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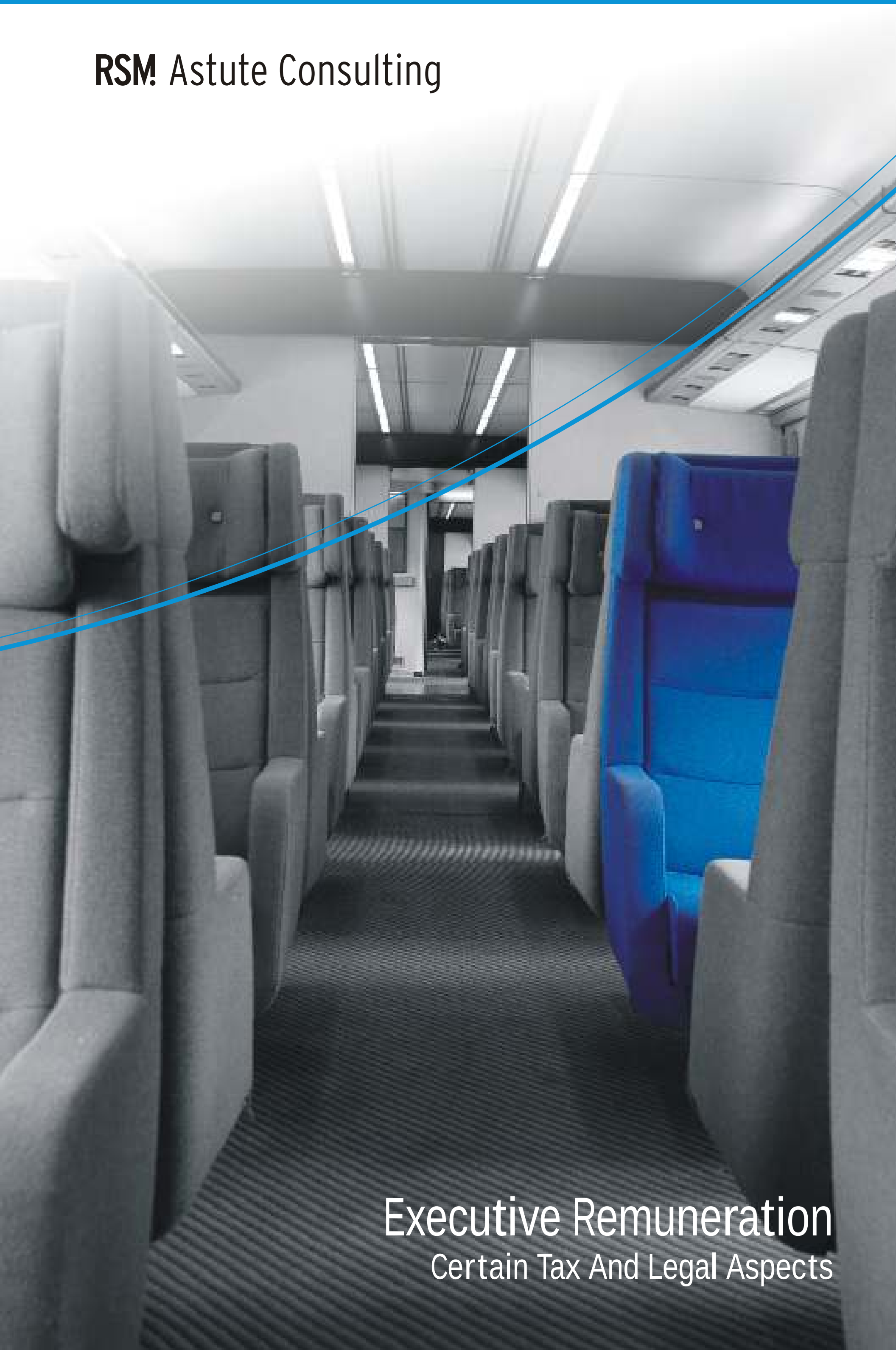

Executive Remuneration

Certain Tax And Legal Aspects

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Chapter 1: Introduction

1.1 Background

India is the 4th largest economy in the world in terms of Gross Domestic Product (GDP) based on Purchasing Power Parity (PPP) method. India's GDP of US$ 1.286 trillion at current prices with a robust GDP growth makes it one of the most exciting economies in the world. For the Financial Year 2009-10, the GDP growth rate of India was around 7.2%, whereas GDP growth rate for the year 2010-11 is expected to rise to 8.4%.

The exponential growth in various industrial and service sectors is followed by unprecedented growth in salary levels of employees, even at junior and middle management levels. This has given rise to the need for a well strategised designing of the executive remuneration, which will ensure a win-win situation for both employers and employees.

1.2 Executive Remuneration Strategy

Executive remuneration strategy should be designed after considering the following factors:

i. Tax optimisation

Tax exemptions are available for various specified allowances and perquisites. Incorporating such allowances and perquisites into the salary structure can result into increase in net take-home pay of the employee without increasing the Cost to the Company (CTC).

ii. Remuneration to foreign nationals

Due to increasing globalisation, 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.

iii. Flexibility

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

- Working conditions / timings: Night shift allowance, hardship allowance, special allowance for working in hazardous work conditions etc.

- Functional responsibilities: Conveyance allowance / reimbursement of petrol to sales employees, reimbursement of professional membership fees to professionals, entertainment allowance to marketing employees etc.

- Working places: City compensatory allowance, free travel allowance to family members, hardship allowance for postings in remote areas etc.

- Employee requirements: House rent allowance for employees staying in rented houses, children education allowance, hostel allowance, scholarships etc.

iv. 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).

v. Optimising the Cost to Company (CTC)

Designing of salary structure should ensure optimisation of CTC, by considering various legal requirements like payment of gratuity, etc.

vi. Administrative efficiency

An effective salary structure should also ensure minimal administrative complexities.

Chapter 2
Residential Status And Taxability

Chapter 2: Residential Status And Taxability

2.1 Introduction

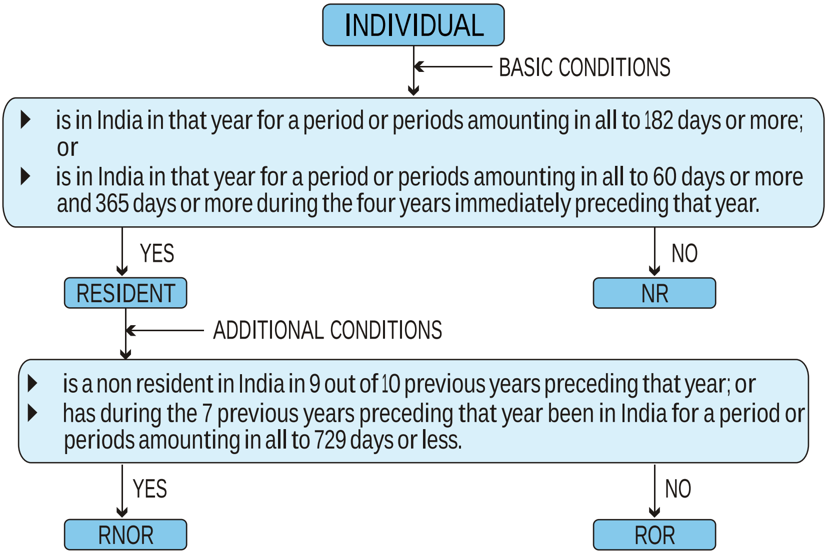
The Indian tax system can broadly be divided into two categories, Direct Taxes and Indirect Taxes. The main components of Direct Taxes include Income Tax and Wealth Tax, whereas Indirect Taxes comprise of Value Added Tax, Service Tax, Customs Duty and other State managed taxes.

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

2.2 Taxability In India

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

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



Residential status can be determined by following the below mentioned sequence:

- The individual should first see whether he satisfies any of the basic conditions. If he does, then he will become a resident in India.
- He should further check whether he satisfies either of the two additional conditions. If he fails to satisfy any of the additional conditions, then he will become resident and ordinary resident (ROR). Otherwise he will become resident but not ordinary resident (RNOR).
- If an individual fails to satisfy any of the basic conditions altogether, then he will become a non resident in India (NR).

However, the basic conditions mentioned above are relaxed for the benefit of following persons:

- An Indian citizen who leaves India in any year for the purpose of employment or as a member of the crew of an Indian ship.
- An Indian citizen or a person of Indian origin who resides outside India and who comes to India on a visit.

The abovementioned persons shall be treated as resident in India only if their total period of stay in India exceeds 182 or more in the concerned previous year.

Further, the day on which such person enters India as well as the day on which he leaves India shall be taken into account as stay of the Individual in India.

2.3 Residential Status And Taxability Of Income

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	▸ Taxable	▸ Taxable	▸ Taxable
	▸ Other income	▸ Taxable	▸ Not Taxable	▸ Not Taxable

From the above table we can draw the following inferences:

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

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

Salary income shall be deemed to accrue or arise in India, if the income is earned in India. In the following cases salary income shall be regarded as earned in India only if the salary is payable for

- service rendered in India; and
- the rest period or leave period which is preceded and succeeded by services rendered in India and forms part of the service contract of employment.

2.4 Previous Year And Assessment Year

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

The tax year consists of Previous Year (P.Y.) and Assessment Year (A.Y.).

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

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

Example:

The financial year 2010-11 will commence from 1 April 2010 and ends on 31 March 2011. So the previous year will be 2010-11.

Assessment year for P.Y. 2010-11 will commence from 1 April 2011 and ends on 31 March 2012. So the assessment year will be 2011-12.

2.5 Tax Liabilities

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

2.6 Double Taxation Avoidance Agreement

If any individual or organization is carrying on any employment, trade, business etc. in a country other than the country of origin, he / it 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 Act are inconsistent with the provisions of DTAA, the later will prevail. In other words an assessee can opt for the provisions of the Act or that of the treaty whichever is more beneficial to him.

India has entered into DTAA with around 78 countries and as such it is not possible to summarise relevant clauses under each agreement in this note. However, certain significant aspects in DTAA relating to taxability of salary of expatriates are summarized below (some of these aspects are based on the OECD model of DTAA, which India follows).

2.6.1 Taxation of remuneration in the country of residence

Remuneration derived by an expatriate in respect of an employment exercised in India shall be taxed only in the country of his residence if,

- The recipient of salary is present in India for a period or periods not exceeding in the aggregate 183 days in the financial year concerned; and
- The remuneration is paid by, or on behalf of, an employer who is not a resident of India; and
- The remuneration is not borne by a permanent establishment or a fixed base which the employer has in India*.

* In certain DTAA's of India the aforementioned clause reads as under:

“Such remuneration is not liable to be deducted from the employer's income chargeable to tax in India.”

Thus, if the above referred conditions are fulfilled then the remuneration of the expatriate will be taxed only in the country of his residence and not in India where the employment is exercised.

2.6.2 Tax credit

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

2.6.3 Eligibility for DTAA benefits

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

2.6.4 Tax deducted at source and benefit under the Act

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

Chapter 3
Tax Rates And Computation

Chapter 3: Tax Rates And Computation

3.1 Tax Rates

In India, the rates of tax can be differentiated in two ways. One is normal rate and the other is special rate. The income which is chargeable to normal rate covers the income under all heads except under the head "Capital Gains".

The tax rates for F.Y. 2009-2010 and 2010-2011 in case of Individuals are as follows:

For FY 2009-2010		For FY 2010-11	
Income Slab (Rs.)	Tax Rates*	Income Slab (Rs.)	Tax Rates*
0 - 1,60,000#	Nil	0 - 1,60,000#	Nil
1,60,001 - 3,00,000	10.30% of income exceeding Rs. 1,60,000	1,60,001 - 5,00,000	10.30% of income exceeding Rs. 1,60,000
3,00,001 - 5,00,000	Rs. 14,420 plus 20.60% of income exceeding Rs. 3,00,000	5,00,001 - 8,00,000	Rs. 35,020 plus 20.60% of income exceeding Rs. 5,00,000
5,00,001 & above	Rs. 55,620 plus 30.90% of income exceeding Rs. 5,00,000	8,00,001 & above	Rs. 96,820 plus 30.90% of income exceeding Rs. 8,00,000

* The tax rates are inclusive of education cess of 2% and secondary & higher education cess of 1% on income tax.

\# In case of a resident woman below 65 years of age at any time during the previous year, the basic exemption income limit is Rs. 1,90,000 and in case of a resident individual of the age of 65 years or more (senior citizen) at any time during the previous year, the basic exemption income limit is Rs. 2,40,000. The tax for other slabs will change accordingly.

3.2 Computation

The incidence of income tax for individuals, women and senior citizens, for the financial year 2010-11, having different income levels can be exemplified as follows:

Income level (Rs.)	Tax liability**		
	Individuals	Women	Senior Citizens
1,60,000	-	-	-
1,90,000	3,090	-	-
2,40,000	8,240	5,150	-
5,00,000	35,020	31,930	26,780
8,00,000	96,820	93,730	88,580
8,00,001 & above	#	#	#

** Tax liability includes education cess and secondary & higher education cess @2% and 1% respectively.

Tax liability for income exceeding Rs. 8,00,000 shall be calculated by applying tax rate of 30.90% to such excess income and adding the amount of income tax payable on income limit of upto Rs. 8,00,000, as worked out in the table.

3.3 Capital Gains Tax

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 following table:

Sr. No.	Particulars	Long Term Capital Gain (STCG)	Short Term Capital Gain (STCG)
1.	Transfer of equity shares in a company or unit of an equity oriented fund.	Exempt*	15%*
2.	Other Assets	20%	Taxed at the rate at which normal income is chargeable to tax.

* Provided the transaction took place through a recognised stock exchange in India and is subject to Securities Transaction Tax.

Assets which are held for more than 36 months from the date of its acquisition are called Long Term Capital Assets. However, in respect of shares, securities listed on a recognized stock exchange in India, units in UTI or of an Indian mutual fund held for more than 12 months will be treated as Long Term Capital Assets.

Assets other than Long Term Capital Assets are called as Short Term Capital Assets.

3.4 Wealth Tax

The Wealth Tax Act, 1957 requires an individual who possesses wealth in excess of Rs. 30,00,000 to pay Wealth Tax @1% on such excess wealth. The valuation of assets coming in the ambit of wealth tax is done as on the valuation date i.e. the last day of the financial year i.e. March 31. In the case of an Individual who is an Indian national and resident and ordinary resident in India is chargeable to wealth tax in respect of his global wealth. Whereas, in the case of an Individual who is a foreign national, he will be subject to wealth tax only in respect of taxable wealth in India.

3.5 Gift Tax

Indian tax system do not incorporate gift tax in its structure. However, in case of an individual, the value of any sum of money / immovable property / movable property received without consideration or inadequate consideration is chargeable to income tax in his assessment under the head “Income from Other Sources”. This provision is applicable only if such sum or the value of property exceeds Rs. 50,000. Further, this provision will not apply to any sum of money or property received in the following circumstances:

- From any specified relative; or
- On the occasion of the marriage of the individual; or
- Under a will or by way of inheritance; or
- In contemplation of death of the donor.

Chapter 4
Allowances And Reliefs

Chapter 4: Allowances And Reliefs

4.1 Introduction

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

- Tax planning
- Flexibility
- Legal requirements
- Optimising 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, Conveyance allowance. Most of the allowances are taxable in the hands of the employees, except for the specified exemptions.

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

4.2 Leave Travel Assistance

Any amount paid as leave travel assistance (LTA) by an employer is exempt from tax, subject to the following conditions:

- The employee should travel to any place in India.
- The LTA is for the employee and his family.
- The exemption shall be available to the least of actual expenses incurred or the limit specified in below mentioned table:

Sr. No.	Mode of journey	Ceiling amount equivalent to
1.	For journeys performed by Air	Air economy fare of the national carrier (Indian Airlines or Air India) by the shortest route to the place of destination.
2.	For journeys performed other than by Air, where	
	▸ 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	
	• Where a recognised public transport system exists	• First class or deluxe class fare on such transport by the shortest route to the place of destination.
	• Where a recognised 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 and so on. The block currently running is 2010-2013.

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

4.3 Leave Encashment

4.3.1 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.

4.3.2 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.

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

- (Earned Leave# - Leave Availed) X Salary**

  (Note: If leave availed is more than earned leave then the entire amount of Leave Encashment shall become taxable); or
- 10 months salary**; or
- Notified amount which is Rs. 3,00,000

Earned Leave shall not exceed 30 days for each completed year of service.
**For the purpose of this section salary means average of last 10 months salary.

4.4 Gratuity

Employees receiving death-cum-retirement gratuity can be classified in three categories. This segregation includes Government employees, employees covered by the Payment of Gratuity Act, 1972 and other employees. Taxability of gratuity in the hands of these classes of employees can be analysed as under:

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

- Employees covered by the Payment of Gratuity Act, 1972: The amount of gratuity received shall be exempt to the extent of the least of the following:
  - 15 days salary* for each completed year of service or part of the year in excess of 6 months; or
  - Rs. 3,50,000#; or
  - 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: The amount of gratuity received shall be exempt to the extent of the least of the following:
  - 1/2 month's salary* for each year of completed service, calculated on the basis of the average salary for the last 10 months; or
  - Rs. 3,50,000#; or
  - 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.

  # As per the Payment of Gratuity (Amendment) Act, 2010, the payment ceiling limit of gratuity payable to an employee has been increased from Rs. 3,50,000 to Rs. 10,00,000. The CBDT has notified the increase in the limit of Gratuity from present Rs. 3,50,000 to Rs. 10,00,000 which is applicable to employees who retire, or become incapacitated before retirement, or expire, or whose services are terminated on or after 24 May 2010.

4.5 Pension

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

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

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

Government Employees	Other Employees	
	Receipt of gratuity	Non-receipt of gratuity
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.

4.6 House Rent Allowance

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

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

HRA can be optional and can be paid to the employee residing in rented houses.

4.7 Certain Notified Special Allowances Or Benefits

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

Allowances	Exempted Amount
Conveyance - 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.	No limit
Any allowance granted for encouraging academic, research and training pursuits in educational and research institutions.	No limit
Any allowance granted to meet the cost of travel on tour or on transfer.	No limit
Any allowance, whether granted on tour or for the period of journey in connection with transfer, to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty.	No limit
Any allowance to meet the expenditure on a helper where such helper is engaged for the performance of duties of an office.	No limit

Allowances	Exempted Amount
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.	No limit
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. 6,000 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 (conveyance) allowance granted to an employee to meet his expenditure for the purpose of commuting between the place of his residence and the place of his duty can be considered as follows:	
- In the case of an employee who is blind or orthopaedically handicapped with disability of lower extremities.	- Rs. 1,600 per month
- Other Employees.	- Rs. 800 per month
We have tried to brief 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 exempt up to specified amounts.	

4.8 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.

4.9 Relief Under Section 89

It is likely that, an employee may receive salary in arrears or in advance in the current year. Due to this the taxable income of the employee may increase and the employee would be required to pay tax at higher rate than he would have been, if there were no such arrears or advance salary. In such cases the employee can claim relief under section 89. The employee can also claim relief under this section for leave encashment received in the previous year.

Chapter 5
Perquisites

Chapter 5: Perquisites

5.1 Introduction

Perquisite is defined (in the Oxford English Dictionary) as any casual emolument, fee or profit, attached to an office or position in addition to the salary or wages. In other words perquisites are benefits in addition to normal salary to which employee has a right by virtue of his employment. To put it simply perquisites or 'perks' as they are called colloquially, are benefits generally in kind, received by an employee by virtue of his employment.

Rule 40F of the Income Tax Rules prescribes the valuation of perquisites for calculation of Income tax. In this chapter various such valuation rules are discussed. In case of certain perquisites, the value of perquisites arrived at shall be reduced by amount, if any, paid or recovered from the employee.

5.2 Residential Accommodation

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

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

Sr. No.	Circumstances	Where accommodation in unfurnished	Where accommodation is furnished
(1)	(2)	(3)	(4)
1.	Where the accommodation is owned by the employer	▸ 15% of salary in cities having population exceeding 25 lakhs as per 2001 census; ▸ 10% of salary in cities having population exceeding 10 lakhs but not exceeding 25 lakhs as per 2001 census; ▸ 7.5% of salary in other areas, in respect of the period during which the said accommodation was occupied by the employee during the previous year.	The value of perquisites as determined under column (3) as increased by 10% per annum of the cost of furniture* or if such furniture is hired from a third party, by the actual hire charges payable for the same.
2.	Where the accommodation is taken on lease or rent by the employer	Actual amount of lease rental paid or payable by the employer or 15% of salary whichever is lower.	-- do --
3.	Where the accommodation is provided by the employer in a hotel (except where the employee is provided such accommodation for a period not exceeding in aggregate 15 days on his transfer from one place to another)	Not applicable.	24% of salary paid or payable for the previous year or the actual charges paid or payable to such hotel, which is lower, for the period during which such accommodation is provided.

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

5.3 Motor Car Facility

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

Sr. No.		Circumstances	Where cubic capacity of the engine of the car: Does not exceed 1.6 litres	Where cubic capacity of the engine of the car: Exceed 1.6 litres
1.		Where the motor car is owned or hired by the employer and -		
	1.1	is used wholly and exclusively in the performance of his official duties	No Value (See Note 1)	No Value (See Note 1)
	1.2	is used exclusively for the private or personal purposes of the employee or any member of his household and the running and maintenance expenses are met or reimbursed by the employer	Actual amount of expenditure incurred by the employer on the running and maintenance of motor car Plus (+) Chauffeur remuneration, if any paid by the employer plus (+) the amount representing normal wear and tear of the motor car (10% p.a. of actual cost of motor car)	Actual amount of expenditure incurred by the employer on the running and maintenance of motor car Plus (+) Chauffeur remuneration, if any paid by the employer plus (+) the amount representing normal wear and tear of the motor car (10% p.a. of actual cost of motor car)
	1.3	is used partly in the performance of duties and partly for private or personal purposes of his own or any member of his household and		

Sr. No.		Circumstances	Where cubic capacity of the engine of the car	
			Does not exceed 1.6 litres	Exceed 1.6 litres
		i. The expenses on maintenance and running are met or reimbursed by the employer; ii. The expenses on running and maintenance for private or personal use are fully met by the assessee.	i. Rs. 1,800 p.m. (plus Rs. 900, if chauffeur is also provided to run the motor car) ii. Rs. 600 p.m. (plus Rs.900, if chauffeur is also provided by the employer to run the motor car)	i. Rs. 2,400 p.m. (plus Rs. 900, if chauffeur is also provided to run the motor car) ii. Rs. 900 p.m. (plus Rs. 900, if chauffeur is also provided to run the motor car)
2.		Where the employee owns a motor car but the actual running and maintenance charges (including remuneration of the chauffeur, if any) are met or reimbursed to him by the employer and-		
	2.1	such reimbursement is for the use of the vehicle wholly and exclusively for official purposes	No Value (See Note 1)	No Value (See Note 1)

Sr. No.		Circumstances	Where cubic capacity of the engine of the car	
			Does not exceed 1.6 litres	Exceed 1.6 litres
	2.2	such reimbursement is for the use of the vehicle partly for official purposes and partly for personal or private purposes of the employee or any member of his household.	actual amount of expenditure incurred by the employer as reduced by the amount specified in sr. no. 1.3.(i) above.	actual amount of expenditure incurred by the employer as reduced by the amount specified in Sl. No. 1.3.(i) above.
3.		Where the employee owns any other automotive conveyance but the actual running and maintenance charges are met or reimbursed to him by the employer and		
	3.1	such reimbursement is for the use of the vehicle wholly and exclusively for official purposes;	No Value (See Note 1)	Not Applicable
	3.2	such reimbursement is for the use of vehicle partly for official purposes and partly for personal or private purposes of the employee.	the actual amount of expenditure incurred by the employer as reduced by the amount of Rs. 900.	Not Applicable

Note 1:
The amount of taxable perquisites shall be taken to be Nil only if the following conditions are fulfilled:

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

5.4 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.

5.5 Free Gas, Electricity And Water Supply

5.5.1 The value of the benefit to the employee resulting from the supply of gas, electric energy or water for his household consumption shall be determined as the sum equal to the amount paid on that account by the employer to the agency supplying the gas, electric energy or water.

5.5.2 Where such supply is made from resources owned by the employer, without purchasing them from any other outside agency, the value of perquisite would be the manufacturing cost per unit incurred by the employer.

5.6 Educational Facilities

5.6.1 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.

5.6.2 Where educational institution is maintained and 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.

However, in respect of the value of educational facilities extended to the children of employee, the same shall be taxable only if it exceeds Rs. 1,000 per month.

5.7 Passenger/Goods Carriage Facility

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

5.8 Interest Free Loans/ Loans At Concessional Rates Of Interest To Employees

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

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

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

5.9 Expenses On Holiday Of Employees Borne By The Employer

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

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

5.10 Free Food And Non-Alcoholic Beverages

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

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

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

5.10.4 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.

5.11 Gifts From Employer

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

5.12 Reimbursment Of Credit Card Expenditure

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

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

- Complete details in respect of such expenditure are maintained by the employer such as the date and nature of expenditure etc.; and
- The employer gives a certificate for such expenditure to the effect that the same was incurred wholly and exclusively for the performance of official duties.

5.13 Club Facility

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

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

However if such expenses are incurred wholly and exclusively for official purposes, then reimbursement thereof shall not be taxable as perquisites subject to fulfillment of the same conditions as are applicable to para 5.12.

5.14 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% per annum of the actual cost of such asset or the amount of rent or charges paid or payable by the employer.

5.15 Transfer Of Movable Asset To The Employee

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

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

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

The value 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 assessee, shall be regarded as 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, sells, gifts or transfers to an irrevocable trust the securities received under an approved scheme of ESOP he will be subject to capital gains tax. As per section 49(2AA) 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 provided by explanation 1(hb) of section 2(42A).

5.17 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.

5.18 Contribution To Superannuation Fund

The amount of any contribution to an approved superannuation fund by the employer in respect of the assessee, to the extent it exceeds one lakh rupees shall be chargeable to tax as perquisites.

5.19 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.

5.20 Medical Treatment Not A Taxable Perquisite

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

Sr. No.	Exemptions
1.	Expenditure on medical treatment for employee or his family member in a hospital maintained by the employer, or a hospital maintained by the Government or a local authority or one approved for medical treatment of Government employees.
2.	Any payment directly by employer (or reimbursement of expenditure to the employee) to a hospital approved by the Chief Commissioner of Income-tax with reference to guidelines prescribed for the purposes of treatment of prescribed diseases or ailments where the employee or family member is undergoing treatment.
3.	Premium paid by the employer under the group medical insurance scheme of employees (including members of their families).
4.	Premium paid by the employer under the mediclaim scheme approved under section 80D.
5.	Any other expenses paid by the employer in respect of the medical treatment of the employee or his family member subject to a maximum of Rs. 15,000 in a year.
6.	Medical treatment of the employee or any member of his family outside India shall not be treated as taxable perquisites subject to the following: ▸ The expenditure on medical treatment and stay abroad of the patient and one attendant shall be exempt to the extent approved by Reserve Bank of India ('RBI'). ▸ The expenditure on travel shall be eligible for exemption only in case of an employee whose Gross Total Income, as computed before including therein the said expenditure, does not exceed Rs. 2,00,000.

5.21 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. 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.

5.22 Keyman Insurance Policy

Keyman insurance is an insurance taken by a company / firm on the life of an employee / partner (keyman), whose services contribute substantially to the success of the business of the company / firm. The object of the keyman insurance is to cover the life of a keyman for a monetary value so that on death of such keyman, the loss to the employing organisation 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 Income Tax Act, 1961. 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 are tabulated as below:

Sr. No.	Recipient Party	Tax Treatment
1.	Employer	Any amount received under a Keyman Insurance Policy either on maturity of the policy or due to death of Keyman is taxable under the head "Profits and Gains from Business or Profession".
2.	Keyman	▸ In case the proceeds of Keyman Insurance Policy are received by the employee, the same will be taxable as salary in the 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 the employer continues to pay premium on the policy even after assignment thereof to employee, the amount of premium so paid will be taxable as perquisites in the hands of the employee.
3.	Third Party (say legal heirs of keyman)	Any amount received by a third party with whom the 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".

Chapter 6
Deductions And Exemptions

Chapter 6: Deductions And Exemptions

6.1 Introduction

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

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

6.2 Entertainment Allowance

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

- One fifth of Basic Salary; or
- Rs. 5000/-; or
- Actual entertainment allowance.

6.3 Employment Tax

A deduction of sum paid on account of tax on employment under article 276(2) of the constitution (commonly known as 'Profession Tax') is allowed. In the state of Maharashtra, the maximum amount of profession tax chargeable for salaried employees is Rs. 2,500 p.a.

6.4 Loss Under The Head "Income From House Property"

If an employee has borrowed money for construction, acquisition, repairing, renovation or reconstruction of house property, then under section 24(b) such employee can claim deduction of interest paid on such borrowed money while computing the income under the head house property. The loss incurred under this head can be set-off against income chargeable under the head Salaries up to limit specified in the following table:

Sr. No.	Purpose of Loan	Deduction Limit
1.	If loan is borrowed for acquisition or construction of house property on or after 1 April 1999.	The ceiling limit would be Rs. 1,50,000.
2.	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 employer can obtain declaration from the employee in Form No. 12C giving particulars of the loss, if any, under the head "Income from House Property". The employer can consider such loss, while computing the amount of tax to be deducted at source. The employer should ensure that along with Form 12C, the employee attaches the computation of loss under the head "Income from House Property".

6.5 Deductions Under Chapter VIA

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

Section	Particulars	Maximum Amount (Rs.)
80C	Specified investments as given below in Note 1.	1,00,000
80CCF	Investment in long-term infrastructure bonds notified by the Central Government. (viz. LIC, IDFC, IFCI and few other infrastructure finance compaines)	20,000
80D	Premium paid by an Individual in respect of medical insurance bought on the health of 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 * Where medical insurance is bought in respect of health of any person who is a senior citizen.	15,000 / 20,000* 15,000 / 20,000*
80DD	Maintenance including medical treatment of dependent who is a person with disability. ** Rs. 1,00,000 in case of severe disability of the dependant person.	50,000**
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
80G	Employer shall not consider donation (except certain prescribed donations) made by employee, while computing tax to be deducted. The employee, in the individual return, can claim such donation.	--

Section	Particulars	Maximum Amount (Rs.)
80GG	Deduction in respect of rent paid for the purpose of own residence subject to following conditions: 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. 2,000 per month. Preconditions: i. Individual does not own residential accommodation either in his name or in the name of spouse or minor child. ii. Individual is not entitled for HRA, which is available as exemption u/s 10(13A). iii. Individual does not claim concession in respect of self-occupied property. Employee should also file declaration in Form No. 10BA.	--
80GGA	Donations for scientific research or rural development	100%
80GGC	Contribution to a political party	100%
80U	Persons having permanent physical disability (including blindness) *** Rs. 1,00,000 in case of severe disability	50,000***

Note 1.
The following are certain specified investments eligible for deduction under section 80C:

i. Life Insurance Premium in respect of life assured of assessee / spouse / child or any member of the HUF, subject to a maximum of 20% of sum assured.
ii. Contribution to Statutory or Recognized Provident Fund & notified pension fund.
iii. Contribution to Public Provident Fund (PPF). In case of an individual, contribution can be made either in his name or in the name of spouse or in the name of the 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 / HDFC / 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 6.4), the loan need not be from institutions specified under this clause.

v. National Savings Certificates VIIIth Issue. (Including interest accrued on NSC-VIth & VIIIth Issues).
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. Other specified payments.
xii. Investing in infrastructure bonds such as IDBI, ICICI etc.

6.6 Income Tax Exemptions

6.6.1 Remuneration of officials of embassies etc.

Remuneration as officials or as member of the staff of Embassy, high commission, legation, commission, consulate or trade representatives of a foreign state is exempt from tax.

For members of staff to enjoy exemption, it is necessary that they are the subjects of such foreign state and are not engaged in any business or profession or employment in India.

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

6.6.2 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 previous year; and
- such remuneration is not liable to be deducted from the employer's income chargeable to tax in India.

6.6.3 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 previous year.

6.6.4 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.

6.6.5 Remuneration under co-operative technical assistance programs or technical assistance grant

Remuneration of a person assigned to duties in India in connection with any cooperative technical assistance programs and projects in accordance with an agreement between India and foreign government is exempt if the following conditions are satisfied:

- The remuneration is received directly or indirectly from that foreign government; and
- The terms of the agreement between the two governments provide for such exemption.

Any other income of such person which accrues outside India is also exempt from tax if such income has suffered tax in the country of accrual.

Remuneration of a consultant engaged under a technical assistance program which is paid out of funds made available to an international organisation under a technical assistance grant agreement between such organisation and the foreign government is exempt from tax if the consultant is either not a citizen of India or is not ordinarily resident in India or is a non-resident and the technical assistance is in accordance with an agreement between the Government of India and that foreign organisation. It is necessary that the engagement of such consultant is approved by the prescribed authority. If such consultant employs any other person in connection with such technical assistance program and pays remuneration to him, such remuneration is also exempt if the person employed by the consultant is either not a citizen of India or is not ordinarily resident in India. The contract of service of such individual should also be approved by the prescribed authority.

Any other income (apart from remuneration) of the consultant or the person employed by him or any income of their family members which accrues to them outside India is also exempt from tax if such income suffers tax in the country where it accrues.

Chapter 7
Social Security Schemes

Chapter 7: Social Security Schemes

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 globalisation and the consequent structural and technological changes. It envisages that the employees shall be protected against all types of 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 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.

7.2 Social Security Schemes

The following are certain important social security schemes in force in India:

7.2.1 The Employees' State Insurance Act, 1948 (ESI Act)

ESI Act covers factories and establishments with 10 or more employees and provides for comprehensive medical care to the employees and their families as well as cash benefits during sickness and maternity, and monthly payments in case of death or disablement. This statue is applicable to every business organization in India and mandatory only to employees earning monthly wages upto Rs. 15,000.

The employer and employee are required to contribute 4.75% and 1.75% respectively of the wages.

7.2.2 The Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (EPF & MP Act)

The EPF and MP Act is applicable to specific scheduled factories and establishments employing 20 or more employees and ensures terminal benefits to provident fund, superannuation pension, and family pension in case of death during service. Separate laws exist for similar benefits for the workers in the coal mines and tea plantations. The law is mandatory for employees earning monthly wages upto Rs. 6,500.

The employer contributes 12% of salary / wages comprising of basic wages and dearness allowance of the employee to the EPF. The employee makes an equal contribution to the fund. Employer's contribution equivalent to 8.33% of salary / wages is diverted towards pension fund, subject to a maximum of Rs. 542 per month. The government contributes 1.16% of the actual salary / wages subject to maximum of Rs. 6,500 to the pension scheme. Further, 0.50% of the employer's contribution is diverted towards Employees Deposit Linked Insurance Scheme (EDLI). Administrative charges of 1.10% and 0.01% towards EPF and EDLI respectively are also diverted out of employer's contribution. The amount contributed by both the employer and employee earns interest @8.5%.p.a. The contribution of employee is an eligible investment under section 80C.

The provisions of EPF and MP Act are applicable to an expatriate subject to the provisions of Social Security Agreement, if any entered into by India with the country of origin of such expatriate. An expatriate who is contributing to a social security programme of his/her country of origin, either as a citizen or resident, with whom India has entered Social Security Agreement on reciprocity basis and enjoying the status of detached worker for the period and terms, as specified in such an agreement shall be treated as “Excluded Employee”. Therefore, if an employee is covered by the Social Security Agreement as stated above, he / she need not to make contribution under the EPF and MP Act. India has entered into Social Security Agreements with Belgium, France and Germany and these agreements are operational. Further, India is in the process of signing Social Security Agreements with the US, Australia, Netherlands, Czech Republic, Spain, Portugal, Switzerland, Norway, Sweden and other countries.

In case of employees not covered by Social Security Agreements as stated above are required to contribute to retirement benefit scheme under EPF and MP Act. In such a case, if the employment of the expatriate gets discontinued before 5 years of continuous service then, the contribution of employer and interest earned thereon will be taxable on receipt in the hands of such expatriate.

7.2.3 The Payment of Gratuity Act, 1972

The objective of the Payment of Gratuity Act, 1972 is to entitle workers engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishment for receipt of gratuity and for matters connected therewith or incidental thereto.

The law is applicable to every business organization in India employing 10 or more persons and the gratuity is payable to employee upon termination of the employment after completing 5 years of continuous service. If termination is due to death or disablement, completion of continuous period of 5 year service is not necessary. Gratuity has to be paid at the rate of 15 days wages for each completed year of service subject to a maximum of Rs. 10,00,000.

7.2.4 The Payment of Bonus Act, 1965

The Payment of Bonus Act, 1965, a legislation to provide for the payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith. This law is applicable to every business organisation in India employing 20 or more persons. The law compulsorily requires the employer to pay minimum bonus @ 8.33% to every employee earning monthly salary or wages upto Rs. 10,000. This amount of minimum bonus is payable even in the case of losses. The bonus under this law is required to be paid within 8 months from the close of the accounting year.

Chapter 8
Expatriate Taxation

Chapter 8: Expatriate Taxation

8.1 Introduction

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 organisation 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 his/her home country.

In this chapter we have disseminated the information about provisions of other Indian laws that the foreign national may come across.

8.2 Visa Legislations

An expatriate coming into India for employment purpose should obtain Employment Visa from the Indian Embassy / Indian Consulate in the country of origin. In this respect, the Ministry of Home Affairs in India has recently issued certain guidelines and directions that should be specifically looked in to. 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.
- As per legislations relating Visa, a business Visa can be granted to a foreign national who wants to visit India to establish an Industrial/business venture, or wants to purchase/sell industrial products in India.
- A Tourist Visa can be granted to a foreign national who does not have a residence or occupation in India and whose sole objective of visiting India is recreation, sight seeing, casual visit to meet friends and relatives etc. No other activity is permissible on a Tourist Visa. Further, a Tourist Visa is non-extendable and non-convertible.
- Where a foreign entity does not have any project office/ subsidiary/ joint venture/ branch office in India, it cannot sponsor a foreign national for Employment Visa.

8.3 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 and new articles upto a value of Rs. 25,000 per adult passenger is exempt from duty, provided the passenger returns to India after staying abroad for more than 3 days. For this purpose adult passenger is one who has attained the age of 10 years or more.
- The general free allowance of a passenger is not clubbable with similar allowance of another passenger.
- Laptop Computer (Notebook Computer) brought by a passenger of the age of 18 years and above is exempt from duty.
- Alcoholic liquor or wines upto 2 liters, 200 cigarettes and Jewellery upto Rs. 20,000 for a lady and Rs. 10,000 for a gentleman can be brought as part of the free baggage allowance.
- In case a single article exceeding the limit of Rs. 25,000 is brought, 35% flat rate of duty with no CVD is payable on excess value. This rate of duty is also payable in case of any article of bona fide baggage brought in excess of free allowance except for fire arms, cartridges of fire arms exceeding 50 and cigarettes, cigars or tobacco in excess of permitted quantities.
- There are concessional rate of customs duty in case a person is transferring his residence in India.

8.4 Foreigners Registration

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

8.5 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 49A 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 Income Tax Act, 1961; or
- At the rate or rates in force; or
- At the rate of 20%.

8.6 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.

8.7 Withholding Of Tax

When an expatriate comes to India for employment and his income is chargeable under the Income Tax Act, 1961 the employer paying the salary is required to deduct tax at source from such salary and pay to the credit of Central Government within 7 days of the immediately succeeding month.

8.8 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 previous year has already been dealt in para 2.4 of chapter 2. While filing of the ROI, due care should be taken while determining the residential status. It is advisable to take professional advice for filing of ROI.

8.9 Filing Of Wealth Tax Return

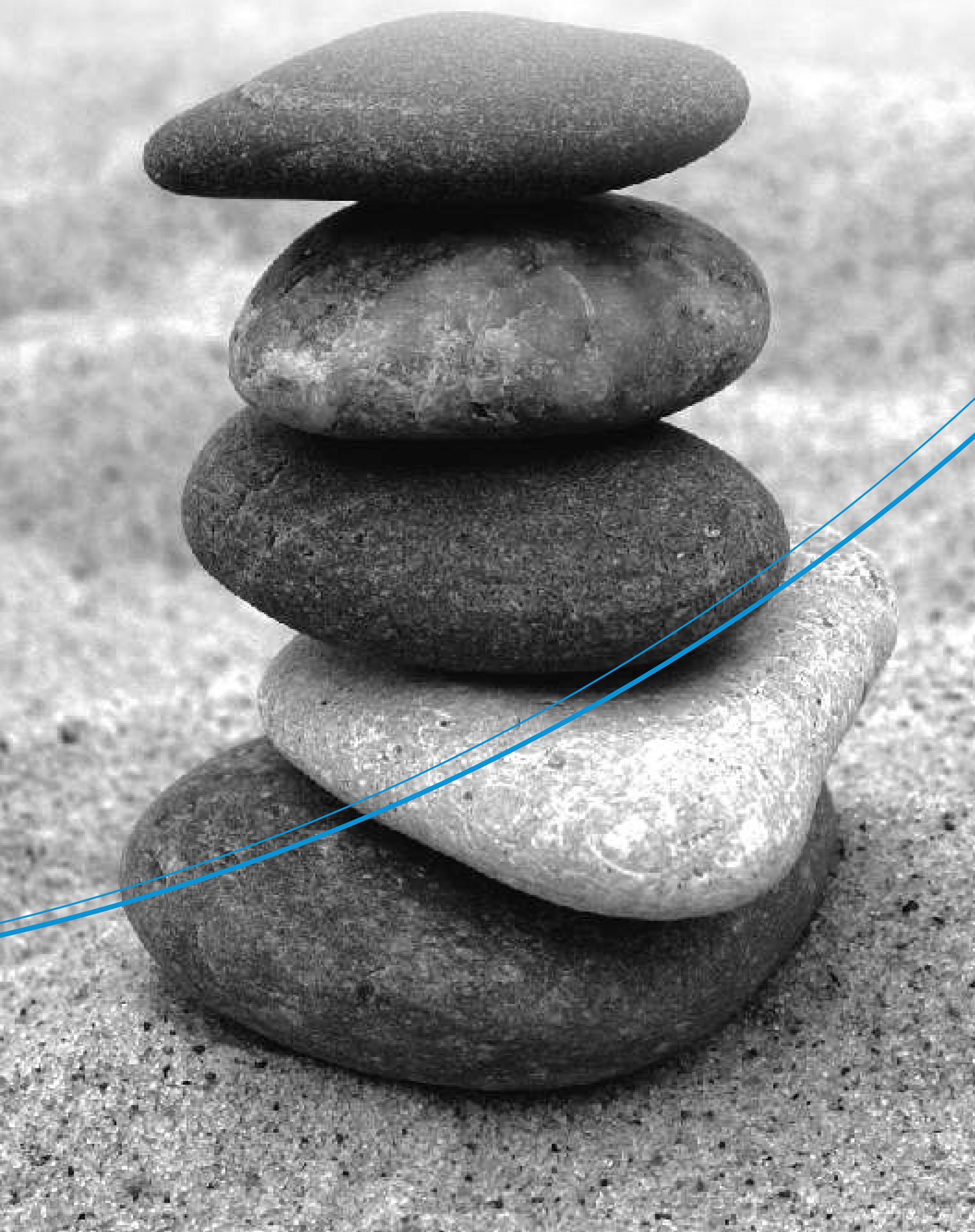
Under the Wealth Tax Act, 1957 if an individual possesses wealth in excess of Rs. 30,00,000 as on the last day of financial year, he will be required to pay wealth tax @1% on such excess wealth. If the expatriate is getting attracted by the provisions of the Wealth Tax Act, 1957 he should ensure that he duly complies with these provisions.

8.10 Tax Clearance Certificate

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

Chapter 9

Duties And Obligations Of Employer, Penalties And Prosecution



Chapter 9: Duties And Obligations Of Employer, Penalties And Prosecution

9.1 Introduction

The Income Tax Act, 1961 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, filing 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 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 deduction 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.

However, any payment which is chargeable under the head "Salaries" and which is payable outside India or to a non-resident shall not be allowed as deduction, if the tax has not been paid thereon nor deducted there from under the provisions of the Income Tax Act, 1961.

9.3 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.

9.4 Payment Of TDS To The Credit Of The Central Government

The employer must deposit the amount of tax deducted from the salary of the employees to the credit of the Central Government within one week from the last date of the month in which deduction is made.

9.5 Issue Of Salary Certificate

The employer must issue certificate to the employee for the tax deducted at source in Form No. 16 within 31 May for the financial year ending on 31 March. The employer is required to furnish in the salary certificate correct and complete particulars of perquisites or profit in lieu of salary provided to the employee and the value thereof.

The statement showing particulars of perquisites or profits in lieu of salary with value thereof shall be provided by the employer in Form No. 12BA, where the amount of salary paid or payable to the employee is more than Rs.1,50,000. The said form shall be forming part of Form No. 16. If the salary is less than Rs.1,50,000, then the details of perquisites may be given in Form No. 16 itself.

9.6 Filing Of Quarterly TDS Return

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

Quarter ending on	Due Date
June	15 July
September	15 October
December	15 January
March	15 May

9.7 Penalties

Section	Default	Quantum
201	Failure to deduct (whole or any part of the tax) or after deducting fails to pay the tax as required under Section 200.	Interest @ 1% (1.5% w.e.f 1 July 2010) per month on the amount of such tax from the date on which such tax was deductible to the date on which the tax is actually paid.
271C	Failure to deduct (whole or any part of the tax) as required under Section 192.	Sum equal to the amount of tax, which the employer failed to deduct.
272A	Failure to furnish annual return as required under Section 206 or issue of TDS certificate as required under Section 203 or failure to furnish the details as required by Section 192(2C) in the TDS certificate.	Rs 100 per day, during which the default continues, subject to that the sum shall not exceed the amount of tax deducted.
272BB	Non-quoting of Tax Deduction Account Number as required by Section 203A.	Rs. 10,000.

9.8 Prosecution

Section	Default	Rigorous Imprisonment
276B	Failure to pay the tax deducted at source to the credit of the Central Government or the tax deducted is not paid within the prescribed time as required under Section 200.	For a term, which shall not be less than 3 months but which, may extend to 7 years and with fine.
278A	Punishment for second and subsequent offences under section 276B.	For a term, which shall not be less than 6 months but which, may extend to 7 years for every offence.

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