KPMG IN INDIA

KPMG Flash News

19 December 2009

TAX

New rules specifying the valuation of perquisite - Compensation packages may need to be revisited

Background

The Finance Act 2009 had abolished Fringe Benefit Tax (FBT) with effect from 1 April 2009. As a consequence, it had restored the taxation of perquisites provided by the employer, in the hands of the employee.
(For details, please refer our earlier Flash news dated 20 July 2009).

The much awaited new rules[1] have now been notified by The Central Board of Direct Taxes (CBDT) *vide* Notification dated 18 December 2009. The amended provisions will be retrospectively effective from 1 April 2009 onwards.

The new valuation rules as prescribed by CBDT and the comparative analysis with the earlier perquisite rules (Rule 3) have been tabulated as under:

[1] Rule 3 has been substituted in the Income-tax Rules, 1962

Nature of benefit provided by the employer	Value of perquisite as per erstwhile rules	Value of perquisite as per new rules
Where unfurnished accommodation is provided by Central/State Government:		
(a) Employees either holding office or post in connection with the affairs of the Union/State **Rule 3(1)(1)**	License fee determined by the Central/ State Government in accordance with the rules framed **as reduced by** the rent, if any, paid by the employee. *** Refer Note 1**[2]	**Same as erstwhile provisions**
(b) Employee who is serving on deputation with any body or undertaking under the control of Central/State Government **Explanation to Rule 3(1)**	**-** Same as above **-**	**-**15% of salary in cities where population is more than 25 lakhs **-**10% of salary in cities where population is more than 10 lakhs but does not exceed 25 lakhs - 7.5% in cities in other areas **as reduced by** the rent, if any, paid by the employee. **Refer Notes 1 and 2**[3]

[2] **Note 1**: In case of furnished accommodation, the perquisite value will be increased by 10% of the cost of furniture/actual hire charges, as reduced by the amount actually paid by the employee.

[3] **Note 2**: 'Salary' would primarily include basic salary and taxable allowances, bonus etc, but has been amended to specifically exclude any lump sum payments received at the time if termination of service or superannuation or voluntary retirement**,** like gratuity, severance pay, leave encashment, voluntary retrenchment benefits, commutation of pension and similar payments.

Nature of benefit provided by the employer	Value of perquisite as per erstwhile rules	Value of perquisite as per new rules
Where unfurnished accommodation is provided by employer other than Central/State Government		
(a) Accommodation is owned by the employer **Rule 3(1)(2)(a)**	-15% of salary in cities where population is more than 25 lakhs -10% of salary in cities where population is more than 10 lakhs but does not exceed 25 lakhs - 7.5% in cities in other areas **as reduced by** the rent, if any, paid by the employee. *** Refer Notes 1 and 2**	**Same as erstwhile provisions**
(b) Accommodation is taken on lease or rent by the employer **Rule 3(1)(2)(b)**	Lower of: -actual amount of lease rent payable by the employer; *or* -15% of salary; **as reduced by** the rent, if any, paid by the employee. *** Refer Notes 1 and 2**	**Same as erstwhile provisions**
Accommodation is provided by the employer in a hotel[4]		
(a) Accommodation is provided for a period of upto 15 days in the aggregate on account of transfer of employee from one place to another **Rule 3(1)(3)**	Not taxable	**Same as erstwhile provisions**
(b) Accommodation is provided for a period of more than 15 days in the aggregate on account of transfer of employee from one place to another **Rule 3(1)(3)**	Lower of: -Actual charges paid by the employer; *or* -24% of salary; **as reduced by** the rent, if any, paid by the employee.	**Same as erstwhile provisions**

[4] 'Hotel' includes licensed accommodation such as motel, service apartment or guest house

Nature of benefit provided by the employer	Value of perquisite as per erstwhile rules	Value of perquisite as per new rules
Motor car is owned/ hired by employer		
(a) Car used exclusively in performance of official duties **Rule 3(2)(A)(1)(a)**	No value provided specified documents[5] are maintained by employer	**Same as erstwhile provisions**
(b) Car used exclusively for personal purpose by the employee or any member of his household[6] and expenses on maintenance and running are met/ reimbursed by employer **Rule 3(2)(A)(1)(b)**	Actual amount of expenditure incurred including the remuneration paid to the chauffeur by the employer *plus* amount representing normal wear and tear of the car[7] **as reduced by** any amount charged from the employee	**Same as erstwhile provisions**
(c) Car used partly for official duties and partly for personal purpose by employee or any member of his household		
(i) Expenses on maintenance and running are met/ reimbursed by employer **Rule 3(2)(A)(1)(c)(i)**	Rs 1,200*[8]/Rs 1,600**[9] per month (plus Rs 600 if chauffeur is provided)	Rs 1,800*Rs 2,400** per month (plus Rs 900 if chauffeur is provided)
(ii) Expenses on maintenance and running for personal use are fully met by employee **Rule 3(2)(A)(1)(c)(ii)**	Rs 400*[10]Rs 600**[11] per month (plus Rs 600 if chauffeur is provided)	Rs 600*/Rs 900** per month (plus Rs 900 if chauffeur is provided)

[5] Specified Documents:
- (a) 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
- (b) The employer gives a certificate to the effect that the expenditure was incurred wholly and exclusively for performance of official duties

[6] Member of household includes spouse(s), children and their spouses, parents and servants and dependants

[7] The normal wear and tear of a motor car shall be taken @ 10% per annum of the actual cost of the motor car(s)

[8] * Where cubic capacity of engine does not exceed 1.6 litres

[9] ** Where cubic capacity of engine exceeds 1.6 litres

[10] * Where cubic capacity of engine does not exceed 1.6 litres

[11] ** Where cubic capacity of engine exceeds 1.6 litres

Nature of benefit provided by the employer	Value of perquisite as per erstwhile rules	Value of perquisite as per new rules
Motor car is owned by employee and running expenses met or reimbursed by employer		
(a) Car used exclusively in performance of official duties **Rule 3(2)(A)(2)(i)**	No value provided the specified documents[12] are maintained by employer	**Same as erstwhile provisions**
(b) Car used partly for official duties and partly for personal purpose by him or any member of his household **Rule 3(2)(A)(2)(ii)**	Actual amount incurred by employer **as reduced by** Rs 1,200*/Rs 1,600** per month (plus Rs 600 if chauffeur is provided)	Actual amount incurred by employer **as reduced by** Rs 1,800*/Rs 2,400** per month (plus Rs 900 if chauffeur is provided) **(Refer Note 3[13])**
Any other automotive conveyance is owned by employee and running and maintenance expenses are met/ reimbursed by employer		
(a) Used exclusively in performance of official duties **Rule 3(2)(A)(3)(i)**	No value provided the specified documents are maintained by employer	**Same as erstwhile provisions**
(b) Used partly for official duties and partly for personal purpose by him **Rule 3(2)(A)(3)(ii)**	Actual amount of expenditure incurred by employer as reduced by Rs 1,200*/Rs 1,600** per month (plus Rs 600 if chauffeur is provided)	Actual amount of expenditure incurred by employer as reduced by Rs 900 per month *** Refer Note 3**

[12] Specified Documents:

(a) 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

(b) The employer gives a certificate to the effect that the expenditure was incurred wholly and exclusively for performance of official duties

[13] **Note 3:** Wherein the employer or employee claims:

- that motor car has been used exclusively in performance of office duties, or
- actual expenses on running and maintenance of the car owned by employee

is more than the amounts deductible as specified, then he may claim a higher amount attributable to such use and the value of the perquisite shall be actual amount attributable to official use of the vehicle, provided the specified documents are maintained by employer

Nature of benefit provided by the employer	Value of perquisite as per erstwhile rules	Value of perquisite as per new rules
Sweeper, gardener, watchman or personal attendant		
Rule 3(3)	Amount of salary paid to such person incurred by the employer **as reduced by amount**, if any, actually paid by the employee.	**Same as erstwhile provisions**
Supply of gas, electric energy or water for employee's household consumption		
a) Using resources owned by the employer without purchasing from outside agency **Rule 3(4)**	Manufacturing cost per unit incurred by the employer **as reduced by amount**, if any, actually paid by the employee.	**Same as erstwhile provisions**
b) Any other case **Rule 3(4)**	Actual amount incurred by the employer to the agency supplying the resources **as reduced by amount**, if any, actually paid by the employee.	**Same as erstwhile provisions**
Free or concessional educational facilities for any member of household		
a) Where the educational institution is itself maintained and owned by the employer **OR** Where such facilities are allowed in other educational institute by reason of his being in employment of that employer. **Rule 3(5)**	The cost of such education in a similar institution in or near the locality. However, if the facilities are provided to the children of the employee (*any other member of the household not covered here*), the value of benefit shall be **Nil** if the cost of such education per child does not exceed INR 1,000 per month.	**Same as erstwhile provisions**
b) In any other case **Rule 3(5)**	Actual amount incurred by the employer **as reduced by amount**, if any, actually paid by the employee.	**Same as erstwhile provisions**

Nature of benefit provided by the employer	Value of perquisite as per erstwhile rules	Value of perquisite as per new rules
Free or concessional transport provided by the employer engaged in the carriage of passengers or goods for personal or private journey		
a) Employers in a business other than airlines and railways **Rule 3(6)**	Value at which such benefit or amenity is offered by such employer to the public **as reduced by amount**, if any, actually paid by the employee.	**Same as erstwhile provisions**
b) Employers in a business of an airline and railways.	Nil	**Same as erstwhile provisions**
Interest free/concessional loan for any purpose		
Rule 3(7)(i)	Value is equal to the interest computed at the rate[14] charged per annum by State Bank of India on the maximum outstanding monthly balance[15] **as reduced** by the interest, if any, actually paid by the employee or any such member of his household. However, in the following cases the value is not taxable: • where the loan granted for medical treatment in respect of certain diseases specified in Rule 3A, excluding the amount claimed under a medical insurance scheme • where the amount of loan does not exceed INR 20,000 in the aggregate.	**Same as erstwhile provisions**

[14] Rate prevailing as on the 1st day of the relevant previous year in respect of loans for the same purpose advanced by the State Bank of India.

[15] ‘Maximum outstanding monthly balance’ is the aggregate outstanding balance for each loan as on the last day of each month

Nature of benefit provided by the employer	Value of perquisite as per erstwhile rules	Value of perquisite as per new rules
Travelling, touring, accommodation and any other facility provided by the employer for personal purposes, other than leave travel concession		
a) Where such facility is maintained by the employer, and is not available uniformly to all employees **Rule 3(7)(ii)**	Value at which such facilities are offered by other agencies to the public **as reduced by amount**, if any, actually paid by the employee.	**Same as erstwhile provisions**
b) Where any official tour is extended as a vacation **Rule 3(7)(ii)**	Actual amount incurred by the employer in relation to such extended period of stay or vacation. **as reduced by amount**, if any, actually paid by the employee.	**Same as erstwhile provisions**
c) In any other case **Rule 3(7)(ii)**	Actual amount incurred by the employer **as reduced by amount**, if any, actually paid by the employee.	**Same as erstwhile provisions**
Free food and non-alcoholic beverages		
Rule 3(7)(iii)	Actual amount incurred by the employer **as reduced by amount**, if any, actually paid by the employee. If food and non-alcoholic beverages are provided during working hours at office or business premises or through non-transferable paid vouchers usable only at eating joints, the value of facility to the extent of INR 50 per meal is exempt from the tax. Tea and snacks provided during working hours and free food or non-alcoholic beverages during working hours provided in a remote location or an off-shore installation exempt from tax.	**Same as erstwhile provisions**

Nature of benefit provided by the employer	Value of perquisite as per erstwhile rules	Value of perquisite as per new rules
Gifts/ Voucher/ Token in lieu of gift		
Rule 3(7)(iv)	Actual amount of gift shall be considered as perquisite. However, the value of perquisite is **NIL** in case the value of gift is below INR 5,000 in the aggregate during the previous year.	**Same as erstwhile provisions**
Credit Card expenses including membership and annual fees		
Rule 3(7)(v)	Actual amount incurred by the employer **as reduced by amount**, if any, actually paid by the employee. However, the amount incurred by the employer wholly and exclusively for business purposes subject to the fulfilment of conditions prescribed[16] is exempt from tax.	**Same as erstwhile provisions**

[16] Conditions to be fulfilled:

a) complete details in respect of such expenditure are maintained by the employer which may, *inter alia*, include the date of expenditure and the nature of expenditure;
b) 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.

Nature of benefit provided by the employer	Value of perquisite as per erstwhile rules	Value of perquisite as per new rules
Club expenses including annual and periodical fees		
a) Other than corporate membership **Rule 3(7)(vi)**	Actual amount incurred by the employer **as reduced by amount**, if any, actually paid by the employee. However, the amount incurred by the employer wholly and exclusively for business purposes subject to the fulfilment of conditions as prescribed above is exempt from tax.	**Same as erstwhile provisions**
b) Corporate membership	Value of perquisite shall not include the initial fee paid for acquiring such corporate membership.	**Same as erstwhile provisions**
c) Health club, sports and similar facilities	If such facilities are provided uniformly by the employer to all the employees, the value of perquisite will be NIL	**Same as erstwhile provisions**
Use of moveable assets		
a) Laptops and computers belonging to employer or hired by him	Nil	**Same as erstwhile provisions**
b) Moveable assets, other than: • Laptops and computers; and • Assets already specified in the rules **Rule 3(7)(vii)**	• 10% per annum of the actual cost of such assets, or • The amount of rent or charge paid or payable by the employer as the case may be **as reduced by amount**, if any, actually paid by the employee.	**Same as erstwhile provisions**

Nature of benefit provided by the employer	Value of perquisite as per erstwhile rules	Value of perquisite as per new rules
Transfer of any moveable assets		
a) Computer and electronic items **Rule 3 (7) (viii)**	Actual cost to the employer as reduced by 50% of the actual cost for each completed year during which such asset was put to use by the employer, on the basis of *reducing balance method.* **as reduced by amount**, if any, actually paid by the employee.	**Same as erstwhile provisions**
b) Motor Cars **Rule 3(7)(viii)**	Actual cost to the employer as reduced by 20% of the actual cost for each completed year during which such asset was put to use by the employer, on the basis of *reducing balance method.* **as reduced by amount**, if any, actually paid by the employee.	**Same as erstwhile provisions**
c) Any other asset **Rule 3(7)(viii)**	Actual cost to the employer as reduced by 10% of the actual cost for each completed year during which such asset was put to use by the employer. **as reduced by amount**, if any, actually paid by the employee.	**Same as erstwhile provisions**
Other benefits		
a) Telephones including mobiles **Rule 3(7)(ix)**	Expenses incurred by employer on behalf of employee will be exempt from tax	**Same as erstwhile provisions**
b) Any other benefit **Rule 3(7)(ix)**	Actual cost to the employer under an arm's length transaction **as reduced by** employee's contribution	**Same as erstwhile provisions**

Our Comments:

The new rules prescribed by CBDT are primarily similar to the erstwhile provisions that prevailed prior to the introduction of FBT. Both employers and employees will now have more clarity on the individual's tax liability.

As there was no clarity on the valuation rules till date, it was no possible for employers to value the perquisites. However, now as the tax liability for the full tax year needs to be recovered by 31 March 2010 from the employee's salary, it may result in significant cash outflow for the employee in the coming months.

After the introduction of the new rules, it may be worthwhile to revisit the existing compensation packages of the employees.

Disclaimer

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

For further information about KPMG in India and our services, please contact:

Bangalore
Maruthi Infotech Centre, 11-12/1
Inner Ring Road
Koramangala, Bangalore 560071
Phone: + 91 80 3980 6000 Fax: +91 80 3980 6999

Chennai
KPMG House
No.10, Mahatma Gandhi Road,
Nungambakkam High Road,
Chennai 600034
Phone: +91 44 39145000 Fax: +91 44 39145999

Delhi
DLF Cyber City, Building no. 10, Block B, Phase II
Gurgaon, Haryana 122 002
Phone: +91 124 307 4000 Fax: +91 124 254 9195

Hyderabad
KPMG, 8-2-618/2
Reliance Humsafar, 4th Floor

Road No.11, Banjara Hills
Hyderabad - 500 034
Phone: +91 40 66305000/23350060 Fax: + 91 40 6630 5299

Kochi
4/F, Palal Towers M. G. Road, Ravipuram,
Kochi 682 016
Tel: +91 484 309 4120
Fax: +91 484 309 4121

Kolkata
KPMG Infinity Benchmark
Plot No. G-1, 10th floor Block - EP & GP,
Sector – V, Salt Lake City
Kolkata - 700091
Phone: +91 33 4403 4000 Fax: +91 33 4403 4199

Mumbai
Lodha Excelus, Apollo Mills Compound,
NM Joshi Marg, Mahalaxmi, Mumbai – 400 011
Phone: +91 22 39896000 Fax: + 91 22 39836000

Pune
703, 7th Floor Godrej Castlemaine, Next to Ruby Hall Clinic,
Bund Garden Road, Pune 411001
Phone: +91 20 30585764/65 Fax: +91 20 3058 5775