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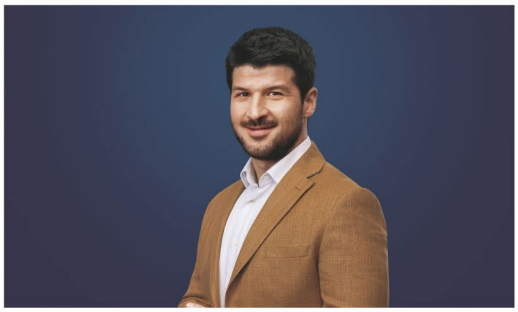
Salary Income-Tax incidence and Optimisation

October 2024



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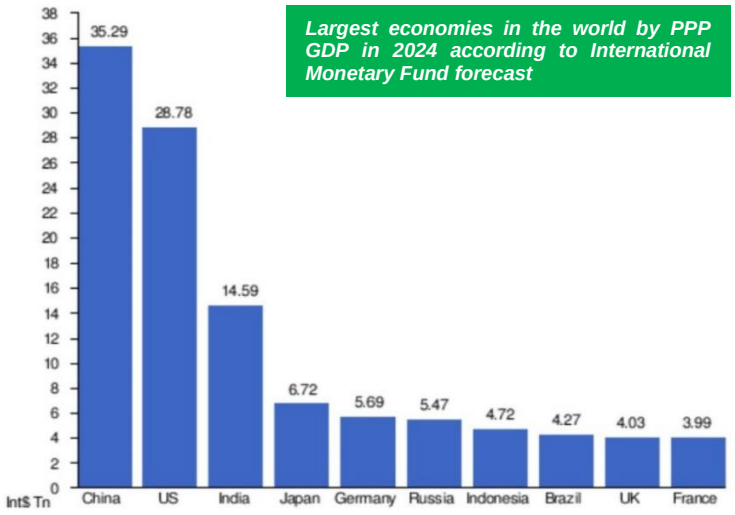
Chapter 1: Introduction

1.1 Background

India is now the 3rd largest economy in the world in Purchasing Power Parity (PPP) terms, with an estimated GDP of more than US $ 14.59 trillion and 5th largest economy in the word in Nominal terms with an estimated GDP of US $ 3.93 trillion. Additionally, the Economic Survey forecasts that India will continue to grow at 6.5% to 7% in FY 2024-25. This implies that India's economic growth will be the fastest among major economies. India's per capita income of the population has increased by 35%[1]. As per the Union government, the rise in the per capita income of people has pushed many households into higher income brackets. Union Budget 2024-25, presented by the Union Minister of Finance and Corporate Affairs Smt. Nirmala Sitharaman, an allocation of Rs. 11,11,111 crore (US$ 134 billion) for capital expenditure, which is 3.4% of India's GDP.



Largest economies in the world by PPP GDP in 2024 according to International Monetary Fund forecast

The phenomenal and consistent growth of the Indian economy has resulted in a large number of tax return filers, especially the salaried income tax filers have increased substantially. In India, there are over 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 construction, retail, software, information technology, communications, hospitality, infrastructure operations, education, healthcare, digital businesses the BFSI (Banking, Financial Services and Insurance), etc.

"The number of startups in India will increase tenfold in the next 4 to 5 years, Union Minister of State for Electronics and IT said recently. He further emphasized India's significant achievements in developing unicorns and startups. The minister highlighted their successful forays into emerging technology fields like AI, Web 3, and deep tech."

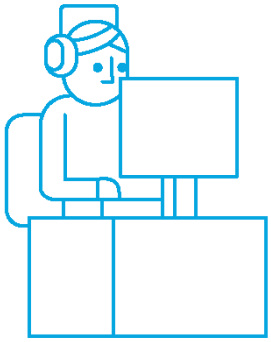
- ✓ In recent times, there has been a major push towards incentivizing the manufacturing sector and start-ups landscape. The concessional tax rate for new manufacturing companies of 15% and Performance Linked Incentive schemes (PLI schemes) for many sectors have resulted in large new investments. India is also known as home to over 100 Unicorns and several Soonicorns which are flush with funds are on a hiring spree. As per the PIB Release dated 29 July 2024 issued by the Ministry of Skill Development and Enterpreneurship, there are about 140,803 recognized start-ups registered with Department of Promotion of Industry and Internal Trade (DPIIT).

[1] World Economic Outlook Database, April 2024 Edition". *IMF.org*. International Monetary Fund. Retrieved 18 April 2024.

- ✓ Besides the Make-In-India initiatives, there are also separate incentives provided to businesses on generation of employment and this could also be one of the contributing factors for increase in the number of tax return filers.

As per PIB data[2], the total number of ITRs for Financial Year (FY) 2023-24 filed till 31st July 2024 are more than 7.28 crore, which is 7.5% more than the total ITRs for FY 2022-23 (6.77 crore) filed till 31st July 2023.

1.2 Salary Income – Incidence & Optimization Opportunities



Under the Indian Income Tax Act, 1961 (the IT Act), the tax rates for individuals in India went up in recent times with the increase in surcharge. As such, the effective personal tax rates ranged from 0% to 39% under the default / new tax regime (and the maximum rate under the old regime is 42.744%). The Finance Act 2023 reduced the maximum surcharge rate from 37% to 25% for taxpayers opting for concessional tax regime. Further, the Finance Minister vide Finance Act, 2024 extended certain concessions in the default / new tax regime (discussed in detail below) w.e.f. FY 2024-25.

Additionally, there are certain avenues available for the salaried employees to optimize their tax outgo. As a result, this publication has not only wide applicability due to large number of salaried tax filers but also the need for understanding the avenues available to optimize the tax outgo.

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

i. Opting for Proper Tax Regime

We have the old tax regime (normal tax regime) and the new tax regime (concessional / default tax regime) wherein 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 tax regime which provides for lower tax rates particularly beneficial 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.

Further, it is pertinent to note that the new tax regime has been made the default tax regime applicable to all the taxpayers from Financial Year 2023-24 onwards.

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 in an 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

[2] **Ministry of Finance Press Release dated 2nd Aug 2024**
https://pib.gov.in/PressReleasePage.aspx?PRID=2040669

on housing loan), section 80C (investments in eligible avenues), 80CCD (Contribution to Notified Pension Scheme), 80D (Mediclaim), 80G (donation to registered charities), 80GG (housing rent), 80TTA (interest on bank and certain other deposits), etc. of the Income-tax Act, 1961 ("the IT Act"). It is important to carefully review the entire list of exemptions and deductions to explore opportunities for tax optimization and then select the beneficial tax regime.

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 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 IT Act. The present edition incorporates further amendments made up to the Finance (No. 2) Act, 2024.

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.

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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.

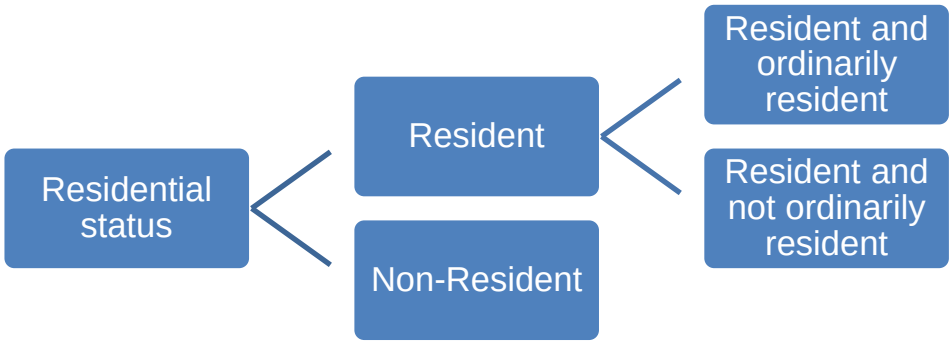
In this booklet, we have made an attempt to cover certain provisions of the Direct Tax law and other important statutes that are applicable to employees.

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 Ordinarily Resident" ('ROR')" or "Resident but Not Ordinarily Resident in India" ('RNOR').

Thus, an individual can be classified in any of the three category - Resident and Ordinarily 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. **First Basic Condition -** He is in India for a period of 182 days or more in that financial year, or
ii. **Second Basic Condition -** 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[3] who resides outside India and who comes to India on a visit and his total income (excluding income from foreign source) is up to Rs. 1.5 million

With respect to the aforementioned 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 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, 60 days limit shall be replaced with 120 days in the second basic condition. As such, 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 and his Indian taxable income exceeds Rs. 1.5 million.

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.

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.

2.3.3 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 Ordinarily Resident ('ROR')" or "Resident but Not Ordinarily Resident in India ('RNOR')". For this purpose, he is required to check if he satisfies any one of the additional conditions listed below:

- He has been a non-resident in India in 9 out of last 10 preceding financial years; or
- He has been in India for a period of not more than 729 days in 7 preceding financial years; or

[3] Person of Indian origin means an individual or either of his parents or either of his grandparents were born in undivided India.

- 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; or

- An Indian Citizen who is deemed to be resident in India as per 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.

2.3.4 Deemed Resident under section 6(1A) of the IT Act:

Section 6(1A) of the IT Act which provides for "Deemed Resident" is applicable from financial year commencing from 1 April 2020. An Individual being a Citizen of India having total Indian taxable 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 entire global income will not be subject to tax.

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

Earlier, the term "liable to tax" was not defined under the IT Act nor in the DTAAs. Section 2(29A) of the IT Act vide amendment brought in by 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.

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

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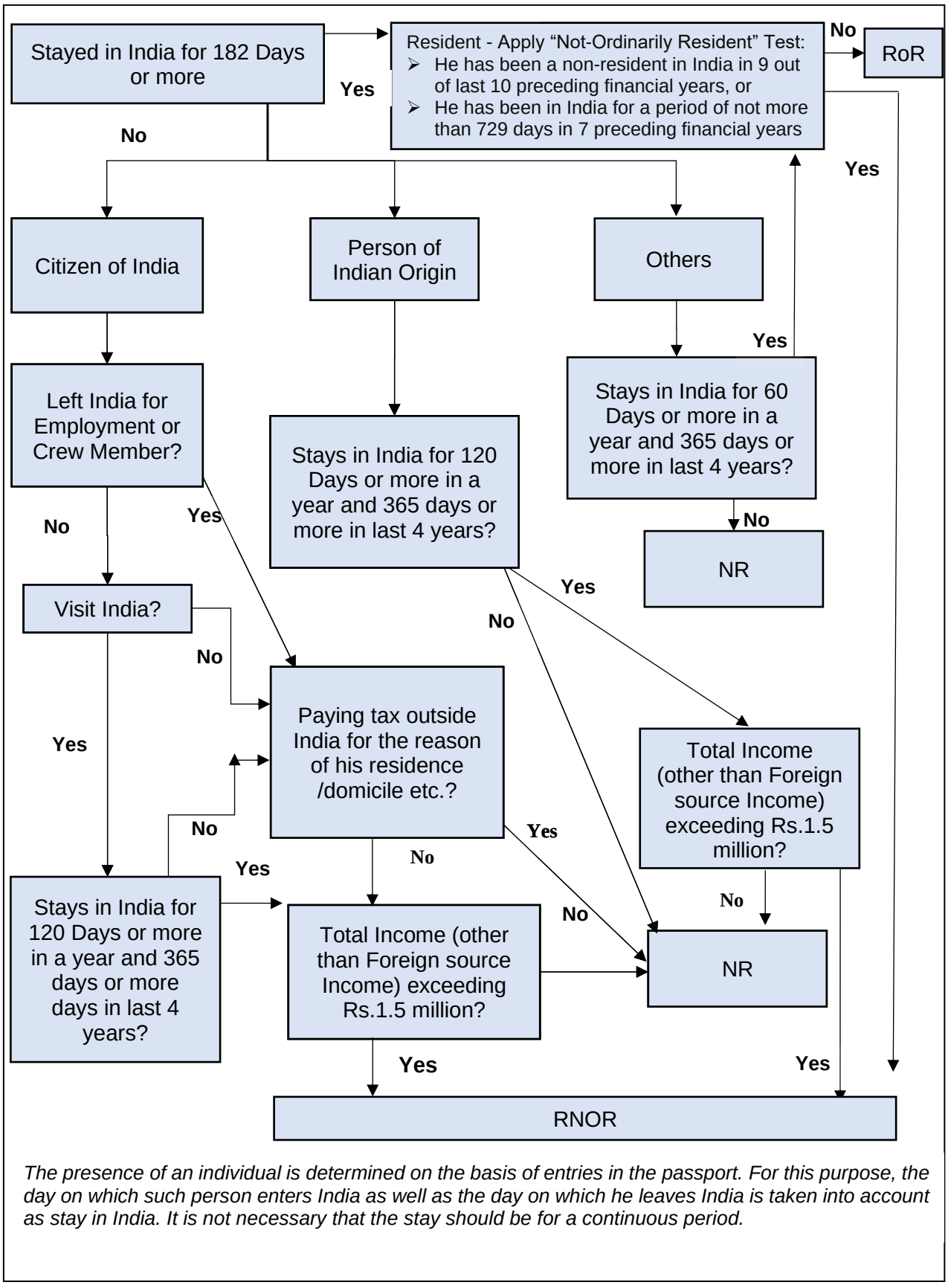

The presence of an individual is determined on the basis of entries in the passport. For this purpose, the day on which such person enters India as well as the day on which he leaves India is taken into account as stay in India. It is not necessary that the stay should be for a continuous period.

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 • Business controlled in India or profession set up in India • Other Income	 • Taxable • Taxable	 • Taxable • Not Taxable	 • Not Taxable • Not Taxable
4	**Global income**	Taxable	Not Taxable	Not Taxable
5	Foreign Assets Disclosure Requirements under the IT Act	Required	Not Required	Not Required

From the above table we can draw the following inferences:

- A resident and ordinarily resident is taxable in respect of his global income. Therefore, if an expatriate executive becomes resident and ordinarily 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.

- Income received would constitute income received for the first time. Thus, in case of any income which is received outside India but is subsequently remitted to India, the same would not constitute as receipt of Income.

- Any income which is taxed on accrual basis and subsequently remitted to India would not be chargeable to tax at the time of remittance.

- 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.

- The following incomes shall be deemed to be received in India-
  - Annual accretion to the credit of Recognised Provident Fund (RPF) in the nature of contribution in excess of 12% pa of salary to RPF or interest in excess of 9.5% p.a.
  - Transfer of amount from unrecognised provident fund to recognised provident fund.
  - Contribution made, by Central Government or any other employer to the account of an employee under a pension scheme referred to in section 80CCD.

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 the 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 subjected 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 2024-25 will commence from 1 April 2024 and end on 31 March 2025. So, the PY will be 2024-25. Assessment Year (AY) for PY 2024-25 will commence from 1 April 2025 and end on 31 March 2026. So, the AY will be 2025-26.

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.

Tax deducted at source and benefit under the IT Act

As per section 199 of the 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.

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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 or the old tax regime, wherein the highest tax slab rate is 30% which is applicable if income exceeds Rs. 10 lakhs in a financial year.

Section 115BAC provides for a concessional tax regime (also known as the "new / default tax regime") to Individuals/ HUFs. Under this regime, the highest tax slab rate is 30% which is applicable if income exceeds Rs. 15 lakhs in a financial year.

Under the old tax regime, the current exemption limit is Rs. 2,50,000 for individuals less than 60 years of age; Rs. 3,00,000 for resident senior citizens (60 years or more but less than 80 years of age) and Rs. 5,00,000 for resident super senior citizens (80 years of age or more).

However, under the new tax regime, the exemption limit is Rs. 3,00,000 and is applicable to all individuals including senior citizens and super senior citizens.

Further, under the old tax regime, the threshold limit of Rs 5,00,000 for the purpose of tax rebate u/s 87A of the IT Act is still available. Correspondingly, under the new regime, the threshold limit of Rs. 7,00,000 for the purpose of full tax rebate u/s 87A of the IT Act continues to be provided for. Accordingly, there would be no effective tax for total income up to Rs. 7,00,000 in case the taxpayer opts for new tax regime u/s 115BAC of the IT Act.

Through the Finance (No. 2) Act, 2024, substantial relief has further been provided by changing the slab rates for personal income tax under the new tax regime under section 115BAC of the IT Act. However, there has been no change in the slab rates under the old tax regime. (Refer Para 3.1.1 and 3.1.2 for slab rates under the new and old tax regime).

Further, vide the Finance Act 2024, under the new tax regime, standard deduction to salaried taxpayer has been increased from Rs. 50,000 to Rs 75,000 and deduction from income in the nature of family pension to has been revised to - 1/3rd of pension amount or Rs. 25,000 (earlier Rs. 15,000), whichever is less.

It may be pointed out that as compared to the old tax regime, the new tax regime has more liberal tax slabs but is subjected to restrictions on availing certain specified tax deductions and exemptions.

Further, the new tax regime continues to be the default tax regime for FY 2024-25 as well, however, individuals may still have the option to opt for the old tax regime.

The taxpayers can switch between the old and the new tax regime on a year-on-year basis. However, any taxpayer deriving income from business or profession who has exercised the option of shifting out of the new tax regime shall be able to exercise the option of opting back to the new tax regime only once.

The CBDT inserted new Rule 21AGA under the Income Tax Rules, 1962 (hereinafter referred to as 'the IT Rules') which provides for Form 10-IEA to enable the taxpayers to opt for the old tax regime or withdrawal of such old tax regime. Accordingly, any eligible taxpayer deriving income from business and profession and intending to opt for the old tax regime would be required to furnish Form-10-IEA on or before the due date u/s 139(1) for furnishing the tax return for such relevant year.

Taxpayers not deriving income from business and profession can opt for the old tax regime directly in the tax return to be furnished before the due date u/s 139(1). Also, for the purpose of withdrawal of such option i.e. opting out of old tax regime shall also be done by way of furnishing Form No. 10-IEA. Such Form No. 10-IEA shall be furnished electronically either under digital signature or electronic verification code.

Further, it is important to note that, an individual shall not be able to opt for old tax regime in case where the ITR is filed after the due date (irrespective of source of income).

3.1.1 Tax Rates Under the Old Tax Regime

The effective tax rates under old regime for FY 2023-24 and for FY 2024-25 (for the purpose of tax deduction at source and advance tax) are as follows:

FY 2024-25 Individual / HUFs/ AOPs / BOIs		**FY 2023-24 Individual / HUFs/ AOPs / BOIs**	
Income Slabs (Rs.)	**Tax Rates**	**Income Slabs (Rs.)**	**Tax Rates**
0 - 2,50,000#	Nil	**0 - 2,50,000#**	Nil
2,50,001# – 5,00,000*	Nil - after rebate under section 87A*	**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	**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	**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	**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

FY 2024-25 Individual / HUFs/ AOPs / BOIs		FY 2023-24 Individual / HUFs/ AOPs / BOIs	
Income Slabs (Rs.)	**Tax Rates**	**Income Slabs (Rs.)**	**Tax Rates**
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	**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
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	**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	**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 be entitled 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.

^^ Maximum rate of surcharge on tax payable on income chargeable to tax under sections 111A, 112A, 112, 115AD(1)(b) and dividend income shall be 15%.

3.1.2 Tax Rates Under the New (Default) Tax Regime

The effective tax rates under new tax regime i.e. section 115BAC for FY 2023-24 and for FY 2024-25 (for the purpose of tax deduction at source and advance tax) are as follows: -

FY 2024-25 Individual / HUFs/ AOPs / BOIs		FY 2023-24 Individual / HUFs	
Income Slabs (Rs.)	**Tax Rates**	**Income Slabs (Rs.)**	**Tax Rates**
0 - 3,00,000	Nil	0 - 3,00,000	Nil
3,00,001 – 6,00,000*	Nil - after rebate under section 87A*	3,00,001 – 6,00,000*	Nil - after rebate under section 87A*
6,00,001 – 7,00,000*	Nil - after rebate under section 87A*	6,00,001 – 7,00,000*	Nil - after rebate under section 87A*
7,00,001 – 10,00,000	Rs. 20,800 plus 10.40% [tax rate 10% plus health and education cess 4% thereon] of income exceeding Rs. 7,00,000	7,00,001 – 9,00,000	Rs. 26,000 plus 10.40% [tax rate 10% plus health and education cess 4% thereon] of income exceeding Rs. 7,00,000
10,00,001 – 12,00,000	Rs. 52,000 plus 15.60% [tax rate 15% plus health and education cess 4% thereon] of income exceeding Rs. 10,00,000	9,00,001 – 12,00,000	Rs. 46,800 plus 15.60% [tax rate 15% plus health and education cess 4% thereon] of income exceeding Rs. 9,00,000
12,00,001– 15,00,000	Rs. 83,200 plus 20.80% [tax rate 20% plus health and education cess 4% thereon] of income exceeding Rs. 12,00,000	12,00,001– 15,00,000	Rs. 93,600 plus 20.80% [tax rate 20% plus health and education cess 4% thereon] of income exceeding Rs. 12,00,000
15,00,001– 50,00,000	Rs. 1,45,600 plus 31.20% [tax rate 30% plus health and education cess 4% thereon] of income exceeding Rs. 15,00,000	15,00,001– 50,00,000	Rs. 1,56,000 plus 31.20% [tax rate 30% plus health and education cess 4% thereon] of income exceeding Rs. 15,00,000

FY 2024-25 Individual / HUFs/ AOPs / BOIs		FY 2023-24 Individual / HUFs	
50,00,001^– 1,00,00,000	Rs.13,61,360 plus 34.32% [(tax rate 30% plus surcharge 10% thereon) plus health and education cess 4% thereon] of income exceeding Rs. 50,00,000	50,00,001^– 1,00,00,000	Rs.13,72,800 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. 32,17,240 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	1,00,00,001^- 2,00,00,000	Rs. 32,29,200 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.73,97,000 plus 39% [(tax rate 30% plus surcharge 25%^^ thereon) plus health and education cess 4% thereon] of income exceeding Rs. 2,00,00,000	2,00,00,001^- 5,00,00,000	Rs.74,10,000 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.1,90,97,000 plus 39% [(tax rate 30% plus surcharge 25%^^ thereon) plus health and education cess 4% thereon] of income exceeding Rs. 5,00,00,000	5,00,00,001 and above	Rs.1,91,10,000 plus 39% [(tax rate 30% plus surcharge 25%^^ thereon) plus health and education cess 4% thereon] of income exceeding Rs. 5,00,00,000

***** A resident individual would be entitled to rebate under section 87A of 100% of tax payable [excluding health and education cess], resulting in NIL tax liability upto total income of Rs. 7,00,000 (earlier total income upto Rs. 5,00,000).

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

^^ Maximum rate of surcharge on tax payable on income chargeable to tax under section 111A, 112A, 112, 115BAD(1)(b) and dividend income shall be 15%.

Some of the Salient Features of the New (Default) tax regime are as follows:

As mentioned above, the Finance (No. 2) Act 2024 extended certain benefits to the new tax regime and accordingly following features are applicable for FY 2024-25 and subsequent years:

- **Liberalizing the Slab Rates**

  As discussed above, in the concessional tax regime, the basic exemption limit is Rs 3,00,000 as compared to old tax regime where the basic exemption limit is Rs 2,50,000.

  A snapshot comparison of the slab rates under both the tax regimes are as follows:

Old Tax Regime		New Tax Regime	
Total Income (In Rs.)	**Tax Rates**	**Total Income (In Rs.)**	**Tax Rates**
0 – 2,50,000	Nil	0 – 3,00,000	Nil
2,50,001 – 5,00,000	5%	3,00,001 – 7,00,000	5%
5,00,001 – 10,00,000	20%	7,00,001 – 10,00,000	10%
10,00,001 or above	30%	10,00,001 – 12,00,000	15%
		12,00,001 – 15,00,000	20%
		15,00,001 or above	30%

- **Default Tax Regime**

  The concessional tax regime was made as the 'Default Tax Regime' for FY 2023-24 and onwards. Thus, if a taxpayer does not specifically opt for the new regime, their tax liability would be automatically computed in accordance with the provisions of the new tax regime.

- **Switching between the Tax regimes**

  An individual with business or professional income will not be eligible to choose between the two regimes every year. Once they opt out of new tax regime, they have only one chance for switching to new regime. Form 10IEA is required to be filed on or before the due date of filing the return of income by such taxpayers at the time of opting out of new tax regime.

  An individual who does not have business or professional income can choose and switch between the two tax regimes every year.

- **Applicable Surcharge above Rs. 5 crores to be restricted to 25%**

  The highest slab rate of tax applicable in the old tax regime is 42.744% (Basic Tax rate of 30% plus 37% Surcharge plus 4% Health & Education cess). However, the highest slab rate of tax in the new regime continues to be 39% (Basic Tax rate of 30% plus 25% Surcharge plus 4% Health & Education cess) from FY 2023-24 onwards.

Total Income (In Rs.)	Surcharge Rate under the New Regime (FY 2023-24 & onwards)
Rs. 50 Lakhs to Rs. 1 Crore	10%
Rs. 1 crore to Rs. 2 Crores	15%
Rs. 2 crores to Rs. 5 Crores	25%
Above Rs. 5 crores	**25%**

- An Individual opting for the new 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 for other than especially abled, 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 –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 other than section 80CCD(2) and section 80CCH

However, the taxpayers would now be able to claim the following deductions under the new tax regime:

- ✓ Standard deduction to salaried taxpayer of Rs. 75,000;
- ✓ Deduction from income in the nature of family pension [1/3rd or Rs. 25,000 (earlier Rs. 15,000), whichever is less];
- ✓ Amount paid or deposited in Agniveer Corpus Fund under section 80CCH of the IT Act;
- ✓ Deduction for employer contribution to NPS to the extent of 14% of the salary.

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

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

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

Annual Income (Rs.)	Tax Liability (Rs.) (Including surcharge and education cess)		
	As per old tax regime**# (deduction/exemption available, but not considered)	As per new tax regime **# (deduction available-mentioned above-but not considered)	Benefit in the proposed new tax regime
2,50,000	-	-	-
3,00,000	-	-	-
5,00,000	-	-	-
6,00,000	33,800	-	33,800

Annual Income (Rs.)	Tax Liability (Rs.) (Including surcharge and education cess)		
	As per old tax regime**# (deduction/exemption available, but not considered)	As per new tax regime **# (deduction available-mentioned above-but not considered)	Benefit in the proposed new tax regime
7,00,000	54,600	-	54,600
7,50,000	65,000	26,000	39,000
9,00,000	96,200	41,600	54,600
10,00,000	1,17,000	52,000	65,000
12,00,000	1,79,400	83,200	92,200
12,50,000	1,95,000	93,600	1,01,400
15,00,000	2,73,000	1,45,600	1,27,400
25,00,000	5,85,000	4,57,600	1,27,400
50,00,000	13,65,000	12,37,600	1,27,400
75,00,000	23,59,500	22,19,360	1,40,140
1,00,00,000	32,17,500	30,77,360	1,40,140
1,50,00,000	51,57,750	50,11,240	1,46,510
2,00,00,000	69,51,750	68,05,240	1,46,510
3,50,00,000	1,34,06,250	1,32,47,000	1,59,250
5,00,00,000	1,92,56,250	1,90,97,000	1,59,250
5,50,00,000	2,32,42,050	2,10,47,000	21,95,050

**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 person 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 previous 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:

Sr. No.	Class of Capital Asset	Holding Period for classification as LTCA		Short Term Capital Gains – Tax Rate (%)		Long Term Capital Gains – Tax Rate (%)	
		Prior to 23rd July 2024	Revised w.e.f. 23rd July 2024	Prior to 23rd July 2024	Revised w.e.f. 23rd July 2024	Prior to 23rd July 2024	Revised w.e.f. 23rd July 2024
1	Listed equity shares or units of equity oriented mutual funds / Listed units of business trusts (REITs / InVITS)	>12 months (36 months for units of business trust)	>12 months	15%	20%	10% [on gains exceeding Rs. 1,00,000]	12.5% [on gains exceeding Rs. 1,25,000]
2	Unlisted shares	>24 months	>24 months	Applicable rates	Applicable rates	10% without indexation (for non-residents) 20% with indexation (for residents)	12.5% without indexation
3	Listed securities (other than units) or zero-coupon Bonds (including listed debentures / bonds#)	>12 months	>12 months	Applicable rates	Applicable rates	Lower of 10% without indexation or 20% with indexation#	12.5% without indexation
4	Unlisted debentures and bonds	>36 months	Always Short term	Applicable rates	Applicable rates	20% with indexation	Applicable rates
5	Market Linked Debentures and Debt Mutual Funds	>36 months	Always Short term	Applicable rates	Applicable rates	Applicable rates	Applicable rates

Sr. No.	Class of Capital Asset	Holding Period for classification as LTCA		Short Term Capital Gains – Tax Rate (%)		Long Term Capital Gains – Tax Rate (%)	
		Prior to 23rd July 2024	Revised w.e.f. 23rd July 2024	Prior to 23rd July 2024	Revised w.e.f. 23rd July 2024	Prior to 23rd July 2024	Revised w.e.f. 23rd July 2024
7	Land & Building	>24 months	>24 months	Applicable slab rates	Applicable slab rates	20% with indexation	12.5% without indexation^^
8	Any other capital asset	>36 months	>24 months	Applicable slab rates	Applicable slab rates	20% with indexation	12.5% without indexation

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

*Market linked debentures is a security which has an underlying principal component in the form of a debt security and where the returns are linked to market returns on other underlying securities or indices and include any securities classified or regulated as a market linked debenture by SEBI.

^ "Specified Mutual Fund" means a Mutual Fund by whatever name called, where not more than 35% of its total proceeds is invested in equity shares of domestic companies

W.e.f. 1st April 2025, "*Specified Mutual Fund" shall mean a mutual fund:*
(a) a Mutual Fund by whatever name called, which invests more than 65% of its total proceeds in debt and money market instruments; or
(b) a fund which invests 65% or more of its total proceeds in units of a fund referred to in sub-clause (a)

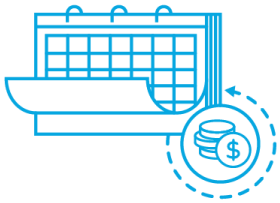
The requirement of investment of not more than 35% in equity shares had impacted other funds which are not debt-oriented funds but invest below 35% in equity shares. Such funds include Exchange Traded Funds (ETFs), Gold Mutual Funds, Gold ETFs, Foreign Funds and Fund-of-Funds (FoFs). In order to bring clarity on the applicability of section 50AA of the IT Act, the Finance (No. 2) Act 2024 amended the definition of section 50AA to clarify that the provisions of section 50AA of the IT Act shall not be applicable to these specified funds unless the investment criteria as per the amended definition has been met. Accordingly, such aforementioned mutual funds sold on or after 1st April 2025 would be taxed in a manner similar to debt mutual funds.

^^ In case of transfer of a long-term capital asset, being land or building or both, by a Resident Individual or HUF, which is acquired before 23 July 2024, the taxpayer can opt to tax the gains @12.5% without indexation or @20% with indexation, whichever is more beneficial.

#Indexation benefit was not available for debentures and bonds, as such, the rate was 10% without indexation.

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), an 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 (i.e. by 31 December) 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 within 30 days at the following address –
  "Centralized Processing Centre, Income Tax Department, Bengaluru— 560500, Karnataka".

3.4.3 Relevant Points for all ITRs - 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.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.)	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 taxpayers 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.	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	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 up to Rs. 2 crore) or Section 44AE (income from goods carriage up to ten vehicles) • Income from Profession where such income is computed on presumptive basis • 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)
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	**ITR-2 cannot be filed by any individual** • whose total income for the year includes income from profit and gains from business or	ITR-3 cannot be used by a person who does not have Income under the head Profits and Gains of Business or Profession	ITR-4 cannot be used by a person who: • is a Director in a company • has held any unlisted equity shares at any time

ITR-1 (SAHAJ)	ITR-2	ITR-3	ITR-4 (SUGAM)
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 • 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 racehorses and special rates under	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.		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 racehorses 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

ITR-1 (SAHAJ)	ITR-2	ITR-3	ITR-4 (SUGAM)
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			• 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.

3.5 Due Dates for Payment of Advance Tax

Advance Tax would refer to such tax paid in advance in the Financial Year or Previous Year preceding the Assessment Year. 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 exempted from paying advance tax.

The due dates for various installments of advance tax are given below:

Due date	Taxpayer declares income under section 44AD(1) or section 44ADA(1) – Presumptive tax on business income / profession	Other Taxpayer
On or before 15th June of the financial year	-	Up to 15% of the advance tax payable
On or before 15th September of the financial year	-	Up to 45% of the advance tax payable
On or before 15th December of the financial year	-	Up to 75% of the advance tax payable
On or before 15th March of the financial year	Up to 100% of the advance tax payable	Up to 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.	**Estimated 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 or via e-filing portal i.e., www.incometax.gov.in.
- 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. Any payment made after 8 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*** and in case of Prannoy Roy vs. CIT[4], 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 following such financial year to the date of determination of total income

[4] *[2009] 179 Taxman 53 (SC)*

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 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.

  Further, 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.

  *Casual Winnings means any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever.

- **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 filing the return beyond the due date. Only in the case of taxpayers whose total income does not exceed Rs 5 lakhs, such late filing fee would be restricted to Rs 1,000.

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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 employee's, 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. Please note that if the taxpayer opts for the New (Default) tax regime, most of the allowances / deductions shall not be available (see the list in para 3.1.2 above).

4.2 Leave Travel Allowance

LTA is a reimbursement that the employee can claim in connection with himself and his family (spouse, children, parents, brothers and sisters of such taxpayer who are wholly or mainly dependent on him) 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 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.

- The benefit can be availed only in respect to travel expenditure and not in relation to boarding/ lodging expenses.

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 IT 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. 25,00,000

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*

4.3.5 In case such leave encashment is received from two or more employers in the same Financial Year, the aggregate amount of exemption that an employee can claim would not exceed Rs. 25,00,000.

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 at the time of death / retirement, can be analyzed as under:

- **Government Employees**: The amount of gratuity received by the employees of the Central Government, State Governments, local authorities and members of the Defense 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 by an employee on his retirement or on his becoming incapacitated prior to such retirement or on termination of his employment, or any gratuity received by his widow, children or dependents on his death 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 30-5-2024, 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 for 37 years (18,000 × 37)	-	Rs. 6,66,000
d.	Gratuity actually received	-	Rs. 6,00,000
e.	Maximum limit applicable (As specified event occurred after 28-3-2020)	-	Rs. 20,00,000
f.	Exemption allowable (least of c, d & e)	-	Rs. 6,00,000
g.	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 can be called uncommuted pension and second is opting for 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	Public Provident Fund (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	Not Applicable (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 1: In case of Recognized, 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 (Recognized 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 is 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)(vii) read with Rule 3B of the Income Tax Rules,1962 ('IT Rules').

Note 2: In order to claim exemption on withdrawal from Recognized Provident Fund, it is necessary that such amount should be withdrawn after rendering 5 years of continuous service. If the said amount is withdrawn before completion of 5 years of continuous service, the same would be subjected to tax in the hands of the employee taxpayer.

However, irrespective of the non-completion of such 5 years of continuous service, tax exemption would be provided if the service has been terminated because of:

- The employee's ill health; or
- By the contraction or discontinuation of the employer's business; or
- Other cause beyond the control of employee

Additionally, TDS will be deducted u/s 192A of IT Act on the amount withdrawn. Such TDS would be deducted @ 10% on accumulated balance withdrawn within 5 years of opening the RPF account (subject to the above conditions), provided the amount withdrawn exceeds Rs. 50,000 and PAN is available with the EPFO. In case the PAN is not available, TDS was required to be deducted at maximum marginal rate. However, with effect from 1st April 2023, changes made vide Finance Act 2023, such TDS would be required to be deducted u/s 206AA (higher of rate specified in the IT Act or rates in force or 20%) of the IT Act instead of the maximum marginal rate in case of absence of PAN.

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 as per section 10(13A) of the IT Act:

- The amount of house rent allowance received, or

- 50% of salary***** in case of employees residing in the four metro-cities (Mumbai, Kolkata, Chennai, New Delhi excluding NCR region - Gurgaon, Noida and Faridabad) 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.

It is pertinent to note that employee shall be required to submit the proof of rent paid through rent receipts/ rent agreement to avail benefit of HRA deduction provided such salaried employees are drawing HRA exceeding Rs. 3,000 per month. Further, it is mandatory for employee to report PAN of the landlord to the employer if rent paid is more than Rs. 1,00,000 in a financial year. In case the landlord does not have a PAN, a declaration to this effect from the landlord along with the name and address of the landlord should be filed by the employee. [***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 which is discussed in detail in Chapter 6.

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 under section 10(13A) 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	

Allowances	Exempted Amount
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. 3,200 per month
We have tried to provide an overview of certain 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 such arrears / advance is 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. In order to claim such relief, the employee is required to mandatorily e-file Form 10E on the income tax portal before filing the Income Tax Return.

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.

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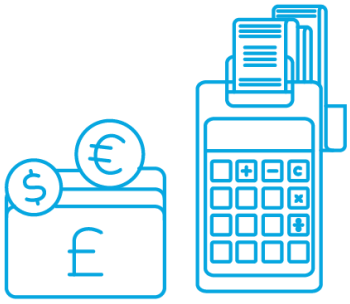
Chapter 5: Perquisites

5.1 Taxability Of Perquisites

Perquisites refer to an extra benefit provided to the employee in addition to the salary and wages. Such perquisite may be provided either in cash or in kind. For instance, housing, cars, etc. In case such perquisite arises as a result of employer-employee relationship, the same would be subject to tax under the head 'Salary' whereas in case such perquisite arises during the course of profession, the same would be chargeable to tax as profits and gains of Business or Profession.

5.2 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 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 specified securities / sweat equity shares allotted or transferred by the employer or former employer to the employee free of cost or at concessional rate.

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 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.

5.3 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**	➢ 10% of salary in cities having population > 40 lakhs ➢ 7.5% of salary in cities having population > 15 lakhs but ≤ 40 lakhs ➢ 5% of salary in other areas. in respect of the period during which the said accommodation was occupied by the employee during the previous year as reduced by the rent, if any, actually paid by the employee. (Population as per 2011 census)	The value of perquisites as determined under column (3) as increased by: ➢ <u>If furniture is owned by the 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**	The actual amount of lease rental paid by the employer or 10% of salary, whichever is lower. Such amount derived would be reduced by the rent, if any, actually paid by the employee.	
3.	Where the accommodation is **provided by the employer in a hotel** (except where the	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.	

Sr. No.	Circumstances	Where accommodation in unfurnished	Where accommodation is furnished
	employee is provided such accommodation for a period not exceeding in aggregate 15 days on his transfer from one place to another)		

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

In case accommodation owned by the employer is provided to the employee for more than one financial year (FY), the perquisite value as computed above shall not exceed the following:

Amount so calculated for the first financial year *

Cost Inflation Index for the FY for which the amount is calculated

Cost Inflation Index for the FY in which the accommodation was initially provided to the employee

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.

5.4 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 liters	Exceeds 1.6 liters
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)

Sr. No.		Circumstance	Where cubic capacity of the engine of the car	
			Does not exceed 1.6 liters	Exceeds 1.6 liters
	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 *plus* Driver's remuneration *plus* 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 -**		

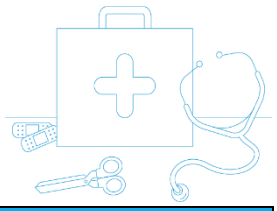
Sr. No.		Circumstance	Where cubic capacity of the engine of the car	
			Does not exceed 1.6 liters	Exceeds 1.6 liters
	3.1	Such reimbursement is for use of vehicle exclusively for official purposes	Nil Value (See Note 1)	
	3.2	Such reimbursement is for use of vehicle partly for official purposes and 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.

5.5 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 maintained by the Government or any local authority or any other hospital approved by the Government for the purposes of medical treatment of its employees or - 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.

Sr. No.	Exemptions
5.	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.

5.6 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 is made available to the employee or any member of his household by the employer 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 interest computed as per the SBI lending rates as on first day of relevant financial year i.e. 1 April, computed on the maximum outstanding monthly balance. Such amount determined would be reduced by interest, if any, actually paid to the employee or the member of the household.

Important Case Law:

In ***All India Bank Officers' Confederation vs The Regional Manager (Civil Appeal no. 7708 of 2014)***, the Supreme Court upheld the taxation of interest-free or concessional loans given by banks to their employees as "fringe benefits" and "perquisites" under Section 17 of the IT Act wherein the interest charged by the bank on such loans is lesser than the interest charged according to the Prime Lending rate of the SBI. This decision reaffirmed the validity of Rule 3(7)(i) of the Income Tax Rules, which determines the taxation of interest-free or concessional loans as perquisites.

5.7 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, or gifts the securities received under ESOP scheme, he will be subjected 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.

Many a times, ESOPs of a foreign entity are granted to employees of its Indian subsidiary. Tax treatment of such ESOPs remain same as discussed above. Capital gains are computed considering the shares to be that of an unlisted company (even if the shares are listed in the foreign jurisdiction).

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.

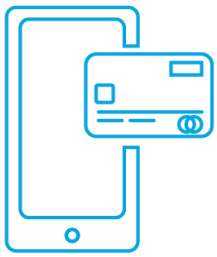
In this case, the value of perquisite in the hands of Mr. X will be computed as follows:

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] [2015] 55 taxmann.com 542 (Delhi) (High Court)

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

5.8 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:

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

ii. 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.

5.9 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. The amount so determined shall be reduced by the amount, if any paid or recovered from the employee for such benefit or amenity.

In case 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. 5.8.

5.10 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.

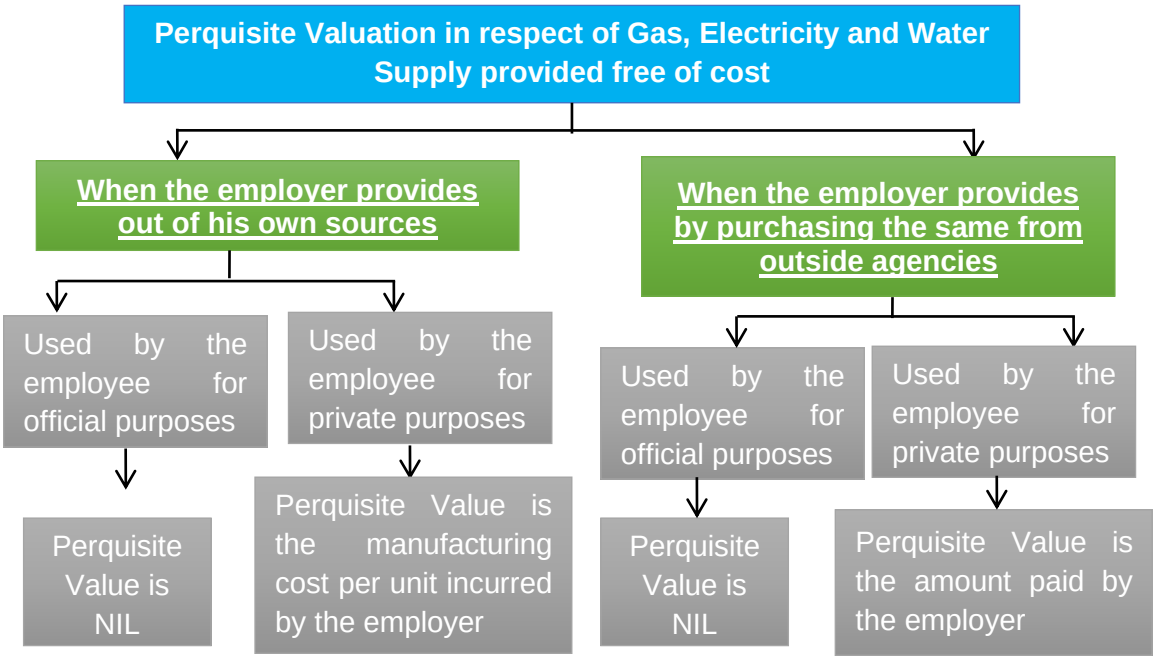
In the case of salaried personnel who are in high income tax brackets, they may optimize their tax structure by availing benefit of the entire exemption of Rs.750,000, subject to the prescribed conditions.

5.11 Free Gas, Electricity and Water Supply

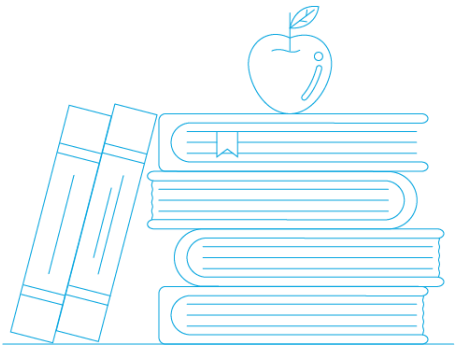
In case where the gas, electricity or water connections are taken by the employee and the employer has paid or reimbursed for such expenses, it would be treated as perquisite in the hands of all the employees.

However, if such connections are taken in the name of the employer and the said facilities are availed by the employee, it would be treated as perquisite in the hands of specified employees only.

The taxability of perquisites for such facilities would be as follows:



5.12 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 any children, the same shall be taxable only if it exceeds Rs. 1,000 per month per child (irrespective of number 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.

5.13 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 and would be reduced by an amount, if any, recovered from the employee.

5.14 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 leave travel 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 such facility is maintained by the employer, and is not available uniformly to all employees, the value of benefit shall be taken to be the value at which such facilities are offered by other agencies to the public. Where the employee is on official tour and the expenses are incurred in respect of any member of his household accompanying him, the amount of expenditure so incurred shall also be a fringe benefit or amenity.

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.

5.15 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.

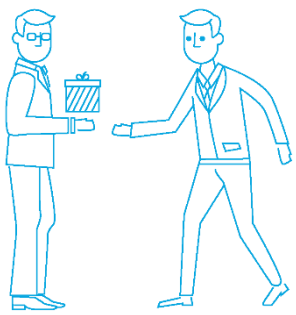
The taxability of value of food and non-alcoholic beverages provided during working hours in remote areas or in an offshore installation, is wholly exempt from tax.

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.

5.16 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, is Rs. 5,000 or more 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.

5.17 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 as reduced by any amount recovered from the employee.

5.18 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 of service 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%

5.19 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.

5.20 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 deducting 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.

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.

5.21 Keyman insurance policy

Keyman insurance is 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".

5.22 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.

5.23 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.

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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 reliefs 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 relating to head "Salaries". Please note that if the taxpayer opts for the New (Default) tax regime, most of the deductions shall not be available (see illustrative list in para 3.1.2 above).

6.2 Standard Deduction

Vide the Finance Act 2024, under the new tax regime, standard deduction to salaried taxpayer has been increased from Rs. 50,000 to Rs 75,000 w.e.f. FY 2024-25.

However, under the old tax regime, standard deduction is Rs. 50,000.

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 which varies from state to state.

6.5 Tax Deductions and Loss under the Head Income from House Property

Every taxpayer deriving rental income from house property can claim a standard deduction u/s 24(a) of 30% of the annual value irrespective of the actual expenditure incurred by him.

Further, where the house property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital can

be claimed as deduction u/s 24(b) of the IT Act. It is pertinent to note that interest on a fresh loan taken in order to repay the original loan availed earlier for any of the aforesaid purposes would also be admissible as deduction under the said section.

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. Also, any interest paid during the Pre-construction period (i.e. period prior to the previous year in which property is acquired or construction is completed) can be claimed as deduction over a period of 5 years in equal annual installments beginning from the year of acquisition or completion of construction. 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 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. Such particulars may now be furnished in a simple statement, which is properly signed and verified by the taxpayer wherein he may also attach 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 deductions is the deduction under section 80C of the IT Act. The following are certain specified investments eligible for deduction under section 80C subject to an aggregate limit of Rs.1,50,000**:**

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.

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 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#

Section	Particulars	Maximum Amount (Rs.)
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.	**In Old Tax Regime:** For government employee: - 14% of Salary For any other employee: - 10% of salary (Salary = Basic + Dearness Allowance) **In New Tax Regime:** For any employee:- 14% 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). *The Ministry of Finance vide ***Notification No. F. No. 16/1/2015-PR dated 10th August 2022*** provided that from 1st October 2022, any citizen who is or has been an income-tax payer (i.e. person who is liable to pay income-tax in accordance with the IT Act, 1961), shall not be eligible to join Atal Pension Yojana (APY). Further, in case a subscriber, who joined on or after 1st October 2022, is subsequently found to have been an income-tax payer on or before the date of application, the APY account shall be closed and the accumulated pension wealth till date would be given to the subscriber.		
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	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

Section	Particulars	Maximum Amount (Rs.)
	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 (including cash payments) made towards preventive health check-ups shall be available within the overall limit of Rs 25,000 /Rs 50,000, as discussed above.	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 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.	Rs. 75,000** **In case of **severe** disability of the dependent person – 1,25,000
80DDB	Available to a resident individual w.r.to. 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
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	Rs. 150,000

Section	Particulars	Maximum Amount (Rs.)
	deduction under any other provision of the IT Act.	
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 or, where such assessee is a member of a Hindu undivided family, by such family at the place where he ordinarily resides or performs duties of his office or employment or carries on his business or profession. 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 resident 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

Under the old tax regime, 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

In case of new tax regime u/s 115BAC, a resident individual whose income is subject to tax u/s 115BAC shall be entitled to a rebate of 100% of income tax payable or Rs. 25,000 whichever is lower provided the total income of said person does not exceed Rs. 7 lakhs. Thus, no tax would be payable where the total income of the taxpayer is upto Rs. 7 lakhs owing to the rebate u/s 87A of the IT Act.

Further, in addition to such enhanced threshold for rebate from Rs. 5 lakhs in the old tax regime to Rs. 7 lakhs in the new tax regime u/s 115BAC of the IT Act, such rebate is extended where the total income of the taxpayer marginally exceeds the threshold of Rs. 7 lakhs.

Accordingly, a marginal relief is available to taxpayer where his total income is exceeding Rs. 7 lakhs and the income tax payable on the total income exceeds the total income over Rs. 7 lakhs. Such relief would be determined by way of computing the difference between the income tax liability on the total income (before rebate u/s 87A) and the total income over Rs. 7 lakhs.

The calculation of such tax liability after marginal relief or rebate available u/s 87A would be computed as follows:

Step 1:-
Calculate the total tax liability on the total income (before rebate u/s 87A) as Amount A

Step 2:-
Calculate the amount of total income over Rs. 7 lakhs as Amount B

Step 3:-
Calculate the positive difference between Amount A over Amount B as marginal relief or rebate u/s 87A

Step 4:-
Reduce the amount of marginal relief as computed in Step 3 from the total tax liability as computed in Step 1 to arrive at the net tax liability.

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 members 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 counterparts enjoy similar benefits in that country.

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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 risks 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 for 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.

In addition to above, the Government has also launched Pradhan Mantri Shram Yogi Man Dhan Pension Yojana (PM-SYM) and Ayushman Bharat Pradhan Mantri Jan Arogya Yojana (AB-PM-JAY). PM-SYM provides pension to the unorganized workers including domestic workers and AB-PM-JAY provides health cover of Rs. 5 lakhs per family per year for secondary and tertiary care hospitalization to vulnerable families. These families include unorganized workers including domestic workers as per the defined eligibility.

Further, the Ministry of Labour & Employment has launched e-SHRAM portal, a National Database of the Unorganized Workers. It has been made available to the States/UTs for registration of unorganized workers including domestic & household workers.

As on dated 29.07.2024, more than 29.82 Crore unorganized workers, including migrant workers, have been registered on this portal and who have been issued e-Shram card.[5]

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 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.

On 18 July 2022, the Minister of State for Labour and Employment has replied on question of implementation of labour codes that as a step towards implementation of the four Labour Codes, the Central Government has pre-published the draft Rules, inviting comments of all stakeholders. The details of the State/Union Territories (UTs) which have pre-published the draft Rules, inviting comments of all stakeholders, are as under:

Name of Code	Name of State/UT
The Code on Wages, 2019	Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Mizoram, Odisha, Punjab, Rajasthan, Sikkim, Tamil Nadu, Telangana, Tripura, Uttarakhand, Uttar Pradesh, UTs of Andaman & Nicobar Islands, Chandigarh, Jammu & Kashmir, Ladakh, NCT of Delhi and Puducherry (31)
The Industrial Relations Code, 2020	Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Odisha, Punjab, Tamil Nadu, Telangana, Tripura, Uttarakhand, Uttar Pradesh, UTs of Chandigarh, Jammu & Kashmir, Ladakh and Puducherry (26)
The Code on Social Security, 2020	Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Odisha, Punjab, Telangana, Tripura, Uttarakhand, Uttar Pradesh, UTs of Andaman & Nicobar Islands, Chandigarh, Jammu & Kashmir, Ladakh and Puducherry (25)

[5] https://pib.gov.in/PressReleasePage.aspx?PRID=2038696

Name of Code	Name of State/UT
The Occupational Safety Health and working Conditions Code, 2020	Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Manipur, Odisha, Punjab, Tamil Nadu, Telangana, Tripura, Uttarakhand, Uttar Pradesh, UTs of Chandigarh, Jammu & Kashmir and Ladakh (24)

Please note that there are no current updates as to when the new labour codes would be implemented.

7.3 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 in force.

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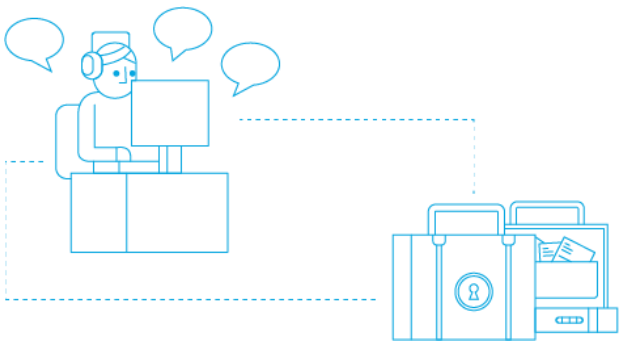
Chapter 8: Expatriate Taxation – Working in India

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 provide overview 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, is assessable under the head 'Salaries', and 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 IT 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:

a. 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

b. The remuneration is paid by, or on behalf of, an employer who is a resident of India; or

c. The remuneration is borne by a permanent establishment or a fixed base or a trade or business 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 a 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 latter 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, subject to certain conditions like obtaining Tax Residency Certificate (TRC) of the state where he is a resident and other specified documentation.

India has entered into DTAA with around 97 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 a valid Tax Residency Certificate (TRC) of that country and e- file Form 10F.

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 of the deductee
- 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 DTAA to be read with Multilateral Instrument (MLI)

Organization for Economic Co-operation and Development ('OECD') under the Base Erosion and Profit Shifting ('BEPS') project has released Action Plan 15 "Developing a Multilateral Instrument to Modify Bilateral Tax Treaties".

Action Plan 15 provides for development of MLI that will enable jurisdictions to swiftly amend their bilateral tax treaties to implement such measures rather than entering into long-drawn process of negotiation. Please note that MLI shall not automatically apply to all bilateral treaties that a signatory country has entered into, but it shall apply to the extent both parties to the treaty have agreed upon the treaty being governed by MLI provisions.

In order to implement the BEPS measures, MLI will modify India's DTAAs and will be applied alongside the existing DTAAs.

Article 6 of MLI provides for modification of the CTA to include the following preamble text:

"*Intending to eliminate double taxation with respect to the taxes covered by this agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this agreement for the indirect benefit of residents of third jurisdictions),"*

In order to achieve this, the provisions of section 90(1)(b) and section 90A(1)(b) of the IT Act were amended so as to provide that the Central Government may enter into an agreement with the Government of any country outside India or specified territory outside India for, *inter alia*, the avoidance of double taxation of income under the IT Act and under the corresponding law in force in that country or specified territory, as the case may be, without creating

opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this agreement for the indirect benefit of residents of any other country or territory).

As MLI becomes effective in India, tax treaties should not be replaced by MLI, but it should be read alongside existing treaty provisions and shall modify the application of DTAAs to the extent of aligning it with measures specified under BEPS Action Reports. Therefore, MLI provisions needs to be analyzed in detail whenever DTAA need to be relied upon as it has wide coverage of anti-abuse rules contained in its 'minimum standards' such as principal purpose test, simplified LOB etc. Any transaction undertaken in violation of MLI provisions in future could have significant tax implications.

8.3.3 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.

8.3.4 Social Security Agreements (SSA)

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 under following circumstances:

- 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

Social Security Agreements ("SSA") and Certificate of Coverage ("COC")

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.

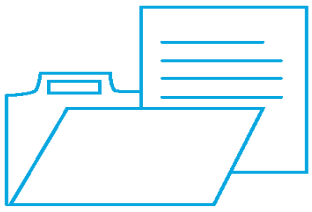
The same are listed as under-

Sr. No.	Country
1.	Austria
2.	Australia
3.	Brazil
4.	Belgium
5.	Canada
6.	Czech Republic
7.	Denmark
8.	Finland
9.	France
10.	Germany
11.	Hungary
12.	Japan
13.	South Korea
14.	Luxembourg
15.	Netherlands
16.	Norway
17.	Portugal
18.	Quebec
19.	Sweden
20.	Switzerland

A **Certificate of Coverage (COC) 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 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 highly skilled and/or qualified foreign professionals whose gross 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.

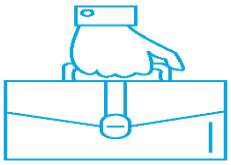
- **Business Visa** can be granted to a foreign national who wants to visit India to establish a business / industrial venture, wants to purchase / sell industrial products in India, attending meetings, participating in an exhibition or trade fair, foreign trainees attending

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 depending upon the nationality.

- **Project visa** is granted to foreign nationals coming to India for execution of projects in the power and steel sectors.

- **Tourist Visa** can be granted to a foreign national whose sole objective of visiting India is recreation, sightseeing, 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 up to 20 grams with a value cap of Rs. 50,000/- (in the case of a gentleman passenger) or up to 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

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")/ Foreigners Registration Officer (FRO) concerned having jurisdiction over the place where the foreigner intends to stay.

Overseas Citizen of India (OCI) card holders are exempted from registration with FRRO.

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 (except for the month of March, it would be 30th April) 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 with in Chapter 2 above. While filing of the ROI, due care should be taken while determining the residential status. It is advisable to take professional advice regarding the 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 - Form 30A, 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. However, as per amendment brought in July 2019, it is now also made applicable to a person being Not ordinary residents or Non-resident (applicable w.e.f. 01 July 2015) but who was an ordinary resident of India in the previous year to which the foreign income relates or in the previous year in which foreign asset was acquired.

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.

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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 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 IT 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 IT Act, the revenue cannot recover the TDS amount with interest from the employee once again.

Section 192(2B) of the IT Act provides that while calculating TDS from salary, income under any other head and tax, if any, deducted thereon, are to be taken into account. The Finance Act 2024 expanded the scope of Section 192(2B) w.e.f. 1st October 2024 to include any tax deducted or collected under the provisions of Chapter XVII-B or Chapter XVII-BB, as the case may be, to be taken into account for the purposes of making the deduction under section

192(1) of the IT Act. In view of this, TCS credit shall also be taken into account while calculating TDS on salary by employers in the same manner in which TDS and other income are considered.

9.3 Procedure for deducting TDS in case of Job switch

In case of job switching, the employee is required to inform about the details of the income pertaining to his previous employment to his new employer in Form 12B. Accordingly, such new employer would take into consideration the details provided by the employee in order to compute the total tax liability. Similarly, in case of simultaneous employment, the employee may furnish such details of income from other employer to one of his employers. In such case where the employee has provided details of income from all the other employers, he can rely on the Form 16 generated by such employer to whom such details are provided for the purpose of furnishing his tax return.

However, where the employee has not provided such details of income from previous employer to new employer or details of income from a simultaneous employment to any of the employers, the employee will have to take into consideration the details provided (such as Basic Salary, Dearness Allowance, Perquisites, Exempt Allowances like Leave Travel Allowance ("LTA") or House Rent Allowance ("HRA"), etc.) in all of the Form 16's received by him for the purpose of furnishing his tax return.

While combining the details of such Form 16's, it is pertinent to note that the quantum of deduction applicable would be restricted to the thresholds as applicable to a single taxpayer and such thresholds should not be multiplied based on the number of Form 16's generated or based on the number of employments. For instance, the salary standard deduction would be restricted to Rs. 50,000 (Rs. 75,000 in case of new tax regime) irrespective of the number of jobs held by the employee. Also, details of income other than salary (such as house property details, savings bank interest, etc.) should also not be combined as it may lead to duplication.

9.4 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%

9.5 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.

9.6 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

9.7 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 '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	Consists 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

9.8 Filing of Quarterly TDS Return

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

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

The Finance (No. 2) Act 2024 has now restricted that no TDS correction statements shall be filed after the expiry of 6 years from the end of the financial year in which the statement is furnished.

9.9 Interest

Section	Default	Quantum
201	Assessee in Default - 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.

9.10 Fees for Late Filing of TDS Return

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

9.11 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, etc.	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 The Finance Act 2024 provides that no penalty shall be levied if the employer proves that after paying TDS along with fees and interest, he has filed the TDS statement before 1 month instead of earlier 1 year from the time prescribed for furnishing such statement

9.12 Prosecution

Section	Default	Rigorous Imprisonment
276B	Failure to pay the tax deducted or the tax deducted is not deposited to the Government The Finance (No. 2) Act 2024 w.e.f. 1st October 2024 provides for exemption from prosecution, if the payment of tax deducted in respect of a quarter has been made to the credit of the Central Government at any time on or before the time prescribed for filing the TDS statement of such quarter under section 200(3) of the IT Act.	3 months to 7 years and with fine.
278A	Punishment for second and subsequent offences under section 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

The Black Money (Undisclosed Foreign Income and Asset) and Imposition of Tax Act, 2015 (referred to as 'Act') extends to the whole of India and came into force from 01 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.

As such, this Act was not applicable in case of any person who is Not Ordinarily Resident and Non-Resident. However, as per amendment brought in July 2019, it is now also made applicable to a person being Not ordinarily residents or Non-resident (applicable w.e.f. 01 July 2015) but who was an ordinary resident of India in the previous year to which the foreign income relates or in the previous year in which foreign asset was acquired.

However, w.e.f. 01-04-2024, if a person, who is a Resident and Ordinarily Resident (ROR) (Discussed in Chapter 2), who is required to file an income tax return for any previous year as per the provision of Income Tax Act and who at any time during such previous year

- held any asset (including financial interest in any entity) located outside India as a beneficial owner or otherwise; or
- was a beneficiary of any asset (including financial interest in any entity) located outside India; or
- had any income from a source located outside India,

and fails to furnish such a return before the end of relevant assessment year, then a penalty of Rs 1 Million can be imposed.

However, this penalty does not apply if the total value of their foreign assets (excluding immovable property) is ₹20 lakh or less.

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	

Note*: The said penalty shall not be applicable in respect of an asset, being one or more bank accounts having an aggregate balance which does not exceed Rs. 5,00,000 at any time during the previous year. However, the Finance (No. 2) Act 2024 has provided that w.e.f. 1st October 2024, such penalty shall not apply in respect of an asset or assets (other than immovable property) where the aggregate value of such asset or assets does not exceed Rs. 20,00,000.

Further, the Finance Act 2024 amended Section 132B of the IT Act, to also include liabilities under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, allowing these liabilities to be recovered from seized assets.

10.5 Tax Clearance Certificate for Black Money Act, 2015

Section 230(1A) of the IT Act requires person domiciled in India to obtain a certificate from the income-tax authorities before leaving India. This certificate confirms that the person has no outstanding liabilities under the IT Act, the Wealth-tax Act, 1957, the Gift-tax Act, 1958, or the Expenditure-tax Act, 1987, or has made satisfactory arrangements to pay any such liabilities.

Accordingly, the Finance (No. 2) Act provides to include liabilities under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, in the tax clearance certificate requirements w.e.f. 1st October 2024.

10.6 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.

10.6.1 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 employee's 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.

As per the clarification issued by CBDT dated 20 August 2024, Income Tax Clearance Certificate is required by residents domiciled in India, only in rare cases which are as under:

a) where a person is involved in serious financial irregularities.
b) Where a tax demand of more than Rs. 10 Lakhs is pending which is not stayed by any authority.

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.

10.6.2 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.

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

(This space has been left blank intentionally)

Abbreviations

AY – Assessment Year

FY – Financial Year

IT Act – Income Tax Act 1961

PLI – Performance Linked Incentives

TDS - Tax Deduction at Source

CTC - Cost To Company

ROR – Resident and Ordinarily Resident

RNOR – Resident but Not Ordinarily Resident

NR – Non-Resident

PY – Previous Year

HUF – Hindu Undivided Family

AOP – Association of Persons

BOI – Body of Individuals

AMT – Alternative Minimum Tax

MF – Mutual Fund

LTCG – Long Term Capital Gain

STCG – Short Term Capital Gain

ESOP – Employee Stock Option Plan

NSDL – National Securities Depository Ltd

TDS – Tax Deducted at Source

TCS – Tax Collected at Source

MAT – Minimum Alternate Tax

EPF – Employee Provident Fund

RPF – Recognized Provident Fund

PPF – Public Provident Fund

PAN – Permanent Account Number

FMV – Fair Market Value

DTAA – Double Tax Avoidance Agreement

MLI – Multilateral Instruments

TRC – Tax Residency Certificate

OECD - Organization for Economic Co-operation and Development

FRRO - Foreigners Regional Registration Office

ROI – Return of Income

AO – Assessing Officer

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

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