

Tax Payers Information Series 31

Taxation of Salaried Employees Pensioners and Senior Citizens



INCOME TAX DEPARTMENT

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PREFACE

Lack of awareness amongst taxpayers is often cited as the main reason for low level of compliance towards tax laws. It has been a constant endeavour of the Directorate of Income Tax (PR, PP & OL) to increase the awareness of the taxpayers about the provisions of tax laws and the steps taken by the government to reduce the complexities of tax laws and improve Tax Payer Service. The booklets published under the Tax Payers Information Series have proved to be an effective and convenient tool to educate the tax payers in discharging their tax liabilities relating to Direct Taxes.

“**Taxation of Salaried Employees, Pensioners and Senior Citizens**” is one of the most popular booklets among the taxpayers. Its last edition was brought out in Nov. 2010. The present edition incorporates further amendments made upto the Finance Act, 2011. This edition has been updated by Smt. Garima Bhagat, Addl. DIT (E), Range-1, New Delhi.

It is hoped that this publication will prove to be very useful for the readers. The Directorate of Income Tax (Public Relations, Printing & Publications and Official Language) would welcome any suggestions to further improve this publication.



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This publication should not be construed as an exhaustive statement of the Law. In case of doubt, reference should always be made to the relevant provisions of the Income Tax Act, 1961, Income Tax Rules, 1962, Wealth Tax Act, 1957 and Wealth Tax Rules, 1957, and, wherever necessary, to Notifications issued from time to time.

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CHAPTER 1 AN INTRODUCTION TO TAXATION

1.1 INTRODUCTION

Income tax is an annual tax on income. The Indian Income Tax Act (Section 4) provides that in respect of the total income of the previous year of every person, income tax shall be charged for the corresponding assessment year at the rates laid down by the Finance Act for that assessment year. Section 14 of the Income-tax Act further provides that for the purpose of charge of income tax and computation of total income all income shall be classified under the following heads of income:

- A. Salaries
- B. Income from house property
- C. Profits and gains of business or profession.
- D. Capital gains
- E. Income from other sources.

The total income from all the above heads of income is calculated in accordance with the provisions of the Act as they stand on the first day of April of any assessment year.

In this booklet an attempt is being made to discuss the various provisions relevant to the salaried class of taxpayers as well as pensioners and senior citizens.

1.2 FILING OF INCOME TAX RETURN

Section 139(1) of the Income-tax Act, 1961 provides that every person whose total income during the previous year exceeded the maximum amount not chargeable to tax shall furnish a return of income. The Finance Act, 2003 has introduced Section 139(1B) which provides for furnishing of return of income on computer readable media, such as floppy, diskette, magnetic cartridge tape,

CD- ROM etc., in accordance with the *e-filing* scheme specified by the Board in this regard.

The return of income can be submitted in the following manner:

- (i) a paper form;
- (ii) e-filing
- (iii) a bar-coded paper return.

Where the return is furnished in paper format, acknowledgement slip attached with the return should be duly filled in. Returns in new forms are not required to be filed in duplicate.

Returns can be e-filed through the internet. E-filing of return is mandatory for companies and firms requiring statutory audit u/s 44AB. From A. Y. 2011-12, it is now also mandatory for all business entities (including individuals/HUF) liable to tax audit to e-file their return of income. E-filing can be done with or without digital signature-

- a) If the returns are filed using digital signature, then no further action is required from the tax payers.
- b) If the returns are filed without using digital signature, then the tax payers have to file ITR-V with the department within 15 days of e-filing.
- c) The tax payer can e-file the returns through an e-intermediary also who will e-file and assist him in filing of ITR-V within 15 days.

Where the return of income is furnished by using bar coded paper return, then the tax payers need to print two copies of Form ITR-V. Both copies should be verified and submitted. The receiving official shall return one copy after affixing the stamp and seal.

The Finance Act, 2005 has provided that w.e.f. 01.04.2006 every person shall file a return of income on or before the relevant due date even if his total income **without giving effect to the provisions of Chapter VI-A** (*please see Chapter 5 of this booklet*) exceeds the maximum amount not chargeable to tax.

The Central Board of Direct Taxes has notified the scheme for exempting salaried taxpayers with total income up to Rs. 5 lakhs from filing income tax return for assessment year 2011-12, which will be due on July 31, 2011. Individuals having total income up to Rs. 5,00,000 for FY. 2010-11, after allowable deductions, consisting of salary from a single employer and interest income from deposits in saving bank account up to Rs. 10,000 are not required to file their income tax return. Such individuals must report their Permanent Account Number (PAN) and the entire income from bank interest to their employer, pay the entire tax by way of deduction of tax at source, and obtain a certificate of tax deduction in Form No. 16. Persons receiving salary from more than one employer, having income from sources other than salary and interest income from a saving bank account, or having refund claims shall not be covered under the scheme. The scheme shall also not be applicable in cases where notices are issued for filing the income tax return under section 142(1) or Section 148 or Section 153A or Section 153C of the Income Tax Act, 1961.

1.3 DUE DATES FOR PAYMENT OF ADVANCE TAX & FILING OF RETURN

Liability for payment of advance tax arises where the amount of tax payable by the assessee for the year is Rs.10,000/- or more. The due dates for various instalments of advance tax are given below:

DUE DATE	AMOUNT PAYABLE
(i) On or before 15 th September of the previous year	Amount not less than 30% of such advance tax payable
(ii) On or before 15 th December of the previous year	Amount not less than 60% of such advance tax payable
(iii) On or before 15 th March of the previous year	Entire balance amount of such advance tax payable

Also, any amount paid by way of advance tax on or before 31st March is treated as advance tax paid during the financial year.

The due date of filing of return of income in case of salaried employees is 31st of July. If the return of income has not been filed within the due date, a belated return may still be furnished before the expiry of one year from the end of the assessment year or completion of assessment, whichever is earlier.

1.4 FORMS TO BE USED:- The forms to be used for filing the return of income from A.Y. 2011-12 are mentioned below:-

Form No. (A.Y. 2010-11)	Form No. (A.Y. 2011-12)	Heading
ITR 1 (SARAL 2)	ITR 1 SAHAJ	For A.Y. 2010-11 - For individuals having income from salary, pension, income from one house property (excluding b/f losses), income from other sources (excluding winning from lottery or income from race horses). For A.Y. 2011-12 - For individuals whose total income includes a) income from salary/pension or b) income from house property (excluding cases whose loss is brought forward from previous years) or c) income from other sources (excluding winning from lottery or income from race horses).
ITR 2	ITR 2	For individuals and HUFs not having income from Business or Profession.
ITR 3	ITR 3	For Individuals and HUFs being

		partners in firms and not carrying out business or profession under any proprietorship.
ITR 4	ITR 4	For individuals & HUFs having income from a proprietary business or profession.
	ITR 4S- SUGAM	For A.Y. 2011-12 only Presumptive business income tax return for individual/HUF whose total income includes a) Business income computed in accordance e-provisions in S44AD or 44AE or b) Income from salary/pension or c) Income from one house property excluding cases of b/f loss from previous years or d) Income from other sources excluding winning from lottery or race horse.
ITR 5	ITR 5	For Firms, AOPs and BOIs
ITR 6	ITR 6	For Companies other than companies claiming exemption under section 11
ITR 7	ITR 7	For persons including companies required to furnish return under Section 139 (4A) or Section 139 (4B) or Section 139 (4C) or Section 139 (4D).

ITR 8	N.A.	Return for Fringe Benefits
ITR V	ITR V	Where the date of the Return of Income/Fringe Benefits in Form ITR-1, ITR-2, ITR-3, ITR-4, ITR-5, ITR-6, ITR-7 & ITR-8 is transmitted electronically without digital signature.
Acknowledgement	Acknowledgement	Acknowledgement for e-Return and non e-Return.

IMPORTANT FEATURES OF SAHAJ & SUGAM:

- These are the simplest, technology enabled and taxpayer friendly forms designed to facilitate faster digitalization and speedy processing.
- These are coloured forms. Taxpayers can download forms from website and print using a colour printer or A4 size white paper. It is advisable for taxpayer to set the 'properties' in printing options to 'fit to page' and print the forms on good quality paper.
- The Acknowledgement copy (ITR-V) to be retained by taxpayer may be printed in black & white.

CHALLAN FORMS:- The following are the new computerized challan forms:-

Challan No.	Nature of Payment
ITNS 280	(0020) Income Tax on Companies (Corporation Tax) (0021) Income Tax (Other than Companies)
ITNS 281	(0020) Tax Deducted/Collected at Source from Company Deductees (0021) Non-Company Deductees

ITNS 282	(0034) Securities Transaction Tax (0023) Hotel Receipts Tax (0024) Interest Tax (0028) Expenditure/other Tax (0031) Estate Duty (0032) Wealth Tax (0033) Gift Tax
ITNS 283	(0036) Banking Cash Transaction Tax (0026) Fringe Benefits Tax

All the columns in the challan form should invariably be filled in, details such as PAN, assessment year, Assessing Officer and his code, status and full address of the assessee in capital letters, the relevant columns of tax, interest etc., should also be filled in properly.

1.5 RATES OF INCOME TAX :-

(A) The rates for charging income tax for F.Y. 2010-11 i.e. A.Y. 2011-12 will be as follows:-

In case of an individual	
Upto Rs. 1,60,000/-	NIL
Rs. 1,60,001/- to Rs. 5,00,000/-	10 per cent.
Rs. 5,00,001/- to Rs. 8,00,000/-	20 per cent.
Above Rs. 8,00,000/-	30 per cent.

In the case of every individual, being a woman resident in India, and below the age of sixty-five years at any time during the previous year, the new rates of income-tax on total income in such cases shall be as under:-

Upto Rs. 1,90,000/-	NIL
Rs. 1,90,001/- to Rs. 5,00,000/-	10 per cent.
Rs. 5,00,001/- to Rs. 8,00,000/-	20 per cent.
Above Rs. 8,00,000/-	30 per cent.

In the case of every individual, being a resident in India, who is of the age of sixty-five years or more at any time during the previous year, the new rates of income tax on total income in such cases shall be as under:-

Upto Rs. 2,40,000/-	NIL
Rs. 2,40,001/- to Rs. 5,00,000/-	10 per cent.
Rs. 5,00,001/- to Rs. 8,00,000/-	20 per cent.
Above Rs. 8,00,000/-	30 per cent.

Education cess @ 2% and “Secondary and Higher Education Cess” @ 1% shall be levied on the amount of tax.

(B) The rates for charging income tax for F.Y. 2011-12 i.e. A.Y. 2012-13 will be as follows :-

I. In case of an individual other than those covered under II and III below:

(1)	Where the total income does not exceed Rs. 1,80,000	Nil
(2)	Where the total income exceeds Rs. 1,80,000 but does not exceed Rs. 5,00,000	10% of the amount by which the total income exceeds Rs. 1,80,000/-.
(3)	Where the total income exceeds Rs. 5,00,000 but does not exceed Rs. 8,00,000	Rs. 32,000 plus 20% of the amount by which the total income exceeds Rs. 5,00,000.
(4)	Where the total income exceeds Rs. 8,00,000	Rs. 92,000 plus 30% of the amount by which the total income exceeds Rs. 8,00,000.

II. In the case of every individual, being a woman resident in India, and below the age of sixty years at any time during the previous year:-

(1)	Where the total income does not exceed Rs. 1,90,000	Nil
(2)	Where the total income exceeds Rs. 1,90,000 but does not exceed Rs. 5,00,000	10% of the amount by which the total income exceeds Rs. 1,90,000/-.
(3)	Where the total income exceeds Rs. 5,00,000 but does not exceed Rs. 8,00,000	Rs. 31,000 plus 20% of the amount by which the total income exceeds Rs. 5,00,000.
(4)	Where the total income exceeds Rs. 8,00,000	Rs. 91,000 plus 30% of the amount by which the total income exceeds Rs. 8,00,000.

III. In the case of every individual, being a resident in India, who is of the age of sixty years or more but less than eighty years at any time during the previous year:-

(1)	Where the total income does not exceed Rs. 2,50,000	Nil
(2)	Where the total income exceeds Rs. 2,50,000 but does not exceed Rs. 5,00,000	10% of the amount by which the total income exceeds Rs. 2,50,000.
(3)	Where the total income exceeds Rs. 5,00,000 but does not exceed Rs. 8,00,000	Rs. 25,000 plus 20% of the amount by which the total income exceeds Rs. 5,00,000.

(4)	Where the total income exceeds Rs. 8,00,000	Rs. 85,000 plus 30% of the amount by which the total income exceeds Rs. 8,00,000.
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IV. In the case of every individual, being a resident in India, who is of the age of eighty years or more at any time during the previous year:

(1)	Where the total income does not exceed Rs. 5,00,000	Nil
(2)	Where the total income exceeds Rs. 5,00,000 but does not exceed Rs. 8,00,000	20% of the amount by which the total income exceeds Rs. 5,00,000.
(3)	Where the total income exceeds Rs. 8,00,000	Rs. 60,000 plus 30% of the amount by which the total income exceeds Rs. 8,00,000.

1.6 CALCULATION OF INTEREST

The Income Tax Act provides for charging of interest for non- payment/short payment/deferment in payment of advance tax which is calculated as below:

(i) INTEREST U/S 234A:

For late or non furnishing of return, simple interest @ 1% for every month or part thereof from the due date of filing of return to the date of furnishing of return, on the tax as determined u/s 143(1) or on regular assessment as reduced by TDS/advance tax paid or tax reliefs, if any, under Double Tax Avoidance Agreements with foreign countries.

(ii) INTEREST U/S 234B:

For short fall in payment of advance tax by more than 10%, simple interest @ 1% per month or part thereof is chargeable

from 1st April of the assessment year to the date of processing u/s 143(1) or to the date of completion of regular assessment, on the tax as determined u/s 143(1) or on regular assessment less advance tax paid/ TDS or tax reliefs, if any, under Double Tax Avoidance Agreements with foreign countries.

(iii) INTEREST U/S 234C:

For deferment of advance tax. If advance tax paid by 15th September is less than 30% of advance tax payable, simple interest @ 1% is payable for three months on tax determined on returned income as reduced by TDS/TCS/Amount of advance tax already paid or tax relief, if any, under Double Tax Avoidance Agreement with forgiving **contribution**. Similarly, if amount of tax paid on or before 15th December is less than 60% of tax due on returned income, interest @ 1% per month is to be charged for 3 months on the amount stated as above. Again, if the advance tax paid by 15th March is less than tax due on returned income, interest @ 1% per month on the shortfall is to be charged for one month.

(iv) INTEREST U/S 234D:

Interest @ 0.5% is levied under this Section when any refund is granted to the assessee u/s 143(1) and on regular assessment it is found that either no refund is due or the amount already refunded exceeds the refund determined on regular assessment. The said interest is levied @ 0.5% on the whole or excess amount so refunded for every month or part thereof from the date of grant of refund to the date of such regular assessment.

1.7 IMPORTANT CONCEPTS & PROCEDURES UNDER THE INCOME TAX ACT

- 1.7.1 Assessee (Section 2(7)): An assessee is a person by whom any tax or any other sum of money is payable under the Act.
- 1.7.2 Assessment Year (Section 2(9)): Assessment year means the period of 12 months starting from 1st

April of every year and ending on 31st March of the next year.

- 1.7.3 Previous year (Section 3): Income earned in a year is taxable in the next year. The year in which income is earned is known as the previous year and the next year in which income is taxable is known as the assessment year.
- 1.7.4 Receipt Vs. accrual of income: Income is said to have been received by a person when payment has been actually received whereas income is said to have accrued to a person if there arises in the person a fixed and unconditional right to receive such income.
- 1.7.5 Belated Return: Section 139(4) provides that a return which has not been furnished by the due date may still be furnished as a belated return before the expiry of one year from the end of the assessment year or before the completion of assessment, whichever is earlier. However, on any return of income that has not been filed by the end of the relevant assessment year, penalty of Rs.5000/- u/s 271F shall be levied.
- 1.7.6 Revised Return: If a person having filed his return within the due date, discovers any omission or wrong statement therein, he may file a revised return before the expiry of one year from the end of the assessment year or completion of assessment whichever is earlier.
- 1.7.7 Processing u/s 143(1): The Finance Act 2008 has reintroduced provisions in respect of correcting arithmetical mistakes or internal inconsistencies at the stage of processing of returns. It has, thus

been provided that, during the stage of processing, the total income shall be computed after making adjustments in respect of any arithmetical error in the return or any incorrect claim apparent from information in the return and if on such computation, any tax or interest or refund is found due on adjustment of TDS or advance tax or self assessment tax, then an intimation specifying the amount payable shall be prepared/generated or issued to the assessee. If any refund is found due, it is to be sent along with an intimation to such effect. If no demand or no refund arises, the acknowledgement of the return is deemed to be an intimation. Such intimation is to be sent within one year from the end of the financial year in which the return is filed.

- 1.7.8 Assessment u/s 143(3): If the Assessing Officer, on the basis of the return filed by the assessee, considers that it is necessary to ensure that the assessee has not understated his income, he shall serve on the assessee a notice u/s 143(2) and, after obtaining such information as he may require, complete the assessment (commonly referred as scrutiny assessment) u/s 143(3).
- 1.7.9 Rectification of mistake u/s 154: If any order passed by an income tax authority suffers from a mistake apparent from record, the assessee may make an application for rectifying the same before the expiry of four years from the end of the financial year in which the above order was passed. The Finance Act 2001 has provided that where an application for rectification under this Section is made by the assessee on or after 1.6.2001, the same shall have

to be acted upon by the income tax authority within a period of six months from the end of the month in which the application is received.

- 1.7.10 Interest on refunds u/s 244A: If the refund due to the assessee is more than 10% of the tax payable by him, he shall be entitled to receive simple interest thereon at rate of 0.5% per month (substituted in place of 0.67% per month w.e.f. 8.9.2003) or part thereof, from 1st April of the assessment year to the date on which the refund is granted.
- 1.7.11 Tax Return Preparers Scheme:- For enabling specified classes of tax payers in preparing and furnishing income tax returns, the Board has notified the 'Tax Return Preparer Scheme' under which specially trained and authorized Tax Return Preparers will provide assistance to tax payers in this regard. Details of the Scheme may be viewed at www.incometaxindia.gov.in. Individuals or HUFs may furnish his return of income through a Tax Return Preparer who has been authorized and certified for this purpose.

CHAPTER-2

SALARY INCOME, PERQUISITES & ALLOWANCES

2.1 WHAT IS "SALARY"

Salary is the remuneration received by or accruing to an individual, periodically, for service rendered as a result of an express or implied contract. The actual receipt of salary in the previous year is not material as far as its taxability is concerned. The existence of employer-employee relationship is the *sine-qua-non* for taxing a particular receipt under the head "salaries." For instance, the salary received by a partner from his partnership firm carrying on a business is not chargeable as "Salaries" but as "Profits & Gains from Business or Profession". Similarly, salary received by a person as MP or MLA is taxable as "Income from other sources", but if a person received salary as Minister of State/ Central Government, the same shall be charged to tax under the head "Salaries". Pension received by an assessee from his former employer is taxable as "Salaries" whereas pension received on his death by members of his family (Family Pension) is taxed as "Income from other sources".

2.2 WHAT DOES "SALARY" INCLUDE

Section 17(1) of the Income tax Act gives an inclusive and not exhaustive definition of "Salaries" including therein (i) Wages (ii) Annuity or pension (iii) Gratuity (iv) Fees, Commission, perquisites or profits in lieu of salary (v) Advance of Salary (vi) Amount transferred from unrecognized provident fund to recognized provident fund (vii) Contribution of employer to a Recognised Provident Fund in excess of the prescribed limit (viii) Leave Encashment (ix) Compensation as a result of variation in Service contract etc. (x) Contribution made by the Central

Government to the account of an employee under a notified pension scheme.

2.3 DEDUCTION FROM SALARY INCOME

The following deductions from salary income are admissible as per Section 16 of the Income-tax Act.

- (i) Professional/Employment tax levied by the State Govt.
- (ii) Entertainment Allowance- Deduction in respect of this is available to a government employee to the extent of Rs. 5000/- or 20% of his salary or actual amount received, whichever is less.

It is to be noted that no standard deduction is available from salary income w.e.f. 01.04.2006 i.e. A.Y.2006-07 onwards.

2.4 PERQUISITES

“Perquisite” may be defined as any casual emolument or benefit attached to an office or position in addition to salary or wages.

“Perquisite” is defined in the section17(2) of the Income tax Act as including:

- (i) Value of rent-free/concessional rent accommodation provided by the employer.
- (ii) Any sum paid by employer in respect of an obligation which was actually payable by the assessee.
- (iii) Value of any benefit/amenity granted free or at concessional rate to specified employees etc.
- (iv) 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.

- (v) 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; and
- (vi) the value of any other fringe benefit or amenity as may be prescribed.

2.5 VALUATION OF PERQUISITES

As a general rule, the taxable value of perquisites in the hands of the employees is its cost to the employer. However, specific rules for valuation of certain perquisites have been laid down in Rule 3 of the I.T. Rules. These are briefly given below.

2.5.1 Valuation of residential accommodation provided by the employer:-

- (a) **Union or State Government Employees-** The value of perquisite is the license fee as determined by the Govt. as reduced by the rent actually paid by the employee.
- (b) **Non-Govt. Employees-** The value of perquisite is an amount equal to 15% of the salary in cities having population more than 25 lakhs, (10% of salary in cities where population as per 2001 census is exceeding 10 lakhs but not exceeding 25 lakhs and 7.5% of salary in areas where population as per 2001 census is 10 lakhs or below). In case the accommodation provided is not owned by the employer, but is taken on lease or rent, then the value of the perquisite would be the actual amount of lease rent paid/payable by the employer or 15% of salary, whichever is lower. In both of above cases, the value of the perquisite would be reduced by the rent, if any, actually paid by the employee.

2.5.2 **Value of Furnished Accommodation-** The value would be the value of unfurnished accommodation as computed above, increased by 10% per annum of the cost of furniture (including TV/radio/refrigerator/AC/other gadgets). In case such furniture is hired from a third party, the value of unfurnished accommodation would be increased by the hire charges paid/payable by the employer. However, any payment recovered from the employee towards the above would be reduced from this amount.

2.5.3 **Value of hotel accommodation provided by the employer-** The value of perquisite arising out of the above would be 24% of salary or the actual charges paid or payable to the hotel, whichever is lower. The above would be reduced by any rent actually paid or payable by the employee. It may be noted that no perquisite would arise, if the employee is provided such accommodation on transfer from one place to another for a period of 15 days or less.

2.5.4 **Perquisite of motor car provided by the employer-** W.e.f. 1-4-2008, if an employer providing such facility to his employee is not liable to pay fringe benefit tax, the value of such perquisite shall be :

- a) Nil, if the motor car is used by the employee wholly and exclusively in the performance of his official duties.
- b) Actual expenditure incurred by the employer on the running and maintenance of motor car, including remuneration to chauffeur as increased by the amount representing normal

wear and tear of the motor car and as reduced by any amount charged from the employee for such use (in case the motor car is exclusively for private or personal purposes of the employee or any member of his household).

- c) Rs. 1800- (plus Rs. 900-, if chauffeur is also provided) per month (in case the motor car is used partly in performance of duties and partly for private or personal purposes of the employee or any member of his household if the expenses on maintenance and running of motor car are met or reimbursed by the employer). However, the value of perquisite will be Rs. 2400- (plus Rs. 900-, if chauffeur is also provided) per month if the cubic capacity of engine of the motor car exceeds 1.6 litres.
- d) Rs. 600- (plus Rs. 900-, if chauffeur is also provided) per month (in case the motor car is used partly in performance of duties and partly for private or personal purposes of the employee or any member of his household if the expenses on maintenance and running of motor car for such private or personal use are fully met by the employee). However, the value of perquisite will be Rs. 900- (plus Rs. 900-, if chauffeur is also provided) per month if the cubic capacity of engine of the motor car exceeds 1.6 litres.

If the motor car or any other automotive conveyance is owned by the employee but the actual running and maintenance charges are met or reimbursed by the employer, the method of valuation of perquisite value is different. (See Rule 3(2)).

- 2.5.5 Perquisite arising out of supply of gas, electric energy or water: This shall be determined as the amount paid by the employer to the agency supplying the same. If the supply is from the employer's own resources, the value of the perquisite would be the manufacturing cost per unit incurred by the employer. However, any payment received from the employee towards the above would be reduced from the amount [Rule 3(4)]
- 2.5.6 Free/Concessional Educational Facility: Value of the perquisite would be the expenditure incurred by the employer. If the education institution is maintained & owned by the employer, the value would be nil if the value of the benefit per child is below Rs. 1000/- P.M. or else the reasonable cost of such education in a similar institution in or near the locality. [Rule 3(5)].
- 2.5.7 Free/Concessional journeys provided by an undertaking engaged in carriage of passengers or goods: Value of perquisite would be the value at which such amenity is offered to general public as reduced by any amount, if recovered from the employee. However, these provisions are not applicable to the employees of an airline or the railways.
- 2.5.8 Provision for sweeper, gardener, watchman or personal attendant: The value of benefit resulting from provision of any of these shall be the actual cost borne by the employer in this respect as reduced by any amount paid by the employee for such services. (Cost to the employer in respect to the above will be salary paid/payable). [Rule 3(3)].

2.5.9 Value of certain other fringe benefits:

- (a) Interest free/concessional loans- The value of the perquisite shall be the excess of interest payable at the prescribed interest rate over, interest, if any, actually paid by the employee or any member of his household. The prescribed interest rate would be the rate charged by State Bank of India as on the 1st Day of the relevant Previous Year in respect of loans of the same type and for same purpose advanced by it to general public. Perquisite to be calculated on the basis of the maximum outstanding monthly balance method. However, loans upto Rs. 20,000/-, loans for medical treatment specified in Rule 3A are exempt provided the same are not reimbursed under medical insurance.
- (b) Value of free meals- The perquisite value in respect of free food and non-alcoholic beverages provided by the employer, not liable to pay fringe benefit tax, to an employee shall be the expenditure incurred by the employer as reduced by the amount paid or recovered from the employee for such benefit or amenity. However, no perquisite value will be taken if food and non-alcoholic beverages are provided during working hours and certain conditions specified under Rule 3(7)(iii) are satisfied.
- (c) Value of gift or voucher or token- The perquisite value in respect of any gift, or voucher, or token in lieu of which such gift may be received by the employee or member of his household from the employer, not liable to pay fringe benefit tax, shall be the sum equal to the amount of such gift, voucher or token. However, no perquisite value will be taken

if the value of such gift, voucher or taken is below Rs. 5000/- in the aggregate during the previous years.

- (d) Credit card provided by the employer- The requisite value in respect of expenses incurred by the employee or any of his household members, which are charged to a credit card provided by the employer, not liable to pay fringe benefit tax, which are paid or reimbursed by such employer to an employee shall be taken to be such amount paid or reimbursed by the employer. However, no requisite value will be taken if the expenses are incurred wholly and exclusively for official purposes and certain conditions mentioned in Rule 3(7)(v) are satisfied.
- (e) Club membership provided by the employer- The requisite value in respect of amount paid or reimbursed to an employee by an employer, not liable to pay fringe benefit tax, against the expenses incurred in a club by such employee or any of his household members shall be taken to be such amount incurred or reimbursed by the employer as reduced by any amount paid or recovered from the employee on such account. However, no requisite value will be taken if the expenditure is incurred wholly any exclusively for business purposes and certain conditions mentioned in Rule 3(7)(vi) are satisfied.

2.5.10 The value of any other benefit or amenity provided by the employer shall be determined on the basis of cost to the employer under an arms' length transaction as reduced by the employee's contribution.

2.5.11 The fair market value of any specified security or sweat equity share, being an equity share in a company, on the date on which the option is exercised by the employee, shall be determined as follows:-

- (a) In a case where, on the date of exercising of the option, the share in the company is listed on a recognized stock exchange, the fair market value shall be the average of the opening price and closing price of the share on the date on the said stock exchange.
- (b) In a case where, on the date of exercising of the option, the share in the company is not listed on a recognized stock exchange, the fair market value shall be such value of the share in the company as determined by a merchant banker on the specified date.
- (c) The fair market value of any specified security, not being an equity share in a company, on the date on which the option is exercised by the employee, shall be such value as determined by a merchant banker on the specified date.

2.6 PERQUISITES EXEMPT FROM INCOME TAX

Some instances of perquisites exempt from tax are given below:

Provision of medical facilities (Proviso to Sec. 17(2)): Value of medical treatment in any hospital maintained by the Government or any local authority or approved by the Chief Commissioner of Income-tax. Besides, any sum paid by the employer towards medical reimbursement other than as discussed above is exempt upto Rs.15,000/-.

Perquisites allowed outside India by the Government to a citizen of India for rendering services outside India (Sec. 10(7)).

Rent free official residence provided to a Judge of High Court or Supreme Court or an Official of Parliament, Union Minister or Leader of Opposition in Parliament.

No perquisite shall arise if interest free/concessional loans are made available for medical treatment of specified diseases in Rule 3A or where the loan is petty not exceeding in the aggregate Rs.20,000/-

No perquisite shall arise in relation to expenses on telephones including a mobile phone incurred on behalf of the employee by the employer.

2.7 ALLOWANCES

Allowance is defined as a fixed quantity of money or other substance given regularly in addition to salary for meeting specific requirements of the employees. As a general rule, all allowances are to be included in the total income unless specifically exempted. Exemption in respect of following allowances is allowable to the extent mentioned against each :-

2.7.1 House Rent Allowance:- Provided that expenditure on rent is actually incurred, exemption available shall be the least of the following :

- (i) HRA received.
- (ii) Rent paid less 10% of salary.
- (iii) 40% of Salary (50% in case of Mumbai, Chennai, Kolkata, Delhi) Salary here means Basic + Dearness Allowance, if dearness allowance is provided by the terms of employment.

2.7.2 Leave Travel Allowance: The amount actually incurred on performance of travel on leave to any

place in India by the shortest route to that place is exempt. This is subject to a maximum of the air economy fare or AC 1st Class fare (if journey is performed by mode other than air) by such route, provided that the exemption shall be available only in respect of two journeys performed in a block of 4 calendar years.

2.7.3 Certain allowances given by the employer to the employee are exempt u/s 10(14). All these exempt allowance are detailed in **Rule 2BB of Income-tax Rules** and are briefly given below:

For the purpose of Section 10(14)(i), following allowances are exempt, subject to actual expenses incurred:

- (i) Allowance granted to meet cost of travel on tour or on transfer.
- (ii) Allowance granted on tour or journey in connection with transfer to meet the daily charges incurred by the employee.
- (iii) Allowance granted to meet conveyance expenses incurred in performance of duty, provided no free conveyance is provided.
- (iv) Allowance granted to meet expenses incurred on a helper engaged for performance of official duty.
- (v) Academic, research or training allowance granted in educational or research institutions.
- (vi) Allowance granted to meet expenditure on purchase/maintenance of uniform for performance of official duty.

Under Section 10(14)(ii), the following allowances have been prescribed as exempt.

Type of Allowance	Amount exempt
(i) Special Compensatory Allowance for hilly areas or high altitude allowance or climate allowance.	Rs.800 common for various areas of North East, Hilly areas of U.P., H.P. & J&K and Rs. 7000 per month for Siachen area of J&K and Rs.300 common for all places at a height of 1000 mts or more other than the above places.
(ii) Border area allowance or remote area allowance or a difficult area allowance or disturbed area allowance.	Various amounts ranging from Rs.200 per month to Rs.1300 per month are exempt for various areas specified in Rule 2BB.
(iii) Tribal area/Schedule area/Agency area allowance available in M.P., Assam, U.P., Karnataka, West Bengal, Bihar, Orissa, Tamilnadu, Tripura	Rs.200 per month.
(iv) Any allowance granted to an employee working in any transport system to meet his personal expenditure during duty performed in the course of running of such transport from one place to another place.	70% of such allowance upto a maximum of Rs. 10,000 per month.

(v) Children education allowance.	Rs.100 per month per child upto a maximum 2 children.
(vi) Allowance granted to meet hostel expenditure on employee's child.	Rs.300 per month per child upto a maximum two children.
(vii) Compensatory field area allowance available in various areas of Arunachal Pradesh, Manipur Sikkim, Nagaland, H.P., U.P. & J&K.	Rs.2600 per month.
(viii) Compensatory modified field area allowance available in specified areas of Punjab, Rajsthan, Haryana, U.P., J&K, H.P., West Bengal & North East.	Rs.1000 per month
(ix) Counter insurgency allowance to members of Armed Forces.	Rs.3900 Per month
(x) Transport Allowance granted to an employee to meet his expenditure for the purpose of commuting between the place of residence & duty.	Rs.800 per month.
(xi) Transport allowance granted to physically disabled employee for the purpose of	Rs.1600 per month.

	commuting between place of duty and residence.	
(xii)	Underground allowance granted to an employee working in under ground mines.	Rs.800 per month.
(xiii)	Special allowance in the nature of high altitude allowance granted to members of the armed forces.	Rs. 1060 p.m. (for altitude of 9000-15000 ft.) Rs.1600 p.m. (for altitude above 15000 ft.)
(xiv)	Any special allowance granted to the members of the armed forces in the nature of special compensatory highly active field area allowance	Rs. 4,200/- p.m.
(xv)	Special allowance granted to members of armed forces in the nature of island duty allowance. (in Andaman & Nicobar & Lakshadweep Group of Islands)	Rs. 3,250/- p.m.

CHAPTER-3

OVERVIEW OF INCOME FROM HOUSE PROPERTY

3.1 INTRODUCTION

Under the Income Tax Act what is taxed under the head 'Income from House Property' is the inherent capacity of the property to earn income called the *Annual Value* of the property. The above is taxed in the hands of the owner of the property.

3.2 COMPUTATION OF ANNUAL VALUE

(i) GROSS ANNUAL VALUE(G.A.V.) is the highest of

- (a) Rent received or receivable
- (b) Fair Market Value.
- (c) Municipal valuation.

(If however, the Rent Control Act is applicable, the G.A.V. is the standard rent or rent received, whichever is higher).

It may be noted that if the let out property was vacant for whole or any part of the previous year and owing to such vacancy the actual rent received or receivable is less than the sum referred to in clause(a) above, then the amount actually received/receivable shall be taken into account while computing the G.A.V. If any portion of the rent is unrealisable, (condition of unrealisability of rent are laid down in Rule 4 of I.T. Rules) then the same shall not be included in the actual rent received/receivable while computing the G.A.V.

(ii) NET VALUE (N.A.V.) is the GAV less the municipal taxes paid by the owner.

Provided that the taxes were paid during the year.

(iii) ANNUAL VALUE is the N.A.V. less the deductions available u/s 24.

3.3 DEDUCTIONS U/S 24:- Are exhaustive and no other deductions are available:-

- (i) A sum equal to 30% of the annual value as computed above.
- (ii) Interest on money borrowed for acquisition/construction/repair/renovation of property is deductible on accrual basis. Interest paid during the pre construction/acquisition period will be allowed in five successive financial years starting with the financial year in which construction/acquisition is completed. This deduction is also available in respect of a self occupied property and can be claimed up to maximum of Rs.30,000/-. The Finance Act, 2001 had provided that w.e.f. A.Y. 2002-03 the amount of deduction available under this clause would be available up to Rs.1,50,000/- in case the property is acquired or constructed with capital borrowed on or after 1.4.99 and such acquisition or construction is completed before 1.4.2003. The Finance Act 2002 has further removed the requirement of acquisition/ construction being completed before 1.4.2003 and has simply provided that the acquisition/construction of the property must be completed within three years from the end of the financial year in which the capital was borrowed.

3.4 SOME NOTABLE POINTS

In case of one self occupied property, the annual value is taken as nil. Deduction u/s 24 for interest paid may still be claimed therefrom. The resulting loss may be set off against income under other heads but can not be carried forward.

If more than one property is owned and all are used for self occupation purposes only, then any one can be opted as self occupied, the others are deemed to be let out.

Annual value of one house away from workplace which is not let out can be taken as NIL provided that it is the only house owned and it is not let out.

If a let out property is partly self occupied or is self occupied for a part of the year, then the value in proportion to the portion of self occupied property or period of self occupation, as the case may be is to be excluded from the annual value.

From assessment year 1999-2000 onwards, an assessee who apart from his salary income has loss under the head "Income from house property", may furnish the particulars of the same in the prescribed form to his Drawing and Disbursing Officer who shall then take the above loss also into account for the purpose of TDS from salary.

A new section 25B has been inserted with effect from assessment year 2001-2002 which provides that where the assessee, being the owner of any property consisting of any buildings or lands appurtenant thereto which may have been let to a tenant, receives any arrears of rent not charged to income tax for any previous year, then such arrears shall be taxed as the income of the previous year in which the same is received after deducting therefrom a sum equal to 30% of the amount of arrears in respect of repairs/collection charges. It may be noted that the above provision shall apply whether or not the assessee remains the owner of the property in the year of receipt of such arrears.

3.5 PROPERTY INCOME EXEMPT FROM TAX

Income from farm house (Sec.2(1A)(c) read with sec. 10(1)). Annual value of any one palace of an ex-ruler (Sec.10(19A)). Property income of a local authority (Sec.10(20)), university/ educational institution (Sec.10(23C)), approved scientific research association (Sec.10(21)), political party (Sec.13A). Property used for own business or profession (Sec.22). One self occupied property (Sec.23(2)). House property held for charitable purposes (Sec.11).

CHAPTER-4

OVERVIEW OF CAPITAL GAINS

4.1 CAPITAL GAINS

Profits or gains arising from the transfer of a capital asset during the previous year are taxable as “Capital Gains” under section 45(1) of the Income Tax Act. The taxability of capital gains is in the year of transfer of the capital asset.

4.2 CAPITAL ASSET

As defined in section 2(14) of the Income Tax Act, it means property of any kind held by the assessee except:

- (a) Stock in trade, consumable stores or raw materials held for the purpose of business or profession.
- (b) Personal effects, being moveable property (excluding Jewellery, archaeological collections, drawings, paintings, sculptures or any other work of art) held for personal use.
- (c) Agricultural land, except land situated within or in area upto 8 kms, from a municipality, municipal corporation, notified area committee, town committee or a cantonment board with population of at least 10,000.
- (d) Six and half percent Gold Bonds, National Defence Gold Bonds and Special Bearer Bonds.

4.3 TYPES OF CAPITAL GAINS

When a capital asset is transferred by an assessee after having held it for at least 36 months, the Capital Gains arising from this transfer are known as Long Term Capital Gains. In case of shares of a company or units of UTI or units of a Mutual Fund, the minimum period of holding for long term capital gains to arise is 12 months. If the period of holding is less than above, the capital gains arising therefrom are known as Short Term Capital Gains.

4.4 COMPUTATION OF CAPITAL GAINS (Sec.48)

Capital gain is computed by deducting from the full value of consideration, for the transfer of a capital asset, the following:-

- (a) Cost of acquisition of the asset(COA):- In case of Long Term Capital Gains, the cost of acquisition is indexed by a factor which is equal to the ratio of the cost inflation index of the year of transfer to the cost inflation index of the year of acquisition of the asset. Normally, the cost of acquisition is the cost that a person has incurred to acquire the capital asset. However, in certain cases, it is taken as following:
 - (i) When the capital asset becomes a property of an assessee under a gift or will or by succession or inheritance or on partition of Hindu Undivided Family or on distribution of assets, or dissolution of a firm, or liquidation of a company, the COA shall be the cost for which the previous owner acquired it, as increased by the cost of improvement till the date of acquisition of the asset by the assessee.
 - (ii) When shares in an amalgamated Indian company had become the property of the assessee in a scheme of amalgamation, the COA shall be the cost of acquisition of shares in the amalgamating company.
 - (iii) Where the capital asset is goodwill of a business, tenancy right, stage carriage permits or loom hours the COA is the purchase price paid, if any or else nil.
 - (iv) The COA of rights shares is the amount which is paid by the subscriber to get them. In case of bonus shares, the COA is nil.
 - (v) If a capital asset has become the property of the assessee before 1.4.81, the assessee may choose either the fair market value as on 1.4.81 or the actual cost of acquisition of the asset as the COA.

- (b) Cost of improvement, if any such cost was incurred. In case of long term capital assets, the indexed cost of improvement will be taken.
- (c) Expenses connected exclusively with the transfer such as brokerage etc.

4.5 SOME IMPORTANT EXEMPTIONS FROM LONG TERM CAPITAL GAINS

- (a) Section 54: In case the asset transferred is a long term capital asset being a residential house, and if out of the capital gains, a new residential house is constructed within 3 years, or purchased 1 year before or 2 years after the date of transfer, then exemption on the LTCG is available on the amount of investment in the new asset to the extent of the capital gains. It may be noted that the amount of capital gains not appropriated towards purchase or construction may be deposited in the Capital Gains Account Scheme of a public sector bank before the due date of filing of Income Tax Return. This amount should subsequently be used for purchase or construction of a new house within 3 years.
- (b) Section 54F: When the asset transferred is a long term capital asset other than a residential house, and if out of the consideration, investment in purchase or construction of a residential house is made within the specified time as in Sec. 54, then exemption from the capital gains will be available as:
 - (i) If cost of new asset is greater than the net consideration received, the entire capital gain is exempt.
 - (ii) Otherwise, exemption = Capital Gains x Cost of new asset/Net consideration.

It may be noted that this exemption is not available, if on the date of transfer, the assessee owns any house other than the new asset. It may be noted that the Finance Act 2000 has provided that

with effect from assessment year 2001-2002, the above exemption shall not be available if assessee owns more than one residential house, other than new asset, on the date of transfer. Investment in the Capital Gains Account Scheme may be made as in Sec.54.

- (c) Section 54EA: If any long term capital asset is transferred before 1.4.2000 and out of the consideration, investment in specified bonds/debentures/shares is made within 6 months of the date of transfer, then exemption from capital gains is available as computed in Section 54F.
- (d) Section 54EB: If any long term capital asset is transferred before 1.4.2000 and investment in specified assets is made within a period of 6 months from the date of transfer, then exemption from capital gains will be available as :-
 - (i) If cost of new assets is not less than the Capital Gain, the entire Capital Gain is exempt.
 - (ii) Otherwise exemption = Capital Gains x $\frac{\text{Cost of New asset}}{\text{Capital Gains}}$
- (e) Section 54EC: This section has been introduced from assessment year 2001-2002 onwards. It provides that if any long term capital asset is transferred and out of the consideration, investment in specified assets (any bond issued by National Highway Authority of India or by Rural Electrification Corporation redeemable after 3 years), is made within 6 months from the date of transfer, then exemption would be available as computed in Sec. 54EB.
The Finance Act, 2007 has laid an annual ceiling of Rs. 50 lakh on the investment made under this section w.e.f. 1.4.2007.
- (f) Section 54ED: This section has been introduced from assessment year 2002-03 onwards. It provides that if a long term capital asset, being listed securities or units, is transferred and out of the consideration, investment in acquiring equity

shares forming part of an eligible issue of capital is made within six months from the date of transfer, then exemption would be available as computed in Sec. 54EB. As per the Finance Act 2006 it has been provided that with effect from assessment year 2007-08, no exemption under this Section shall be available.

4.6 LOSS UNDER CAPITAL GAINS

Can not be set off against any income under any other head but can be carried forward for 8 assessment years and be set off against capital gains in those assessment years.

4.7 EXEMPT INCOME

The Finance Act 2003 has introduced S.10(33) w.e.f. 01.04.2003 which provides that income arising from certain types of transfer of capital assets shall be treated as exempt income. S.10(33) provides for exemption of income arising from transfer of units of the US 64 (Unit Scheme 1964). S.10(36) inserted by the Finance Act, 2003 w.e.f. 1.4.2004 provides that income arising from transfer of eligible equity shares held for a period of 12 months or more shall be exempt.

The Finance Act, 2004 has introduced Section 10(38) of the I.T. Act which provides that no capital gains shall arise in case of transfer of equity shares held as a long term capital asset by an individual or HUF w.e.f. 01.04.2005 provided such transaction is chargeable to 'securities transaction tax'.

COST INFLATION INDEX:

The Central Government has notified the Cost Inflation Index for the purpose of long term Capital Gain as follows:

Financial Year	Cost Inflation Index
1981-82	100
1982-83	109
1983-84	116
1984-85	125
1985-86	133
1986-87	140
1987-88	150
1988-89	161
1989-90	172
1990-91	182
1991-92	199
1992-93	223
1993-94	244
1994-95	259
1995-96	281
1996-97	305
1997-98	331
1998-99	351
1999-2000	389
2000-2001	406
2001-2002	426
2002-2003	447
2003-2004	463
2004-2005	480
2005-2006	497
2006-2007	519
2007-2008	551
2008-2009	582
2009-2010	632
2010-2011	711

CHAPTER-5

DEDUCTIONS UNDER CHAPTER- VIA

5.1 INTRODUCTION

The Income Tax Act provides that on determination of the gross total income of an assessee after considering income from all the heads, certain deductions therefrom may be allowed. These deductions detailed in chapter VIA of the Income Tax Act must be distinguished from the exemptions provides in Section 10 of the Act. While the former are to be reduced from the gross total income, the latter do not form part of the income at all.

5.2 The chart given below describes the deductions allowable under chapter VIA of the I.T. Act from the gross total income of the assessee having income from salaries.

SECTION	NATURE OF DEDUCTION	REMARKS
80CCC	Payment of premium for annuity plan of LIC or any other insurer Deduction is available upto a maximum of Rs.10,000/-	The premium must be deposited to keep in force a contract for an annuity plan of the LIC or any other insurer for receiving pension from the fund.The Finance Act 2006 has enhanced the ceiling of deduction under Section 80CCC from Rs.10,000 to Rs.1,00,000 with effect from 1.4.2007.

80CCD	Deposit made by an employee in his pension account to the extent of 10% of his salary.	Where the Central Government makes any contribution to the pension account, deduction of such contribution to the extent of 10% of salary shall be allowed. Further, in any year where any amount is received from the pension account such amount shall be charged to tax as income of that previous year. The Finance Act, 2009 has extended benefit to any individual assessee, not being a Central Government employee.
80CCF	Subscription to long term infrastructure bonds	Subscription made by individual or HUF to the extent of Rs. 20,000 to notified long term infrastructure bonds is exempt from A.Y. 2011-12 onwards.
80D	Payment of medical insurance premium. Deduction is available upto Rs.15,000/ for self/ family and also upto Rs. 15,000/- for insurance in	The premium is to be paid by any mode of payment other than cash and the insurance scheme should be framed by the General

	respect of parent/parents of the assessee.	Insurance Corporation of India & approved by the Central Govt. or Scheme framed by any other insurer and approved by the Insurance Regulatory & Development Authority. The premium should be paid in respect of health insurance of the assessee or his family members. The Finance Act 2008 has also provided deduction upto Rs. 15,000/- in respect of health insurance premium paid by the assessee towards his parent/parents. W.e.f. 01.04.2011, contributions made to the Central Government Health Scheme is also covered under this section.
80DD	Deduction of Rs.40,000/- in respect of (a) expenditure incurred on medical treatment, (including nursing), training and rehabilitation of handicapped dependant relative. (b) Payment or	The handicapped dependant should be a dependant relative suffering from a permanent disability (including blindness) or mentally retarded, as certified by a specified physician or psychiatrist.

	deposit to specified scheme for maintenance of dependant handicapped relative. W.e.f. 01.04.2004 the deduction under this section has been enhanced to Rs.50,000/- Further, if the dependant is a person with severe disability a deduction of Rs.1,00,000/- shall be available under this section.	Note: A person with severe disability means a person with 80% or more of one or more disabilities as outlined in section 56(4) of the “Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act.”
80DDB	Deduction of Rs.40,000 in respect of medical expenditure incurred. W.e.f. 01.04.2004, deduction under this section shall be available to the extent of Rs.40,000/- or the amount actually paid, whichever is less. In case of senior citizens, a deduction upto Rs.60,000/- shall be available under this Section.	Expenditure must be actually incurred by resident assessee on himself or dependent relative for medical treatment of specified disease or ailment. The diseases have been specified in Rule 11DD. A certificate in form 10 I is to be furnished by the assessee from a specialist working in a Government hospital.
80E	Deduction in respect of payment in the previous year of interest on loan	This provision has been introduced to provide relief to students taking

	taken from a financial institution or approved charitable institution for higher studies.	loans for higher studies. The payment of the interest thereon will be allowed as deduction over a period of upto 8 years. Further, by Finance Act, 2007 deduction under this section shall be available not only in respect of loan for pursuing higher education by self but also by spouse or children of the assessee. W.e.f.01.04.2010 higher education means any course of study pursued after passing the senior secondary examination or its equivalent from any recognized school, board or university.
80G	Donation to certain funds, charitable institutions etc.	The various donations specified in Sec. 80G are eligible for deduction upto either 100% or 50% with or without restriction as provided in Sec. 80G
80GG	Deduction available is the least of (i) Rent paid less 10% of total income	(1) Assessee or his spouse or minor child should not own residential

	(ii) Rs.2000 per month (iii) 25% of total income	accommodation at the place of employment. (2) He should not be in receipt of house rent allowance. (3) He should not have a self occupied residential premises in any other place.
80U	Deduction of Rs.50,000/- to an individual who suffers from a physical disability (including blindness) or mental retardation. Further, if the individual is a person with severe disability, deduction of Rs.75,000/- shall be available u/s 80U. W.e.f. 01.04.2010 this limit has been raised to Rs. 1 lakh.	Certificate should be obtained on prescribed format from a notified 'Medical authority'.
80RRB	Deduction in respect of any income by way of royalty in respect of a patent registered on or after 01.04.2003 under the Patents Act 1970 shall be available as :-Rs. 3 lacs or the income received, whichever is less.	The assessee who is a patentee must be an individual resident in India. The assessee must furnish a certificate in the prescribed form duly signed by the prescribed authority alongwith the return of income.

80QQB	Deduction in respect of royalty or copyright income received in consideration for authoring any book of literary, artistic or scientific nature other than text book shall be available to the extent of Rs. 3 lacs or income received, whichever is less.	The assessee must be an individual resident in India who receives such income in exercise of his profession. To avail of this deduction, the assessee must furnish a certificate in the prescribed form along with the return of income.
80C	This section has been introduced by the Finance Act, 2005. Broadly speaking, this section provides deduction from total income in respect of various investments/expenditures/payments in respect of which tax rebate u/s 88 was earlier available. The total deduction under this section is limited to Rs.1 lakh only.	

The following investments/payments are inter alia eligible for deduction u/s 80C:-

NATURE OF INVESTMENT	REMARKS
Life Insurance Premium	For individual, policy must be in the name of self or spouse or any child's name. For HUF, it may be on life of any member of HUF.
Sum paid under contract for deferred annuity	For individual, on life of self, spouse or any child of such individual.
Sum deducted from salary payable to Govt. Servant for securing deferred annuity for self, spouse or child	Payment limited to 20% of salary.
Contribution made under Employee's Provident Fund Scheme	—
Contribution to PPF	For individual, can be in the name of self/spouse, any child & for HUF, it can be in the name of any member of the family.
Contribution by employee to a Recognised Provident Fund.	—
Subscription to any notified securities/notified deposits scheme.	—

Subscription to any notified savings certificates.	e.g. NSC VIII issue.
Contribution to Unit Linked Insurance Plan of LIC Mutual Fund	e.g. Dhanrakhsa 1989
Contribution to notified deposit scheme/Pension fund set up by the National Housing Bank.	—
Certain payment made by way of instalment or part payment of loan taken for purchase/construction of residential house property.	Condition has been laid that in case the property is transferred before the expiry of 5 years from the end of the financial year in which possession of such property is obtained by him, the aggregate amount of deduction of income so allowed for various years shall be liable to tax in that year.
Subscription to units of a Mutual Fund notified u/s 10(23D)	—
Subscription to deposit scheme of a public sector company engaged in providing housing finance.	—
Subscription to equity shares/debentures forming part of any approved eligible issue of capital made by a public company or public financial institutions.	—

Tuition fees paid at the time of admission or otherwise to any school, college, university or other educational institution situated within India for the purpose of full time education.	Available in respect of any two children.
Any term deposit for a fixed period of not less than five years with the scheduled bank.	This has been included in Section 80C by the Finance Act 2006.
Subscription to notified bonds issued by NABARD	This has been included in Section 80C by the Finance Act 2007 and has come into effect from 1.4.2008.
Payment made into an account under the Senior Citizens Savings Scheme Rules, 2004	This has been introduced by Finance Act, 2008 and shall come into effect from 1.4.2009.
Payment made as five year time deposit in an account under the Post Office Time Deposit Rules, 1981	This has been introduced by Finance Act, 2008 and shall come into effect from 1.4.2009.

It may be noted that the aggregate amount of deductions under sections 80C, 80CCC and 80CCD are subject to an overall ceiling of Rs.1 lakh.

CHAPTER-6
TAX REBATE & RELIEF

6.1 INTRODUCTION

The total income of an assessee is determined after deductions from the gross total income are made as discussed in the previous chapter. It is on this total income that the tax payable is computed at the rates in force. The Income Tax Act further provides for rebate from the tax payable as computed above, if certain investments or payments are made. Rebate provided u/s 88 of the Act must be distinguished from deductions provided in Chapter VIA of the Act. While the latter reduces the gross total income, rebate is a reduction from the tax payable.

The Finance Act, 2002 introduced some changes in the above which came into effect from A.Y. 2003-2004. The rate of rebate has been kept at 20% in case the gross total income, before giving effect to the deductions under chapter VIA, is below Rs. 1.5 lacs while the rate would be 15% if gross total income is higher than Rs. 1.5 lacs but lower than Rs. 5 lacs. On the other hand, if the gross total income exceeds Rs. 5 lacs, no rebate under this chapter would be available. It has also been provided that an individual whose income under the head ‘Salaries’ is below Rs. 1 lakh during the previous year and constitutes at least 90% of his gross total income, shall be entitled to rebate @ 30% on the investments/ payments specified in Section 88. The maximum amount of investment qualifying for rebate u/s 88 has been enhanced to Rs.70,000, however, additional rebate on investment upto Rs. 30,000 is available in respect of subscription to specified infrastructure equity share/debentures.

Investment qualifying for rebate u/s 88 must be out of income chargeable to tax in the relevant previous year. The above

requirement has, however, been deleted by the Finance Act 2002 w.e.f. A.Y. 2003-2004.

With effect from assessment year 2001-2002 onwards a new section 88C has been inserted. It provides that in case of assessee being a woman resident in India and below 65 years of age, tax rebate of an amount of Rs. 5,000 or 100% of tax, whichever is less, shall be available. The above rebate is to be allowed from the amount of Income Tax computed before allowing for tax rebate u/s 88 in respect of various investments expenditures, important among which are discussed below in paragraph 6.2.

6.2

NATURE OF INVESTMENT	REMARKS
Life Insurance Premium	For individual, policy must be in self or spouse’s or any child’s name. For HUF, it may be on life of any member of HUF.
Sum paid under contract for deferred annuity	For individual, on life of self, spouse or any child
Sum deducted from salary payable to Govt. Servant for securing deferred annuity for self, spouse or children	Payment limited to 20% of salary.
Contribution made under Employee’s Provident Fund Scheme	—
Contribution to PPF	For individual, can be in the name of self/spouse, any child & for HUF, it can be in the name of any member of the family.

Contribution by employee to a Recognised Provident Fund.	—
Sum deposited in 10 year/15year account of Post Office Savings Bank	—
Subscription to any notified securities/notified deposits scheme.	—
Subscription to any notified savings certificates	e.g. NSC VIII issue.
Contribution to Unit Linked Insurance Plan of LIC Mutual Fund	e.g. Dhanrakhsa 1989
Contribution to notified deposit scheme/Pension fund set up by the National Housing Bank.	—
Certain payment made by way of instalment or part payment of loan taken for purchase/ construction of residential house property.	Qualifying amount limited to Rs.10,000. The limit has been raised to Rs.20,000 w.e.f. assessment year 2001-2002.
Contribution to notified annuity Plan of LIC(e.g. Jeevan Dhara) or Units of UTI/notified Mutual Fund.	If in respect of such contribution, deduction u/s 80CCC has been availed of, rebate u/s 88 would not be allowable.
Subscription to units of a Mutual Fund notified u/s 10(23D)	—

Subscription to deposit scheme of a Public Sector Company/ Authorised Authority providing long term house financing.	—
Subscription to equity shares/ debentures forming part of any approved eligible issue of capital made by a public company or public financial institutions.	In respect of it, a higher limit of qualifying investment of Rs.70,000 (Rs.80,000 w.e.f. A.Y. 2001-2002) is available as against Rs.60,000 in case of other investments.
(w.e.f. 01.04.2004) Tuition fees paid at the time of admission or otherwise to any school, college, university or other educational institution situated within India for the purpose of full time education of any two children.	The qualifying amount limited to Rs.12,000/- in respect of each child.

It is important to note that no tax rebate u/s 88 shall be available from A.Y.2006-07 onwards. Similarly, sections 88B and 88C providing special rebates to senior citizens and ladies, stand omitted w.e.f. 01.04.2006.

6.3 RELIEF UNDER SECTION 89 (1):-

It is available to an employee when he receives salary in advance or in arrear or when in one financial year, he receives salary of more than 12 months or receives 'profits in lieu of salary'. W.e.f. 1.6.89, relief u/s 89(1) can be granted at the time of TDS from employees of all companies, co-operative societies, universities or institutions as well as govt./public sector undertakings, the relief should be claimed by the employee in Form No. 10E and should be worked out as explained in Rule 21A of the Income Tax Rules.

CHAPTER-7

PERMANENT ACCOUNT NUMBER

7.1 WHAT IS P.A.N.

P.A.N. or Permanent Account Number is a number allotted to a person by the Assessing Officer for the purpose of identification. P.A.N. of the new series has 10 alphanumeric characters and is issued in the form of laminated card.

7.2 WHO SHALL APPLY FOR P.A.N.

Section 139A of the Income Tax Act provides that every person whose total income exceeds the maximum amount not chargeable to tax or every person who carries on any business or profession whose total turnover or gross receipts exceed Rs.5 lakhs in any previous year or any person required to file a return of income u/s 139(4A) shall apply for PAN. Besides, any person not fulfilling the above conditions may also apply for allotment of PAN. With effect from 01.06.2000, the Central Government may by notification specify any class/classes of person including importers and exporters, whether or not any tax is payable by them, and such persons shall also then apply to the Assessing Officer for allotment of PAN.

W.e.f. 01.04.2006 a person liable to furnish a return of fringe benefits under the newly introduced section 115WD of the I.T. Act is also required to apply for allotment of PAN. Of course, if such a person already has been allotted a PAN he shall not be required to obtain another PAN.

The Finance Act, 2006 has provided that for the purpose of collecting any information, the Central Govt. may by way of notification specify any class or classes of persons for allotment of PAN and such persons shall apply to the Assessing Officer within the prescribed time. Provision for Suo moto allotment of

PAN has also been introduced w.e.f.1.6.2006 as per which the assessing officer may allot a Permanent Account No. to any person whether or not any tax is payable by him having regard to the nature of transactions.

7.3 TRANSACTIONS IN WHICH QUOTING OF PAN IS MANDATORY

- Purchase and sale of immovable property.
- Purchase and sale of motor vehicles.
- Transaction in shares exceeding Rs.50,000.
- Opening of new bank accounts.
- Fixed deposits of more than Rs.50,000.
- Application for allotment of telephone connections.
- Payment to hotels exceeding Rs.25,000.
- Provided that till such time PAN is allotted to a person, he may quote his General Index register Number or GIR No.

7.4 HOW TO APPLY FOR PAN

- ❖ Application for allotment of PAN is to be made in Form 49A.
- ❖ Following points must be noted while filling the above form:-
 - i) Application Form must be typewritten or handwritten in black ink in BLOCK LETTERS.
 - ii) Two black & white photographs are to be annexed.
 - iii) While selecting the “Address for Communication”, due care should be exercised as all communications thereafter would be sent at indicated address.
 - iv) In the space given for “Father’s Name”, only the father’s name should be given. Married ladies may note that husband’s name is not required and should not be given.
 - v) Due care should be exercised to fill the correct date of birth.
 - vi) The form should be signed in English or any of the Indian Languages in the 2 specified places. In case of thumb impressions attestation by a Gazetted Officer is necessary.

CHAPTER-8
TAXABILITY OF
RETIREMENT BENEFITS

8.1 INTRODUCTION

On retirement, an employee normally receives certain retirement benefits. Such benefits are taxable under the head 'Salaries' as "profits in lieu of Salaries" as provided in section 17(3). However, in respect of some of them, exemption from taxation is granted u/s 10 of the Income Tax Act, either wholly or partly. These exemptions are described below:-

8.2 GRATUITY (Sec. 10(10)):

- (i) Any death cum retirement gratuity received by Central and State Govt. employees, Defence employees and employees in Local authority shall be exempt.
- (ii) Any gratuity received by persons covered under the Payment of Gratuity Act, 1972 shall be exempt subject to following limits:-
 - (a) For every completed year of service or part thereof, gratuity shall be exempt to the extent of fifteen days Salary based on the rate of Salary last drawn by the concerned employee.
 - (b) The amount of gratuity as calculated above shall not exceed Rs.3,50,000(w.e.f.24.9.97).
- (iii) In case of any other employee, gratuity received shall be exempt subject to the following limits:-
 - (a) Exemption shall be limited to half month salary (based on last 10 months average) for each completed year of service

- (b) Rs.3.5 Lakhs whichever is less.

Where the gratuity was received in any one or more earlier previous years also and any exemption was allowed for the same, then the exemption to be allowed during the year gets reduced to the extent of exemption already allowed, the overall limit being Rs. 3.5 Lakhs.

As per Board's letter F.No. 194/6/73-IT(A-1) dated 19.6.73, exemption in respect of gratuity is permissible even in cases of termination of employment due to resignation. The taxable portion of gratuity will qualify for relief u/s 89(1).

Gratuity payment to a widow or other legal heirs of any employee who dies in active service shall be exempt from income tax(Circular No. 573 dated 21.8.90). Payment of Gratuity (Amendment) Bill, 2010 has proposed to increase the limit to Rs. 10,00,000.

8.3 COMMUTATION OF PENSION (SECTION 10(10A)):

- (i) In case of employees of Central & State Govt. Local Authority, Defence Services and Corporation established under Central or State Acts, the entire commuted value of pension is exempt.
- (ii) In case of any other employee, if the employee receives gratuity, the commuted value of 1/3 of the pension is exempt, otherwise, the commuted value of 1/2 of the pension is exempt.

Judges of S.C. & H.C. shall be entitled to exemption of commuted value upto 1/2 of the pension (Circular No. 623 dated 6.1.1992).

8.4 LEAVE ENCASHMENT (Section 10(10AA)):

- (i) Leave Encashment during service is fully taxable in all cases, relief u/s 89(1) if applicable may be claimed for the same.

- (ii) Any payment by way of leave encashment received by Central & State Govt. employees at the time of retirement in respect of the period of earned leave at credit is fully exempt.
- (iii) In case of other employees, the exemption is to be limited to the least of following: (a) Cash equivalent of unutilized earned leave (earned leave entitlement can not exceed 30 days for every year of actual service) (b) 10 months average salary (c) Leave encashment actually received. This is further subject to a limit of Rs.3,00,000 for retirements after 02.04.1998.
- (iv) Leave salary paid to legal heirs of a deceased employee in respect of privilege leave standing to the credit of such employee at the time of death is not taxable.

For the purpose of Section 10(10AA), the term 'Superannuation or otherwise' covers resignation (CIT Vs. R.V. Shahney 159 ITR 160(Madras)).

8.5 RETRENCHMENT COMPENSATION (Sec. 10(10B)):

Retrenchment compensation received by a workman under the Industrial Disputes Act, 1947 or any other Act or Rules is exempt subject to following limits:-

- (i) Compensation calculated @ fifteen days average pay for every completed year of continuous service or part thereof in excess of 6 months.
- (ii) The above is further subject to an overall limit of Rs.5,00,000 for retrenchment on or after 1.1.1997 (Notification No. 10969 dated 25.6.99).

8.6 COMPENSATION ON VOLUNTARY RETIREMENT OR 'GOLDEN HANDSHAKE'(Sec. 10(10C)):

- (i) Payment received by an employee of the following at the time of voluntary retirement, or termination of service is exempt

to the extent of Rs. 5 Lakh:

- (a) Public Sector Company.
 - (b) Any other company.
 - (c) Authority established under State, Central or Provincial Act.
 - (d) Local Authority.
 - (e) Co-operative Societies, Universities, IITs and Notified Institutes of Management.
 - (f) Any State Government or the Central Government.
- (ii) The voluntary retirement Scheme under which the payment is being made must be framed in accordance with the guidelines prescribed in Rule 2BA of Income Tax Rules. In case of a company other than a public sector company and a co-operative society, such scheme must be approved by the Chief Commissioner/Director General of Income-tax. However, such approval is not necessary from A.Y. 2001-2002 onwards.
 - (iii) Where exemption has been allowed under above section for any assessment year, no exemption shall be allowed in relation to any other assessment year. Further, where any relief u/s 89 for any assessment year in respect of any amount received or receivable or voluntary retirement or termination of service has been allowed, no exemption under this clause shall be allowed for any assessment year.

8.7 PAYMENT FROM PROVIDENT FUND (Sec. 10(11), Sec. 10(12)):

Any payment received from a Provident Fund, (i.e. to which the Provident Fund Act, 1925 applies) is exempt. Any payment from any other provident fund notified by the Central Govt. is also exempt. The Public Provident Fund(PPF) established under the

PPF Scheme, 1968 has been notified for this purpose. Besides the above, the accumulated balance due and becoming payable to an employee participating in a Recognised Provident Fund is also exempt to the extent provided in Rule 8 of Part A of the Fourth Schedule of the Income Tax Act.

8.8 PAYMENT FROM APPROVED SUPERANNUATION FUND (Sec.10(13)):

Payment from an Approved Superannuation Fund will be exempt provided the payment is made in the circumstances specified in the section viz. death, retirement and incapacitation.

8.9 DEPOSIT SCHEME FOR RETIRED GOVT/PUBLIC SECTOR COMPANY EMPLOYEES:

Section 10(15) of the Income Tax Act incorporates a number of investments, the interest from which is totally exempt from taxation. These investments may be considered as one of the options for investing various benefits received on retirement. One among them, notified u/s 10(15)(iv)(i), is the DEPOSIT SCHEME FOR RETIRED GOVT/PUBLIC SECTOR COMPANY EMPLOYEES which is a particularly attractive option for retiring employees of Govt. and Public Sector Companies. W.e.f. assessment year 1990-91, the interest on deposits made under this scheme by an employee of Central/State Govt. out of the various retirement benefits received is exempt from Income-tax. This exemption was subsequently extended to employees of Public Sector companies from assessment year 1991-92 vide notification No. 2/19/89-NS-II dated 12.12.1990. Salient features of the scheme are discussed below:

Rate of Return	Tax free interest @ 9% P.A. payable half yearly on 30th June and 31 st December
Limit of Investment	Minimum Rs.1000.

Liquidity

Maximum not exceeding the total retirement benefits.

Entire balance can be withdrawn after expiry of 3 years from the date of deposit. Premature encashment can be, made after one year from the date of deposit in which case interest on amount withdrawn will be payable @ 4% from the date of deposit to the date of withdrawal.

Other considerations:

Only 1 account can be opened in own name or jointly with spouse. Account is to be opened within 3 months of receiving retirement benefits. Scheme is operated through branches of SBI and its subsidiaries and selected branches of nationalised banks.

[This scheme has been discontinued w.e.f. 10.07.2004 vide notification F. No.15-01/2004-NS-2, dated 09.07.2004.]

CHAPTER-9

PENSIONERS & SENIOR CITIZENS

9.1 PENSION

Pension is described in section 60 of the CPC and section 11 of the Pension Act as a periodical allowance or stipend granted on account of past service, particular merits etc. Thus monthly allowance to the younger brother of a ruler was treated as a maintenance allowance and not pension (Raj Kumar Bikram Bahadur Singh Vs. CIT 75 ITR 227(MP)). There are three important features of 'pension'. Firstly, pension is a compensation for past service. Secondly, it owes its **origin** to a past employer-employee or master-servant relationship. Thirdly, it is paid on the basis of earlier relationship of an agreement of service as opposed to an agreement for service. This relationship terminates only on the death of the concerned employee.

Pension received from a former employer is taxable as 'Salary'. Hence, the various deductions available on salary income, including relief u/s 89(1) for the arrears of pension received would be granted to pensioners who received their pension from, a nationalised bank and in other cases their present Drawing & Disbursing Officers. Similarly, deductions from the amount of pension of standard deduction and adjustment of tax rebate u/s 88 and 88B shall be done by the concerned bank, at the time of deduction of tax at source from the pension, on furnishing of relevant details by the pensioner. Instructions in above regard were issued by R.B.I.'s Pension Circular (Central Service No. 7/C D.R./1992(Ref. No. DGBA:GA(NBS) No. 60/GA64-(II CVL-91-92 dated 27.4.92).

Pension to officials of UNO is exempt from taxation. Section 2 of the UN (Privilege & Immunities) Act, 1947 grants tax

exemption to salaries/emoluments paid by U.N. The Karnataka High Court had held that u/s 17 of the Income Tax Act, salary has been defined as including pension, therefore, if salary received from U.N. is exempt, so shall be the pension. This decision was accepted by the CBDT vide circular No. 293 dated 10.02.1981.

9.2 FAMILY PENSION

Family pension is defined in Section 57 as a regular monthly amount payable by the employer to a person belonging to the family of an employee in the event of death. Pension and family pension are qualitatively different. The former is paid during the lifetime of the employee while the latter is paid on his death to surviving family members. However, in case of family pension, since there is no employer-employee relationship between the payer and the payee, therefore, it is taxed as 'Income from Other Sources' in the hands of the nominee(s). In respect of family pension, deduction u/s 57(iia) of Rs.15000 or 1/3rd of the amount received, whichever is less, is available.

9.3 SENIOR CITIZEN

Under the Income Tax Act, a senior citizen is a person who at any time during the previous year has attained the age of 65 years or more. There are certain benefits available to senior citizen under the Income Tax Act:-

- (i) **Tax rebate u/s 88B:** Rebate under this section to the extent of Rs.20,000/- was available to all senior citizens whether they are pensioners or self employed or traders etc.

It may be noted that no rebate u/s 88B is available from A.Y.2006-07 onwards. However, the maximum amount not chargeable to tax in respect of senior citizens has been increased to **Rs.2,40,000** w.e.f. A.Y. 2010-11. Thus, no tax is payable by a senior citizen if the total income is upto **Rs.2.4 lacs** for the A.Y. 2010-11. For A.Y. 2012-13 it has been provided by Finance

Act 2011 that no tax shall be paid by a senior citizen being of age of sixty years or more but less than 80 years, if total income is upto Rs. 2.5 lacs. Further, for citizens being of age of eighty years or more, this has been hiked to Rs. 5 lacs. Thus, special status has been accorded to super senior citizens of age 80 years or more.

(ii) Benefits provided by Finance Act 2007: The deduction available u/s 80D for medical insurance premium paid is to be increased to Rs.20,000 for senior citizens. Secondly, the deduction available u/s 80DDB in respect of expenditure incurred on treatment of specified diseases is to be increased to Rs.60,000 for senior citizens.

(iii) **In order to resolve the tax issues arising out of the reverse mortgage scheme introduced by the National Housing Bank (NHB), the Finance Act 2008 has added a new clause (xvi) in Section 47 of the I.T. Act which provides that any transfer of a capital asset in a transaction of reverse mortgage under a notified scheme shall not be regarded as a transfer and shall, therefore, not attract capital gains tax. This ensures that the intention of a reverse mortgage which is to secure a stream of cash flow against the mortgage is not contradicted by treating the same as transfer.**

The second issue is whether the loan, either in lump sum or in instalments, received under a reverse mortgage scheme amounts to income. Receipt of such loan is in the nature of a capital receipt. However, with a view to providing certainty in the tax regime pertaining to the senior citizens, the Finance Act 2008 has amended section 10 of the Income Tax Act to provide that such loan amounts will be exempt from income tax.

Consequent to these amendments, a borrower, under a reverse mortgage scheme, will be liable to income tax (in the nature of tax on capital gains) only at the point of

alienation of the mortgaged property by the mortgagee for the purposes of recovering the loan.

These amendments will take effect from the 1st day of April, 2008 and will accordingly apply in relation to assessment year 2008-09 and subsequent assessment years.

CHAPTER-10

TAXATION OF EXPATRIATES

10.1 INTRODUCTION

With the globalisation of the world trade and liberalisation of the Indian economy, the number of persons moving in or out of India in the exercise of their business, profession or employment is on the increase. A brief discussion of the taxation of these expatriates is being attempted below:

10.2 RESIDENTIAL STATUS

As in most of the countries, the liability under the Indian Income tax law is also co-related to the residential status of the concerned tax payer. Section 6 of the Indian Income-Tax Act creates 3 categories as far as residential status is concerned.

10.2.1 Resident An Individual is said to be resident in India in any previous year if he is in India for at least 182 days in that year or during that year he is in India for a period of at least 60 days & has been in India for at least 365 days during the 4 years preceding that year. However, the period of 60 days referred to above is increased to 182 days in case of Indian citizens who leave India as members of the crew of an Indian Ship or for Indian citizens or persons of Indian origin who, being outside India, come to visit India in any previous year.

10.2.2 Non- Resident A person who is not a resident in terms of the above provisions is a non-resident.

10.2.3 Resident but Not Ordinarily Resident (RNOR)

A person who is otherwise resident as defined in para 10.2.1 would be RNOR if he satisfies any of the following two conditions:

- (i) He has not been resident in India in 9 out of 10 preceding previous years.

or

- (ii) He has not been in India for an aggregate period of 730 days or more in the preceding 7 previous years.

W.e.f. 01.04.2004, the status 'RNOR' has been redefined as follows:-

An individual shall be said to be RNOR if he has been a non-resident in India in 9 out of 10 previous years preceding or period amounting to 729 days or less during the 7 previous years preceding that year.

10.3 SCOPE OF TAXATION:

Based on the residential status of payer, his tax liability will be as follows:-

Residential status	Taxability of Income
(i) Resident	All income of the previous year wherever accruing or arising or received by him including incomes deemed to have accrued or arisen.
(ii) Non-Resident	All income accruing, arising to or deemed to have accrued or arisen or received in India.

(iii) Resident but not ordinary Resident	All Income accruing or arising or deemed to have accrued or arisen or received in India. Moreover, all income earned outside India will also be included if the same is derived from a business or profession controlled or set up in India.
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10.4 EXPATRIATES WORKING IN INDIA

In case of foreign expatriate working in India, the remuneration received by him, assessable under the head 'Salaries', is deemed to be earned in India if it is payable to him for service rendered in India as provided in Section 9(1)(ii) of the Income Tax Act. The explanation to the aforesaid law clarifies that income in the nature of salaries payable for services rendered in India shall be regarded as income earned in India. Further, from assessment year 2000-2001 onwards income payable for the leave period which is preceded and succeeded by services rendered in India and forms part of the service contract shall also be regarded as income earned in India. Thus, irrespective of the residential status of the expatriate employee, the amount received by him as salary for services rendered in India shall be liable to tax in India being income accruing or arising in India, regardless of the place where the salary is actually received. However, there are certain exceptions to the rule which are briefly discussed below:-

- 10.4.1** Remuneration of an employee of a foreign enterprise is exempt from tax if his stay in India is less than 90 days in aggregate during the financial year [Sec.10(6)(vi)]. This is subject to further relaxation under the provisions of Double Taxation Avoidance Agreement entered into by India with the respective country.
- 10.4.2** Remuneration received by a foreign expatriate as an official of an embassy or high commission or consulate or trade representative of a foreign state is exempt on reciprocal basis [Sec.10(6)(ii)].

- 10.4.3** Remuneration from employment on a foreign ship provided the stay of the employee does not exceed 90 days in the financial year [Sec. 10(6)(viii)].
- 10.4.4** Training stipends received from foreign government (Sec.10(6)(xi)).
- 10.4.5** Remuneration under co-operative technical assistance programme or technical assistance grants agreements (Sec. 10(8) & (10(8B))).

10.5 SPECIAL PROVISIONS RELATING TO NON-RESIDENTS

Chapter XIIA of the Income Tax Act deals with special provisions relating to certain incomes of non-residents. Sec. 115D deals with special provisions regarding computation of investment income of NRIs. Section 115E relates to investments income and long term capital gains of NRIs, such income being taxed at concessional flat rates. As per section 115F, capital gain is not chargeable on transfer of foreign exchange assets under certain circumstances. The NRIs need not file their return of income if their total income consist only of investment income or long term capital gains or both and proper tax has been deducted from this income (Sec. 115G). Benefits under this chapter are available even after the assessee becomes a resident (Sec.115H). The provisions of this chapter would not apply if the assessee so chooses (Sec. 115I).

10.6 DOUBLE TAXATION AVOIDANCE AGREEMENT (DTAA)

The Central Government acting under the authority of Law (Sec. 90) has entered into DTAA's with more than 60 countries. Such treaties serve the purpose of providing protection to the tax payers from double taxation. As per section 90(2), in relation to an assessee to whom any DTAA applies, the provisions of the Act shall apply only to the extent they are more beneficial to the

assessee. The provisions of these DTAA's thus prevail over the statutory provisions.

10.7 INDIAN RESIDENTS POSTED ABROAD

Indian residents who have taken up employment in countries with which India has got DTAA are entitled to the benefit of the DTAA entered into by India with the country of employment. Accordingly, their tax liability is decided.

Indian expatriates working abroad have been granted several special tax concessions under the Act. Professors, teachers and research workers working abroad in any university or any educational institutions are entitled to deduction of 75% of their foreign remuneration provided the same is brought into India in convertible foreign exchange within a period of 6 months from the end of the previous year or such extended time as may be allowed (Sec. 80-R). Similarly, in case of an Indian Citizen having received remuneration for services rendered outside India, 75% of his foreign remuneration is deductible from his taxable income provided such remuneration is brought to India in convertible foreign exchange within the time specified above (Sec. 80 RRA).

From assessment year 2001-2002 onwards, there has been a change in the amount of deduction available under sections 80R/80RRA. For details, reference may be made to the sections concerned of the Income Tax Act. No deduction u/s 80R/80RRA shall be allowed in respect of A.Y. 2005-06 onwards.

It may also be mentioned here that as per section 9(1)(iii) income chargeable under the head 'Salary' payable by the Government to a citizen of India for services rendered outside India is deemed to accrue or arise in India. However, allowances or perquisites paid or allowed outside India by the Govt. to a citizen of India for rendering services abroad is exempt from taxation u/s 10(7).

10.8 INCOME TAX CLEARANCE CERTIFICATE

An expatriate before leaving the territory of India is required to obtain a tax clearance certificate from a competent authority stating that he does not have any outstanding tax liability. Such a certificate is necessary in case the continuous presence in India exceeds 120 days. An application is to be made in a prescribed form to the Income Tax Authority having jurisdiction for assessment of the expatriate to grant a tax clearance certificate. This is to be exchanged for final tax clearance certificate from the foreign section of the Income Tax Department. Tax Clearance certificate is valid for a period of 1 month from the date of issue and is necessary to get a confirmed booking from an airline or travel agency and may be required to be produced before the customs authorities at the airport.

CHAPTER- 11
INCOME TAX ON
‘FRINGE BENEFITS’

11.1 INTRODUCTION :-

The Finance Act, 2005 has introduced a new tax called ‘Income-tax on fringe benefits’ w.e.f. 01.04.2006. This shall be in the form of additional income tax levied on fringe benefits provided or deemed to have been provided by an employer to his employees during the previous year.

11.2 RATE OF TAX :-

The tax on fringe benefits shall be levied at the rate of 30% on the value of fringe benefits provided.

11.3 LIABILITY TO PAY :-

The liability to pay this tax is to be borne by the employer including

- i) a company
- ii) a firm
- iii) an association of persons or body of individuals excluding any fund or trust or institution eligible for exemption u/s 10(23C) or 12AA.
- iv) a local authority
- v) an artificial juridical person

11.4 WHAT IS INCLUDED IN ‘FRINGE BENEFITS’ :-

Fringe benefits have been defined as including any consideration for employment provided by way of

- a) any privilege, service, facility or amenity provided by an employer directly or indirectly including reimbursements.

- b) any free or concessional ticket provided by the employer for private journeys of his employees or their family members.
- c) any contribution by the employer to an approved superannuation fund for employees.
- d) any specified security or sweat equity shares allotted/ transferred, directly or indirectly by the employers free of cost or at concessional rate to his employees. The detailed provisions in respect of this are included in Chapter XII H of the I.T. Act.

Further, fringe benefits shall be deemed to have been provided if the employer has incurred any expenses or made any payments for various purposes namely, entertainment, provision of hospitality, conference, sales promotion including publicity, employees welfare, conveyance, tour & travel, use of hotel, boarding & lodging etc.

Various provisions relating to income tax on ‘fringe benefits’ have been modified by the Finance Act, 2006. Exceptions in respect of certain expenditures have been introduced including expenditure incurred on distribution of free/concessional samples and payments to any person of repute for promoting the sale of goods or services of the business of the employer. Similarly, it has been proposed that expenditure incurred on providing free or subsidized transport or any such allowance provided by the employer to his employees for journeys from residence to the place of work shall not be part of fringe benefits. Another significant amendment is regarding the contribution by an employer to an approved superannuation fund to the extent of Rs.1 lakh per employee which shall not be liable to fringe benefit tax. Further, in the case of some other expenses incurred such as expenses incurred on tour and travel, lower rates for valuation of fringe benefits @ 5% have been provided for. The Finance Act, 2008 has introduced further exemption in respect of certain expenditures from the purview of Fringe Benefit Tax. These include payments through non-transferable electronic meal cards, provision of crèche facility, organizing sports events or

sponsoring a sportsman being an employee. These provisions shall come into effect from A.Y. 2009-10 onwards.

The Finance act, 2009 has withdrawn the Fringe Benefit Tax. Thus, the FBT stands abolished w.e.f. A.Y. 2010-11 and now such perquisites are taxable in hands of employees.

CHAPTER- 12

SOME RELEVANT CASE-LAWS

12.1 EMPLOYER-EMPLOYEE RELATIONSHIP:

The nature and extent of control which is the basic requisite to establish employer- employee relationship would vary from business to business. The test which is uniformly applied in order to determine the relationship is the existence of a “right to control” in respect of the manner in which the work is to be done.

(Dharangadhra Commercial Works v State of Saurashtra 1957 SCR 152)

12.2 LEAVE ENCASHMENT (S.10(10AA)):

“Retirement” includes resignation. What is relevant is retirement: how it took place is immaterial for the purpose of this clause. Therefore, even on resignation, if an employee gets any amount by way of leave encashment, S.10(10AA) would apply.(CIT v D.P. Malhotra (1997) 142 CTR 325(Bom)).

(CIT v R.J. Shahney(1986) 159 ITR 160(Mad.))

12.3 HOUSE RENT ALLOWANCE (S.10(13A)):

When commission is paid to a person based upon fixed percentage of turnover achieved by the employee it would amount to “Salary” for the purpose of Rule 2 (h) of part A of IV Schedule (Gestetner Duplicators v CIT 117 ITR 1 (SC)).

12.4 PERQUISITE (S. 17):

12.4.1 One can not be said to allow a perquisite to an employee if the employee has no vested right to the same.

(CIT v L.W. Russel (1964) 531 ITR 91 (SC)).

12.4.2 Reimbursement of expenses incurred by the employee has been intended to be roped in the definition of “ Salary” by bringing it as part of “Profit in lieu of salary.”

(I.E. I Ltd. v CIT (1993) 204 ITR 386(Cal.)

12.5 RENT FREE ACCOMMODATION:

A rent free accommodation was provided to the assessee by his employer but he never occupied it. Held that, unless the employee expressly forgoes his right to occupying it, the perk value would be taxable even though he never occupies it.

(CIT v B.S. Chauhan 150 ITR 8(Del)).

12.6 DEDUCTION UNDER S.80G:

By the very nature of calculation required to be made u/s 80G(4) it is necessary that all deduction under chapter VIA be first ascertained and deducted before granting deduction u/s 80G

(Scindia Steam Navigation Co v CIT (1994) 75 Taxman 495(Bom.))

12.7 DEDUCTION U/S 80RRA:

Fees received by a consultant or technical for rendering services abroad would also come within the purview of S. 80RRA

(CBDT v Aditya V. Birla (1988) 170 ITR 137(SC))

12.8 RELIEF U/S 89:

Where arrears of salary are paid under orders of court, the employee would be entitled to relief u/s 89.

(K.C. Joshi v Union of India (1987) 163 ITR 597(SC).

12.9 REVISED RETURN:

A belated return filed u/s 139(4) can not be revised u/s 139(5).

(Kumar J.C. Sinha v CIT (1996) (86 Taxman 122(SC)).

12.10 Return showing income below taxable limit is a valid return.

(CIT v Ranchhoddas Karosands (1959) (361 ITR 869 (SC)).



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