

NOTIFIED JURISDICTIONAL AREA (NJA)

SECTION 94A: SPECIAL MEASURES IN RESPECT OF TRANSACTIONS WITH PERSONS LOCATED IN NOTIFIED JURISDICTIONAL AREA

1. Pre-conditions for applicability

The Section is applicable only if the following pre-conditions are fulfilled:

- a) There is a **country or territory outside India with whom India does not have effective exchange of information on taxation matters.**
- b) Such country/area is specified by notification in the Official Gazette as a Notified Jurisdictional Area (NJA), having regard to the lack of effective exchange of information with such country or territory.
- c) An **assessee enters in to a transaction where one of the parties to the transaction is a person located in an NJA.**

2. "Person located in a notified jurisdictional area" shall include,—

- a) a person who is resident of the NJA;
- b) a person, not being an individual, which is established in the NJA; or
- c) a permanent establishment of a person not falling in clause (a) or clause (b), in the NJA;

3. Consequences

If the aforesaid pre-conditions are fulfilled:

- a) **All the parties to the transaction shall be deemed to be associated enterprises** within the meaning of section 92A.
- b) **The transaction shall be deemed to be an international transaction** within the meaning of section 92B.
- c) The provisions of **transfer pricing** [except the condition of relaxation of variation of 1% or 3%], shall **apply** to such transaction and accordingly, the income or expenditure, as the case may be, shall be computed having regards to the Arm's Length Price.
- d) **Deduction of Interest: Any payment made to any financial institution** located in an NJA shall be allowed as a deduction only if the assessee furnishes an **authorization**, in the prescribed form, authorising the CBDT or any other income – tax authority acting on its behalf, **to seek relevant information from the said financial institution.** Also such interest should be allowed on the basis of Arm's Length Price.

e) **Deduction of Expenses and Depreciation:** No deduction in respect of any other expenditure or allowance (including depreciation) arising from the transaction with a person located in an NJA shall be allowed unless the assessee maintains such other documents and furnishes the information as may be prescribed. The deduction shall be allowed on the basis of Arm's Length Price.

f) **Income and Capital Receipts:** If the assessee has received or credited any sum from any person located in an NJA, and the assessee does not offer any explanation about the source of such receipt/ credit or the explanation offered by him is not satisfactory, in the opinion of the Assessing Officer, **then such sum shall be deemed to be the income of the assessee for that previous year.**

To illustrate, if an assessee receives share capital of ₹ 100 million from 'X' a person located in a notified jurisdictional area, then the assessee has to give an explanation about the source of the said sum of ₹ 100 million in the hands of 'X'. Further if 'Y' and not 'X' is the beneficial owner, then the assessee has to give an explanation about the source of the said sum of ₹ 100 million in the hands of 'Y'.

g) **TDS:** Section 94A(5) provides that any payment made to a person located in the NJA shall be liable to deduction of tax at the **higher of –**

- i. **the rate or rates in force; or**
- ii. **the rates specified in the relevant provisions of the Act; or**
- iii. **30%**

However, it may be noted that the recipient would be entitled to offer such income to tax at a lower rate. **To illustrate,** although a payment of royalty or fees for technical services to a person located in NJA (with whom India does not have a DTAA) will be subject to TDS at the aforesaid rates, the recipient will be liable to tax under section 115A @ 10%.

Example: Payment of royalty to foreign company in NJA. The TDS rate shall be 40% as per section 195. However this royalty shall be taxed in the hands of foreign company @ 10% under section 115A. The foreign company has to file return of income in India to claim the refund of 30%.