GRATUITY

What is Gratuity?

- Gratuity is a kind of retirement benefit. It is earned by an employee as a reward for long and meritorious service
- It is payable on termination of employment after the employee has rendered continuous service for not less than 5 years
- Termination of employment may be due to any of the following:
    - Superannuation
    - Retirement/Resignation
    - Death/Disablement due to accident/disease (in this case, 5-year limit on service is not applicable)

What is continuous service?

- It is the period of uninterrupted service by employee. However, period of interruption on account of the following shall be part of continuous service:
    - Sickness/Accident/Leave
    - Absence from duty without leave (not if order treating absence as break in service is issued by employer)
    - Lay-off/Strike/Lock-out
    - Cessation of work not due to any fault of employee
- If employee is not in continuous service for a period of 1 year, he shall be deemed to be in continuous service if during the period of 12 months preceding the date with reference to which the calculation is being made, the employee has worked under the employer for not less than
    - 190 days (employed in mine or any establishment which works for less than 6 days in a week)
    - 240 days (in any other case)
- In case of seasonable establishments if the employee is not in continuous service for 1 year, an employee shall be deemed to be in continuous service if he has worked for not less than 75% of the number of days on which the establishment was in operation during such period

Whom is the Gratuity Act applicable?

- Every factory, mine, oilfield, plantation, port & railway company
- Every shop/establishment in which 10 or more persons are/were employed, on any day of the preceding 12 months
- Such other establishments in which 10 or more persons are/were employed, on any day of the preceding 12 months, as the Central Government may specify in this behalf by notification in the official gazette

Who are not covered under the Gratuity Act?

- Apprentices
- Persons who hold civil posts under Central Government/State Government and are governed by any other Act or Rules providing for payment of gratuity

Exemption

- Govt may exempt any establishment, if its employees are in receipt of gratuity or pensionary benefits not less favourable than the benefits provided under the Payment of Gratuity Act

How is Gratuity computed?

- For every completed year of service or part thereof in excess of 6 months, the employer shall pay gratuity @15 days' wages based on rate of wages last drawn
- In case of monthly rated employee, 15 days wages = rate of wages/26 x 15

  For example, X has resigned ABC Ltd after being employed for a period of 5 years 7 months drawing a wage of ₹20,000 per month. Gratuity payable to X is ₹69,231 [(20000/26 x 15) x 6]
- In case of piece-rated employee, last drawn wages = average wages (excluding overtime) for last 3 months preceding the termination of employment
- In case of seasonable establishments, gratuity payable @7 days' wages for each season (for seasonal workers)
- Maximum gratuity payable is ₹10 lacs

What is wage?

- Wage means basic salary and includes dearness allowance
- It does not include HRA/bonus/commission/overtime/other allowances

When can Gratuity be forfeited?

- Gratuity of an employee whose services have been terminated for any act, wilful omission or negligence causing any damage/loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of damage/loss so caused
- Gratuity may be partially/wholly forfeited if services have been terminated for riotous/disorderly conduct or act of violence of employee, offence involving moral turpitude committed in the course of employment
- However, the employee shall be given an opportunity of being heard before such forfeiture

What is compulsory insurance?

- Every employer shall obtain an insurance for his liability for payment of gratuity from LIC or any other prescribed insurer
- However, the following employers are exempted from compulsory insurance:
  - Employer who has already established an approved gratuity fund & who desires to continue such arrangement
  - Employer employing 500 or more persons who establishes an approved gratuity fund
- Every employer shall register with the Controlling Authority after obtaining insurance or establishing approved gratuity fund
- Where employer fails to pay insurance premium or any contribution to an approved gratuity fund, he shall be liable to pay gratuity under the Gratuity Act (including interest, if any, for delayed payments) with the Controlling Authority

Who is Controlling Authority (CA)?

- It means an authority appointed by Central/State Government

Nomination

- Every employee who has completed 1 year of service, shall make a nomination within 30 days of completion of 1 year
- An employee may distribute amount of gratuity amongst more than one nominee
- If employee has family, nomination may be made in favour of one or more members of the family (nomination made in favour of person who is not a member of family is void)
- If the employee has no family, nomination may be made in favour of any person and if the employee subsequently acquires a family, such nomination shall forthwith become invalid & employee, shall within 90 days make a fresh nomination in favour of one/more members of his family
- A nomination may be modified by an employee at any time after giving a written notice to the employer
- If nominee predeceases the employee, the interest of nominee shall revert to employee and the employee shall then make a fresh nomination
- Employer shall keep the nomination in safe custody and nomination shall take effect from the date of receipt of same by employer

What is family under Gratuity Act?

Family includes the following:

- Employee
- His/her spouse
- His/her children whether married/unmarried
- His/her dependent parents
- His/her dependent parents of spouse
- Widow & children of her/his predeceased son, if any

How to apply for Gratuity?

- An employee who is eligible for payment of gratuity shall send an application to the employer within 30 days from the date it becomes payable
- Where the date of superannuation or retirement is known, employee may apply to the employer before 30 days of date of superannuation/retirement
- A nominee of an employee shall apply within 30 days from the date gratuity becomes payable to him/her
- A legal heir shall apply within 1 year from the date gratuity becomes payable to him/her
- Application filed after expiry of specified period may be entertained by the employer, if there is sufficient cause for delay

Determination of amount of Gratuity & Payment by employer

- The employer shall determine the amount as soon as it becomes payable and give notice to the person to whom it is payable
- Notice is also to be given to CA specifying the amount of gratuity so determined irrespective of the fact whether an application has been made or not by the concerned
- The employer shall arrange to pay gratuity within 30 days from the date it becomes payable to person to whom it is payable

Payment of interest by employer in case of delay in payment

- If gratuity is not paid within 30 days, the employer shall pay simple interest at the rate notified
- The interest shall be payable from the date on which the gratuity becomes payable to the date on which it is paid
- No such interest shall be payable if delay in payment is due to default of employee and employer has obtained permission in writing from the CA for delayed payment

Dispute

- If there is dispute as to the amount payable or admissibility of claim or person entitled to receive gratuity, the employer shall deposit such amount as the employer admits to be payable, with the CA
- Employer/employee whoever is raising the dispute may make application to the CA for deciding the dispute
- CA shall after inquiry and giving reasonable opportunity of being heard to the parties, determine the matters in dispute. If amount is payable to the employee, he shall direct the employer to pay such amount as reduced by the amount already deposited by the employer
- CA shall pay the amount deposited by the employer, to the person entitled thereto

Application to the Controlling Authority for direction

- If any employer
  - Refuses to accept nomination or application for payment of gratuity
  - Issues notice specifying the amount which is considered by the applicant to be less than what is payable or rejecting eligibility of payment of gratuity
  - Having received an application, fails to issue any notice within 15 days,

  the claimant employee/nominee/legal heir, may within 90 days apply to the CA for issuing a direction. CA may accept application after 90 days on sufficient cause shown by the applicant
- Any person aggrieved by an order of CA may within 60 days (extendable by a further period of 60 days on sufficient cause) of receipt of order, prefer an appeal to the Central/State Government or such other authority as may be specified
- No appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant deposits such amount with the appellant authority
- Central/State Government or appellant authority, after giving parties a reasonable opportunity of being heard, confirm, modify or reverse the decision of the CA

Recovery of Gratuity

- If the amount is not paid by the employer within the prescribed time, to the person entitled thereto, the latter shall make an application to the CA
- CA shall issue a certificate for the amount to the collector
- The collector shall recover the amount with compound interest (@15%) as arrears of land revenue and pay the same to the person entitled thereto
- Before issuing the certificate to collector, the CA shall give employer a reasonable opportunity of showing cause against the issue of such certificate

Protection of Gratuity

- No gratuity payable shall be liable for attachment in execution of any decree/order of any court
- However, gratuity payable to heirs of an employee on his/her death is attachable

Penalty

Particulars	Penalty
False statement or false representation by any person	Imprisonment up to 6 months or with fine up to ₹10,000 or with both
Contravention of Gratuity Act by an employer	Imprisonment up to 1 year (not less than 3 months) or fine up to ₹20,000 (not less than ₹10,000) or with both
Non-payment of gratuity	Imprisonment up to 2 years (not less than 6 months)
Contravention of provisions of compulsory insurance	Fine up to ₹10,000 and in case of continuing offence further fine up to ₹1,000 for each day during which the offence continues