July 2022

Salary Income

Certain Tax and Legal Aspects

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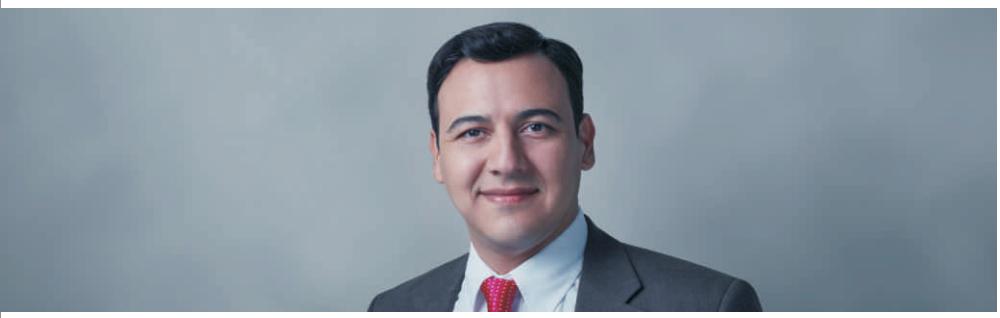

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Chapter 1: Introduction

1.1 Background

India is now the 3rd largest economy in the world in terms of Gross Domestic Product (GDP) based on Purchasing Power Parity (PPP) method which stood at US$ 10.22 trillion (The World Bank - 2021). The economy is expected to grow at an average annual growth rate of 7% by 2025[1], making it one of the world's fastest growing major economy in the world.

The phenomenal growth of the Indian economy has resulted in a large number of salaried income tax filers. In India, we are estimated to have 8.50 crore tax-filers and the salaried employees and managerial personnel constitute the largest segment out of the same. Some of the reasons for the increase in the salaried income tax-filers are:

- Overall economic growth has resulted in emergence of large mid-income and highly paid executives. The services sector has contributed significantly particularly the information technology sector, back offices, digital businesses and the BFSI (Banking, Financial Services and Insurance).

- In recent times, there has been a major push towards the manufacturing sector and start-ups. The concessional tax rate for new manufacturing companies of 15% and Performance Linked Incentive schemes (PLI schemes) have resulted in large new investments. India is also known as home to over 100 Unicorns and several Soonicorns which are flush with funds and on a hiring spree.

- Sustained increase in salaries – The average increase in salaries over the past 5 years is 7% to 8% per annum. On the other hand, there is no increase in the basic exemption limit for tax purposes resulting in higher tax filers.

1.2 Salary Income – Incidence & Optimization Opportunities

The tax rates for individuals in India have gone up in recent times with the increase in surcharge and the effective personal tax rates now range from 0% to 42.7%. While the corporate tax rates have gone down, the personal tax rates have increased. On the other hand, there are certain avenues available to the salaried employees to optimize their tax outgo. As a result, this publication has not only wide applicability due to large number of salaries tax filers but also the need for understanding of the avenues available to optimize the tax outgo.

The optimization opportunities which have been discussed in this research publication can broadly be summarized under the following categories:

i. Opting for Proper Tax Regime

We have the old tax regime and the new tax regime and the taxpayer has the option to select each year the regime he wishes to opt for. It is important to note that in case the tax-filer opts for the new regime which provides for lower tax rates particularly for employees having taxable income below Rs.15 lakhs (1.5 million) per annum, he may not be eligible for several deductions/exemptions. As a result, it is necessary to make the computation under both the regimes and then decide the regime to be opted for.

[1] IMF (https://www.imf.org/external/datamapper/NGDP_RPCH@WEO/IND?zoom=IND&highlight=IND)

ii. Tax exemptions and deductions

Tax exemptions and deductions are available for various specified allowances and perquisites. Incorporating such allowances and perquisites into the salary structure can result into increase in net take-home pay of the employee without increasing the Cost to the Company (CTC). These include exemptions for house rent allowance, gratuity, leave encashment and employer's contribution to the provident fund and superannuation fund. The eligible deductions include section 16 (standard deduction), section 24 (interest on housing loans), section 80C (investments in eligible avenues), 80CCB, 80D (Mediclaim), 80G (donation to registered charities), 80GG (housing rent) and 80TTA (interest on bank and certain other deposits) of the Income-tax Act, 1961 ("the Act"). It is important to carefully review the entire list of exemptions and deductions to explore opportunities for tax optimization.

iii. Valuation of Perquisites

The perquisites are valued in accordance with the specified rules or based on the market value of the same. The rules provide for valuation of certain perquisites in a manner which may result in concessional tax treatment. These include employee stock options, rent free accommodation, car facility, etc.

iv. Remuneration to foreign nationals

Due to increasing globalization, many companies in India are recruiting foreign nationals. This has given rise to need for understanding various tax and foreign exchange regulations for designing remuneration of such foreign nationals, especially laws relating to remittance of funds, Double tax avoidance treaties between India and country of residence of the foreign nationals etc.

v. Flexibility

Designing of salary structure should provide flexibility to both the employer and the employee. The need for flexibility arises because of varied working conditions / timings, functional areas, working places and employee requirements etc. Some of the allowances which can provide such flexibility, for the above discussed factors, are –

- **Working conditions / timings –** Night shift allowance, hardship allowance, special allowance for working in hazardous work conditions etc.
- **Functional responsibilities –** Conveyance allowance / reimbursement of petrol to sales employees, reimbursement of professional membership fees to professionals, entertainment allowance to marketing employees etc.
- **Working places -** City compensatory allowance, free travel allowance to family members, hardship allowance for postings in remote areas etc.
- **Employee requirements -** House rent allowance for employees staying in rented houses, children education allowance, hostel allowance, scholarships etc.

vi. Compliance with the legal requirements

Salary structure should take into account the legal requirements as to payment of certain mandatory benefits like provident fund and gratuity, work timings and work conditions specified under Shop and Establishments Acts, Factories Act etc. and various tax requirements like Tax Deduction at Source (TDS).

vii. Optimizing the Cost to Company (CTC)

Designing of salary structure should ensure optimization of CTC, by considering cost to the company (CTC) or the employer. This would result in a win-win situation for both.

viii. Administrative efficiency

An effective salary structure should also keep in view the administrative complexities and compliance costs.

1.3 Scope and limitations

In this research publication compiled by us, we intend to offer a broad outline of various tax regulations currently prevailing and relating to income from salaries under the Income-tax Act, 1961. The present edition incorporates further amendments made up to the Finance Act, 2022.

This booklet is not an offer, invitation or solicitation of any kind and it does not purport to be comprehensive, or to render legal, economic, commercial, or financial advice. This booklet should not be relied upon for taking actions or decisions without appropriate professional advice as the facts of each case have to be studied and the legal position analyzed properly before taking any action or decision in the matter. We do not claim that this booklet is a comprehensive guide. Accordingly, we advise the readers against making decisions without consulting their tax and financial advisors. We hope that this publication will prove to be very useful for the readers.

While all reasonable care has been taken in preparation of this booklet, we accept no responsibility or liability for any errors it may contain or for any omissions or otherwise or for any loss, howsoever caused or sustained, by the person who relies on it.

Chapter 2: Basics of Indian Tax Law

2.1 Introduction

The Indian tax system can broadly be divided into two categories, Direct Taxes and Indirect Taxes. The main components of Direct Taxes include Income Tax whereas Indirect Taxes comprise of Goods and Service Tax, Value Added Tax, Customs Duty and other State managed taxes.

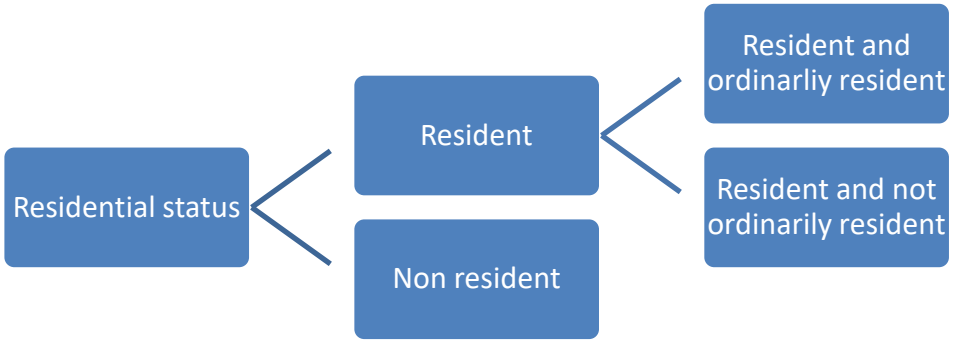
In this booklet, we have made an attempt to cover certain provisions of the Direct Tax law and other important statues that are applicable to employees.

2.2 Taxability in India

In India the taxability of an individual is dependent on his/her residential status. The residential status is determined based on physical presence of the individual in India during the relevant financial year.

The residential status of an individual for tax purposes is crucial for determination of the taxable income. In India, an individual is treated as either "Resident" or "Non-resident" ('NRs') for tax purposes. Residents are further classified into "Resident and Ordinary Resident" ('ROR')" or "Resident but Not Ordinarily Resident in India" ('RNOR').

Thus, an individual can be classified in any of the three groups - Resident and Ordinary Resident (ROR), Resident but Not Ordinary Resident (RNOR) and Non-resident (NR). The conditions determining the residential status can be understood with the help of following diagrammatic depiction.



Generally speaking, RORs are subject to tax on their worldwide income whereas NRs and RNORs are subjected to tax on income which accrues or arises in India or is received in India. The residential status is determined for each tax year which is the financial year starting from 1 April – 31 March based on "physical stay" and "citizenship".

2.3 Determination of Residential Status

2.3.1 If an individual satisfies any one of the following **basic conditions**, he is treated as a Resident of India for that financial year:

i. He is in India for a period of 182 days or more in that financial year OR
ii. He is in India for 60 days or more during that financial year and has been in India for 365 days or more during last 4 years.

However, the basic conditions mentioned above are relaxed in case of the following persons:
a) An Indian citizen who leaves India in any year for the purpose of employment or as a member of the crew of Indian Ship
b) An Indian citizen or a person of Indian origin who resides outside India and who comes to India on a visit

With respect to the abovementioned persons, he/she shall be treated as resident in India only if his/her total period of stay in India exceeds 182 days or more in the relevant financial year (i.e. 60 days shall be replaced as 182 days in 2nd basic condition for determining whether a person is resident in India).

2.3.2 The Finance Act, 2020 has made certain amendments in section 6 of the Act. As per the said amendment with effect from 1 April 2020, in case of an Indian citizen or a person of Indian origin, being outside India and comes to India on a visit and whose total Indian taxable income, other than income from foreign sources, exceeds Rs. 1.5 million, then for determining his/her residential status, 182 days limit shall be replaced with 120 days in the second basic condition i.e. under the second basic condition he will be considered as resident if he stays in India during the relevant financial year for 120 days or more and 365 days or more in the preceding 4 financial years.

However, even if such a person (having Indian taxable income exceeding Rs. 1.5 million) stays in India during the relevant financial year for 120 days but less than 182 days, he shall be treated as Resident but Not Ordinarily Resident (RNOR) and his global income will not be subject to tax as discussed in detail below in Para 2.4 below.

2.3.3 Further, the Finance Act, 2020 also inserted a new section 6(1A) i.e. "Deemed Resident" which is applicable from financial year commencing from 1 April 2020. If an Individual being a Citizen of India having total Indian Income (i.e. income other than income from foreign sources) exceeding Rs 1.5 million, shall be deemed to be resident of India in any financial year, if he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature. However, such a person shall be treated as Resident but Not Ordinarily Resident (RNOR) and his global income will not be subject to tax as discussed in Para 2.4 below.

If an individual does not satisfy any of the basic conditions altogether, he will be treated as a non-resident of India (NR) for that financial year.

2.3.4 "Liable to Tax" as defined by Finance Act 2021:

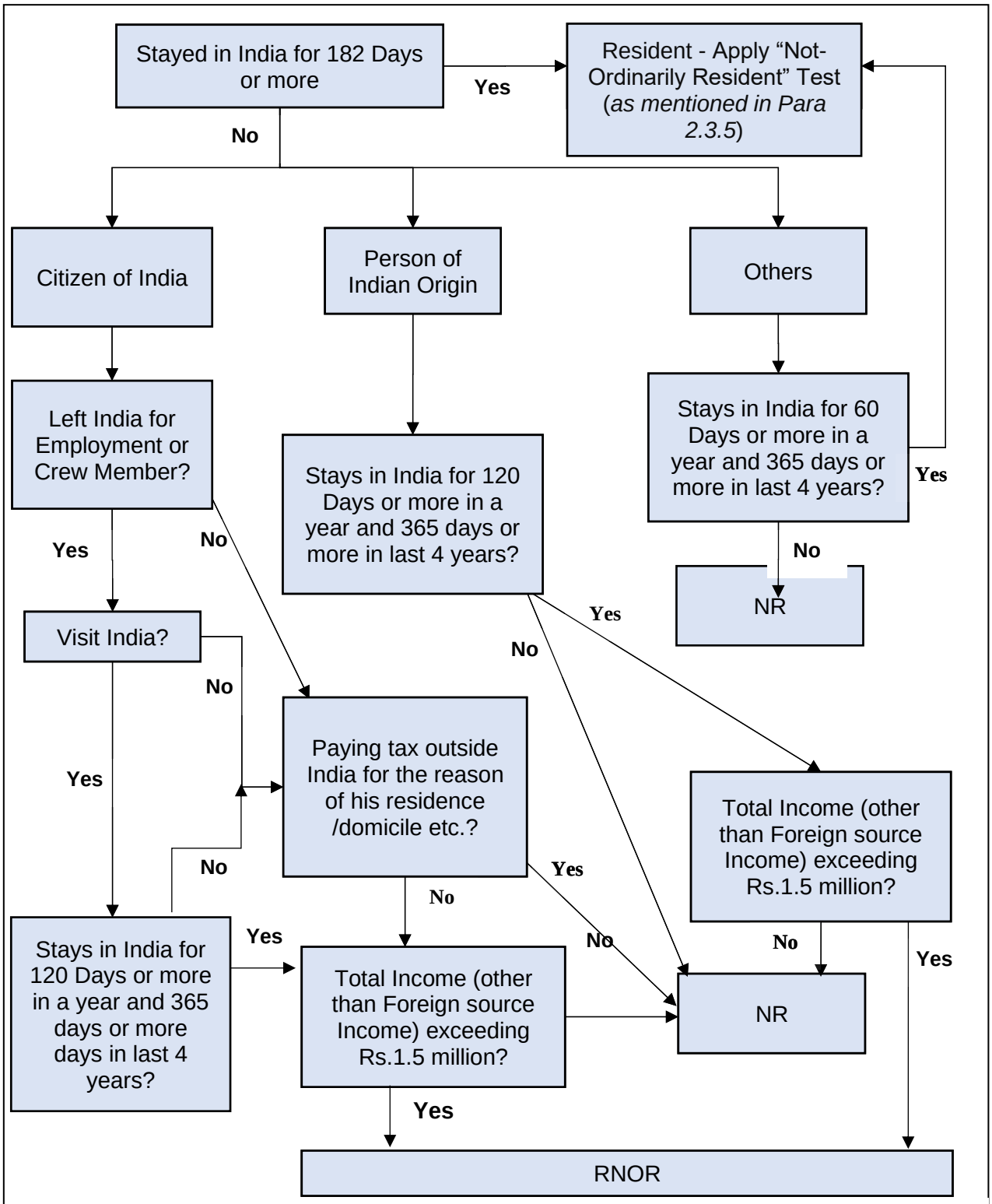
Earlier, the term "liable to tax" was not defined under the IT Act nor in the DTAAs. Now, the Finance Act, 2021 has defined this term "Liable to tax" in relation to a person and with reference to a country, means that there is an income-tax liability on such person under the law of that country for the time being in force and shall include a person who has subsequently been exempted from such liability under the law of that country.

2.3.5 In case an individual satisfies any of the basic conditions and is treated as Resident, it is necessary to determine whether he is a "Resident and Ordinary Resident ('ROR')" or "Resident but Not Ordinarily Resident in India ('RNOR')". For this purpose, he is required to check if he satisfies <u>any one</u> of the additional conditions listed below:

- He has been a non-resident in India in 9 out of last 10 preceding financial years.
- He has been in India for a period of not more than 729 days in 7 preceding financial years.
- An Indian Citizen or a person of Indian origin whose total income (other than income from foreign sources) exceeds Rs. 1.5 million during the financial year and who has been in India for a period of 120 days or more but less than 182 days;
- An Indian Citizen who is deemed to be resident in India as per new Section 6(1A).

If he fulfills any of the above conditions, he will be considered as RNOR. If he fails to satisfy all the above conditions, then he will be treated as ROR.

The below-mentioned Flowchart provides an overview of the determination of Residential status:



The presence of an individual is determined on the basis of entries in the passport. For this purpose, the day on which such person enters India as well as the day on which he leaves India is taken into account as stay in India. It is not necessary that the stay should be for a continuous period.

2.4 Residential Status and Taxability of Income

The following table provides understanding of residential status and applicable scope of taxation in India as per Section 5 of the IT Act:

Sr. No.	Particulars	ROR	RNOR	NR
1	Income received or deemed to be received in India	Taxable	Taxable	Taxable
2	Income accruing or arising or deemed to accrue or arise in India.	Taxable	Taxable	Taxable
3	Income accruing or arising outside India from:			
	- A business controlled in or a profession set up in India	Taxable	Taxable	Not Taxable
	- Other Income	Taxable	Not Taxable	Not Taxable
	Foreign Assets Disclosure Requirements under the IT Act	**Yes**	**No**	**No**

From the above table we can draw the following inferences:

- A resident and ordinary resident is taxable in respect of his global income. Therefore, if an expatriate executive becomes resident and ordinary resident, then he will be taxable in India on his global income.

- Income which is accruing or arising or deemed to accrue or arise in India is also taxable in the hands of all types of assesses, whether it be ROR, RNOR or NR.

- Salary income shall be deemed to accrue or arise in India, if the income is earned in India. In the following cases salary income shall be regarded as earned in India only if the salary is payable for:
  - service rendered in India; and
  - the rest period or leave period which is preceded and succeeded by services rendered in India and forms part of the service contract of employment.

Important Case Law:

In ***CIT vs. Eli Lilly & Co (India) (P) Ltd. [2009] 178 Taxman 505(SC)***, it was held that the home salary paid by the foreign Company in foreign currency abroad shall be "deemed to accrue or arise in India" depending upon the in-depth examination of the facts in each case. If the home salary/special allowance payment made by the foreign company abroad in foreign currency is for rendition of services in India and no work is found to have been performed for foreign company, then such payment would be covered under section 192(1) read with section 9(1)(ii).

2.5 Concept of Previous Year and Assessment Year

In India, the reporting year for any person commences on April 1 and ends on March 31. This year is generally called as financial Year.

The tax year consists of Previous Year (PY) and Assessment Year (AY).

“Previous Year” is the financial year of which income earned is made subject to tax.

"Assessment Year" is the year subsequent to PY with reference to which income of the PY is assessed and subject to tax at prescribed rates".

Example:

The financial year 2022-23 will commence from 1 April 2022 and ends on 31 March 2023. So, the PY will be 2022-23. Assessment Year (AY) for PY 2022-23 will commence from 1 April 2023 and ends on 31 March 2024. So, the AY will be 2023-24.

2.6 Tax Liabilities

An employee earning salary from India shall be liable for income tax in India based on the prescribed tax rates. Salary income is subject to income tax in India if services are rendered in India, irrespective of whether salary is received in India or not.

2.6.1 Tax deducted at source and benefit under the IT Act

As per section 199 of the Income Tax Act, 1961 ('IT Act') any tax withheld and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made and the credit shall be given to him for the amount withheld on the production of the certificate for the assessment year for which such income is assessable.

Chapter 3: Tax Rates and Computation

3.1 Tax Rates

Currently, individuals/HUFs are taxable as per the progressive tax slabs commonly referred to as normal tax provisions and the highest tax slab rate is 30% which is applicable if income exceeds Rs. 10 lakhs.

The Finance Act, 2020 has introduced section 115BAC applicable w.e.f. AY 2021-22 to provide new optional tax regime to individuals/HUFs. The exemption limit in case of optional tax regime is Rs. 2,50,000. It is applicable even in the case of senior citizen and super senior citizen. In other words, under the normal provisions, exemption limit for senior citizen is Rs. 3,00,000 and for super senior citizen it is Rs. 5,00,000. But in case of alternative tax regime, it is Rs. 250,000 for any individual.

The tax rates in the old and new tax regime in case of individuals, HUFs, AOPs and BOIs continue to remain the same. It may be pointed out that individuals/HUFs continue to have the option to avail the new tax regime which has more liberal tax slabs but lesser tax deductions.

3.1.1 Tax Rates Under the Old Tax Regime

The effective tax rates under old regime for FY 2021-22 and for FY 2022-23 (for the purpose of tax deduction at source and advance tax) are as follows:

Income Slabs (Rs.)	Tax Rates
0 - 2,50,000 #	Nil
2,50,001 # – 5,00,000*	Nil - after rebate under section 87A*
5,00,001 – 10,00,000	Rs. 13,000 plus 20.80% [tax rate 20% plus health and education cess 4% thereon] of income exceeding Rs. 5,00,000
10,00,001 – 50,00,000	Rs. 1,17,000 plus 31.20% [tax rate 30% plus health and education cess 4% thereon] of income exceeding Rs. 10,00,000
50,00,001^ – 1,00,00,000	Rs.15,01,500 plus 34.32% [(tax rate 30% plus surcharge 10% thereon) plus health and education cess 4% thereon] of income exceeding Rs. 50,00,000
1,00,00,001^-2,00,00,000	Rs. 33,63,750 plus 35.88% [(tax rate 30% plus surcharge 15% thereon) plus health and education cess 4% thereon] of income exceeding Rs. 1,00,00,000

Income Slabs (Rs.)	Tax Rates
2,00,00,001^-5,00,00,000	Rs.75,56,250 plus 39% [(tax rate 30% plus surcharge 25% thereon) plus health and education cess 4% thereon] of income exceeding Rs. 2,00,00,000
5,00,00,001^ and above	Rs.2,11,04,850 plus 42.744% [(tax rate 30% plus surcharge 37% thereon) plus health and education cess 4% thereon] of income exceeding Rs. 5,00,00,000

Basic exemption income slab in case of a resident individual of the age 60 years or more (senior citizen) and resident individual of the age 80 years or more (very senior citizens) at any time during the financial year, continues to remain the same, at Rs. 3,00,000 and Rs. 5,00,000 respectively.

* The tax rate has been continued at 5.20% [tax rate 5 % plus health and education cess 4% thereon] on the income exceeding Rs. 2,50,000 but not exceeding Rs. 5,00,000. However, a resident individual would continue to entitle to a rebate under section 87A of tax payable [excluding health and education cess] or Rs. 12,500, whichever is lesser, resulting in NIL tax liability upto total income of Rs. 5,00,000.

^ Marginal relief is available to ensure that the additional income tax payable, including surcharge of 10%, 15%, 25% or 37% on the excess of income over Rs. 50,00,000, Rs. 1,00,00,000, Rs. 2,00,00,000 or Rs. 5,00,00,000 as the case may be, is limited to the amount by which the income is more than Rs. 50,00,000, Rs. 1,00,00,000, Rs. 2,00,00,000 or Rs. 5,00,00,000 as the case may be. However, no marginal relief shall be available in respect of the health and education cess.

3.1.2 Tax Rates Under the New Optional (Concessional) Tax Regime

The effective tax rates under optional tax regime i.e. section 115BAC** for FY 2021-22 and for FY 2022-23 (for the purpose of tax deduction at source and advance tax) are as follows-

Income Slabs (Rs.)	Tax Rates
0 - 2,50,000	Nil
2,50,001 – 5,00,000*	Nil - after rebate under section 87A*
5,00,001 – 7,50,000	Rs. 13,000 plus 10.40% [tax rate 10% plus health and education cess 4% thereon] of income exceeding Rs. 5,00,000
7,50,001 – 10,00,000	Rs. 39,000 plus 15.60% [tax rate 15% plus health and education cess 4% thereon] of income exceeding Rs. 7,50,000
10,00,001 – 12,50,000	Rs. 78,000 plus 20.80% [tax rate 20% plus health and education cess 4% thereon] of income exceeding Rs. 10,00,000

Income Slabs (Rs.)	Tax Rates
12,50,001 – 15,00,000	Rs. 1,30,000 plus 26.00% [tax rate 25% plus health and education cess 4% thereon] of income exceeding Rs. 12,50,000
15,00,001 – 50,00,000	Rs. 1,95,000 plus 31.20% [tax rate 30% plus health and education cess 4% thereon] of income exceeding Rs. 15,00,000
50,00,001^ – 1,00,00,000	Rs.14,15,700 plus 34.32% [(tax rate 30% plus surcharge 10% thereon) plus health and education cess 4% thereon] of income exceeding Rs. 50,00,000
1,00,00,001^- 2,00,00,000	Rs. 32,74,050 plus 35.88% [(tax rate 30% plus surcharge 15% thereon) plus health and education cess 4% thereon] of income exceeding Rs. 1,00,00,000
2,00,00,001^- 5,00,00,000	Rs.74,58,750 plus 39% [(tax rate 30% plus surcharge 25%^^ thereon) plus health and education cess 4% thereon] of income exceeding Rs. 2,00,00,000
5,00,00,001^ and above	Rs.2,09,97,990 plus 42.744% [(tax rate 30% plus surcharge 37%^^ thereon) plus health and education cess 4% thereon] of income exceeding Rs.5,00,00,000

* ^ ^^ The tax rate, Marginal relief and Maximum rate of surcharge shall be applicable as mentioned hereinabove in old tax regime.

Some of the Salient Features of the Concessional tax regime are as follows:

- The option shall be exercised for every financial year where the individual or the HUF has no business income and in other cases, the option once exercised shall be valid for that financial year and all subsequent years.

- If an individual or HUF fails to satisfy the conditions mentioned in any financial year, the option to pay tax as per above slab rates shall become invalid in respect of the assessment year relevant to that financial year and other provisions of the IT Act shall apply, as if the option had not been exercised for the assessment year relevant to that financial year.

- The option to opt for alternate tax regime shall be exercised for every financial year where the individual or the HUF has no business income and in other cases, the option once exercised shall be valid for that financial year and all subsequent years.

- The option can be withdrawn only once where it was exercised by the individual or HUF having business income for a financial year other than the year in which it was exercised and thereafter, the individual or HUF shall never be eligible to exercise option under this new tax regime, except where such individual or HUF ceases to have any business income.

- Provisions of Alternative Minimum Tax (AMT) shall not be applicable to individual or HUF exercising such concessional tax rate option.

- An Individual opting for the Concessional tax regime would be required to forego the following exemptions / deductions:

(a) Section 10(13A) – House Rent Allowance
(b) Section 10(5) – Leave travel Concession.
(c) Section 10(14) – Covers special allowance detailed in Rule 2BB (such as children education allowance, hostel allowance, transport allowance, per diem allowance, uniform allowance, etc.).
(d) Section 10(17) – Income by way of Daily allowance / any other allowance received by MP, member of state legislature, etc.
(e) Section 10(32) – Clubbing benefit of Rs. 1,500 per minor child
(f) Section 10AA – Exemption to SEZ unit
(g) Section 16 – Standard Deduction of Rs. 50,000, Entertainment Allow., PT
(h) Section 24(b) – Interest on borrowed loan for a Self-Occupied property (rented property not covered)
(i) Section 32(1)(iia) –Additional depreciation
(j) Section 32AD – Investment Allowance for investment in Andhra Pradesh / Telangana / Bihar / West Bengal
(k) Section 33AB – Tea / Coffee / Rubber Development
(l) Section 33ABA – Site Restoration Fund
(m) Section 35(2AA) – deduction for Payment to National Laboratory or University or IIT
(n) Section 35AD – Deduction in respect of specified business
(o) Section 35CCC - Expenditure on agricultural extension project
(p) Section 57(iia)- Family pension
(q) Any provision of chapter VI – A – section 80C, 80CCD(1B), 80D etc.
(r) Section 80CCD(2) is not covered (where an employer makes a contribution to NPS)

3.2 Tax Incidence (Old Tax Regime vis-à-vis New Tax Regime)

The following table provides a comparison of Income slabs and proposed tax incidence under the old regular tax regime and the optional tax regime:

Annual Income (Rs.)	Tax Liability (Rs.) (including surcharge and education cess)		
	As per existing tax regime*# (Old Tax Regime) (deduction/exemption available, but not considered)	As per optional tax regime i.e. New Tax Regime (No deduction/exemption available)	Benefit as per the optional tax regime
2,50,000	-	-	-
5,00,000	-	-	-
7,50,000	65,000	39,000	26,000
8,00,000	75,400	46,800	28,600
10,00,000	1,17,000	78,000	39,000
12,50,000	1,95,000	1,30,000	65,000
15,00,000	**2,73,000**	**1,95,000**	**78,000**
50,00,000	13,65,000	12,87,000	78,000

75,00,000	23,59,500	22,73,700	85,800
1,00,00,000	32,17,500	31,31,700	85,800
1,50,00,000	51,57,750	50,68,050	89,700
2,00,00,000	69,51,750	68,62,050	89,700
3,50,00,000	1,34,06,250	1,33,08,750	97,500
5,00,00,000	1,92,56,250	1,91,58,750	97,500
5,50,00,000	2,32,42,050	2,31,35,190	1,06,860

∗ The tax incidence for AOPs and BOIs will be same as that of individuals and HUFs.

Basic exemption income slab in case of a resident individual of the age of 60 years or more (senior citizen) and resident individual of the age of 80 years or more (very senior citizens) at any time during the financial year, continues to remain the same at Rs. 3,00,000 and Rs. 5,00,000 respectively.

3.3 Capital Gain Tax Rates

The rates of tax specified in Para 3.1 are applicable in respect of income chargeable under all the heads of income except capital gains to which special rate of tax is applicable. The tax structure for capital gains can be understood from the following table:

Asset Description	Asset Held Duration		Tax Rate	
	Short Term	Long Term	Short Term	Long Term
Immovable Property (such as House Property etc.)	≤ than 2 years	> than 2 years	Slab rate	20% + Indexation
Movable Property (Gold/Jewellery etc.)	≤ than 3 years	> than 3 years	Slab rate	20% + Indexation
Listed Shares/ Equity Oriented MF	≤ than 1 year	> than 1 year	15%	LTCG upto 1 lakh - no tax LTCG more than 1 lakh-10% without indexation
Unlisted Equity Shares (incl. foreign stocks)	≤ than 2 years	> than 2 years	Slab rate	20% + Indexation
Debt Oriented MF	≤ than 3 years	> than 3 years	Slab rate	20% + Indexation

Tax rates mentioned above would be further enhanced by the applicable surcharge and education cess.

3.4 Filing of Income Tax Return

3.4.1 Due Date for Return Filing

An annual income tax return (ITR) is required to be filed by an individual in India by July 31 immediately following the end of the tax year. In case of salaried employees who also have business income (where audit is applicable), extended timeline of 31 October or 30 November may be applicable. If the return of income has not been filed within the due date, a belated return may still be furnished before three months prior to the expiry of the AY or completion of assessment, whichever is earlier. Further, Updated Tax Returns can be furnished within 2 years from the end of the AY, subject to payment of additional tax.

Every Individual taxpayer would be mandatorily required to file tax return in India in electronic form. An exception has been carved out for super senior citizens (more than 80 years) who have the option to file ITR 1 and ITR 4 in physical or paper mode.

3.4.2 Verification of ITR.

ITR filed electronically can be verified with the Income-tax Department in any of the following ways: -

- digitally signing the verification part, or
- authenticating by way of electronic verification code (EVC), or
- Aadhaar OTP, or
- by sending duly signed paper Form ITR-V - Income Tax Return Verification Form by post to CPC at the following address –
  "Centralized Processing Centre, Income Tax Department, Bengaluru— 560500, Karnataka".

3.4.3 Relevant Points for all ITRs which taxpayers should ensure that:

- They are Registered user on the e-Filing portal with valid user ID and password
- The Status of their PAN is active
- They should Link PAN and Aadhaar Card
- They should Pre-validate at least one bank account and nominate it for refund (recommended)
- Their valid mobile number should be linked with Aadhaar / e-Filing portal / bank / NSDL / CDSL (for e-Verification, as the case may be)

3.4.4 Applicability of ITR Forms

There are 4 ITRs (ITR1, ITR2, ITR3 & ITR4) for individual which have been notified and are available on income tax e-filing portal: www.incometax.gov.inwww.incometax.gov.in

ITR-1 (SAHAJ)	ITR-2	ITR-3	ITR-4 (SUGAM)
Eligibility ITR-1 can be filed by a Resident and ordinarily resident (ROR) whose Total Income from any of the following sources up to ₹ 50 lakh: • Income from Salary / Pension • Income from One House Property • Income from Other sources (Interest, Family Pension, etc.)	**Eligibility** ITR-2 can be filed by individuals or HUFs who: • **Not** having Income under the head Profits and Gains of Business or Profession • Who is not eligible for filing ITR -1 For instance, Individual tax payers with total income exceeding Rs. 50 lakhs would be eligible to file ITR-2. • Further, taxpayers not eligible to file ITR -1 such as those being Directors in a company, holding unlisted shares, having any asset or signing authority outside India, having agricultural income in excess of Rs. 5,000 or winnings from lottery, claiming tax relief, etc. would also be required to file ITR -2.	**Eligibility** ITR-3 can be filed by individuals or HUFs who: • Having Income under the head Profits and Gains of Business or Profession • having income in the nature of Interest, Salary, bonus commission or remuneration, by whatever name called, due to, or received by him from partnership firm	**Eligibility** ITR-4 This return is applicable for Resident and ordinarily resident (ROR) having Total Income up to ₹ 50 lakh as follows: • Income from business where such income is computed on presumptive basis under Section 44AD (i.e. Gross Turnover upto Rs. 2 crore) or Section 44AE (income from goods carriage upto ten vehicles) • Income from Profession where such income is computed on presumptive basis under • Income from Salary / Pension • Income from One House Property • Income is from other sources (interest from savings account, deposits, income tax refund, any other interest income)

ITR-1 (SAHAJ)	ITR-2	ITR-3	ITR-4 (SUGAM)
Non-Eligibility **ITR-1 cannot be used by a person who**: • is a Director in a company • has held any unlisted equity shares at any time during the financial year • has any asset (including financial interest in any entity) located outside India • has signing authority in any account located outside India • has income from any source outside India • has withdrawn cash and TDS has been deducted u/s 194N on such withdrawal • has deferred tax on ESOP received from employer being an eligible start-up • who has any brought forward loss or loss to be carried forward under any head of income	**Non-Eligibility** **ITR-2 cannot be filed by any individual** • whose total income for the year includes income from profit and gains from business or profession, and also • who has income in the nature of Interest, Salary, bonus commission or remuneration, by whatever name called, due to, or received by him from partnership firm.	**Non-Eligibility** ITR-3 cannot be used by a person who does not have Income under the head Profits and Gains of Business or Profession	**Non-Eligibility** ITR-4 cannot be used by a person who: • is a Director in a company • has held any unlisted equity shares at any time during the financial year • has any asset (including financial interest in any entity) located outside India • has signing authority in any account located outside India • has income from any source outside India • is a person in whose case payment or deduction of tax has been deferred on ESOP • who has any brought forward loss or loss to be carried forward under any head of income • has Income from Other Sources in the nature of winnings from lottery, activity of owning and maintaining race

ITR-1 (SAHAJ)	ITR-2	ITR-3	ITR-4 (SUGAM)
• has Income from Business and Profession and Capital Gains • has Income from Other Sources in the nature of winnings from lottery, activity of owning and maintaining race horses and special rates under section 115BBDA /115BBE • Agricultural income in excess of ₹5,000 • any claim of credit of tax deducted at source in the hands of any other person • has any claim of relief (unilateral or bilateral) under section 90 and/or section 91			horses and special rates under section 115BBDA /115BBE • Agricultural income in excess of ₹5,000 • any claim of credit of tax deducted at source in the hands of any other person • has any claim of relief (unilateral or bilateral) under section 90 and/or section 91 ITR-4 (Sugam) is not mandatory but required to be filed in case taxpayer opts for Presumptive Taxation.

3.4.5 Major changes in the ITR Forms for FY 2021-22 are listed below:

- A New Schedule has been inserted for reporting of tax deferred on ESOP received from employer being an eligible start up u/s 80-IAC requiring the following details:

  - Amount of tax deferred in ITR filed from earlier Assessment Years;
  - Date of sale of specified securities and amount of tax attributable to such sale;
  - Whether 48 months have expired from the end of the relevant assessment year in which specified security or sweat equity shares were allotted;
  - Date on which he ceased to be an employee of the organisation;
  - Amount of tax payable in current assessment year;
  - Balance amount of tax deferred to be carried forward to next assessment years

- Details of Foreign Assets and Income (Schedule FA) is required to reported for the calendar year basis. Previously, it was on financial year basis. For the AY 2022-23, details of Schedule FA is required to be reported as on 31 December 2021.

- Separate disclosure is required of interest and dividend incomes taxable under Section 115AC of bonds and GDR purchased in foreign currency.

- Furnish details of income from retirement benefit account maintained in foreign countries in accordance with Section 89A of the Act. In this regard, the CBDT has vide Notification No. 25/2022/F. No. 370142/7/2022-TPL dated 4th April 2022 notified Canada, United Kingdom of Great Britain and Northern Ireland and United States of America (USA) to be as notified countries for the purpose of Section 89A. Also, quarter wise retirement benefit break up to be provided for interest calculation under section 234C of the Act.

- Reporting of interest accrued on Provident Fund to which no exemption is available.

- Furnishing of purchase and sale of land/building of the property transfer.

- Country and Zip Code if the property transfer is situated in a foreign country

- In accordance with Rule 11UAE(2) and Rule 11UAE(3), disclosure of FMV of capital assets and consideration received in a slump sale transaction.

- Dividend to be bifurcated under Section 2(22)(e) and other dividend income.

- Disclosure for alternative tax regime opted under Section 115BAC. Form 10IE -date of filing and acknowledgement number and whether Section 115BAC Opting in now, Not opting, Continue to opt, Opt out.

While filing of income tax return, due care should be taken. It is advisable to take professional advice for filing of ITR.

3.5 Due Dates for Payment of Advance Tax

Liability for payment of advance tax arises where the amount of tax payable by the assessee for the relevant year is Rs. 10,000 or more. However, individuals who are 60 years or older, and do not derive any income from business would be exempt from paying advance tax. The due dates for various installments of advance tax are given below:

Due date	Assessee declares income under section 44AD(1) or section 44ADA(1) – Presumptive tax on business income	Other assessees
On or before 15th June of the financial year	-	Upto 15% of the advance tax payable
On or before 15th September of the financial year	-	Upto 45% of the advance tax payable
On or before 15th December of the financial year	-	Upto 75% of the advance tax payable

On or before 15th March of the financial year	Upto 100% of the advance tax payable	Upto 100% of the advance tax payable

Also, any amount paid by way of advance tax on or before 31st March is treated as advance tax paid during the financial year.

3.6 Computation and Payment of Advance Tax

The Advance Tax for the relevant quarter would be computed in the following manner:

I.	Tax Liability	xxx
II.	Less: (i) Tax Deductions including Tax rebate (ii) TDS and TCS Credit (iii) Foreign Tax Credit/ MAT Credit/ AMT Credit (iv) Brought Forward Loss	(xxx)
III.	Advance Tax Liability for the entire year	xxx
IV.	Advance Tax Payable for Quarter (Amount as per III * 15%/ 45%/ 75%/ 100%)	xxx

Payment of Advance Tax

- Payment can be made by way of filling up Challan No./ ITNS 280.
- The payment can be made either online via www.tin-nsdl.com website or in Over the Counter (OTC) mode by way of approaching banks.
- Even after the banking hours for payment through OTC mode is closed, the payment can be made through online transfer. However, it is important to note that such payment needs to be made before 8 pm via online mode in accordance with RBI regulations. As any payment made after 8.00 pm even through online transfer, would be regarded as payment received on the next working day.

3.7 Interest/Late filing fees Calculation

The IT Act provides for charging of interest for non -payment / short payment / deferment in payment of advance tax which is discussed as below:

- **Interest for default in furnishing return of Income u/s 234A:** For late or non-furnishing of return, simple interest @ 1% per month or part thereof on the net tax payable amount is charged from the due date of filing the return to the date of furnishing the return. As per ***CBDT Circular No. 2/2015*** it was held that interest under section 234A of the IT Act on default in furnishing return of income shall be payable only on the amount of tax that has not been deposited before the due date of filing of the income-tax return for the relevant assessment year.

- **Interest for defaults in payment of Advance tax u/s 234B:** Non-payment of advance tax or payment of advance tax less than 90% of the assessed tax will attract simple interest at the rate 1% per month or part thereof. The period for which interest is payable would be from

the first day of April next following such financial year to the date of determination of total income under section 143(1). However, if regular assessment under section 143(3) is completed, then interest is chargeable up to the date of regular assessment. The amount on which interest shall be calculated shall be the amount equal to the assessed tax or on the amount by which the advance tax paid falls short of the assessed tax.

- **Interest for deferment of Advance tax u/s 234C**: In case of individual, the pattern of interest calculation is as under:

  - As aforementioned, the taxpayer is required to pay 15% of the tax due on the returned income for the first quarter. However, if the taxpayer has paid 12% of the tax, then such taxpayer would not be subjected to interest u/s 234C;

  - As aforementioned, the taxpayer is required to pay 45% of the tax due on the returned income for the first quarter. However, if the taxpayer has paid 36% of the tax, then such taxpayer would not be subjected to interest u/s 234C;

  - On or before 15th December is less than 75% of the tax due on the returned income, then the assessee shall be liable to pay simple interest @1% per month on the shortfall for a period of 3 months on the amount of such shortfall (i.e. 3%)

  Where the whole amount of advance tax paid by any assessee on or before 15th March is less than the tax due on the income returned then the assessee shall be liable to pay simple interest @ 1% on the amount of shortfall from the tax due on the returned income.

  It is advisable to pay 100% tax payable before 31 March to avoid interest under section 234C.

  For dividend income, capital gains and casual winnings income interest under Section 234C shall not be applicable to any shortfall in the payment of the tax due on the returned income where such shortfall is on account of under-estimate or failure to estimate dividend and the advance tax payments has been paid in the subsequent advance tax instalments.

- **Fees for default in furnishing return of Income u/s 234F:** Section 234F provides for levy of penalty of Rs. 5,000 in case of the taxpayer assessee filing the return beyond the due date. Only in case of such taxpayers whose total income does not exceed Rs 5 lakhs, such late filing fee would be restricted to Rs 1,000.

Chapter 4: Exempt Allowances and Relief

4.1 Introduction

Allowances to employees is a commonly followed practice in India. Some of the reasons for payment of such allowances are:

- **Tax incidence**
- **Flexibility**
- **Legal requirements**
- **Optimizing CTC**

Some examples of commonly paid allowances are Dearness allowance (DA), House rent allowance (HRA), Leave travel assistance (LTA), City compensatory allowance (CCA), Medical allowance and Conveyance allowance. While some of the allowances are taxable in the hands of the employees, certain specified allowances are eligible for exemption.

The purpose of this chapter is to discuss only those allowances, which are entitled to tax benefit and certain specific tax exemptions relating to salary.

4.2 Leave Travel Allowance

LTA is a reimbursement that the employee can claim in connection with himself and his family proceeding on leave to any place in India. The exemption shall be available to the least of actual expenses incurred or the limit specified in below table:

Sr. No.	Mode of Journey	Ceiling Amount Equivalent To
1.	Air	Economy fare of the national carrier (Indian Airlines or Air India) by the shortest route to the place of destination.
2.	Other than by Air:	
	▪ Rail facility is available	Air-conditioned first class rail fare by the shortest route to the place of destination.
	▪ Rail facility is not available, but	
	- recognized public transport system exists	First class or deluxe class fare on such transport by the shortest route to the place of destination.
	- recognized public transport system does not exists	The air-conditioned first class rail fare, for the distance of the journey by the shortest route, as if the journey has been performed by rail.

- The benefit can be availed for two journeys performed in a block of **4 calendar years** commencing from calendar year 1986 i.e. 1986-1989, 1990-1993 & so on. The block currently running is 2022-2025 i.e. 1 January 2022 to 31 December 2025.

- An employee not availing LTA in a block of calendar years can carry over one journey to the succeeding block & perform the same in the 1st year of such succeeding block. This will not affect the two journeys available for such succeeding block.

Important Case Law:

In ***CIT v. Larsen & Toubro Ltd. [2009] 181 Taxman 71 (SC)***, it was held that assessee-employer is under no statutory obligation to collect evidence to show that its employee(s) has actually utilized amount(s) paid towards leave travel concession(s)/conveyance allowance for purpose of TDS under section 192.

4.3 Leave Encashment

4.3.1 Employees can encash their accumulated leaves if they are entitled, either during the term of employment or on retirement.

4.3.2 Leave Encashment received during the continuance of service is always chargeable to tax as salary in the hands of both Government and Non-Government employees.

4.3.3 In the case of Central / State Government employees, any amount received as cash equivalent of leave salary in respect of period of earned leave at his credit at the time of retirement / superannuation, is exempt from tax.

4.3.4 In case of any other employee the amount paid by his employer at the time of his retirement, whether on superannuation or otherwise, in respect of earned leave to his credit, shall be exempt in accordance with provisions of section 10(10AA) of the Act. The amount of exemption shall be least of the following:

a. [Earned Leave# – Leave Availed] x Average monthly salary**

   (Note: If leave availed is more than earned leave then the entire amount of Leave Encashment shall become taxable), or

b. 10 months' salary**, or

c. Notified amount which is Rs. 3,00,000

d. Leave salary actually received

 # Earned Leave shall not exceed 30 days for each completed year of service.
***For the purpose of this section, salary means average of last ten months salary. Also, Salary for this purpose includes basic salary, dearness allowance and commission based on fixed percentage of turnover secured by employee*

Important Case Law:

In ***CIT v D.P. Malhotra (1997) 142 CTR 325(Bom)) and (CIT v R.J. Shahney (1986) 159 ITR 160 (Mad.)***, it was held that the term "Retirement" includes resignation. What is relevant is retirement: how it took place is immaterial for the purpose of this clause. Therefore, even

on resignation, if an employee gets any amount by way of leave encashment, S.10(10AA) would apply.

4.4 Gratuity

Gratuity, if any, received during the employment is fully taxable in the hands of employees, whether government and non-government. However, employees receiving death-cum-retirement gratuity can be classified in three categories. This segregation includes Government employees, employees covered by the Payment of Gratuity Act, 1972 and other employees. Taxability of gratuity in the hands of these classes of employees can be analyzed as under:

- **Government Employees**: The amount of gratuity received by the employees of Central Government, State Governments, local authorities and members of the Defence services is wholly exempt from tax.

- **Employees covered by the Payment of Gratuity Act, 1972**: The amount of gratuity received shall be exempt to the extent of the least of the following:

  a. 15 days salary* for each completed year of service or part of the year in excess of 6 months, or

  b. Rs. 20,00,000 or

  c. Actual Gratuity received.

  **Salary for the purpose of this clause includes Basic Salary and Dearness Allowance and is calculated by dividing salary last drawn by 26 days i.e. maximum number of working days in a month.*

- **Other Employees not covered under the Gratuity Act**: The amount of gratuity received shall be exempt to the extent of the least of the following:

  a. ½ month's salary***** for each year of completed service, calculated on the basis of the average salary for the last 10 months or

  b. Rs. 20,00,000 or

  c. Actual Gratuity received.

  *******Salary for the purpose of this clause includes Basic Salary, Dearness Allowance (if provided in the terms of employment) and commission as a percentage of turnover achieved by the employee.*

Illustration:

Mr. X, covered by Payment of Gratuity Act 1972, whose monthly salary was Rs. 31,200 retired on 30-5-2021, after putting in a service of 36 years, 9 months, and received a gratuity of Rs. 6,00,000. The exemption is to be computed as follows:

a. Completed years of service (rounded off)	-	37 years
b. 15 days' wages – 15/26 × 31,200	-	Rs. 18,000
c. Amount calculated at 15 days' wages		

d. for 37 years (18,000 × 37)	-	Rs. 6,66,000
e. Gratuity actually received	-	Rs. 6,00,000
f. Maximum limit applicable	-	Rs. 20,00,000
(As specified event occurred after 28-3-2020)		-
g. Exemption allowable (least of c, d & e)	-	Rs. 6,00,000
h. Taxable Gratuity (d – f)	-	NIL

4.5 Pension

4.5.1 Pension can be received in two ways, first is on a monthly basis which we can call it as uncommuted pension and second is grabbing a lump-sum by commuting the pension.

4.5.2 Uncommuted pension is always taxable as salary in the hands of employees, whether government or non-government.

4.5.3 In respect of commuted pension, the taxability aspect can be considered from the following table:

Sr. No.	Government Employees	Other Employees	
		In receipt of gratuity	Not in receipt of gratuity
1.	Any amount of commuted pension received is wholly exempt from tax.	**One third** of the amount of commuted pension which the employee would have received had he commuted the whole of pension shall be eligible for exemption.	**One half** of the amount of commuted pension which the employee would have received had he commuted the whole of pension shall be eligible for exemption.

Pension received by the family members of armed force (where the death of such member has occurred in the course of operational duties) is exempt as per section 10(19) of the IT Act.

4.6 Provident Fund

A specified sum is deducted from the employee's salary as contribution towards the Provident fund. Moreover, the employer also generally contributes the same amount out of his pocket, to the fund. The credit balance in a provident fund account of an employee consists of the following:

- employee's contribution
- interest on employee's contribution
- employer's contribution
- interest on employer's contribution.

The accumulated balance is paid to the employee at the time of his retirement or termination/ resignation. In the case of death of the employee, the same is paid to his legal heirs.

As the provident fund represents an important source of small savings available to the Government, the IT Act provides certain deductions on savings in a provident fund account.

The taxability of Provident Fund is tabulated as below:

Particulars	Recognized PF	Unrecognized PF	Statutory PF	PPF
Employer's Contribution	Taxable as "salary" u/s 17(1) if such contribution exceeds 12% of salary	No taxability at the time of contribution	It is fully exempt.	- (Only the assessee/ employee taxpayer contributes to a PPF
Employee's Contribution	Contribution made by employee is eligible for deduction u/s 80C subject to threshold limit of Rs. 1.5 lakhs	Not eligible for Deduction u/s 80C	Contribution made by employee is eligible for deduction u/s 80C subject to threshold limit of Rs. 1.5 lakhs	Contribution made by employee is eligible for deduction u/s 80C subject to threshold limit of Rs. 1.5 lakhs
Interest credited on Employee's contribution	It is taxable as salary u/s 17(1) to the extent such interest exceeds 9.5% p.a.	No taxability (at the time of credit) Taxable at the time of termination under 'Other Sources'	Upto certain limit of contribution it is exempt	It is fully exempt.
Interest credited on Employer's Contribution	It is taxable as salary u/s 17(1) to the extent such interest exceeds 9.5% p.a.	No taxability (at the time of credit) Taxable as Profit in lieu of Salary u/s 17(3) at the time of termination	Interest is fully exempt	Not Applicable

Note: In case of Recognised, Statutory and Public Provident Fund, the amount withdrawn at the time of retirement/ termination would be exempt u/s 10(11) and 10(12) of the IT Act. However, such exemption would be withdrawn in case of interest income earned on Provident Fund (Recognised and Statutory) on annual contribution in excess of Rs. 2,50,000. Hence any interest earned on PF Contribution on such excess amount of contribution is chargeable to tax and will be taxable under the head 'Income from Other Sources'.

Thus, any interest to the extent it relates to amount of PF contribution exceeding Rs. 2,50,000/- made by employees would be taxable. However, where the employer in not making any contributions to the Provident Fund, the threshold limit of Rs. 2,50,000/- would be enhanced to Rs. 5,00,000/.

Further, the aggregate upper limit of Rs. 7.5 lakhs is applicable in respect of employer's contribution in a year to NPS, superannuation fund and recognized provident fund of the employee and any excess contribution would be taxable. Any contribution in excess of the threshold limit of Rs. 7.5 lakhs would be taxable as perquisite u/s 17(2)(ia) r.w. Rule 3B of the Income Tax Rules ('IT Rules').

4.7 House Rent Allowance

In case of house rent allowance (HRA) paid to an employee by his employer, who is incurring expenditure on payment of rent in respect of residential accommodation and is not the owner of residential accommodation occupied by him, the exemption available would be *the least* of the following:

- The amount of house rent allowance received, or
- 50% of salary* in case of employees residing in the four metro-cities (Mumbai, Delhi, Kolkata, Chennai) and 40% of salary in case of employees residing in other cities, or
- Excess of rent paid over 10% of the salary due for the relevant period.

*****Salary for the purpose of this clause includes Basic Salary, Dearness Allowance (if provided in the terms of employment) and commission as a percentage of turnover achieved by the employee.*

Amount of allowance is fully taxable, if it is received by an employee who is living in his own house or if he does not pay any rent.

Employee shall be required to submit the proof of rent paid through rent receipts to avail benefit of HRA deduction. It is mandatory for employee to report PAN of the landlord to the employer if rent paid is more than Rs. 1,00,000 [***Circular No. 08 /2013 dated 10th October, 2013 and Circular No. 20/2015 dated 2nd December 2015***].
Any individual not in the receipt of HRA but is incurring rent can avail the benefit of deduction as per section 80GG on fulfilment of prescribed conditions therein.

Illustrations:

Mr. X residing in Delhi has received following amount during the financial year:

Basic Salary – Rs. (20,000*12)	–	Rs. 2,40,000/-
Dearness Allowance (DA) – Rs. (10000*12)	–	Rs. 1,20,000/-
House Rent Allowance (HRA) – Rs. (8000*12)	–	Rs. 96,000/-
Actual Rent Paid – Rs. (10,000*12)	–	Rs. 1,20,000/-

Accordingly, least of the following shall be exempt:

Actual HRA received (8000*12)	–	Rs. 96,000/-
Rent Paid in excess of 10% of salary (120,000-36,000)	–	Rs. 84,000
50% of Salary	–	Rs. 180,000/-

Therefore, Rs. 84,000 shall be exempt and the balance Rs. 12,000 shall be included in gross salary.

4.8 Certain Notified Special Allowances or Benefits

An employee is entitled to exemption under section 10(14) of the IT Act in respect of certain specified allowances. These allowances are exempt to the extent of amount spent or as specified below:

Allowances	Exempted Amount
Conveyance Allowance - Any allowance paid by the employer to the employee towards expenditure on conveyance in performance of duties is not chargeable to tax in the hands of the employee.	Least of the following amount shall be exempt: 1. Amount received, or 2. Actual expenditure incurred for performance of duty.
Academic Allowance - Any allowance granted for encouraging academic, research and training pursuits in educational and research institutions	
Travelling Allowance - Any allowance granted to meet the cost of travel on tour or on transfer.	
Daily Allowance - Any allowance, whether granted on tour or for the period of journey in connection with transfer, to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty.	
Helper Allowance - Any allowance to meet the expenditure on a helper where such helper is engaged for the performance of duties of an office.	
Uniform Allowance - Any allowance granted to meet the expenditure incurred on the purchase or maintenance of uniform for wear during the performance of duties of an office.	
Any allowance granted to an employee **working in any transport system** to meet his personal expenditure during his duty performed in the course of running of such transport from one place to another.	The amount of exemption is 70% of such allowance, subject to maximum of Rs. 10,000/- per month.
Children's education allowance paid to employees. The exemption is available for up to a maximum of two children.	Rs. 100 per child per month Maximum benefit is Rs. 2,400 p.a.
Hostel allowance paid by the employer to employees having children studying in hostel. The exemption is available for upto a maximum of two children.	Rs. 300 per child per month Maximum benefit is Rs. 7,200 p.a.
Transport allowance granted to an employee, who is blind [or deaf and dumb] or orthopedically handicapped with disability of lower extremities, to meet his expenditure for the purpose of commuting between the place of his residence and the place of his duty	Rs. 3200 per month
We have tried to brief about allowances which are generally availed by employees. Other allowances which are dependent on the employee's place of performing duty such as high altitude allowance, border and tribal area allowance, underground allowance etc. are also exempt up to specified amounts.	

4.9 Voluntary Retirement

Any compensation at the time of voluntary retirement or termination of service received by an employee from the employer, in accordance with approved scheme, is exempt from tax subject to a maximum of Rs. 500,000 and specified conditions.

4.10 Relief under section 89

The taxability of salary is based on the rule that salary is taxable on due or receipt basis, whichever is earlier. However, it is likely that, an employee may receive salary in arrears or in advance in the current year, such arrears / advance will be taxed in the year in which these

arrears/advance are paid or allowed to the employee. Due to this the taxable income of the employee may increase and the employee would be required to pay tax at higher rate than he would have been, if there were no such arrears or advance salary. In such cases the employee can claim relief under section 89. The employee can also claim relief under this section for leave encashment, gratuity, and pension received in the financial year.

Steps to calculate the relief when salary has been received in arrears or in advance:

1. Calculate the tax payable on the total income, including the additional salary of the relevant financial year in which the same is received. (Receipt basis).

2. Calculate the tax payable on the total income, excluding the additional salary of the relevant financial year in which the same is received. (Receipt basis).

3. Find out the difference in tax between (1) and (2) as calculated above.

4. Compute the tax on the total income after excluding the additional salary in the financial year to which such salary relates. (Accrual basis).

5. Compute the tax on the total income after including the additional salary in the financial year to which such salary relates. (Accrual basis).

6. Find out the difference in tax between (4) and (5) as calculated above.

7. The excess of tax computed at (3) over the tax computed at (6) is the amount of relief admissible u/s 89(1). No relief is however admissible if the tax computed at (3) is less than the tax computed at (6). In such a case the assessee – employee need not apply for relief.

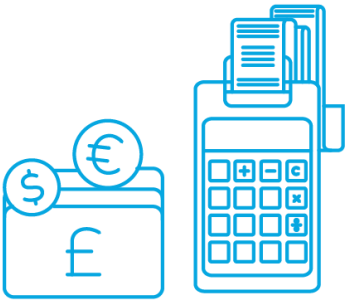
Important Case Law:

In ***K.C. Joshi v Union of India (1987) 163 ITR 597(SC)***, it was held that where arrears of salary are paid under orders of court, the employee would be entitled to relief u/s 89.

Chapter 5: Perquisites

5.1 Statutory Definition

The IT Act gives an inclusive definition of 'perquisites'. It deals with the following perquisites:



i. Value of rent-free accommodation provided to the employee by his employer.

ii. Value of any concession in matter of rent respecting any accommodation provided to the employee by his employer.

iii. Value of any benefit or amenity granted or provided free of cost or at concessional rate to employee-directors and specified employees, with some exceptions.

Following employees are specified employees:

- Director-employee.
- An employee having 20% or more of voting power in employer-company.
- An employee who is drawing salary in excess of Rs. 50,000 and does not fall in above two categories.

For computing the limit of Rs. 50,000 following are excluded / deducted:

a. Non-monetary benefits.
b. Deduction on account of profession tax and entertainment allowance.
c. Non-taxable allowances.

iv. Sums paid by the employer in respect of any obligation which, but for such payment, would have been payable by the employee.

v. Sums payable by the employer to effect an assurance on the life of the employee or to effect a contract for an annuity.

vi. Value of securities / sweat equity shares allotted or transferred by the employer or former employer to the employee.

vii. Contributions made by an employer to an approved superannuation fund, recognized provident fund and pension fund

viii. Value of any other fringe benefit or amenity.

ix. Medical benefits are not treated as perquisite in certain specific situations.

Rule 3 of the Income Tax Rules prescribes the valuation of perquisites for calculation of income tax. In this chapter, various such valuation rules are discussed. In case of certain perquisites, the value of perquisites arrived at shall be reduced by amount, if any, paid or recovered from the employee.

In several cases, the taxable value of the perquisites could be lower than the cost incurred by the employer and hence, may be beneficial from the tax perspective.

5.2 Residential Accommodation

The employer may provide residential accommodation to the employee. The perquisite value of residential accommodation is determined in accordance with the following table for the period during which the accommodation is occupied by the employee.

The table below states perquisites valuation for residential accommodation provided by employer other than the Central Government or any State Government.

Sr. No.	Circumstances	Where accommodation in unfurnished	Where accommodation is furnished
(1)	(2)	(3)	(4)
1.	Where the accommodation is **owned by the employer**	➢ 15% of salary in cities having population > 25 lakhs ➢ 10% of salary in cities having population > 10 lakhs but ≤ 25 lakhs ➢ 7.5% of salary in other areas. (population as per 2001 census)	The value of perquisites as determined under column (3) as increased by: ➢ <u>If Furniture is owned by employer:</u> 10% p.a. of the cost of furniture* or ➢ <u>If such furniture is hired from a third party</u>: Actual hire charges payable for the same (as reduced by the amount recovered from employee, if any)
2	Where the accommodation is taken on **lease or rent by the employer**	Actual amount of lease rental paid by the employer or 15% of salary, whichever is **lower**.	
3.	Where the accommodation is **provided by the employer in a hotel** (except where the employee is provided such accommodation for a period not exceeding in aggregate 15 days on his transfer from one place to another)	Actual amount of hotel rent paid by the employer or 24% of salary paid/payable in respect of period during which the accommodation is provided, whichever is **lower**.	

*Furniture including television sets, radio sets, refrigerators, other household appliances, air conditioning plant or equipment.

Important Case Law:

In ***CIT v B.S. Chauhan 150 ITR 8 (Del)***, a rent free accommodation was provided to the assessee by his employer but he never occupied it. It was held that, unless the employee expressly forgoes his right to occupy it, the perk value would be taxable even though he never occupies it.

5.3 Motor Car Facility

The value of perquisite by way of use of motor car to an employee by an employer shall be determined in accordance with the following:

Sr. No.		Circumstance	Where cubic capacity of the engine of the car	
			Does not exceed 1.6 litres	**Exceeds 1.6 litres**
1		Motor car is owned or hired by the employer and –		
	1.1	used exclusively in the performance of official duties	Nil Value (See Note 1)	Nil Value (See Note 1)
	1.2	used exclusively for personal purposes of the employee or family member and the running and maintenance expenses are met or reimbursed by the employer	Actual amount of expenditure incurred + Driver's remuneration + The amount representing normal wear and tear of the motor car (10% p.a. of actual cost of motor car)	
	1.3	used partly for official and partly for personal purposes and – i. Expenses on maintenance and running are met or reimbursed by employer; ii. Expenses on running and maintenance for private or personal use are fully met by assessee.	i. Rs. 1,800 p.m. (*plus* Rs. 900, if driver is also provided) ii. Rs. 600 p.m. (plus Rs.900, if driver is also provided)	i. Rs. 2,400 p.m. (*plus* Rs. 900, if driver is also provided) ii. Rs. 900 p.m. (*plus* Rs. 900, if driver is also provided)
2		Where employee owns a motor car but actual running and		

		maintenance charges (including remuneration of driver, if any) are met or reimbursed to him by employer and—		
	2.1	Such reimbursement is for use of vehicle exclusively for official purposes	Nil Value (See Note 1)	Nil Value (See Note 1)
	2.2	Such reimbursement is for use of vehicle partly for official purposes and partly for personal purposes of employee or any family member.	Actual amount of expenditure incurred by employer as reduced by amount specified in Sr. No. 1.3 (i) above.	Actual amount of expenditure incurred by employer as reduced by amount specified in Sr. No. 1.3 (i) above.
3		Where employee owns any other automotive conveyance but actual running and maintenance charges are met or reimbursed by employer and -		
	3.1	Such reimbursement is for use of vehicle exclusively for official purposes	Nil Value (See Note 1)	
	3.2	Such reimbursement is for use of vehicle partly for official purposes and partly for personal purposes of employee.	The actual amount of expenditure incurred by the employer as reduced by the amount of Rs. 900.	

Note: The amount of taxable perquisites shall be taken to be Nil only if the following conditions are fulfilled:

- The employer has maintained complete details of journey undertaken for official purpose which may include date of journey, destination, mileage and the amount of expenditure incurred thereon,
- The employer gives a certificate to the effect that the expenditure was incurred wholly and exclusively for the performance of official duties.

5.4 Medical Treatment not a Taxable Perquisite:

The exemptions from tax, in the hands of the employee, for reimbursement of medical expenses are discussed in the table below:

Sr. No.	Exemptions
1.	Expenditure on medical treatment for employee or his family member in a hospital maintained by the employer, or a hospital maintained by the

	Government or a local authority or one approved for medical treatment of Government employees.
2.	Any payment directly by employer (or reimbursement of expenditure to the employee) to a hospital approved by the Chief Commissioner of Income-tax with reference to guidelines prescribed for the purposes of treatment of prescribed diseases or ailments where the employee or family member is undergoing treatment.
3.	Premium paid by the employer under the group medical insurance scheme of employees (including members of their families).
4.	Premium paid by the employer under the mediclaim scheme approved under section 80D.
6..	Medical treatment of the employee or any member of his family outside India shall not be treated as taxable perquisites subject to the following: ➢ The expenditure on medical treatment and stay abroad of the patient and one attendant shall be exempt to the extent approved by Reserve Bank of India ('RBI'). ➢ The expenditure on travel shall be eligible for exemption only in the case of an employee whose Gross Total Income, as computed before including therein the said expenditure, does not exceed two lakh rupees.

5.5 Interest Free Loans / Loans at Concessional Rates of Interest to Employees

The employer usually gives loans to the employees either at NIL rate of interest or at concessional rate of interest. There shall be no perquisite in the hands of the employees, if the total amount of loan made available to the employee or any member of his household or any person on his behalf:

- Does not exceed Rs. 20,000, or
- If the loan is made available for medical treatment in respect of diseases specified in Rule - 3A. However, if the loan made available for medical treatment specified therein has been reimbursed to the employee under any medical insurance scheme, then the exemption so provided shall not apply to the extent of loan reimbursed under any medical insurance scheme.

Where an employer or any person on his behalf gives such loan in excess of Rs.20,000/- to the employee or to any member of his household, the value of perquisite shall be determined as the sum equal to the SBI lending rates as on first day of relevant financial year i.e. 1 April, computed on the maximum outstanding monthly balance.

5.6 Employee Stock Option Plan / Scheme (ESOP / ESOS)

The value of any specified security or sweat equity shares allotted by the employer, free of cost or at concessional rate shall be regarded as taxable perquisites in the hands of employee.

The amount of perquisites subject to tax will be the difference between Fair Market Value (FMV) and the amount actually paid by the employee i.e. exercise price.

When the employee transfers, sale, gift the securities received under ESOP scheme he will be subject to capital gain tax. The cost of acquisition of securities shall be FMV as is considered for determining the value of perquisites. While determining the nature of capital gain i.e. short term or long term, the period of holding from the date of allotment or transfer of such security or shares shall be taken into account. As the capital gains in case of listed shares are taxed at concessional tax rates, this is widely used in case of information technology and back office companies as well as digital businesses and start ups.

Illustration: Mr. X is offered an Employees' Stock Option Plan to acquire the shares of the company at Rs. 100 per share. The current market price of the shares of the company is Rs. 680 per share. In pursuance of the scheme, Mr. X exercised the option and was allotted 100 shares. The market price of the shares on different dates is as follows:

- Market price on the date of declaring the option: Rs. 680 per share.
- Market price on the date of exercise of the option by Mr. X: Rs. 800 per share.
- Market price on the date of allotment of the share by the company: Rs. 820 per share.

The taxable value of perquisite in respect of above shares issued by the company to Mr. X will be computed as follows:

In respect of any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer or former employer, free of cost or at concessional rate to the employee, the fair market value of such shares/securities on the date of exercise of the option, less amount recovered from the employee, will be the taxable value of perquisite in the hands of the employee.

In this case, the value of perquisite in the hands of Mr. X will be computed as follows:

Particulars	Amount (Rs.)
Fair market value of the share on the date of exercise of the option	800
Less: Amount recovered from the employee	100
Taxable value of perquisite (per share)	700
(×) No. of shares issued to Mr. X	100
Taxable value of perquisite	70,000

ACIT vs. Robert Arthur Keltz [2013] [35 taxmann.com 424] (Delhi - Trib.)

Where an assessee being an employee of a foreign company has not rendered service in India for the whole grant period; only such proportion of the ESOP perquisite as is relatable to the service rendered by the assessee-employee in India is taxable in India

5.7 Reimbursement of Credit Card Expenditure

The amount of expenses including membership fees and annual fees incurred by the employee or any member of his household, which is charged to a credit card (including any add-on-card) provided by the employer, or otherwise, paid for or reimbursed by such employer shall be taken to be the value of perquisite chargeable to tax. In this case, if any amount is recovered from the employee the same shall be reduced from the value of taxable perquisites.

However, if such expenses are incurred wholly and exclusively for official purposes, then reimbursement thereof shall not be taxable as perquisites subject to fulfillment of following conditions:

- Complete details in respect of such expenditure are maintained by the employer such as the date and nature of expenditure etc., and

- The employer gives a certificate for such expenditure to the effect that the same was incurred wholly and exclusively for the performance of official duties.

5.8 Club Facility

Where any club facility has been availed by the employee or any member of his household, the expenditure (including the amount of annual or periodical fee) in respect of which has been incurred or reimbursed by the employer, then in that case the value of perquisites shall be the actual amount of expenditure incurred or reimbursed by such employer on that account.

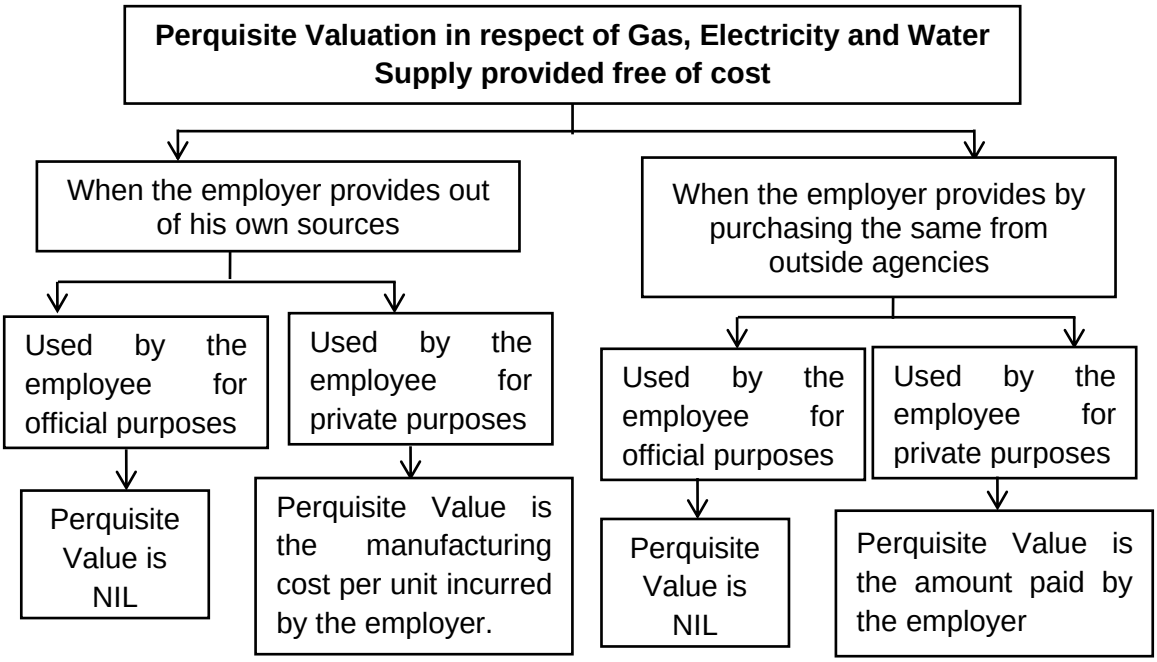
Provided that where the employer has obtained corporate membership of the club and the facility is enjoyed by the employee or any member of his household, the value of perquisite shall not include the initial fee paid for acquiring such corporate membership.

However, if such expenses are incurred wholly and exclusively for official purposes, then reimbursement thereof shall not be taxable as perquisites subject to fulfillment of the same conditions as are applicable to Para no. 5.7.

5.9 Contribution to Superannuation Fund

The amount of any contribution to retirement funds such as recognized provident fund, pension fund and approved superannuation fund by the employer in respect of the assessee, to the extent it exceeds Rs. 750,000 in a financial year, then the excess contribution shall be chargeable to tax as perquisites in the hands of the employee. In case of salaried personnel who are in high income brackets, it is important that the benefit of the entire exemption of Rs.750,000 is availed.

5.10 Free Gas, Electricity and Water Supply



5.11 Educational Facilities

Where free educational facilities are made available by the employer to any member of household of the employee, the value of perquisites shall be equal to the amount of expenditure incurred by the employer in that behalf reduced by amount recovered from employee.

However, in respect of the value of educational facilities extended to the children of employee, the same shall be taxable only if it exceeds Rs. 1,000 per month per child (irrespective of numbers of children). The value of perquisite shall be reduced by the amount, if any, paid or recovered from the employee.

Where educational institution is maintained & owned by the employer or such free education facilities are provided by reason of employee's being in employment of that employer, then the value of perquisites shall equal to the cost of such education in a similar institution in or near the locality.

5.12 Passenger / Goods Carriage Facility

If an employer is engaged in the business of carriage of passengers or goods and such services are extended to any employee or to any member of his household for personal or private journey, free of cost or at concessional fare, then the value of taxable perquisites shall be the value at which such benefit or amenity is offered by such employer to the public at large.

5.13 Expenses on Holiday of Employees Borne by the Employer

The perquisite value of traveling, touring, accommodation and any other expenses paid for or borne or reimbursed by the employer for any holiday availed by the employee or any member of his household, other than concession or assistance referred to in Rule 2B (Refer Para no. 4.2), shall be equal to the amount of the expenditure incurred by such employer in that behalf.

Where any official tour is extended as a vacation, the value of such fringe benefit shall be limited to the expenses incurred in relation to such extended period of stay or vacation.

5.14 Free Food and Non-Alcoholic Beverages

Any lunch allowance, dinner allowance or refreshment allowance given to an employee shall always be subject to tax in his hands.

The taxability of value of food and non-alcoholic beverages provided during working hours in remote area or in an offshore installation is wholly exempt from tax.

The value of food and non-alcoholic beverages provided in office premises or through non-transferable paid vouchers usable only at eating joints by the employer are exempt to the extent of Rs. 50/- per meal.

However, it may be noted that the value of tea or similar non-alcoholic beverages and snacks in the form of light refreshments during working hours are not charged to tax as perquisites.

5.15 Gifts from Employer

The value of any gift, or voucher, or token in lieu of which such gift may be received by the employee or by member of his household from the employer shall be determined as the sum equal to the amount of such gift, provided the value of such gift, voucher or token, as the case may be, exceeds Rs. 5,000 in the aggregate during the financial year.

However, it may be noted that gifts received in form of cash or convertible into money such as gift cheques are not exempt from tax.

5.16 Use of Movable Asset

Any use, by the employee or any member of his household of movable asset, (other than assets already specified in Rule 3 and other than laptops and computers), belonging to the employer or hired by him, shall be chargeable as perquisite. The value of such perquisite shall be 10% p.a. of the actual cost of such asset or the amount of rent or charge paid or payable by the employer.

5.17 Transfer of Movable Asset to the Employee

The transfer of any movable asset, belonging to the employer directly or indirectly, to the employee or any member of his household, shall be chargeable as perquisite. The value of the perquisite shall be the actual cost of such asset to the employer as reduced by the cost of normal wear and tear. The normal wear and tear shall be calculated by applying the following rates for each completed year during which such asset was put to use by the employer and further reduced by the amount paid or recovered from the employee, if any.

Sr. No.	Movable Asset	Method of calculating normal wear & tear	Rate of normal wear & tear
1.	Computers and Electronic Gadgets	Written Down Value	50%
2.	Motor Car	Written Down Value	20%
3.	Other Assets	Straight Line Method	10%

5.18 Life Assurance / Contract for an Annuity

Any sum payable by the employer, whether directly or through a fund (other than specified funds) to effect an assurance on the life of the assessee or to effect a contract for an annuity shall be chargeable to tax as perquisites.

5.19 Tax Liability on Non-Monetary Perks Borne by The Employer

The employer may at his option opt to pay tax on non-monetary perquisites rendered and enjoyed by his employees. The employer may, at its option, make payment of the tax on such perquisites himself without making any TDS from the salary of the employee. However, the employer will have to pay the tax at the time when such tax was otherwise deductible i.e. at the time of payment of income chargeable under the head salaries to the employee.

Illustration: The income chargeable under the head salaries of an employee below sixty years of age for the year inclusive of all perquisites is Rs. 4,50,000/-, out of which, Rs. 50,000/- is on account of non-monetary perquisites and the employer opts to pay the tax on such perquisites as per the provisions discussed above:

Particulars	Amount (Rs.)
Taxable Salary	Rs. 4,50,000
Tax on Total Salary (including Cess)	Rs. 20,600
Average Rate of Tax [(20,600/4,50,000) X 100]	4.57%
Tax payable on Rs. 50,000 (4.57% of 50,000)	Rs. 2,285

. In such a case, the tax so paid by the employer shall not be taxed as income in the hands of the employee. However, the employer cannot get the benefit of deduction of such tax paid on behalf of the employee as business expenditure.

5.20 Keyman insurance policy

Keyman insurance is an insurance taken by a company / firm on the life of an employee / partner (keyman), whose services contribute substantially to the success of the business of the company / firm. The object of the keyman insurance is to cover the life of a keyman for a monetary value so that on death of such keyman, the loss to the employing organization is recouped with monetary assistance (insured amount) received from the insurance company. Further, it can also secure the company / firm against the payment of a considerable amount payable to the legal heirs of the deceased in form of share of assets of deceased in the company / firm. In this way Keyman Insurance Policy acts as a positive measure to improve the retention of the keyman in the company / firm.

The amount of insurance premium paid by the company / firm is allowable as business expenditure as per the provisions of the IT Act. The taxability of receipts under a Keyman Insurance Policy in the hands of company / firm, in the hands of keyman and in the hands of third persons can be tabulated as below:

Sr. No.	Recipient Party	Tax Treatment
1.	Employer	Any amount received either on maturity of policy or due to death of Keyman is taxable under the head “Profits and Gains from Business or Profession”
2.	Keyman	➢ In case proceeds of Keyman Insurance Policy are received by employee, the same will be taxable as salary in year of receipt as it is a part of “Profits in lieu of salary”.

		➢ During the continuance of the policy, if the same is assigned to the employee, then the surrender value of the policy would be taxable in the hands of employee in the year of assignment. ➢ If employer continues to pay premium on policy even after assignment thereof to employee, the amount of premium so paid will be taxable as perquisites in the hands of employee.
3.	Third Party (say legal heirs of keyman)	Any amount received by a third party with whom employer does not have any employer-employee relationship under a Keyman Insurance Policy, the same amount will be chargeable to tax under the head "Income from Other Sources".

5.21 Provision Of Domestic Helpers

The value of benefit to the employee or any member of his household resulting from the provision by the employer of services of a sweeper, a gardener, a watchman or a personal attendant, shall be the actual cost to the employer.

The actual cost shall be the total amount of salary paid or payable by the employer as reduced by the amount paid by the employee for such services.

5.22 Residuary Clause:

The value of any other benefit or amenity, service, right or privilege provided by the employer shall be determined on the basis of cost to the employer under an arm's length transaction as reduced by the employee's contribution, if any.

However, this clause shall not cover expenses on telephones including a mobile phone actually incurred on behalf of the employee by the employer.

Chapter 6: Certain Deductions and Exemptions

6.1 Introduction

The income chargeable under the head "Salary" which is arrived at after giving due credit in respect of allowances and relief's as discussed in Chapter 4 and inclusion of the value of taxable perquisites as discussed in Chapter 5 shall form part of Gross Total Income (GTI).

IT Act has provided for certain deductions from GTI under various income heads and certain general deductions. In this chapter we have discussed the deductions from the salary income, certain general deductions available to individuals and exempted income under relating to head "Salaries".

6.2 Standard Deduction

Every employee who is in receipt of salary income is allowed deduction of Rs. 50,000 or the amount of salary whichever is less. It may be pointed out that the tax filers who opt for the new tax regime are not eligible for the same.

6.3 Entertainment Allowance

A government employee who is in receipt of entertainment allowance is entitled to deduction to the extent of least of following:

- 1/5th of Basic Salary, or
- Rs. 5,000/-, or
- Actual entertainment allowance.

It is pertinent to note that such allowance is not available to any other taxpayer who is not a State or Central Government employee

6.4 Employment Tax/ Profession Tax

A deduction of sum paid on account of tax on employment commonly known as 'Profession Tax' is allowed. In case the professional tax is paid by the employer on behalf of an employee, the same will first be added in the gross salary of employee as perquisites and then will be claimed as a deduction under this section.

Profession Tax varies from state to state. In the state of Maharashtra, the maximum amount of profession tax chargeable for salaried employees is Rs. 2,500 p.a.

6.5 Loss under the Head Income from House Property

Deduction under section 24(b) of the IT Act can be claimed up to limit specified in the following table:

Sr. No.	Type of House Property	Purpose of Loan	Deduction Limit
1	Let Out Property	Any purpose	No limit
2	Self - Occupied Property	If loan is borrowed for acquisition or construction of house property on or after 1 April 1999.	#The ceiling limit would be Rs. 2,00,000/-
3	Self - Occupied Property	If loan is borrowed for any other purpose i.e. repairing, renovation, reconstruction of house property, etc.	The ceiling limit would be Rs. 30,000/-

#The house should be completed within 5 years from the end of the financial year in which the capital was borrowed. Hence it is necessary for employer to obtain the completion certificate of the house property against which deduction is claimed either from the builder or through self-declaration from the employee.

The employer can obtain declaration from the employee in Form No. 12C giving particulars of the loss, if any, under the head "Income from House Property". The employer can consider such loss, while computing the amount of tax to be deducted at source. The employer should ensure that along with Form 12C, the employee attaches the computation of loss under the head "Income from House Property".

Loss under house property shall be allowed to be set-off against any other head of income only to the extent of Rs. 2,00,000 for any assessment year. The balance loss if any, shall be allowed to be carried forward for set-off to 8 subsequent years

6.6 Deduction under Section 80C

One of the most availed tax deduction is the deduction under section 80C of the Act. The following are certain specified investments eligible for deduction under section 80C subject to an aggregate limit of Rs.150,000**:**

i. Life Insurance Premium to effect or keep in force insurance on life of (a) self / spouse / child in case of individual or any member of the HUF, subject to a maximum of the following:

Policy issued before 1st April, 2012	20% of the actual capital sum assured
Policy issued on or after 1st April, 2012	10% of the actual capital sum assured
Policy issued on or after 1st April, 2013 – In cases of persons with disability as per Sec. 80U or suffering from disease or ailment as specified in Sec. 80DDB	15% of the actual capital sum assured

ii. Contribution to statutory or recognized provident fund, notified pension fund, approved superannuation fund.

iii. Contribution to Public Provident Fund (PPF). In case of an individual, contribution can be made either in his name or spouse or child of such individual. In case of HUF, contribution can be made in the name of any member of the HUF.

iv. Payment to housing board or authority or repayment of loan taken from Government / Bank / LIC/ Employer being public limited or public sector company / National Housing Bank / University/ other specified sources, for purchase / construction of residential house and the house should not be sold / disposed off within 5 years. It is important to note that for deduction of interest on housing loan (Refer Para 6.5), the loan need not be from institutions specified under this clause.

v. Subscription to any notified savings certificate, Unit Linked Savings certificates. e.g. NSC VIII and IX issue.

vi. Investment in notified scheme of term deposit for a fixed period of not less than 5 years with a scheduled bank.

vii. Subscription to Rural Bonds issued by NABARD.

viii. Deposit in an account under the Senior Citizens Savings Scheme Rules, 2004.

ix. 5 year time deposit in an account under the Post Office Time Deposit Rules, 1981.

x. Tuition fees paid by an individual to any university, college, school or other educational institution situated within India, in respect of fulltime education of any two children of such individual.

xi. Deposit in Sukanya Samriddhi Account Scheme in the name of girl child of assessee / in the name of girl child for whom assessee is legal guardian.

xii. Amount contributed (for a fixed period of not less than 3 years) by a Central Government employee to his NPS (Tier-II) account.

xiii. Stamp duty paid on purchase of a house and the amount paid for registration of the documents of the house

xiv. Other specified payments.

6.7 Other Deductions under Chapter VI A

The employer can consider the following amount for deduction from the Gross Total Income of the employees:

Section	Particulars	Maximum Amount (Rs.)
80C	**This has been discussed above**	Rs. 1,50,000#
80CCC	Sum paid / deposited by an individual to effect or keep in force a contract for any annuity plan of life insurance corporation of India or any other registered Indian insurance company for receiving pension from the fund set up for this purpose subject to conditions specified	Rs. 1,50,000#

80CCD(1)	Deduction in respect of amount paid / deposited by an individual in the National Pension Scheme or Atal Pension Yojana to be determined in the manner specified.	10% of salary**#^** (Salary = Basic + Dearness Allowance)
80CCD(2)	Deduction in respect of amount paid / deposited by an employer in the new pension scheme to be determined in the manner specified.	10% of salary (Salary = Basic + Dearness Allowance) Note: It is not subject to the overall limit of Rs.1,50,000
#The aggregate deduction under section 80C, 80CCC and 80CCD (1) is subject to ceiling of Rs. 1,50,000. **^**With effect from 1 April 2016, an additional deduction of Rs. 50,000 in respect of additional contribution under section 80CCD (1B) is available on which the overall ceiling limit of Rs. 1,50,000 is not applicable. However, when claiming deduction under this section, one should ensure that there is no duplication of claim, i.e. you must not claim the same contribution amounts under both sections 80CCD(1B) and 80CCD(1).		
80D	Premium paid by an Individual in respect of medical insurance or contribution to Central Government Health Scheme / notified scheme for self, spouse or dependent children. Apart from above deduction, if an Individual buys medical insurance in respect of health of his/her parents, then additional deduction under this section is available to the extent of *Senior Citizens above the age of 60 years who are not covered by Health Insurance, to be allowed deduction of Rs. 50,000 towards actual medical expenditure.* Also, deduction of Rs 5,000 for any payments made towards preventive health check-ups shall be available within the overall limit of Rs 25,000/Rs 50,000, as discussed above.	Rs. 25,000 / Rs. 50,000* Rs. 25,000 / Rs. 50,000***** *The higher limit of Rs. 50,000 would be applicable where medical insurance is bought in respect of health of any person who is a senior citizen.
80DD	Available to a resident individual for maintenance including medical treatment of dependent relative (spouse, children, parents, brothers and sisters of the individual) who is a person with disability: a. Incurred any expenditure for the medical treatment, training and rehabilitation of a	Rs. 75,000** **In case of **severe** disability of the dependent person – 1,25,000

	dependent, being a person with disability, or b. Paid or deposited any under a scheme framed in this behalf by the LIC However, it should be noted that if the taxpayer is already claiming tax under section 80U, then section 80DD would not be applicable.	
80DDB	Available to a resident individual e.r.t. amount actually paid for the medical treatment of specified disease for assessee or a dependent relative (spouse, children, parents, brothers and sisters).	Senior Citizen - Rs. 100,000 (age 60 or above) Others – Rs. 40,000
80E	Interest on loan taken from specified lenders for pursuing higher education by the individual for himself or spouse or children of the individual. "Higher Education" means any course of study pursued after passing the Senior Secondary Examination or its equivalent.	100% of interest paid subject to certain conditions
80EEA	Deduction is available for AY 2020-21 and subsequent years in respect of the interest on loan taken for residential house property subject to conditions as follows: ➢ The loan has been sanctioned by the financial institution during the period beginning on the 1st April, 2019 and 31st March 2022 ➢ The stamp duty value of residential house property does not exceed Rs. 45 lakh; ➢ The taxpayer does not own any residential house property on the date of sanction of loan. Any individual claiming deduction under this section is not allowed to claim deduction under section 24(b) to that extent.	Rs. 150,000
80EEB	Deduction is available for AY 2020-21 and subsequent years in respect of the interest on loan taken for purchase of electric vehicle subject to the condition that the loan has been sanctioned by the financial institution (including NBFC) during the period beginning on the 1st April, 2019 and 31st March 2023. Any individual claiming deduction under this section is not allowed to claim deduction under any other provision of the IT Act.	Rs. 150,000

80G	Employer shall not consider donation (except certain prescribed donations) made by employee, while computing tax to be deducted. However, the employee, in the individual return, can claim such donation.	
80GG	Deduction in respect of rent paid for the purpose of own residence subject to following conditions: i. Individual does not own residential accommodation either in his name or in the name of spouse or minor child. ii. Individual is not entitled for HRA, which is available as exemption u/s 10(13A). iii. Individual does not claim concession in respect of self-occupied property. Employee should also file declaration in Form No. 10BA.	Deduction is available to the extent of the least of the following: ➢ Excess of 10% of total income before allowing deduction under this section, or ➢ 25% of total income before allowing deduction under this section, or ➢ Rs. 5,000 per month
80GGA	Donations for scientific research or rural development (Cash donations to be restricted to Rs. 2,000)	100%
80GGC	Contribution to a political party or an electoral trust	100%
80TTA	Deduction is available in respect of interest on deposits in savings account with a banking company, co-operative society and Post office	Rs. 10,000
80TTB	Deduction is available in respect of interest on deposits with a banking company, co-operative society and Post office in case of senior citizen	Rs. 50,000
80U	Persons having permanent physical disability	Rs. 75,000 in case of severe disability Rs. 1,25,000

6.8 Rebate under Section 87A

A resident individual whose total income does not exceed Rs. 5,00,000, shall be entitled to a deduction, from the amount of income-tax on his total income with which he is chargeable for any assessment year, of an amount equal to 100% of such income-tax or an amount of Rs. 12,500, whichever is less.

- Rebate is available only to resident individuals and not available to non-residents.
- If the total tax payable by is less than Rs. 12,500/-, rebate is restricted to “total tax payable”.
- Rebate is allowed before levy of Education Cess (EC) & Surcharge.
- Rebate benefit is available to all categories of individuals but not to super senior citizen, since he is already fully exempted up to Rs. 5 lakhs.
- Deduction u/s 80C to 80U like 80C, 80D, 80DD, 80DDB etc. also to be deducted to get total income.

Illustration:

Particulars	Amount (Rs.)
a. Gross Total Income	3,80,000
b. Less: deductions	50,000
c. Net Taxable Income	3,30,000
d. Income Tax	4,000 [5% * (3,30,000 – 2,50,000)]
e. Rebate Allowed: - 100% of Tax - Maximum Allowed	4,000 12,500 } Least of two: Rs. 4000
f. Income Tax after Rebate	0
g. Education cess @ 4%	0
h. Net Tax Liability	0

6.9 Income Tax Exemptions

6.9.1 Remuneration of employees of foreign enterprises

Such remuneration for services rendered during stay in India is exempt if:

- the foreign enterprise is not engaged in any trade or business in India;
- his stay in the aggregate does not exceed 90 days in that financial year; and
- Such remuneration is not liable to be deducted from the employer's income chargeable to tax in India.

6.9.2 Remuneration for employment on a foreign ship

Remuneration of a non-resident for services rendered in connection with his employment on a foreign ship is exempt from tax if his total stay in India does not exceed 90 days in the financial year.

6.9.3 Training stipend

Remuneration received by an employee of foreign government in connection with his training in any undertaking owned by the Government or Government owned company or its subsidiary or a corporation or a government financed registered society, is exempt from tax.

6.9.4 Remuneration of officials of embassies etc.

Remuneration as officials or as member of the staff of Embassy, high commission, legation, commission, consulate or trade representatives of a foreign state is exempt from tax. For members of staff to enjoy exemption, it is necessary that they are the subjects of such foreign state and are not engaged in any business or profession or employment in India.

Remuneration as Trade Commissioner or other official representative is exempt on reciprocal basis i.e. only if their Indian counter-parts enjoy similar benefits in that country.

Chapter 7: Certain Social Security Schemes Prevailing In India

7.1 Introduction

Social Security is increasingly being viewed as an integral part of the development process because it helps to create a more positive attitude to the challenges of globalization and the consequent structural and technological changes. It envisages that the employees shall be protected against social risk
s that may cause undue hardships to them in fulfilling their basic needs. Many employees do not have enough financial resources to face such risks arising due to sickness, accidents, old age, diseases, unemployment etc. and also do not have alternative source of livelihood to help them in the period of adversity. Hence, it becomes the obligation of the State to help the workers by providing them the social safety cover.

The social security issues mentioned in the Concurrent List of the Constitution of India are:

- Social Security and social insurance, employment and unemployment.
- Welfare of Labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pension and maternity benefits.

In this chapter we have discussed certain principal social security laws enacted in India and respective provisions as per these laws. It may be noted that these schemes are applicable to all employees employed in India, subject to satisfaction of conditions mentioned therein.

The Government of India launched 3 social security schemes – 1 pension scheme (Atal Pension Yojana) and 2 insurance schemes (Pradhan Mantri Jeevan Jyoti Bima Yojana and Pradhan Mantri Suraksha Bima Yojana) to address the issues of very low coverage of life or accident insurance and old age income. These schemes aim to provide much needed access to affordable personal accident and life cover to a vast population, currently not having convenient and systematic access of this nature. With a view to create a universal social security system by expanding penetration of insurance and pension schemes in India, these schemes have been linked to auto-debit facility from bank accounts.

7.2 New Labour Codes

The Parliament of India has passed the following four labour codes, which subsumes 29 different central labour law legislations, with a view to consolidate them.

1. The Code on Social Security, 2020.
2. The Code on Wages, 2019.
3. The Occupational Safety, Health and Working Conditions Code, 2020.
4. The Industrial Relations Code, 2020.

The aforesaid Codes propose various changes such as reclassification of workforce, changes in the definition of salary for employees' benefit, etc. While the aforesaid four labour codes have been passed by the Parliament, they have not yet been notified to be effective. Most states have already framed draft rules under the new labour codes. As a result, the developments in this respect need to be closely monitored.

Employee's Provident Fund

- **Priority of Payment of Contributions over Other Debts**
  As per the current law (The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ("EPF Act")), any amount due for contributions under employee provident fund shall be the first charge on the assets of the establishment to which it relates and shall be paid in priority to all other debts notwithstanding anything contained in any other law for the time being force.

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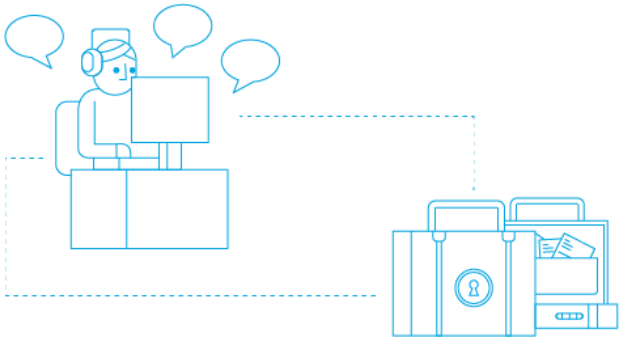
Chapter 8: Expatriate Taxation – Working in India

8.1 Introduction



With the globalization of the world trade and liberalization of the Indian economy, the number of persons moving in or out of India in the exercise of their business, profession or employment is on the increase. A brief discussion of the taxation of these expatriates is being attempted below:

India is a fast-growing country and many foreign multinational companies are seeing it as a place which has abundance of potential for growth. These companies are from different industries coming out with new products, services and technologies adjusted to the living style in India.

As every business has its own intricacies, these companies want the key functions of their Indian operations to be handled by experienced people in their organization at home. A careful structuring of remuneration of such expatriates is essential in order to achieve the following objectives:

- Avoidance of double taxation of the salary paid to the expatriates
- Minimum TDS compliances for Indian entity.
- Remittance of salary of the expatriate to their home country.

In this chapter we will try to disseminate the information about provisions of other Indian laws that the foreign national may come across.

8.2 Remuneration Received by Expatriates Working in India

The remuneration received by foreign expatriate working in India, assessable under the head 'Salaries', is deemed to be earned in India if it is payable to him for service rendered in India as provided in Section 9(1)(ii) of the Income Tax Act. Income payable for the leave period which is preceded and succeeded by services rendered in India and forms part of the service contract shall also be regarded as income earned in India. Thus, irrespective of the residential status of the expatriate employee and the place of receipt, the salary received by him for services rendered in India shall be liable to tax. However, there are few exceptions to this rule, which we have discussed hereunder:

- Remuneration received as employee (Foreign citizen) of foreign enterprise for services rendered during stay in India is exempt from tax (also referred to as short stay exemption) if the following conditions are fulfilled:

  a. the foreign enterprise is not engaged in any trade or business in India
  b. total period of stay of such employee in India does not exceed 90 days in the financial year
  c. the remuneration received by such employee is not liable to be deducted from the income of the employer chargeable under Indian Income Tax Act.

  [Section 10(*6*)(*vi*)]

This is subject to further relaxation, if any, under the provisions of Double Taxation Avoidance Agreement entered into by India with the respective country.

Note: Indicative provision under the DTAA for taxation of remuneration in the country of residence

Remuneration derived by an expatriate in respect of an employment exercised in India shall be taxable in India if:

- The recipient of salary is present in India for a period or periods exceeding in the aggregate 183 days in the financial year concerned; or
- The remuneration is paid by, or on behalf of, an employer who is a resident of India; or
- The remuneration is borne by a permanent establishment or a fixed base which the employer has in India

As such, while determining the taxability, the relevant DTAA should be referred to.

- Remuneration received by a non-resident for services rendered in connection with his employment on a foreign ship is exempt from tax if his total stay in India does not exceed in the aggregate a period of 90 days in the financial year [Section 10(*6*)(*viii*)]
- Remuneration received by employees (foreign citizen) of foreign Governments deputed to India for training in Government establishments or public sector undertakings is exempt from tax. [Section 10(*6*)(*xi*)]
- Remuneration as officials or as member of the staff of Embassy, high commission, legation, commission, consulate or trade representatives of a foreign state is exempt from tax. For members of staff to enjoy exemption, it is necessary that they are the subjects of such foreign state and are not engaged in any business or profession or employment in India. [Section 10(*6*)(*ii*)]

8.3 Double Taxation Avoidance Agreement (DTAA)

If any individual is carrying on any employment, trade, business etc. in a country other than the country of origin, he may face the problem of taxability of such income in both countries. The country of origin may want to tax the income on the basis of residential status of the person. The country in which such employment, business, trade etc. is carried may want to levy the tax on the basis of source of income. Solution to this is Double Taxation Avoidance Agreement commonly known as DTAA or the “treaty”, entered into between two countries. It is to be noted that where the provisions of the IT Act are inconsistent with the provisions of DTAA, the later will prevail. In other words, an assessee can opt for the provisions of the IT Act or that of the treaty whichever are more beneficial to him.

India has entered into DTAA with around 96 countries and as such it is not feasible to summarize relevant clauses under each agreement in this note. However, certain significant aspects in DTAA relating to taxability of salary of expatriates are summarized above in para 8.2 (some of these aspects are based on the Organization for Economic Co-operation and Development (OECD) model of DTAA, which India follows.

8.3.1 Eligibility for DTAA benefit

The provisions of DTAA are applicable to any person who is a resident of one of the contracting states. In order to claim the benefit of DTAA entered into between India and other country, it is necessary to obtain Tax Residency Certificate (TRC) of that country and self-declaration in Form 10F to establish tax residency of such other country.

Also, as per section 206AA of IT Act, if the employee does not hold a valid PAN, deduction of tax will be made at the rate of 20% or the rate in force whichever is higher. However, relaxation from the deduction of tax at higher rate under section 206AA will be available (*refer rule 37BC of the Income Tax Rules*), if the deductee shall in respect of certain specified payments (such as interest, royalty, fees for technical services, dividend and payments on transfer of any capital asset), furnish the following details and documents to the deductor, namely:—

- name, e-mail id, contact number;
- address in the country or specified territory outside India of which the deductee is a resident;
- a certificate of his being resident in any country or specified territory outside India from the Government of that country or specified territory if the law of that country or specified territory provides for issuance of such certificate;
- Tax Identification Number of the deductee in the country or specified territory of his residence and in case no such number is available, then a unique number on the basis of which the deductee is identified by the Government of that country or the specified territory of which he claims to be a resident.

8.3.2 Tax credit

The expatriate may claim credit of taxes paid in India on his salary against taxes payable on the same income in his country of residence.

8.3.3 Social Security Agreements

The Employees Provident Fund Act, 1952 ("EPF") covers international workers or expatriates ("IW") within the ambit of the statute. Expatriate employees working in India are required to make PF and pension contributions in India of 12% of the IW's total salary, with the exception of exclusions under social security agreements and bilateral economic partnership agreements. A matching contribution is to be made by the employer for each IW.

Also, IWs are allowed to withdraw the provident fund accumulations only:

- upon retirement from service in the establishment at any time after the attainment of 58 years of age;
- upon retirement on account of permanent and total incapacity for work due to bodily or mental incapacity; and
- in respect of the member covered under an SSA, on such grounds as specified in such agreement

<u>Social Security Agreements ("SSA") and Certificate of Coverage ("COC")</u>

An SSA (also known as Totalisation Agreement) is a bilateral instrument to protect the social security interests of workers posted in another country. Indian employees, who are posted to other countries by their Indian employers as part of assignment or deputation, without terminating the contract of employment, continue to make social security contribution in India

as per Indian law. On account of the assignment undertaken in the other country, they may also be required to make social security contribution under the host country's laws. Ordinarily, such employees do not derive any benefit from such contributions made outside India on account of restrictions on withdrawal and stipulations pertaining to duration of stay. Similarly, for outbound employees and being a reciprocal arrangement, an SSA is intended to provide for avoidance of double coverage i.e., coverage under the social security laws of both the home and host countries.

There are almost 20 countries with which India has signed SSAs and is in force as of now.

A certificate of coverage or a detachment certificate is a document that must be obtained by an IW so as to avail the benefits under the applicable SSA. A COC is issued in the employee's home country by the social security authority in accordance with the provisions of the relevant SSA. The COC acts as a proof of detachment, pursuant to which, exemptions from the applicable social security compliances at the host country are allowed.

8.4 Visa Legislations

An expatriate coming into India for employment purpose should obtain Employment Visa from the Indian Embassy / Indian Consulate in the country of origin. In this respect, the Ministry of Home Affairs in India has recently issued certain guidelines and directions that should be specifically looked in to. Based on details available in public domain, we have highlighted certain important points from these guidelines and directions for ready reference.

- An employee who is coming to India for the purpose of execution of a project / contract should obtain an Employment Visa. An Employment Visa is granted to skilled and qualified foreign whose salary exceeds Rs. 16.25 lakhs per annum subject to fulfillment of other conditions. An Employment Visa may be extended upto 5 years from the date of issue of initial Employment Visa, on a year-to-year basis.
- Where a foreign entity does not have any project office / subsidiary / joint venture / branch office in India, it cannot sponsor a foreign national for Employment Visa.
- A Business Visa can be granted to a foreign national who wants to visit India to establish a business / industrial venture, wants to purchase / sell industrial products in India, attending meetings, participating in an exhibition or trade fair, foreign trainees attending in-house training etc. A Business Visa is generally granted to the individual for single or multiple entries, for a maximum period of 10 years.
- A Tourist Visa can be granted to a foreign national who does not have a residence or occupation in India and whose sole objective of visiting India is recreation, sight seeing, casual visit to meet friends and relatives etc. No other activity is permissible on a Tourist Visa. Further, a Tourist Visa is non-extendable and non-convertible.

8.5 Customs Baggage Rules

Baggage is an aspect of customs network through which common man going abroad or returning from abroad comes in contact with customs. Some of the important baggage rules of the Indian Customs Law are presented below:

- Used personal effects (excluding jewellery) and new articles upto a value of Rs. 50,000/- per adult passenger is exempt from duty

- The general free allowance of a passenger shall not be pooled with free allowance of any another passenger.

- Laptop Computer (Notebook Computer) brought by a passenger of the age of 18 years and above is exempt from duty.

- Firearms, cartridges of firearms exceeding 50, cigarettes exceeding 100 or cigars exceeding 25 or tobacco exceeding 125 grams, alcoholic liquor and wines in excess of 2 litres, or gold or silver, in any form, other than ornaments and flat panel television sets are not allowed to be imported.

- An Indian passenger who has been residing abroad for over 1 year is allowed to bring jewellery, free of duty in his bonafide baggage upto 20 grams with a value cap of Rs. 50,000/- (in the case of a gentleman passenger) or upto 40 grams with a value cap of Rs.1,00,000/- (in the case of a lady passenger).

- There are concessional rates of customs duty in case a person is transferring his residence in India or a professional returning to India.

8.6 Foreigners Registration

As per the provisions of the Registration of Foreigners Rules 1939, any foreign national visiting India, who either has a valid visa for more than 180 days or intending to stay in India for more than 180 days, must register within 14 days of arrival with the Foreigners Regional Registration Office ("FRRO"). Overseas Citizen of India (OCI) card holders are exempted from registration with FRRO. However, Person of Indian Origin (PIO) card holders need to get themselves registered only when their continuous stay in India exceeds 180 days.

8.7 Permanent Account Number (PAN)

Permanent Account Number is allotted by the Income Tax Department to the concerned person. It is a must document in today's era. PAN is required to be quoted on all correspondence with the Income Tax Department. Therefore, the expatriate should make an application in the prescribed form 49AA for allotment of a PAN. As per the recent amendments in the Indian tax law, a payer who is making payment of any sum on which tax is deductible at source, is liable to deduct tax at highest of the following rates, in case the payee does not furnish his PAN to the payer or furnishes a PAN which is invalid or does not belong to him.

- At the rate specified in the relevant provision of the IT Act; or
- At the rate or rates in force; or
- At the rate of 20%

8.8 Foreign Exchange Control Regulations

The current Foreign Exchange Control Regulations permit an expatriate, who is an employee of a foreign company, on Secondment / deputation to a subsidiary in India, to maintain a foreign currency account in a bank outside India and receive salary outside India, subject to certain conditions to be fulfilled. An expatriate can repatriate 100% of net salary after deduction of taxes to a place outside India for maintenance of their close relatives. An expatriate can open a bank account in India with an Indian bank or an Indian branch of a foreign bank.

An expatriate can receive funds remitted from outside India into his Indian bank account. Any non-employment income say, dividend, interest etc. earned outside India is generally credited to the account of expatriate maintained outside India. Transfer of such income from that account to Indian account can be made without attracting any tax liability in India. However, such income may get taxable in India, if it is directly credited to Indian bank account of expatriate.

8.9 Withholding of Tax

When an expatriate comes to India for employment and his income is chargeable under the IT Act the employer paying the salary is required to deduct tax at source from such salary and pay to the credit of Central Government within 7 days of the immediately succeeding month.

8.10 Filing of Return of Income (ROI)

An annual return of income is required to be filed by an expatriate working in India before July 31 of the relevant assessment year. The concept of assessment year and financial year has already been dealt in Para 2.5 of chapter 2. While filing of the ROI, due care should be taken while determining the residential status. It is advisable to take professional advice for filing of ROI.

8.11 Tax Clearance Certificate

When an expatriate leaves India after completion of assignment or employment he should obtain a no objection certificate from the Indian Tax Authorities. One of the requirements to obtain such certificate is to furnish the Income tax authorities an undertaking, in the prescribed form, from the employer to the effect that the tax payable by the employee to tax authorities shall be paid by the employer. This no objection certificate is important since the immigration authorities at the airport may require the expatriate to produce such certificate.

8.12 The Black Money (Undisclosed Foreign Income and Asset) and Imposition of Tax Act, 2015

The Black Money (Undisclosed Foreign Income and Asset) and Imposition of Tax Act, 2015 has become effect from 1 July 2015. It seeks to levy tax and penalty on undisclosed foreign income and asset of a person who is resident and ordinary resident (ROR) as per section 6 of the IT Act.

India follows physical presence test as the sole criteria for determining ROR residential status for tax purpose and the same needs to be ascertained for each financial year (1 April to 31 march) separately. Thus, depending upon the number of days of stay in India, even an expatriate regularly working in India may qualify as ROR as per IT Act. On becoming ROR, an expatriate will have to file his return of income in India disclosing all his global income and also disclosure of assets situated outside India.

Chapter 9: Duties and Obligations of Employer, Penalties and Prosecution

9.1 Introduction

The IT Act requires an employer to comply with certain obligations as to the tax deduction at source, payment of tax so deducted to the credit of employee, filling of returns, issue of salary certificates, etc. The employer should duly fulfill with all these obligations in order to avoid any penal action or prosecution by the income tax department.

9.2 Tax Deduction at Source

Section 192 of the IT Act requires any person responsible for paying any income chargeable under the head "Salaries" to deduct tax at source on the amount payable. Such tax deductions shall be made on the amount of projected salary of the employee for the year considering value of taxable perquisites, bonus and other contingent taxable incentives. Tax deduction shall be made at the rate at which the employee would be chargeable to tax. The employer should consider the declared amount of deductions and exemptions by the employee and the loss under the head "Income from House Property", if any. However, the employer should not consider donations made by employees eligible under section 80G while calculating the amount of taxable salary.

On payment of salary to residents, if the tax has not been deducted, or if deducted but not deposited within the prescribed due-date, 30% of such expenditure shall be disallowed while calculating the 'profits and gains of business or profession' of the employer.

However, if the salary is payable outside India or to a non-resident, 100% of such expenditure shall be disallowed in the hands of employer, if the tax has not been deducted, or after deduction, was not paid within the prescribed due date as provided in the IT Act. The salary expenses would be allowed in the year in which TDS was paid.

Yashpal Sahni v. Rekha Hajarnavis, Asstt. CIT [2007] 293 ITR 539/ 165 Taxman 144[Bom HC]

From the language of section 205 of the Act, it is clear that the bar operates as soon as it is established that the tax has been deducted at source and it is wholly irrelevant as to whether the tax deducted at source is paid to the credit of the Central Government or not and whether TDS certificate in Form No. 16 has been issued or not. Also, the mere fact that the employer may not issue TDS certificate to the employee does not mean that the liability of the employer ceases. The liability to pay income-tax if deducted at source is upon the employer. Even if the credit of the TDS amount is not available to the employee for want of TDS certificate, the fact that the tax has been deducted at source from salary income of the employee would be sufficient to hold that as per section 205 of the Act, the revenue cannot recover the TDS amount with interest from the employee once again.

9.3 Compulsory Requirement to furnish PAN by Employee (Section 206AA):

Section 206AA in the IT Act makes furnishing of PAN by the employee compulsory in case of receipt of any sum or income or amount, on which tax is deductible. If employee (deductee) fails to furnish his/her PAN to the deductor, the deductor has been made

responsible to make TDS at higher of the following rates:

(i) at the rate specified in the relevant provision of this Act; or
(ii) at the rate or rates in force; or
(iii) at the rate of 20%.

The deductor has to determine the tax amount in all the three conditions and apply the higher rate of TDS. However, where the income of the employee computed for TDS u/s 192 is below taxable limit, no tax will be deducted. But where the income of the employee computed for TDS under section 192 is above taxable limit, the deductor will calculate the average rate of income-tax based on rates in force as provided in section 192. If the tax so calculated is below 20%, deduction of tax will be made at the rate of 20% and in case the average rate exceeds 20%, tax is to deduct at the average rate. Education Cess @ 4% is not to be deducted, in case the tax is deducted at 20% under section 206AA of the Act.

9.4 Quoting of Tax Deduction Account Number (TAN)

Every person deducting tax at source is required to obtain TAN. The TAN is required to be quoted:

- In all challans for the payment of tax deducted to the credit of the Central Government under Section 200.
- In the salary certificate issued under Section 203.
- In all other documents pertaining to such transactions as may be prescribed in the interests of revenue.

9.5 Due Date for TDS Payment to the Credit of the Central Government

Sr. No.	Particulars	Due Date
1.	Tax deductible for April to February	7th of the next month
2.	Tax deductible in March	30th April

9.6 Issue of Salary Certificate

Form 16 is the certificate issued by the employer under section 203 of the IT Act for tax deducted at source (also called as 'TDS') on salary paid to an employee under section 192 on or before 15 June of the succeeding financial year. Form 16 consists of two parts viz. Part A and Part B.

Part	Consist of:
Part A	Various information such as name and address of the employer and employee, the period for which the employee has served the employer during the FY and details of tax deducted and deposited with the Government by the employer.
Part B	Detailed working of Computation of tax which includes salary income, other income, allowances, deductions and the tax amount

9.7 Filing of Quarterly TDS Return

The employer has to file quarterly e-TDS return in form 24Q. The last date for filing of such eTDS returns are as follows:

Quarter ending on	Due Date
June	31 July
September	31 October
December	31 January
March	31 May

9.8 Interest

Section	Default	Quantum
201	Failure to deduct or after deducting fails to pay the tax	Interest @ 1% p.m. or part thereof on amount of tax from date on which such tax was deductible to date on which tax is deducted. Interest @ 1.5% p.m. or part thereof on amount of such tax from date on which such tax is deducted to date on which tax is actually paid.

9.9 Fees for Late Filing of TDS Returns

Section	Default	Quantum
234E	Failure to TDS return in time	Fine of Rs. 200/- every day during which failure continues max. up to TDS amount.

9.10 Penalties

Section	Default	Quantum
271C	Failure to deduct tax	Sum equal to the amount of tax, which the employer failed to deduct.
272A	• Failure to furnish annual return as required under Section 206 • Issue of TDS certificate • Failure to furnish the details in the TDS certificate.	Rs. 500 per day, during which the default continues, max. up to TDS amount.
271H	Failure to file the statement of TDS/TCS within the due date	Minimum penalty of Rs 10,000 which may be extended to Rs 1,00,000. The penalty under this section is in addition to the late filing fee u/s 234E.

9.11 Prosecution

Section	Default	Rigorous Imprisonment
276B	Failure to pay the tax deducted or the tax deducted is not deposited to the Government	3 months to 7 years and with fine.
278A	Punishment for second and subsequent offences under S. 276B	6 months to 7 years for every offence with fine

Chapter 10: The Black Money (Undisclosed Foreign Income and Asset) And Imposition Of Tax Act, 2015 - Key Highlights

10.1 Applicability

This Act extends to the whole of India and shall come into force from 1st July, 2015. This Act will apply to all persons who are Resident and Ordinarily Resident in India as per section 6 of the IT Act and covers undisclosed foreign income and assets (including financial interest in any entity). The term 'Person' will include individual, HUF, company, firm, AOP, BOI, local authority and every artificial judicial person.

This Act will not apply to any person who is Not Ordinarily Resident and Non-Resident.

10.2 Coverage

The provisions of this Act shall be applicable in respect of the following:

a. Income from a source located outside India, which has not been disclosed in the return of income within the specified time

b. Income, from a source located outside India, in respect of which return is not furnished within the specified time and

c. Value of an undisclosed asset located outside India

'Value of undisclosed asset' shall be taken at fair market value determined as per Rules in the financial year in which such asset comes to the notice of Assessing Officer.

10.3 Tax Rate

Undisclosed foreign income or assets shall be taxed at a flat rate of 30%. No exemptions or deductions or set off of any losses carried forward which are otherwise allowed under the existing provisions of the Indian IT Act are admissible.

10.4 Offences and Prosecution

Nature	Penalty	Prosecution
Non-disclosure of income or an asset located outside India	3 times the tax computed	
Failure to file return in respect of foreign income or asset	Rs. 10 Lacs	6 months to 7 years with fine
Return of income is filed but the foreign income and asset are not disclosed or inaccurate particulars of income are furnished	Rs. 10 Lacs	6 months to 7 years with fine

Punishment for willful attempt to evade tax, penalty or interest	Amount of Tax arrear	Resident and Ordinarily Resident – 3 years to 10 years with fine Any Person – 3 months to 3 years with fine
Abetment to make and deliver false return, account, statement or declaration relating to tax payable		6 months to 7 years with fine
Penalty for false statement in verification		6 months to 7 years with fine
Penalty for failure to: (a) answer any question (b) sign statement made (c) attend or produce books of account or documents	Min. Rs. 50,000 Max. Rs.2,00,000	

10.5 Employers' Responsibility

The Act provides that abetment, or inducing another person to make and deliver false return, account, statement or declaration relating to tax payable, or aiding in concealment of foreign income, would attract prosecution proceedings.

Where an ordinarily resident employee earns foreign income and the same is not reported by the employer in Form 16 (Certificate of tax deducted at source), proceedings under the Act may be initiated.

10.5.1 Outbound deputation

Where an Indian employee leaves India for the purpose of employment outside India, salary is usually paid in India while living allowances, accommodation benefits, per diems, etc. are paid overseas. Sometimes, employers also bear the overseas tax and social security obligations of the employee.

a. Employee Perspective:

When the foreign income which are taxable in the hands of the ordinarily resident employee is not disclosed in the employees Indian income tax return, such income shall be characterized as undisclosed foreign income and accordingly will attract the penalty and prosecution proceeding under the Act.

b. Employer Perspective:

Employer is responsible to include ordinary resident employee's salary income whether earned in India or abroad in Form 16. Non-inclusion of such foreign income in Form 16 issued by the employer may be construed as abetment and thereby trigger the penalty and prosecution proceedings under this Act.

10.5.2 Inbound deputation

Inbound deputation of employee refers to an employee working abroad who comes to India for a short period. They are commonly known as Expatriates. Such employees are likely to become "ordinarily resident" in India after 2-3 years of stay in India. Accordingly, the

expatriates shall be required to file income tax returns and also disclosed their foreign income and assets.

From employer's perspective, it is important that any remuneration in respect of expatriates is captured comprehensively by the employer. Where the employee is tax equalized, the onus of reporting these payments falls squarely on the employer, further, necessitating a review of the compensation collation process as well as tax positions currently being adopted by the employer in relation to expatriates. With respect to inbound expatriates, questions with respect to disclosure of overseas social security and pension funds, taxability of employer contribution to pension funds and accretions thereto could arise, non-disclosure of which shall attract the provisions of this Act.

Employer shall also encourage employees to avail the one-time compliance opportunity, where there is non-disclosure with respect to past years.

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Teli Galli Junction
Andheri (E), Mumbai - 400 069

New Delhi - NCR
2nd Floor, Tower-B
B-37, Sector-1
Noida - 201 301

Chennai
Apex Towers
2nd Floor, No.54
II Main Road, R. A. Puram
Chennai - 600 028

1A, Chamiers Apartments
62/121, Chamiers Road
R. A. Puram, Chennai - 600 028

Kolkata
JK Millennium Centre
5th Floor
46-D, J L Nehru Road
Kolkata-700071

Bengaluru
3rd Floor, B Wing
Jubilee Building, 45, Museum Road,
Bengaluru - 560 025

Surat
DTA-2, G-02 to G-05 Plot
Gujarat Hira Bourse
Ichhapore-2, Surat - 394 510

T-720, Belgium Tower
Opp. Linear Bus Stop
Ring Road, Surat - 395 002

B/604-605, Tirupati Plaza
Athwa Gate, Nanpura
Surat - 395 001

Hyderabad
301, Block-1, Whitehouse,
Greenlands Road,
Kundanbagh, Begumpet,
Hyderabad, 500016.

Ahmedabad
B/708, Mondeal Heights
Near Novotel Hotel
Opp. Karnavati Club, S.G.Highway
Ahmedabad - 380 015

Pune
102, 1st Floor
Shree Residency
Baner Balewadi Road
Balewadi, Pune - 411 045

Gandhidham
206, Sunshine Arcade II, Plot
No.37, Sector 8, Near D-Mart,
Gandhidham - 370 201

Jaipur
346, 3rd Floor
Ganpati Plaza, M.I. Road
Jaipur - 302 001

For further information please contact:

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