OUTLINE: -

What Salary Is?
Basis of Charge
Who gets Salary?
What Does Salary in general comprises off?
Allowances
Perquisites
Treatment of Special Receipts
Treatment of Some Special Funds
Deduction Under Head of Salaries.

WHAT SALARY IS, BASIS OF CHARGE & WHO GETS SALARY

Salary as per Sec. 17(1): -
"salary" includes —
(*i*) wages;
(*ii*) any annuity or pension;
(*iii*) any gratuity ;
(*iv*) any fees, commissions, perquisites or profits in lieu of or in addition to any salary or wages;
(*v*) any advance of salary;
(*va*) any payment received by an employee in respect of any period of leave not availed of by him;]
(*vi*) the annual accretion to the balance at the credit of an employee participating in a recognised provident fund, to the extent to which it is chargeable to tax under rule 6 of Part A of the Fourth Schedule;
(*vii*) the aggregate of all sums that are comprised in the transferred balance as referred to in sub-rule (2) of rule 11 of Part A of the Fourth Schedule of an employee participating in a recognised provident fund, to the extent to which it is chargeable to tax under sub-rule (4) thereof; and
(*viii*) the contribution made by the Central Government or any other employer in the previous year, to the account of an employee under a pension scheme referred to in section 80CCD;

Basis of Charge: -
Sec. 15. The following income shall be chargeable to income-tax under the head "Salaries"—
(*a*) any salary due **from an employer** or a former employer to an assessee in the previous year, whether paid or not;
(*b*) **any salary paid or allowed** to him **in the previous year** by or on behalf of an employer or a former employer though not due or before it became due to him;
(*c*) any arrears of salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer, if not charged to income-tax for any earlier previous year.

Explanation 1.—For the removal of doubts, it is hereby declared that where any salary

paid in advance is included in the total income of any person for any previous year it shall not be included again in the total income of the person when the salary becomes due.
Explanation 2.—**Any salary**, bonus, commission or remuneration, by whatever name called, due **to**, or received by, **a partner of a firm** from the firm shall **not be regarded as "salary"** for the purposes of this section.

ANALYSIS & NOTES

It is necessary to note and understand that definition of salary is not easy to understand the definition of salary as it is not the complete and exhaustive in itself and for understanding the concept of salary it is important for one to also keep in mind the basis of charge that will help in more better way to understand the concept of what the salary is? To whom salary is?

Therefore now when the key things are looked upon in section 15 you'll find that salary head deals with all the payments that one receives form an employer, be it past or present or future.

1) It is important to note that this section is applicable only in the case where the **person is an Individual**, not in any other case, as the services can be rendered only with the involvement of personal efforts that too must be there in a way of master and servant relation not on principal to principal basis.

2) Employer & employee (Master Servant) relationship

- Relation of employer and employee is a must between payer and payee for any income to be taxed under this head.
- Any payment received by an individual from a person other than his employer can neither be termed nor be taxed as salary.
- Examples:
  - ➢ Remuneration received by a lecturer from his college is salary but remuneration received from another university is not salary. Hence, it will be taxable under the head "Income from other sources", not under the head "Salaries". (e.g. remuneration for setting question paper of another university).
  - ➢ If director is working in a company in the *capacity of employee*, then commission or director's sitting fee or any other amount received by him from that company should be taxable as a "Salary income", otherwise as a "Income from other sources".

But Important to Note: -

1. ***MLAs or MPs are not treated as an employee of the Government***; therefore remuneration received by these people is not taxable under the head "Salaries", but taxable under the head "Income from other source".
2. ***Salary received by a partner from a partnership firm is taxable under the head "Business and profession".***

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3) Salary income must be real and not fictitious
There should be an intension to pay and receive salary. Likewise, there should be intension to render services.

4) Surrender of salary
- Salaries are taxable on due basis and once accrued to an employee, its subsequent waiver by the employee does not relieve him from tax liability.
- But if an employee surrenders his salary to Central Government u/s 2 of Voluntary Surrender of Salaries Act, 1961, the salary so surrendered will be excluded while computing his taxable income.

5) Tax-free salary
- There is no concept of Tax Free Salary in India.
- Amount of tax paid by the employer on behalf of the employee shall be included in the taxable income of the employee.

6) Arrear of salary
Arrears will be taxed in the previous year in which these are paid or allowed to employee (i.e. receipts basis), because those pertains to earlier years and gets due later on. And since the past years cannot be altered again therefore the same are taxable on the receipt basis.

7) Salary due or received in foreign currency
If the salary is earned in foreign currency, it will be converted into rupees.
- Conversion rate - Buying rate on specified date
- Specified date - Last date of the month immediately preceding the month in which the salary is due / paid in advance / paid in arrears.

8) How to compute salary in the grade system
Example
If an employee joins the service on 1-5-97 and is placed in the grade of Rs. 32,500 – 500 - 38,000 - 800 -44,400.
This means that-
- He will get a basic salary of Rs. 32,500 w.e.f. 1-5-97.
- He will get annual increment of Rs. 500 w.e.f. 1-5-98 and onwards till his salary reaches Rs. 38,000.
- Thereafter, he will get on annual incremental of Rs. 800 till his salary reaches 44,400.
- No further increment will be given thereafter till he is placed in other grade.

9) Chargeability
Salary is chargeable either on
- Due basis; or
- Receipt basis
  (whichever is earlier)

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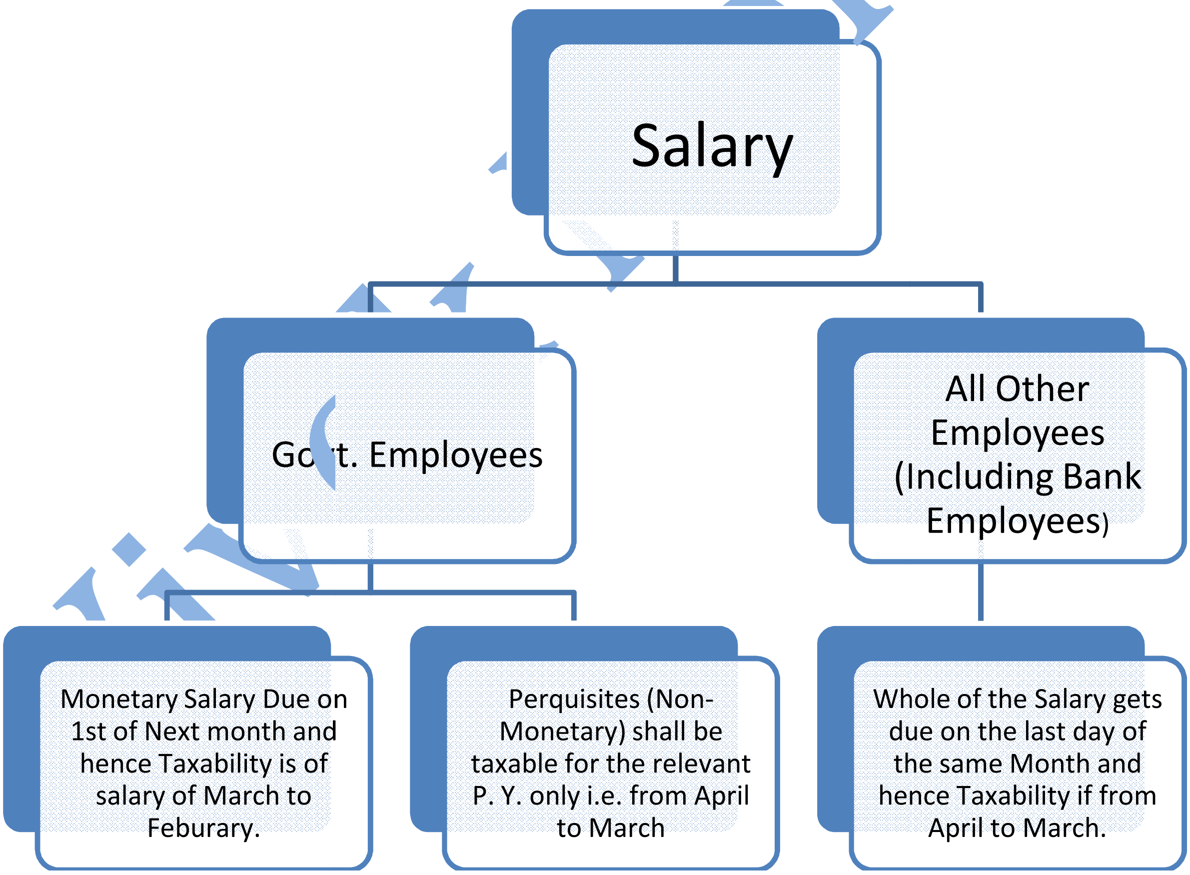
1. If salary is due at the end of the month	-	In this case, salary from April to March is taxable
2. If salary is due on 1st day of the next month	-	In this case, salary from March to February is taxable. (But it is important to note and understand that for the monetary benefits the taxability shall be from March to February but for Perquisites and all other non-monetary benefits the taxability shall be from April to March only, although the next salary slip of March shall be getting generated in the April month and all dues shall be calculate in April Month.)

Note – In case of Government employees, the salary become due on the 1st day of the next month whereas in case of non-Government employees (including bank employees), the salary become due on the last day of the same month.



<u>10) Method of accounting</u>

It is important to note that the section 15 has laid and said clearly the manner in which the calculation of the salary shall be made hence the method of accounting followed by the assessee/ individual is irrelevant.

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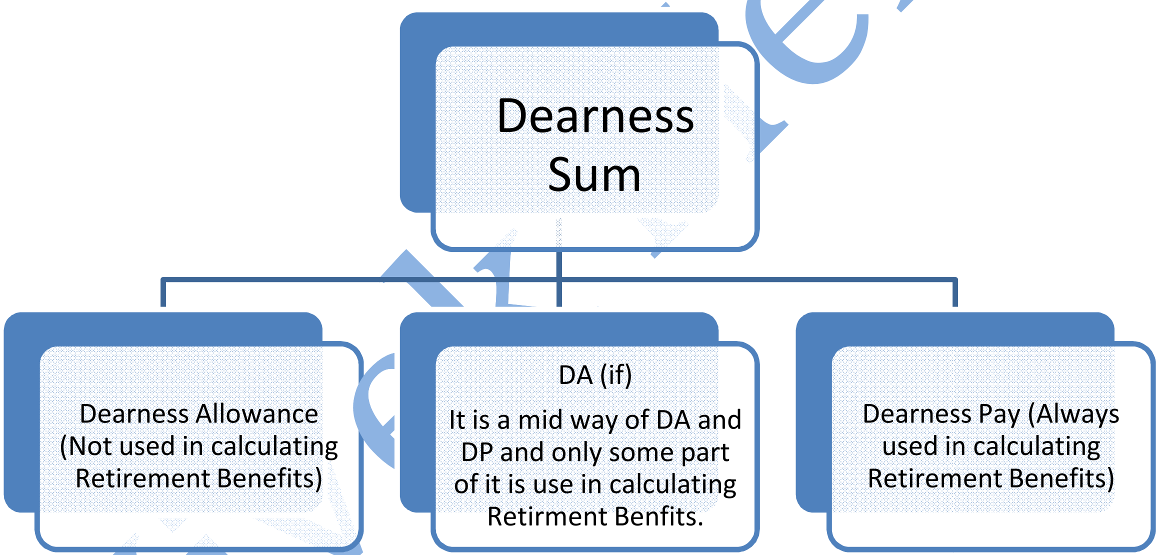
11) Salary earned & received outside India

Since salary *earned and received* outside India is not taxable in the hands of NOR & NR. Therefore perquisites received outside India for rendering service outside India is not chargeable to tax.

12) Dearness Allowance & Pay

- **Dearness allowance (DA)**
  If in question DA is given, then it will not be treated as forming part of salary unless question specifically says that -
  - It is forming of retirement benefits /
  - Under the terms of employment /
  - Consider for retirement benefits.
- **Dearness pay (DP)**
  It means it is forming part of retirement benefit unless question says otherwise



13) Contract of Service vs. Contract of Service

Wherever there exists employer employee relationship there is a ‘Contract of Service’. In this case employer can control and direct the work to be performed by the employee. In this case income received by the person is taxable under the head of salaries. Whereas when there is no employer employee relationship and then also work is performed by one for the other then there exists relationship of ‘Contract for Service’. The work is performed and relationship is enjoyed on the basis of principal to principal. In this case the contractor can be told the work to be performed. There is no specific instruction about how it is to be done. In this case income is chargeable under the head of Business and Profession.

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WHAT DOES SALARY IN GENERAL COMPRISES OFF?

In General Salary comprises of : -

Basics + Allowance in cash + some facilities + Some reimbursement of personal Expenses

Whole of the salary in general is taxable but to avoid the hardship on salaried employees certain allowance are exempt, certain facilities are not chargeable to tax and such so now we shall study the things in details.

ALLOWANCES

1) Meaning of allowance: - Allowance is a fixed monetary amount paid by the employer to the employees for meeting some particular expenses, whether personal or for performance of his duties.

An Important Note for both Allowances as well as Perquisites In Respect of Members and Chairman of UPSC (Union Public Service Commission)

Section 10 (45): -

1. In case of serving Chairman and members:—
    a. the value of rent free official residence;
    b. the value of conveyance facilities including transport allowance;
    c. the sumptuary allowance;
    d. the value of leave travel concession provided to a serving Chairman or member of the Union Public Service Commission and members of his family;
2. In case of the retired Chairman and retired members:—
    a. a sum of maximum Rs. 14,000 per month for defraying the service of an orderly and for meeting expenses incurred towards secretarial assistance on contract basis;
    b. the value of a residential telephone free of cost and the number of free calls to the extent of 1500 per month (over and above the number of free calls per month allowed by the telephone authorities).

Types of Allowances

Allowances which are fully exempted in case of Certain Person.

There are three class of person covered in this category, viz: -

1) Allowance to citizen of India, who are rendering services to Government and are working outside india.

2) Allowances given to SC and HC Judges;

3) Allowances paid by UNO to its employee's.

4) Chairman, Member or retired Member of UPSC [10(45)]

Allowances which arePartly Exempted and Partly Taxable

HRA 10(13A)

Least of the following is exempted -

a) Actual HRA received

b) Rent paid – 10% of salary

c) 40% of salary [in case of 4 metro cities 50% of salary]

Note: For Purpose of Salary the place of Residence is important, not the working

Meaning of Salary: - Basic + DA (If) + Fixed %age Commission (or say variable Commission)

Salary for the purpose of HRA calculation need to be taken on Due basis.

Specified or Notified Allowances:

Sec 10 (14)

Covered Seperately under the table

Allowance which are fully taxable

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Specified or Notified Allowances:

Sec 10 (14)

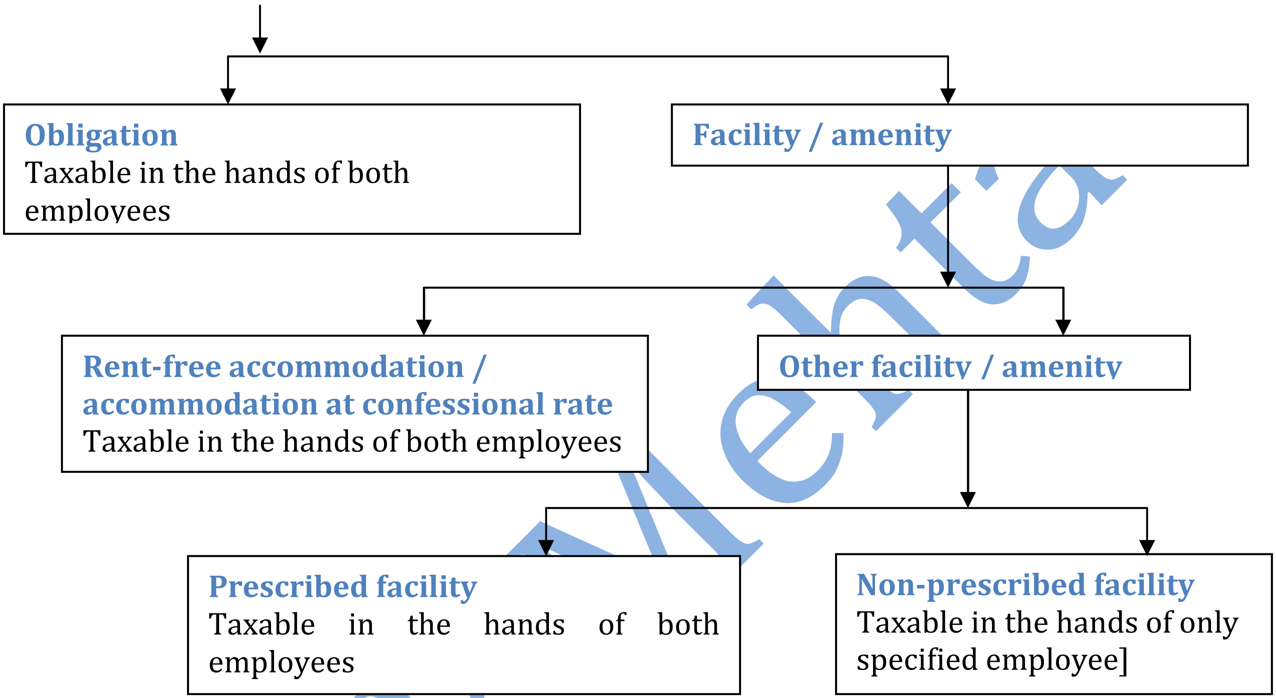
- Allowances which are exempt upto the extent Received or Spent, whichever is less.
- Allownaces exempt upto the fixed limit or received, whichever is less
- Allowances Exempted upto certain Percentage of the Amount received.

S.N.	Allowances	Exemption
Allowance exempted up to amount spent for specific purpose		
(i)	Daily allowance	Any allowance whether granted on tour or for the period of journey in connection with transfer, to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty.
(ii)	Conveyance allowance	Any allowance granted to meet the expenditure on conveyance in performance of duties of an office. Note – Expenditure for covering the journey between office and residence is not treated as expenditure in performance of duties of the office and, consequently, such expenditure is not exempt.
(iii)	Helper allowance	Any allowance to meet the expenditure on a helper where such helper is engaged for the performance of official duties.
(iv)	Academic allowance / Research allowance	Amt allowance granted for encouraging the academic research and other professional pursuits.
(v)	Uniform allowance	Any allowance to meet the expenditure on

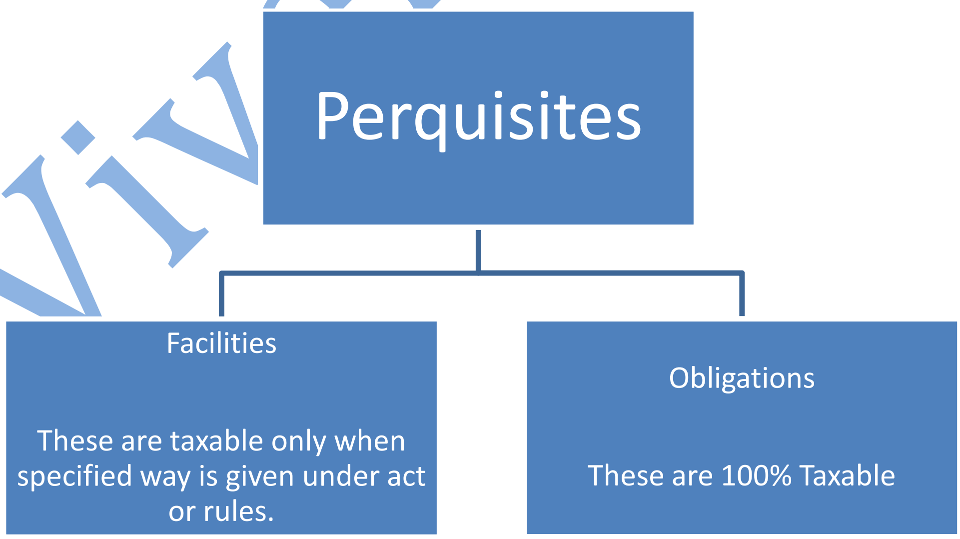
		the purchase or maintenance of uniform for wear during the performance of duties of an office.
(vi)	Traveling allowance / Transfer allowance	Any allowance granted to meet the cost of travel on tour or on transfer (including any sum paid in connection with transfer, packing and transportation of personal effects on such transfer).)
Allowance exempted up to limit specified		
(i)	Children education allowance.	Rs. 100/- per month per child (up to a maximum of 2 children)
(ii)	Hostel allowance	Rs. 300/- per month per child (up to a maximum of 2 children)
(iii)	Tribal area allowance	Rs. 200/- per month.
(iv)	Composite hill compensatory allowance or high attitude allowance etc.	Rs. 300/- to 7000/- per month.
(v)	Border area, remote area allowance, disturbed area allowance	Rs. 200/- to 1300/- p.m.
(vi)	Compensatory field area allowance	Rs. 2600/- p.m.
(vii)	Compensatory modified field area allowance	Rs. 1000/- p.m.
(viii)	Counter insurgency allowance	Rs. 3900/- p.m.
(ix)	Transport allowance (to meet expenditure for the purpose of commuting between the place of his residence and the place of duty.)	Rs. 800/- p.m. Note - Rs. 1600/- in case of an employee who is blind / orthopaedically handicapped with disability of lower extremities.
(x)	Underground allowance	Rs. 800/- p.m.
(xi)	High altitude (uncongenial allowance (Given to Nuremberg the armed forces)	Rs. 1060/- p.m. to 1600/- p.m.
(xii)	Special compensatory highly active field area allowance	Rs. 4200/- p.m.
(xiii)	Island (duty) allowance (Given to member of armed forces in the Andaman & Nicobar and Lakshadweep).	Rs. 3250/- p.m.
Exempted up to certain percentage of amount received		
(i)	Allowance allowed to transport employee (to meet his personal expenditure during his duty performance in the course of running of such transport from one	70% of such allowance or 10,000 p.m. (whenever is less). **Condition** Exemption will be allowed to the transport employees only when they are not in

	place to another.	receipt of daily allowance. If they are in receipt of daily allowance, they can claim exemption under a (i) (i.e. Daily allowance).

PERQUISITES



In Short if we try to explain the things then it is as follows



Note: - Section 10(45) should also be kept in Mind while studying Perquisites.

Detailed Discussion & Material on Perquisites will be made available separately.

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TREATMENT OF SPECIAL RECEIPTS

- Gratuity
- Leave Encashment
- Pension
- Retrenchment Compensation
- Compensation under Voluntary Retirement Scheme

Gratuity [Sec. 10(10)]

Gratuity Received During the period of Service → Fully Taxable but however relief under section 89 can be claimed.

At the time of Retirement

- **Government Employees** → 100% Exempt
- **Non – Government Employees**

Employees covered by Payment of Gratuity Act, 1972

Least of the following is exempted -

a. Actual gratuity received
b. Rs. 10 Lacs
c. 15/26 * Last drawn salary * Rounded years of service.

Notes

Meaning of salary

Basic Salary + DA (always).

Rounded years of service

- More than 6 months - 1 Year
- 6 months or less - Ignore

Seasonal employment

7/26 should be taken.

Piece rated employee

Last drawn salary = Average of total wages (*excluding overtime*) received for a period of 3 months immediately preceding the retirement

Employees not covered by Payment of Gratuity Act. 1972

Least of the following is exempted -

a. Actual gratuity received
b. Rs. 10 Lacs
c. 1/2 * Average salary * Completed years of service

Notes

Meaning of salary

Basic + DA (if forming part of retirement benefit) + Fixed commission on turnover].

Completed year of service

Part of the month *(whether more / less than 6 months)* shall be completely ignored.

Average salary

Average of 10 month's salary preceding the *month of retirement.*

Some Important Cases and Situations: -

- **Gratuity from more than one employer: -** Aggregate amount of exemption cannot exceed Rs. 10,00,000.
- **Exemption claimed in earlier year: -** Exemption limit = Rs. 10,00,000 *minus* amount of exemption (s), availed in the earlier year (s)
- **Relief u/s 89: -** If gratuity received by employee exceeds the exemption limit, he can claim relief u/s 89, i.e. for the taxable part of the Gratuity Relief under section 89 can be claimed and availed.
- **Gratuity received by family members after the death of the employee**
    a. *If gratuity is either due or paid during the lifetime of the employee*: - It will be taxable in the hands of deceased employee. For this purpose, income tax return shall be submitted by legal heirs.
    b. *If gratuity is due & paid after the death of the employee:* - It cannot be taxed in the hands of deceased employee.

  Note - This amount is not taxable in the hands of legal heirs also as it does not partake the character of income in their hands but it is only a part of the estate devolving upon them.

Leave Encashment [Sec. 10(10) AA)]

Encashment of leave during tenure of service
(Fully taxable)

Encashment of accumulated leave at the time of retirement

Government employees
(Fully exempted)

Non-Government employees
Least of the following is exempted -

a. Amount actually received
b. Rs. 3 Lacs
c. Average salary x 10
d. (Maximum 30 days for each *completed year* of service *minus* leave availed) x Average salary

Notes: -

- **Salary** = Basic + DA (if forming part of salary) + Fixed %age Commission.
- **Average salary: -** Average of 10 month's salary preceding the date of retirement
- **Gratuity received by legal heirs**: - Amount of leave encashment received by legal heirs of deceased employee is not taxable in the hand of recipient.
- **Relief u/s 89: -** Relief u/s 89 can be claimed by an employee in respect of encashment of leave salary when in service.

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Pension [Sec. 10(10A)]

- **Uncommuted pension** (i.e. Periodical pension) (Fully taxable)
- **Commuted Pension**
  - **Government employees** → (Fully Exempted)
  - **Non-Government employees**
    - ***If the employee receives gratuity also***
      Exemption
      1/3rd of commuted (full) value of the pension
    - ***It the employees does not receive gratuity***
      Exemption
      1/2nd of commuted (full) value of the pension

Notes: -

1. **Family pension** received by the legal heirs after the death of the employee is taxable in the hand of legal heir under the head `Income from other source'.
2. Relief u/s 89: - If commuted pension received by employee exceeds the exemption limit, he can claim relief u/s 89.
3. **Pension scheme in case of an employee joining Central Government on or after January1, 2004, Further the Scheme has been extended to the other employees also: -**
   i. Contribution by the Employer to the pension scheme is first included under the head salaries.
   ii. Such contribution and employee's contribution to the pension scheme is deductible u/s 80CCD.
   iii. Deduction = 10% of salary (Salary = Basis salary + DA (if under the terms of employment).
   iv. When pension is received out of the aforesaid amount it will be taxable in the hands of recipient.
   v. No deduction will be allowed u/s 80C in respect of aforesaid sums.

Retrenchment Compensation [Sec. 10(10B)]

Least of the following is exempted -

a. Actual amount received
b. Rs. 5 Lacs
c. 15 Days Average Pay x Rounded year of service.
(15/26 x Avg Pay x R/o Yr of Service)

Notes: -

1. ***Average pay***

Monthly paid workman	-	3 completed calendar months
Weekly paid workman	-	4 completed weeks
Daily paid workman	-	12 full working days.

2. **Salary** = Basic + All allowance + Value of all benefit
But does not include –
a. Bonus;
b. Employer's contribution to any retirement benefit scheme; and
c. Gratuity.

3. **Relief u/s 89: -** Relief u/s 89 can be claimed for the taxable part.

Compensation received on Voluntary Retirement [Sec. 10(10C)]

Exemption

Least of the following is exempted -

a. Actual amount received.
b. Rs. 5 Lacs
c. Maximum of
(i) Last down salary x 3 x Completed year of service, or
(ii) Last drawn salary x Balance months of service left.

Notes: -

1. Compensation received from following employer on voluntary retirement is exempted to certain limit: -
a. Central Government / State Government / Local authority or authority established under Central / State / Provincial Act; or
b. Any company / co-operative society; or
c. A university / I.I.T.
d. Any notified institute of management
e. Institute having importance throughout India or in any state or states as may be notified.
2. **Salary =** Basic + DA (if forming part of retirement benefit) + Fixed % commission.
3. This exemption can be claimed by the assessee *only once in lifetime*
4. **Either relief u/s 89 or Exemption under section 10(10C) claimed at once**, Not both.

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Treatment of provident fund

Particulars	SPF	RPF	URPF	PPF
Employee's contribution (whether deduction u/s 80C is available or not)	Available	Available	Not available	Available
Employer's contribution (whether exempted or not)	Fully exempted	Exempted up to 12% of salary **Meaning of salary** Basic + DA (if forming part of retirement benefit) + Fixed commission of turnover	Not exempted (but also not taxable ever year)	Not applicable (as there is only assessee's own contribution
Interest on P.F. (whether exempted or not)	Fully exempted	Exempted up to 9.5%	Not exempted (but also not taxable ever year	Fully exempted
Repayment of lump sum amount on retirement / resignation / termination (whether exempted or not)	Fully exempted u/s 10(11)	Exempted [if certain condition are satisfied] [See note]	a. Accumulated employee's contribution not taxable b. Accumulated employers' contribution and interest thereon is taxable as "Profit in lieu of salary". c. Interest on employee's contribution in taxable as "income from other sources". Note – Relief u/s 89 can be claimed in case of sum received from URPF so far as it is attributable to employer's contribution and interest thereon.	Fully exempted.

SPF = Statutory Provident Fund RPF = Recognized Provident Fund
URPF = Unrecognized Provident Fund PPF = Public Provident Fund

Note

Condition for exemption from RPF

1. If the employee rendered continuous service with his employer for a period of 5 years or more; or
2. If, though, he has not rendered continuous service of 5 years, the service has been terminated -
   a. by reason of such employee's ill health; or
   b. by the contraction / discontinuance of the employer's business; or
   c. other cause beyond the control of the employee, or
3. If, on the cessation of his employment, the employee obtains employment with any other employer, to the extent the accumulated balance due and becoming payable to him is transferred to his individual account in any RPF maintained by such other employer.

However, in a situation mentioned under clause (3) above for calculating period of service for clause (1) above, the period of service rendered under previous employer(s) shall also be included.

Non-fulfilment of condition

(i) If the accumulated balance become taxable due to non-fulfilment of the aforesaid conditions, the total income of the employee will be recomputed by the Assessing Officer, as if the fund was not recognized from the beginning.

(ii) He can, however, claim relief u/s 89(1).

(iii) Interest on employee's contribution is taxable as "Income from other sources".

Amount transferred from URPF to RPF

1. **Computation of taxable**

   That part of the sum which is transferred from URPF to PPF is taxable as under -

	Particular	Taxable amount
a.	Employee's contribution • Up to assessment year 1997-98 • After assessment year 1997-98	 Excess of 10% Excess of 12%
b.	Interest credited to fund • Up to 1.4.2001 • After 1.4.2001	 Excess of 12% Excess of 9.5%

2. **Taxability**

   The aggregated excess amount till the date of conversion of the URPF to RPF computed as above should be included in the gross salary of the previous year in which *conversion took place.*
3. **Relief / exemption**

   No other relief / exemption shall be granted.
4. **Balance not transferred**

That part of the accumulated balance, which is not transferred, and which relates to the employer's contribution and interest thereon is taxable as profit in lieu of salary.

Other welfare fund

Approved Superannuation Fund

Employer's contribution	Exempted
Employee's contribution	Deduction u/s 80C
Interest on above contributions	Exempted
Payment from the fund	Any payment from an approved superannuation fund shall be exempted if it is made - a. on the death of a beneficiary; or b. to an employee in lieu of or in commutation of an annuity on - • his retirement at or after a specified age; or • his becoming incapacitated prior to such retirement.

Approved Gratuity Fund

a. Employer's contribution is exempted from tax.
b. Actual payment received by the employee is exempted from tax within the limit specified in sec. 10(10).

DEDUCTION FROM SALARY [SEC. 16]

Following two deductions are allowed from gross salary –

1. Entertainment allowance [Sec. 16(ii)]
2. Tax on employment (professional tax) [Sec. 16(iii)]

Entertainment Allowance [Sec. 16(ii)]

- First the entire entertainment allowance received by an employee is added to the gross salary.
- then deduction u/s 16 (ii) shall be allowed as under.

Government employees

Least of the following is deductible -

a. Amount actual received
b. Rs. 5,000
c. 20 % of salary (Salary = Basic salary)

Non-Government employees

(No deduction)

Note – Actual expenditure towards entertainment is not deductible. It is irrelevant.

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Tax on Employment (Professional Tax) [Sec. 16(iii)]

- Deduction in available only in the year in which such tax is paid (i.e. on payment basis).
  Note – If it is paid after the end of the previous year, no deduction shall be allowed.
- If it is paid by employer on behalf of an employee –
  a. It is first included in the salary as perquisite [for all employee], and
  b. Then the same amount is allowed as deduction.

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