

**GUIDELINES FOR
APPROVAL OF R&D COMPANIES UNDER SECTION 80-IB (8A)
OF THE INCOME-TAX ACT, 1961
(March 2001)**

1. In order to provide incentive for research and development, the Finance Act, 2000 inserted a provision under sub-section 8A after sub section (8) of Section 80-IB of the Income Tax Act, 1961 for companies carrying out scientific research and development activities. The relevant portions of the provision of the section 80-IB and the sub-section (8A) reads as follows :

Deduction In respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings.

** 80-IB. (1) Where the gross total income of an assessee includes any profits and gains derived from any business referred to in sub-sections (3) to (11)*

(such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to such percentage and for such number of assessment years as specified in this section.

(2) This section applies to any industrial undertaking which fulfils all the following conditions, namely :-

- (i) it is not formed by splitting up, or the reconstruction, of a business already in existence:*

Provided that this condition shall not apply in respect of an industrial undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;

- (ii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose;*
- (iii) it manufactures or produces any article or thing not being any article or thing specified in the list in the Eleventh Schedule, or operates one or more cold storage plant or plants, in any part of India :*

** Section 80-IA and 80-IB were substituted for section 80-IA by the Finance Act, 1999. w.e.f. 1.4.2000.*

Note : The relevant portions of the Income-tax Act 1961 and the Income-tax Rules, 1962, pertaining to approval of R&D companies have been reproduced in these guidelines for the sake of convenience of the applicants. The reproduced portions should not however taken to be the official text of the Act and the Rules. In event of any discrepancy between the text reproduced in the guidelines and the official text of the IT Act and IT Rules as notified in the Gazette of India, the text as bought out in the Gazette should be treated as correct and authentic.

Provided that the condition in this clause shall, in relation to a small scale industrial undertaking or an industrial undertaking referred to in sub-section (4) shall apply as if the words "not being any article or thing specified in the list in the Eleventh Schedule" had been omitted.

Explanation 1.-For the purposes of clause (ii), any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled, namely :-

- (a) such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India;*
- (b) such machinery or plant is imported into India from any country outside India; and*
- (c) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee.*

Explanation 2.-Where in the case of an industrial undertaking, any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the machinery or plant used in the business, then, for the purposes of clause (ii) of this sub-section, the condition specified therein shall be deemed to have been complied with;

- (iv) in a case where the industrial undertaking manufactures or produces articles or things, the undertaking employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power.*

80-IB (8A). *The amount of deduction in the case of any company carrying on scientific research and developments shall be hundred per cent of the profits and gains of such business for a period of ten consecutive assessment years, beginning from the **initial assessment year**, if such company:-*

- i. is registered in India;*
- ii. has its main object the scientific and industrial research and development;*
- iii. is for the time being approved by the prescribed authority at any time after the 31st day of March, 2000 but before the 1st day of April 2003;*
- iv. fulfils such other conditions as may be prescribed;*

For the purposes of this provision "initial assessment year" means the assessment year relevant to the previous year in which the company is approved by the prescribed authority

2. Secretary, DSIR, Ministry of Science & Technology has been designated as the prescribed authority as per notification. No.S.O.85 (E) dated 31st January 2001. The notification reads as follows :

S.O.85(E) – In exercise of the powers conferred by section 295, read with sub-section (8A) of section 80-IB, of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. (1) These rules may be called the Income-tax (1st Amendment) Rules, 2001.
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Income-tax Rules, 1962, in Part IV, after rule 18C, the following rule shall be inserted, namely:-

“18 D. Prescribed authority for approval of companies carrying on scientific research and development: -

- (1) For the purpose of sub-section 8(A) of section 80-IB the prescribed authority shall be the Secretary, Department of Scientific and Industrial Research, Ministry of Science & Technology, Government of India.
- (2) The prescribed authority shall initially grant approval to a company carrying on scientific research and development for a period of three assessment years and subject to satisfactory performance of that company on periodic review extend the said approval for a further period of three assessment years so that the total period of approval is for ten consecutive assessment years, beginning from the initial assessment year.

18DA. Prescribed conditions for deduction under sub-section (8A) of section 80-IB:-

- (1) Any company carrying on scientific research and development shall be eligible for deduction specified in sub-section (8A) of section 80-IB, if such company -
 - (a) is registered in India;
 - (b) has its **main object** the scientific and industrial research and development;
 - (c) has adequate infrastructure such as laboratory facilities, qualified manpower, scale-up facilities and prototype development for undertaking scientific research and development of its own;
 - (d) has a well formulated research and development programme comprising of time bound research and development projects with proper mechanism for selection and review of the projects or programme;
 - (e) is engaged **exclusively** in scientific research and development activities leading to technology development, improvement of technology and transfer of technology developed by themselves;

- (f) *submits the annual return along with statement of accounts and annual report within eight months after the close of each accounting year to the prescribed authority.*
- (2) *Every company which is approved under sub-rule (2) of rule 18D shall-*
 - (a) *sell any prototype or output, if any, from its laboratories or pilot plants with the prior permission of the prescribed authority;*
 - (b) *intimate the change, if any, in its memorandum of association and articles of association relating to its main objects and forward the altered copy of memorandum of association and articles of association to the prescribed authority;*
 - (c) *apply for extension of the approval at least three months before expiry of the approval already granted by the prescribed authority;*
 - (d) *have a system of monitoring the cost of research and development projects.*
- (3) *If, at any stage, it is found that-*
 - (a) *the approval granted to the company referred to in sub-rule (2) of rule 18D is to avoid payment of taxes by its group companies or companies related to its directors or majority of its shareholders;*
 - (b) *any provision of the Act or the rules have been violated, the prescribed authority specified may withdraw the approval so granted.*
- (4) *Every company referred to in sub-rule (1) shall make an application to the prescribed authority for the purpose of obtaining approval.*
- (5) *Every application referred to in sub-rule (4) shall be accompanied by -*
 - (a) *Memorandum of association and articles of association incorporating all amendments duly certified by the company secretary or managing director of the company;*
 - (b) *annual report of the company for the last three years, if available;*
 - (c) *photocopies of the memorandum of understanding relating to all ongoing and future sponsored research projects or programmes.*
- (6) *The prescribed authority may call for any information or document which may be necessary for consideration of the grant of approval under sub-rule (2) of rule 18D.*
- (7) *The prescribed authority shall grant approval within four months from the date of receipt of the application.*

Provided that where the approval is not granted, the decision of the said authority shall be communicated to the applicant within the said period of four months.

Provided further that no approval shall be refused unless the applicant has been given an opportunity of being heard”.

3. Companies which comply with the provisions of section 80-IB(8A) read along with general provisions of section 80-IB of the IT Act, 1961 and provisions of the Rules 18D and 18DA of the IT Rules, 1962; and which are initially approved by the prescribed authority under the IT Act (section 80-IA/IB) after the 31st day of March, 2000 but before 1st day of April, 2003; and whose initial approval is renewed from time to time by the prescribed authority shall be eligible for benefit under said section. Companies desirous of seeking approval of the prescribed authority for the purpose of availing the benefit may send application to Head RDI, DSIR, Ministry of Science & Technology, Technology Bhawan, New Mehrauli Road, New Delhi-16 (in 3 sets) as per the format enclosed at Annexure-I.

4. The approval of the prescribed authority shall be granted initially for a period up to 3 years provided all the conditions set out in the Income Tax Act / Rules are fulfilled.

5. The companies desirous of seeking approval for a further period shall make application to the Head(RDI), DSIR, Ministry of Science & Technology, Technology Bhawan, New Mehrauli Road, New Delhi-16 (in 3 sets) as per the format enclosed at Annexure-I) three months prior to the expiry of approval date.

6. The companies approved by the prescribed authority under sub section 8A of section 80-IB of IT Act, 1961 shall submit annual returns giving details of projects completed during the year, in progress and planned (as per Annexure-I) along with statement of accounts and annual report within eight months after the close of each accounting year to the Head RDI, DSIR, Ministry of Science & Technology, Technology Bhawan, New Mehrauli Road, New Delhi-16. In the year, the company applies for extension of approval of the prescribed authority, the annual return need not to be sent.

