed structure is a prerequisite for grant of license. What is important is that the site or building is suitable for secure storage of goods and discharge of compliances, such as proper boundary walls, gate(s) with access control and personnel to safeguard the premises. Moreover, depending on the nature of goods used, the operations and the industry, some units may operate without fully closed structures. The Principal Commissioner / Commissioners of Customs will take into consideration the nature of premises, the facilities, equipment and personnel put in place for secure storage of goods, while considering grant of license.

5. Bond:

The person obtaining license to undertake manufacturing and other operations shall be required to execute a bond of value **thrice** the amount of duty involved. The format in which bond is to be executed and the manner in which the bond register has to be maintained has been provided in Annexure-C to Circular No. 34/2019-Cus dated 01st October 2019.

6. Validity of License Granted:

The license granted for private warehouse and the permission extended for manufacturing facility are valid unless it is cancelled or surrendered. Thus, there is no requirement to renew the license on a period basis.

7. Import of Inputs:

As mentioned above, the facility of private warehousing with manufacturing facility is a duty deferment scheme. Thus, both BCD and IT on imports stand deferred. In case of import of goods other than capital goods, BCD and IT payable shall stand deferred till they are cleared from warehouse as such or in the form of finished goods after manufacturing for home consumption. No interest is payable on the amount of BCD and IT payable for the reason of deferment.

No depreciation is available on the imported inputs which implies that BCD and IT are payable on the value at which they are originally imported. Bill of entry for home consumption is required to be filed in order to pay the duty on imported inputs and remove the manufactured finished goods. In case the finished goods are exported, the duty (both BCD and IT) on the imported inputs shall stand remitted i.e., there is no requirement to pay BCD and IT payable for the imported inputs if the finished goods are eventually cleared for export.

8. Import of Capital Goods:

The licensed unit can import capital goods and warehouse them without payment of BCD and IT. Duty deferment is available till the time the imported goods are cleared for home consumption. The capital goods can be cleared for home consumption upon payment of applicable BCD and IT without interest. The duty deferment is without any time limitation. No depreciation is available if imported capital goods (on which duty has been deferred) are cleared for home consumption after use which implies that BCD and IT is payable on the value at which the capital goods are originally imported. No duty is payable on those imported capital goods used in the warehouse if they are eventually exported.

9. Clearance of Manufactured Goods to DTA:

The goods manufactured in the private warehouse shall be subject to GST[6] if the clearance to DTA[7] amounts to supply as per the provisions of section 7 of the CT[8] Act, 2017. In such an event, the manufactured goods cleared shall be subject to CT/ST[9] or IT, depending upon the nature of supply being inter-state or intra-state. Thus, the goods shall be assessed to tax on the value of manufactured goods as determined in terms of section 15 of the CT Act, 2017 and accordingly the goods shall be removed to DTA under the cover of a valid tax invoice. Thus, duty payable on finished goods manufactured in a private warehouse is limited to tax payable as if the goods the manufactured and supplied within India.

10. Interest Obligation:

As mentioned above, the facility of private warehousing is a duty deferment scheme wherein the applicable BCD and IT are payable only when the imported inputs and capital goods are removed from the warehouse. There is no interest obligation on the importer for the reason that the duties are paid at the time of ex-bonding the resultant goods. This implies that BCD and IT are payable without any interest at the time the imported goods are cleared from warehouse.

11. No Physical Control and requirement to appoint a warehouse keeper:

Private warehouses are not subject to physical control on a day-to-day basis by officers of Customs. Further, approval of the bond officer is not required for clearance of the goods from the warehouse. These units will be subject to risk-based audits based on a risk-criteria. There is no prescribed frequency for such audit. As the warehouse is not subject to any physical control by officer of Customs, the warehouse owner is required to appoint a warehouse keeper for a warehouse to be licensed under section 58 of the Customs Act. The warehouse keeper is expected to discharge duties and responsibilities, maintain accounts and also sign the documents, on behalf of the licensee. The warehouse keeper is expected to supervise and satisfy himself about the veracity of the declaration/accounts that he is signing. The inspection of goods by customs at the stage of ex-bonding would be done, only if there is indication of risks and not as a matter of routine practice.

[6]Goods and Services Tax
[7]Domestic Tariff Area
[8]Central Goods and Services Tax
[9]State Goods and Services Tax

12. Documentation:

Following are the customs documents involved for movement of imported goods on which duty has been deferred to/ from a unit undertaking manufacture and other operations in a bonded warehouse:

(i) **Customs Station to Section 65 unit:** It is clarified that no separate form is prescribed for movement from Customs station to Section65 unit as the goods are already accompanied by the Bill of entry for warehousing.

(ii) **From another warehouse (non-Section 65[10]) to a Section 65[11] Unit:** The goods can be removed from a warehouse which is not a section 65 unit to a warehouse which is a section 65 unit can be undertaken by following the procedure prescribed under Warehoused Goods (Removal) Regulations, 2016.The removal of goods can be undertaken through a prescribed form. The owner of the goods shall be required to remove the goods under one-time lock and is required to provide the bond officer or proper officer due acknowledgment given by the licensee or bond officer of the warehouse to which the goods are removed.

(iii) **From Section 65 Unit to another warehouse (the other warehouse can be a Section 65 unit or a non-Section 65 warehouse):** The goods shall be removed under one-time lock and in the form prescribed under Manufacture and Other Operations in Warehouse (No.2) Regulations, 2019. The said form should be duly acknowledged by the warehouse keeper or proper officer of warehouse receiving the goods.

13. Record Maintenance:

A licensed private warehouse with permission for manufacturing is required to maintain record of receipt of goods received by way of import or procurement from DTA, goods issued for manufacturing, resultant finished goods obtained from processing, goods sent to job work, goods returned from job work, finished goods cleared for export, finished goods cleared for home consumption, import goods cleared as such for home consumption or for export, waste or refuse arising out of manufacture. The records shall be maintained in the form notified under Annexure B of Circular No. 34/2019-Cus dated 01st October 2019. Further, it is clarified that the Generally Accepted Accounting Principles will be followed for inventory control in a Section 65 unit. Thus, FIFO method can be followed.

[10] A warehouse without license to carry out manufacture and other operations

[11] A warehouse with license to carry out manufacture and other operations

14. Re-Entry of Manufactured Goods:

Once the goods are cleared from the warehouse, they will no longer be treated as warehoused goods. Thus, if the resultant goods cleared from the warehouse are returned by the customer for repair, they will be entered as DTA receipts (this is provided in the accounting form). After repair, when the same is cleared from the warehouse, the same will be entered in the prescribed accounting form. If the goods were exported and subsequently rejected or sent back for repair by the customer, then the goods upon re-import have to be entered as Imports receipts in the accounting form. The relevant customs notification for re-imports has to be followed while filing the Bill of Entry for re-import of the goods.

15. Surrender of License:

Since the unit operating under Section 65 is also licensed as a Private Bonded warehouse under Section 58 of the Customs Act, the procedure for surrender of licence will be as per the regulation 8 of the Private Warehouse Licensing Regulations,2016.A licensee may, therefore, surrender the licence granted to him by making a request in writing to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be. On receipt of such request, the licence will be cancelled subject to payment of all dues and clearance of remaining goods in such warehouse.

16. Job Work:

Capital goods can be removed for job work for the purpose of repairs only with permission of bond officer. Inputs can be removed for job work upon the condition that the imported inputs shall first be deposited in the warehouse (section 65 unit), measures to be taken to establish identity between goods sent to job work and the goods returned. The procedure and time line for return of goods by job worker shall be as per GST provisions. Goods are permitted to be directly exported from Job worker's premises or can be removed to customers location in DTA. The detailed procedures have been clarified under Circular No. 48/2020-Cus dated 27.10.2020.

CONCLUSION:

Considering the above discussion on various aspects of private warehousing facility available under Customs, it is not an exaggeration to say that this is a boon to those exporters who may not have the required scale of operations and doubtful about the fulfillment of conditions to obtain other export benefits. By following the warehousing procedure, working capital can be saved without paying duties/taxes up front and protect themselves from undergoing cumbersome refund process that they have to usually undergo to get refund of the duties/taxes involved in their exports. On the other hand, this facility can equally be beneficial to domestic suppliers as well as it offers the facility of duty deferment without any requirement to pay interest. To conclude, the private warehousing facility available under customs is much more attractive after the recent revamping and procedural simplifications. It is worth for business houses to consider this option in order to minimize the tax implications on their business and become more competitive in market.

References:

1. *Section 58 of Customs Act, 1962*
2. *Section 65 of Customs Act, 1962*
3. *Private Warehouse Licensing Regulations, 2016*
4. *Warehouse (Custody and Handling of Goods) Regulations, 2016*
5. *Warehoused Goods (Removal) Regulations, 2016*
6. *Manufacture and Other Operations in Warehouse (No.2) Regulations, 2019.*
7. *Circular No. 34/2019 dated 01st October 2020*
8. *Circular No. 48/2020-Cus dated 27th October 2020*
9. *FAQs released by CBIC vide F. No.484/03/2015-LC (Pt)*

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TRANSFER PRICING

MASTER FILE AND COUNTRY BY COUNTRY REPORT

Contributed by CA Sri Harsha & CA Narendra

Introduction to Master File and Country by Country Report:

The lack of quality data on corporate taxation has been a major limitation to measuring the fiscal and economic effects of tax avoidance, making it difficult for authorities to carry out transfer pricing assessments on transactions between related companies and even more difficult to carry out audits.

To tackle the above issue and to provide tax authorities with sufficient information about economic activities of multinational group, OECD[1] has prepared Action Plan 13 under the BEPS[2] Package. Action Plan 13 requires every multinational group to file a detailed report namely 'Country by Country Report' ('CbCr') on its economic activities to tax authorities.

Under this Action Plan, parent entity of a group has to file CbCr to the tax authorities of the country in which such parent entity is resident. CbCr which is filed with the particular country shall be shared with other tax jurisdictions by country with which CbCr is filed. CbCr in substance contains global allocation of income, profit, taxes paid and economic activity among various tax jurisdictions in which it operates.

In addition to the filing of CbCr, Action Plan 13 requires multinational group to file Master File. Master File ('MF') is required to be filed every constituent entity of international group to tax authorities of a country in which such entity is resident. MF in substance contain date relating each entity's economic activity in multinational group.

India being an active participant in OECD BEPS initiative ,to implement CbCr recommendations, has introduced Section 286 in ITA[3] through Finance Act, 2016 with effective from the Assessment Year 2017-18.Further,Section 92D of ITA has been amended to implement MF requirements under Action Plan 13.

Further, vide Income-tax (Twenty-fourth Amendment) Rules, 2017, two new rules i.e., Rule 10DA and Rule 10DB have been introduced IT[4]Rules for implementing the CbCr and MF. With the above background, lets proceed to discuss about CbCr and MF in detail.

[1]Organisation for Economic Co-operation and Development
[2]Base Erosion and Profit Shifting
[3]Income Tax Act, 1961
[4]Income Tax Rules, 1962

Important Expressions:

Expression	Meaning
International Group	The expression 'international group' means any group that includes two or more enterprises which are resident of different jurisdictions or one enterprise which carries on any business in other jurisdiction through permanent establishment.
Group	Group includes parent company and all other entities in respect of which parent company is required, under any law for time being in force or accounting standards of the country in which parent company is resident, to prepare consolidated financial statements, or such parent company would have prepared consolidated financial statements had its shares were listed in recognized stock exchange in the country in which such parent is resident.
Parent Entity	Parent entity means any entity ('first mentioned entity') which is holding any interest in other entities and: • is required to prepare consolidated financial statements or • it would have prepared the consolidated financial statement had the shares were listed on recognized stock exchange and there is no other entity ('second mentioned entity') which is holding any interest in the first mentioned entity and thereby such entity ('second mentioned entity') is required to prepare consolidated financial statement.
Constituent Entity	Constituent entity means any separate entity that is included in the consolidated financial statement and also includes any entity which is excluded from consolidated financial statement solely on the basis of size and materiality. Permanent Establishment of an entity is also considered as constituent entity of the international group. Which means that single entity operating in other jurisdictions through PE is also considered as international group and obliged to comply with requirements of Master File and CbCR under Rule 10DA and Rule 10DB of the IT Rules respectively.
Consolidated Financial Statements	Consolidated Financial Statements ('CFS') means financial statement of an international group in which the assets, liabilities, income, expenses and cash flows of the parent entity and the constituent entities are presented as those of a single economic entity.

Reporting Accounting Year	Reporting Accounting Year ('RAY') means that accounting year in respect of which CbCr is required to be submitted.
Accounting Year	If the parent entity is resident in India, then previous year i.e., April-March is considered as accounting year. However, if the parent company is not a resident in India, annual accounting year period with respect to which parent entity prepares financial statement is considered as accounting year.

Master File:

Section 92D of ITA requires every constituent entity of an international group to keep and maintain information and documentation in respect of international group. In this regard, Rule 10DA lists out the information or documentation which is required to be kept and maintained and lays down the procedure for filing such information with the tax authorities.

Form:

Form 3CEAA has been prescribed under Rule 10DA for filing of information and documentation with the tax authorities.

Monetary Threshold:

As the master file contains detailed information and documentation of every entity in international group, it may not be feasible to maintain such information and documentation by every constituent entity. Hence, a monetary threshold has been prescribed under Rule 10DA for applicability of Master File. Every constituent entity of international group shall file MF in Form 3CEAA if,

- the consolidated group revenue of an international group for the accounting yearas per the consolidated financial statement exceeds INR 500 Crore

and

- the aggregate value of international transactions for the accounting year as per the books account exceeds INR 50 Crore (or)the aggregate value of international transactions for the accounting year in respect of purchase, sale, transfer, lease or use of intangible assets as per the books of account exceeds INR 10 Crore.

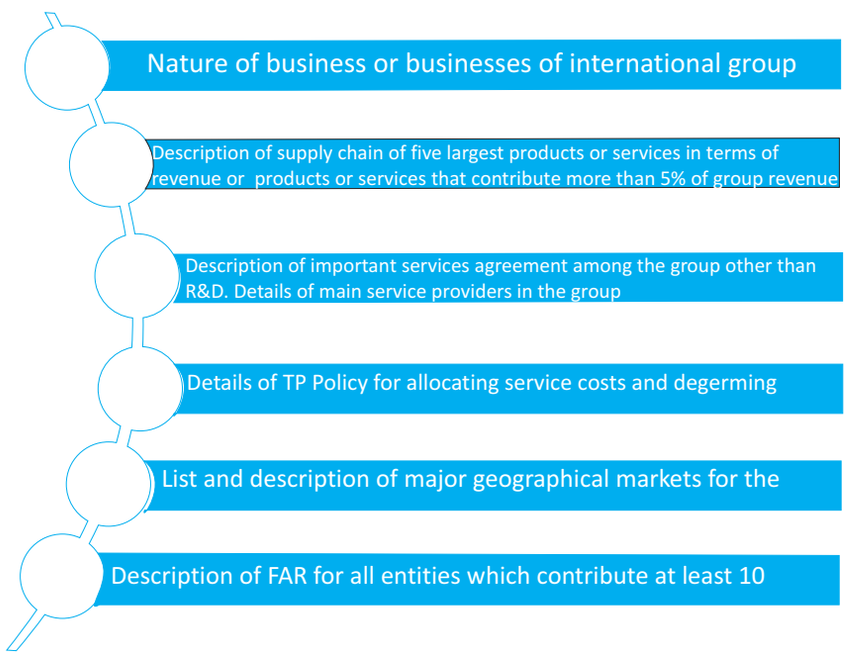
If the above two mentioned conditions i.e., first mentioned condition and either of the limits in second condition, are satisfied simultaneously then, constituent entity of an international group shall file MF in Form 3CEAA.However, if parent entity is not resident in India, then accounting year is defined to mean the accounting year as followed by such parent entity. If parent company follows accounting year from January – December, such period needs to be considered as accounting year under Rule 10DA. In such a scenario, there exists an ambiguity regarding computation of aggregate value of international transactions during the accounting year as constituent entity in India follows financial year as April – March. More clarity is to be provided by CBDT in this connection.

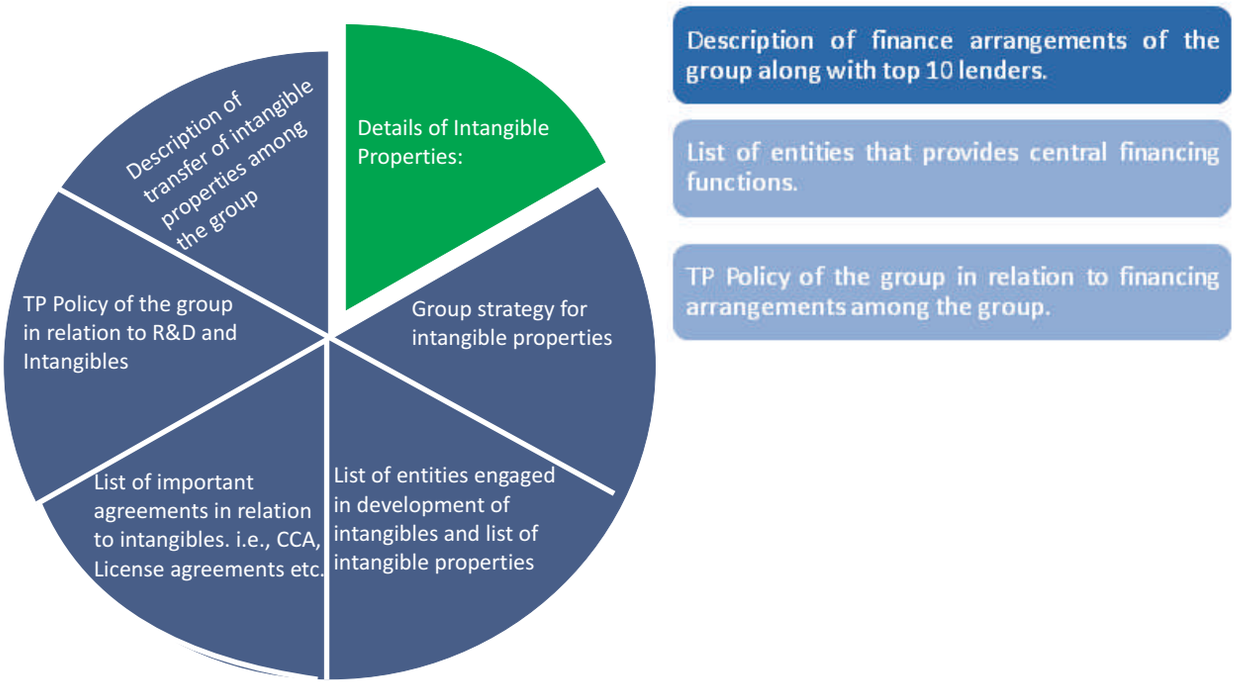
Further, Form 3CEAA contains two parts i.e., Part -A and Part-B. Part -A contains basic information about the entity filing the Form 3CEAA and details of the international group. Part -B is the actual Master File Form which contains the details as mentioned in Rule 10DA (1). Rule 10DA provides that the Part -A of Form 3CEAA is mandatory irrespective of monetary threshold are satisfied or not, which means that every constituent entity of international group shall file Part -A of Form 3CEAA and Form Part -B of Form 3CEAA is applicable only when the monetary threshold as specified above are crossed.

Broad Details:

A broad description of the information and documents which are required to be maintained under Rule 10DA is given below:

- List of all Constituent Entities in the Group along with Ownership Structure
- Business Description of the Group
- Details of Intangible Properties
- Details of Finance Arrangements
- Business description, Details of intangible properties and Finance arrangements of the group includes:





Due date:

Rule 10DA (2) states that Form 3CEAA shall be filed on or before the due date for filing return of income for the relevant period.

Multiple Constituent Entities - Residing in India:

As the MF contains details of each constituent entity, it is sufficient that if such Form 3CEAA is filed by any of the constituent entity located in India. In this regards, international group has to designate any entity located in India as designated entity for filing MF in Form 3CEAA. Such designated entity shall intimate tax authorities that the entity has been designated for filing MF. Such intimation shall be filed in Form 3CEAB 30 days before due date for filing of Form 3CEAA.

Maintaining of Information and Documents:

Information and documents as specified in Rule 10DA shall be kept and maintained for a period of 8years from the end of the relevant assessment year.

Penalties:

Section 271AA prescribes a penalty of Rs 5,00,000 for failure to furnish the MF.

Country by Country Report:

Section 286 of the Act requires the parent entity or alternate reporting entity which is resident in India to submit the following information in CbCr:

- Aggregate information in respect of amount of revenue, profit before tax, amount of income tax paid, stated capital, accumulated earnings, number of employees and tangible assets with regard to each jurisdiction in which group operates.

- Details of each constituent entity of the group and country in which such entity is incorporated including country of residence of such entity.

- Nature and details of business description of each constituent entity.

Form:

Form 3CEAD has been prescribed under Rule 10DB for the purpose of submitting CbCr.

Monetary Threshold:

Constituent entity being a parent of the group, if such parent company is resident in India, shall submit CbCr in Form 3CEAD if the consolidated group revenue as per the consolidated financial statement for the accounting year preceding to reporting accounting year exceeds Rs.5,500 Crores. Which means that, unlike MF, for the purpose of computing the monetary limits for submitting the CbCr, oneneeds to check the consolidated revenue for the preceding year.

Responsibility for Submission:

Unlike MF (where MF is required to be submitted by the group to each tax jurisdiction),CbCr is required to be submitted by ultimate parent entity of the group and such CbCr shall be shared with other jurisdictions by such tax jurisdiction with which CbCr is filed.

However, ultimate parent of the group may designate any other constituent of the group to submit the CbCr to the tax authorities of the country in which such alternate reporting entity is resident. In such a case, alternate reporting entity steps into the shoes of parent company and submits the CbCr. OECD has named this alternate reporting entity as surrogate parent entity.

Due Date for Filing – Form 3CEAD:

Section 286 read with Rule 10DB requires the parent company or alternate reporting entity to file CbCr in Form 3CEAD within a period of 12 months from the end of relevant reporting accounting year.

In other words, that if the parent company is resident in India, then Form 3CEAD shall be submitted on or before March 31 of succeeding year. For example, in respect of accounting year 2019-20, CbCr shall be filed on or before March 31, 2021.
However, if the parent company is not resident in India, CbCr shall be submitted on or before 12 months from the end of relevant accounting year of parent company. If the parent entity follows accounting year as January – December, then CbCr shall be submitted within 12 months from relevant accounting year.

Intimation regarding Parent Entity:

If the parent company is not resident in India, then every constituent entity residing in India shall intimate to the tax authorities whether such entity is the alternate reporting entity or details of parent/alternate reporting entity by filing Form 3CEAC.

If there are more than one constituent entities are in India, every constituent entity shall intimate to the tax authorities about parent entity or alternate reporting entity by filing Form 3CEAC.

Due Date - Form 3CEAC:

Every constituent entity shall file Form 3CEAC two months prio rto the due date for filing Form 3CEAD.

Filing of CbCr by other Constituent Entities:

As mentioned above, CbCr is to be submitted to one tax jurisdiction and such report is to be shared with other jurisdictions. As sharing of CbCr requires enforcing regulations, OECD has recommended to implement auto exchange of CbCr by multiple jurisdictions.

Such CbCr is automatically exchanged between the jurisdictions by virtue of signatories to the multilateral competent authority agreement or bilateral agreements between the jurisdictions. However, in the following situations, CbCr may not be shared with other tax jurisdictions:

- Where the parent entity is not obligated to file CbCr by virtue of local laws
- India does not have agreement for exchange of CbCr
- There is a systemic failure of the country for exchanging of CbCr

In the above-mentioned circumstances, constituent entity residing in India shall file Form 3CEAD.However, where there is more than one constituent entity residing in India, such CbCr shall be filed by any constituent entity which is designated for submitting CbCr. Information with regard to filing of CbCr by designated entity shall be conveyed to tax authorities by filing Form 3CEAE. However, no time limit has been prescribed under section 286 or Rule 10DB for filing Form 3CEAE.

Exception to other Constituent Entities from submission CbCr:

If alternate reporting entity ('ARE') has filed CbCr to the country in which such alternate reporting entity is resident and

- such report is required to be submitted by virtue of local laws of such country
- such report is filed within time limit prescribed in country in which such ARE is resident
- there is a valid agreement in force for exchange of CbCrwith India
- there is no systemic failure for exchange of information
- Informed tax authorities of country in which such ARE is resident that it is designated ARE
- Constituent Entities has intimated tax authorities in India regarding filing of CbCr by ARE

then, constituent entity residing in India is not obligated to submit CbCr in Form 3CEAD.

Due Date – Form 3CEAD – Constituent Entity:

Except where there is a systemic failure in exchanging of CbCr, other constituent entity shall submit CbC Report in Form 3CEAD within 12 months from end of reporting accounting year.

In case where there is systemic failure in exchange of CbCr and such failure is intimated by tax authorities to the constituent entity, CbCr shall be submitted within 6 months from the end of month in which such failure is intimated to constituent entity.

Penalties:

Description of the Failure	Amount of Penalty
Failure to Furnish Form 3CEAD	• If period of delay does not exceed on month – INR 5,000 per day. • If period of delay exceeds one month – INR 15,000 per day.
Failure to provide information as requested by the tax authorities	INR 5,000 per day during which such failure continues.
Failure to File Form 3CEAD or failure to furnish explanation as mentioned in (1) and (2) above after issuing the order for penalty for the said failures.	INR 50,000 per day during the which such failure continues from the date of service of order.
Furnishing inaccurate information in Form 3CEAD or in explanation to tax authorities.	INR 5,00,000.

Master File (Rule 10DA):

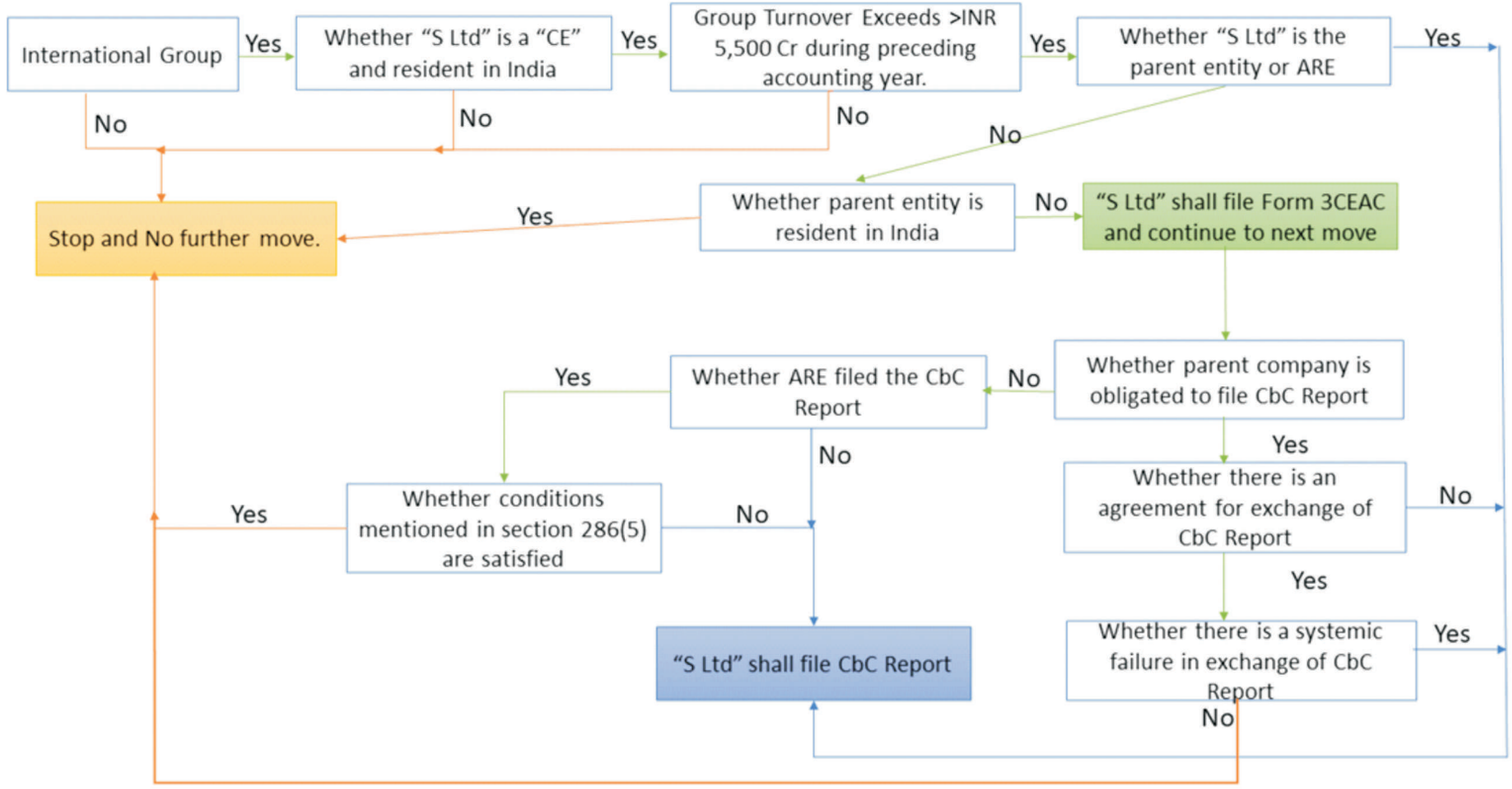
Form	Conditions	Obligation on Indian Entity	Due Date	Broad Details included in Forms
3CEAB (Intimation)	When there is more than one entity resident in India, one entity shall file Form 3CEAB intimating that such entity is designated for filing Form 3CEAA.	Designated Entity in India shall file the Form 3CEAB.	30 days prior to due date for filing Form 3CEAA.	• Details of the entity filing the Form 3CEAB. • Name of International group. • Name and address of the ultimate parent entity. • Accounting Year for which the Form is being filed.
3CEAA Part -A (MF)	No specific monetary threshold. To be filed in all instances. To be filed by constituent entity in India.	Designated Entity in India shall file the Form 3CEAA Part -A.	On or before due date for filing ITR.	• Details of the entity filing the Form. • Name and address of the international group. • Accounting year for which the Form is being filed. • Details of other constituent entities located in India.
3CEAA Part-B (MF)	Consolidated group revenue for the accounting year> INR 500Cr. and • Value of international transactions exceeds INR 50 Cr or • Value of international transactions in respect of intangible property exceeds INR 10 Cr.	Designated Entity in India shall file the Form 3CEAA Part -B.	On or before due date for filing ITR.	• List of all entities in the group along with ownership structure. • Detailed business description of the group viz. details of supply chain, FAR analysis, geographical markets etc. • Detailed information about intangible assets of the group. • Detailed information about finance arrangements of the group.

Country by Country Report (Rule 10DB):

If CbC Report regulations are applicable in India, only then entities residing in India are required to comply with following requirements.

Form	Conditions	Obligation on Indian Entity	Due Date	Broad Details included in Forms
3CEAC (Intimation)	If ultimate parent company is not resident in India.	Every constituent entity residing in India.	Two months prior to due date for filing CbC Report.	• Details of the entity filing the Form 3CEAC. • Name and address of the ultimate parent company. • Accounting year for which the Form is being filed.
3CEAD	If ultimate parent company is in India or ultimate parent company has not filed CbCr	Constituent entity in India shall file only if conditions are satisfied.	Within 12 months from the end of relevant accounting year. i.e., due date for the accounting year 2019 is December 31,2020.	• Details of revenue, assets, employees, capital, profit before tax and income tax paid with regard to each jurisdiction in which group operates. • Details of constituent entities in the group with business description.

S Limited, an enterprise located in India and engaged in business which is a constituent entity of international group. Let us proceed to understand under what circumstances, S Limited is obliged to file CbCr in India:



This article is contributed by CA Sri Harsha Vardhan K & CA Narendra, Partners of SBS and Company LLP, Chartered Accountants.
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INCOME TAX

FAQS FOR SECTION 80D

Contributed by CA Sri Harsha & Research Team

1. What is the deduction specified under Section 80D?

Section 80D falls under Chapter VI-A of Income Tax Act, 1961 (for brevity 'ITA'), which deals with 'deductions to be made in computing total income'. Section 80D deals with deduction in respect of amounts paid towards health insurance, medical expenditure and preventive health check-up.

2. Who are eligible for claiming deduction under Section 80D?

The deduction is available for individual and Hindu Undivided Family (HUF). The section allows cover for: :

Person	Coverage
Individual	Family and Parents
HUF	All members of HUF

3. Who are all covered under the ambit of 'Family'?

S ection 80D defines 'family' to mean spouse and dependent children of the assessee.

4. Whether Individual who is not a resident during the previous year is eligible for claiming deduction under Section 80D?

An Individual who is a non-resident,shall be eligible for deduction under Section 80D if he is total income is subjected to tax in India.

5. What are the kind of amounts that are allowed as deduction under Section 80D?

Section 80D allows the following amounts as deduction:

Assessee	Type	Covered	Covers
Individual	Insurance Premium	premium paid towards health insurance	Assessee or his family
		contribution made to Central Government Health Scheme	Assessee or his family
		any other scheme notified by Central Government	
	Preventive Health Check	payment made on account of preventive health check-up	Assessee or his family
	Insurance Premium	premium paid towards health insurance	Parent or Parents
	Preventive Health Check	payment made on account of preventive health check-up	Parent or Parents
	Medical Expenditure	Amount paid on account of medical expenditure on health*	Assessee or member of his family
	Medical Expenditure	Amount paid on account of medical expenditure on health*	Any Parent of Assessee
HUF	Insurance Premium	premium paid towards health insurance	Any member of HUF
	Medical Expenditure	Amount paid on account of medical expenditure on health*	Any member of HUF

* medical expenditure is allowed in case of senior citizen only if there is no amount of premium paid in respect of insurance onsaidsenior citizen

6. What are the maximum amounts that are allowed as deductions under Section 80D?

Section 80D restricts the claim of deduction of the above expenditure. The restrictions are both internal and external. That is to say, the insurance premium, preventive health check and medical expenditure is restricted to a maximum internal limit and all put together are again restricted to another maximum external limit. The below provides a quick reference of the maximum amounts that are allowed as deductions under Section 80D:

Assessee	Type	Covers	Internal Limit	Maximum Deduction
Individual	Insurance Premium	Assessee & Family	INR 25,000	INR 50,000^
	Preventive Health Check$		INR 50,000*	
	Medical Expenditure	Assessee & Family	INR 50,000	
	Insurance Premium	Parents	INR 25,000	INR 50,000^
	Preventive Health Check$		INR 50,000*	
	Medical Expenditure	Parents	INR 50,000	

Assessee	Type	Covers	Internal Limit	Maximum Deduction
Individual (Parents - Senior Citizens)	Insurance Premium	Assessee & Family	INR 25,000	INR 75,000^
	Preventive Health Check$		INR 50,000*	
	Medical Expenditure	Assessee & Family	INR 50,000	

* In case if assessee or any family member or parents are senior citizen, then instead of INR 25,000, the internal deduction is allowable to the extent of INR 50,000.

^ Even though the internal deduction is enhanced from INR 25,000 to INR 50,000 in case of senior citizens, there will be no change in maximum deduction.

$ Deduction in case of preventive health check-up is restricted only to the extent of INR 5,000.

Assessee	Type	Covers	Internal Limit	Maximum Deduction
HUF	Insurance Premium	Any member of HUF	INR 25,000 INR 50,000*	INR 50,000^
	Medical Expenditure		INR 50,000	

* In case if any member of HUF is a senior citizen, then instead of INR 25,000, the internal deduction is allowable to the extent of INR 50,000.

^ Even though the internal deduction is enhanced from INR 25,000 to INR 50,000 in case of senior citizens, there will be no change in maximum deduction.

7. I am employed in a software company which provides health insurance to all the employees. The premium on said health insurance is paid by the company and not recovered from my salary, however shown in the CTC/Pay-Slip. Can I claim the said premium as deduction of under Section 80D?

Section 80D allows premium paid as deduction in computation of total income. In the facts of your case, since there is no deduction from your salary, the said premium cannot be said as to be paid by you. In absence of any payment directly or indirectly, you will not be eligible for deduction under Section 80D while computing your tax liability.

8. I am employed in a software company which provides health insurance to all the employees. The premium on said health insurance is recovered from my salary and shown in the Pay-Slip. Can I claim the said premium as deduction under Section 80D?

Yes. Section 80D allows deduction if the premium is paid in the modes specified in Section 80D(2B). One of the specified modes is cash. The other being any other mode which is not falling in the first specified mode. Since the premium is recovered from your salary, it constitutes payment by you and accordingly a deduction under Section 80D can be claimed subject to the maximum amounts that are allowable as deductions.

9. I am employed in a software company which provides health insurance to all the employees. The premium on said health insurance is paid by the company and not recovered from my salary, however shown in the CTC/Pay-Slip. The company also allows to pay premium to cover my parents under the same policy, subject to payment of premium by myself. Can I claim the said premium paid for my parents as deduction of under Section 80D?

Yes, Section 80D allows deduction of insurance premium paid on insurance to keepthe health of parents also. Since the premium is recovered from your salary, it would be deemed to be paid for the purposes of Section 80D and accordingly deduction can be claimed subject to the maximum amounts that are allowable as deductions.

10. I am a software employee aged 45 years. I have a wife (aged 44 years) and one dependent child. During the financial year, I have paid a health insurance premium of INR 50,000. I have not paid any other premiums during the year. What is the amount that can be claimed as deduction under Section 80D?

As stated earlier as response to other FAQs, there are internal and external deductions under Section 80D. Since you and your wife do not qualify as 'senior citizen', the maximum deduction that would be eligible under Section 80D is INR 25,000. The extra premium paid amounting to INR 25,000 would not be eligible for deduction even though the maximum deduction allowed under Section 80D for health insurance premium is INR 50,000/- because of the internal limits.

11. Continuing with the above FAQ # 9, all facts being same except I am age of 62 years. What is the amount that can be claimed as deduction under Section 80D?

Since you age is greater than 60 years, you will be considered as senior citizen for the purposes of Section 80D and the deduction towards health insurance premium will be allowed to the extent of INR 50,000 instead of general deduction of INR 25,000. Accordingly, the deduction under Section 80D will be an amount of premium paid that is INR 50,000, since this also within the maximum amount allowable as deduction.

12. Continuing with the above FAQ # 10, all facts being same except I have incurred a medical expenditure on my wife during the financial year amounting to INR 50,000. What is the amount that can be claimed as deduction under Section 80D, if my wife is senior citizen or if my wife is not a senior citizen?

As stated earlier as response to other FAQs, Section 80D allows deduction of amounts paid not only towards health insurance but also for medical expenditure. The deduction allowable for medical expenditure in case of assesse or his family member is INR 50,000. Further, the section allows such deduction in case of senior citizen only if such senior citizen does not have an insurance cover.

Deduction – If your wife is not a senior citizen:

Since you are wife is not a senior citizen, you will be allowed deduction of medical expenditure, even if there is an insurance cover on her health. As far as the quantum of deduction is concerned, you have spent INR 50,000 as premium towards health insurance and INR 50,000 for medical expenditure totalling to INR 1,00,000. Since Section 80D allows a maximum of INR 50,000 as deduction for health insurance premium and medical expenditure, the maximum deduction that is allowable under Section 80D is restricted to INR 50,000 despite of the fact that INR 1,00,000 is spent.

Deduction – If your wife is a senior citizen:

Since your wife is a senior citizen, as per the provisions of Section 80D, the medical expenditure would not be allowed as deduction, because she is having an insurance cover for her health. In case, if you do not have any medical insurance in effect for her, then the deduction can be allowed up to INR 50,000 subject to a condition that there are no other insurance premiums payable.

13. I am a software employee aged 45 years. I have a wife (aged 44 years) and one dependent child. During the financial year, I have paid a health insurance premium of INR 15,000. Apart from the said premium, I have also paid INR 50,000 towards health insurance premium for my senior citizen parents. What is the amount that can be claimed as deduction under Section 80D? What would be the response if the premium paid towards my parents policy is INR 75,000 instead of INR 50,000.

Section 80D allows deduction of premium paid towards health insurance of assessee and his parents. The maximum deduction for assessee or his family health insurance and health insurance of parents is different.

If premium paid for senior citizen parents - INR 50,000:

Accordingly, since you and your wife are not senior citizens and the internal deduction and maximum deduction being INR 25,000 and INR 50,000, the health insurance premium INR 15,000 is completely allowed. Since your parents are senior citizens and the internal deduction being INR 50,000 and maximum deduction being INR 50,000, the premium paid to the tune of INR 50,000 gets completely deductible. Hence, the total deduction available is INR 65,000.

If premium paid for senior citizen parents - INR 75,000:

Since the internal deduction and maximum deduction allowable is INR 50,000, the maximum deduction that is allowable under Section 80D continues to be INR 65,000 despite the fact that INR 90,000 is being spent.

14. Continuing with FAQ # 12, all facts being same except that I have paid premium of INR 50,000 towards health insurance which covers my father in law and mother in law. What is the deduction that is allowable under Section 80D?

Section 80D allows deduction of health insurance premium paid towards his family or parents. The said section does not cover spouse's parents. Hence, health insurance premium paid covering father-in-law and mother-in-law would not be eligible for deduction under Section 80D. However, if spouse is also earning taxable income, then the premium paid towards her parents can be claimed as deduction under Section 80D subject to all other conditions.

15. During the financial year, I have spent INR 15,000 towards preventive health check-up. Also, I have taken an insurance policy by paying a premium of INR 35,000. What is the deduction allowed under Section 80D?

Section 80D covers also the expenditure incurred for preventive health check-up, subject to a maximum internal cap of INR 5,000 and maximum deduction of INR 50,000. Since the amount spent on preventive health check-up is INR 15,000, an amount in excess of INR 10,000 shall be ignored and INR 5,000 will be taken for the purposes of deduction under Section 80D. In the same way, since the internal deduction for health insurance premium and preventive health check-up is INR 25,000, the balance INR 10,000 would not be taken for the purposes of testing with the maximum deduction of INR 50,000. Hence, maximum deduction allowable under Section 80D is INR 5,000 towards preventive health check-up and INR 20,000 towards health insurance premium totalling

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