GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
FINANCE DEPARTMENT
4TH LEVEL, ‘A WING’ DELHI SECRETARIAT.
I.P. ESTATE, NEW DELHI 110002

F. No. 4(86)/Fin. (Estb-III)/2010-11/ D-3/4q

Dated: 23/1/2011

ENDORSEMENT

A copy of the under mentioned paper is forwarded for information and necessary action to the following:-

1. All Head of Department, Govt. of NCT of Delhi.
2. All Pay & Accounts Officers, Govt. of NCT of Delhi.
3. All Head of Autonomous Bodies, Govt of NCT of Delhi.
4. Commissioner M.C.D., Town Hall, Chandini Chowk, Delhi.
5. Chairperson, NDMC, Palika Kendra, New Delhi.
6. Chief Executive Officer, Delhi Cantonment Board, Delhi.
7. Guard File.
8. Website.

(S. K. SAHA)
DEPUTY SECRETARY-I

List of paper forwarded

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Name of the Ministry/Deptt.</th>
<th>O.M. No. and Date</th>
<th>Subject</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Department of Revenue</td>
<td>Dated: 13.12.2010</td>
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<td></td>
<td>Central Board of Direct</td>
<td></td>
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<td></td>
<td>Taxes, GOI.</td>
<td></td>
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Reference is invited to Circular No.01/2010 dated 11.01.2010 whereby the rates of deduction of income-tax from the payment of income under the head "Salaries" under Section 192 of the Income-tax Act, 1961, during the financial year 2009-2010, were intimated. The present Circular contains the rates of deduction of income-tax from the payment of income chargeable under the head "Salaries" during the financial year 2010-2011 and explains certain related provisions of the Income-tax Act. The relevant Acts, Rules, Forms and Notifications are available at the website of the Income Tax Department:

www.incometaxindia.gov.in.

2. FINANCE ACT, 2010

As per the Finance Act, 2010, income-tax is required to be deducted under Section 192 of the Income-tax Act 1961 from income chargeable under the head "Salaries" for the financial year 2010-2011 (i.e. Assessment Year 2011-2012) at the following rates:

RATES OF INCOME-TAX

A. Normal Rates of tax:

1. Where the total income does not exceed Rs.1,60,000/-

   Nil

2. Where the total income exceeds Rs.1,60,000/- but does not exceed Rs.5,00,000/-

   10 per cent, of the amount by which the total income exceeds Rs.1,60,000/-.  

3. Where the total income exceeds Rs.5,00,000/- but does not exceed Rs.8,00,000/-

   Rs.34,000/- plus 20 per cent of the amount by which the total income exceeds Rs.5,00,000/-. 

4. Where the total income exceeds Rs.8,00,000/-

   Rs.94,000/- plus 30 per cent of the amount by which the total income exceeds Rs.8,00,000/-. 

B. Rates of tax for a woman, resident in India and below sixty-five years of age at any time during the financial 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 per cent, 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 per cent 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 per cent of the amount by which the total income exceeds Rs.8,00,000/-.
C. Rates of tax for an individual, resident in India and of the age of sixty-five years or more at any time during the financial year:

1. Where the total income does not exceed Rs.2,40,000/-. Nil

2. Where the total income exceeds Rs.2,40,000/- but does not exceed Rs.5,00,000/-. 10 per cent, of the amount by which the total income exceeds Rs.2,40,000/-

3. Where the total income exceeds Rs.5,00,000/- but does not exceed Rs.8,00,000/-. Rs.26,000/- plus 20 per cent of the amount by which the total income exceeds Rs.5,00,000/-.

4. Where the total income exceeds Rs.8,00,000/-. Rs.86,000/- plus 30 per cent of the amount by which the total income exceeds Rs.8,00,000/-.

Surcharge on Income Tax:
There will be no surcharge on income tax payments by individual taxpayers during FY 2010-11 (AY 2011-12).

Education cess on income tax:
The amount of income-tax shall be further increased by an additional surcharge (Education Cess on Income Tax) at the rate of two percent of the income-tax.

Additional surcharge on Income Tax (Secondary and Higher Education Cess on Income-tax):
From Financial Year 2007-08 onwards, an additional surcharge is chargeable at the rate of one percent of income-tax (not including the Education Cess on income tax).

Education Cess, and Secondary and Higher Education Cess are payable by both resident and non-resident assessee.

3. SECTION 192 OF THE INCOME-TAX ACT, 1961: BROAD SCHEME OF TAX DEDUCTION AT SOURCE FROM "SALARIES".

Method of Tax Calculation:
3.1 Every person who is responsible for paying any income chargeable under the head "Salaries" shall deduct income-tax on the estimated income of the assessee under the head "Salaries" for the financial year 2010-2011. The income-tax is required to be calculated on the basis of the rates given above subject to provisions of sec 206AA of the Income-tax Act and shall be deducted at the time of each payment. No tax will, however, be required to be deducted at source in any case unless the estimated salary income including the value of perquisites, for the financial year exceeds Rs.1,60,000/- or Rs.1,50,000/- or Rs.2,40,000/-, as the case may be, depending upon the gender and age of the employee. (Some typical examples of computation of tax are given at Annexure-I).

Payment of Tax on Non-monetary Perquisites by Employer:
3.2 An option has been given to the employer to pay the tax on non-monetary perquisites given to an employee. The employer may, at his option, make payment of the tax on such perquisites himself without making any TDS from the salary of the employee. The employer will have to pay such tax at the time when such tax was otherwise deductible i.e. at the time of payment of income chargeable under the head "salaries" to the employee.

Computation of Average Income Tax:
3.3 For the purpose of making the payment of tax mentioned in para 3.2 above, tax is to be determined at the average of income tax computed on the basis of rates in force for the financial year, on the income chargeable under the head "salaries", Including the value of perquisites for which tax has been paid by the employer himself.

ILLUSTRATION:
Suppose that the income chargeable under the head "salaries" of a male employee below sixty-five years of age for the financial year inclusive of all perquisites is Rs.4,50,000/-, out of which, Rs.50,000/- is on account of non-monetary perquisites and the employer opts to pay the tax on such perquisites as per the provisions discussed in para 3.2 above.

STEPS:
Income chargeable under the head "Salaries" inclusive of all perquisites: Rs. 4,50,000
Tax on Total Salaries(including Cess): Rs. 29,870
Average Rate of Tax [(29,870/4,50,000) X 100]: 6.63%
Tax payable on Rs.50,000/= (6.63% of 50,000):
Rs. 3,315

Amount required to be deposited each month:
Rs. 280(278)
(3315/12)

The tax so paid by the employer shall be deemed to be TDS made from the salary of the employee.

Salary From More Than One Employer:

3.4 Sub-section (2) of section 192 deals with situations where an individual is working under more than one employer or has changed from one employer to another. It provides for deduction of tax at source by such employer (as the tax payer may choose) from the aggregate salary of the employee who is or has been in receipt of salary from more than one employer. The employer is now required to furnish to the present/ chosen employer details of the income under the head "Salaries" due or received from the former/other employer and also tax deducted at source therefrom, in writing and duly verified by him and by the former/other employer. The present/ chosen employer will be required to deduct tax at source on the aggregate amount of salary (including salary received from the former or other employer).

Relief When Salary Paid In Arrear or Advance:

3.5 Under sub-section (2A) of section 192 where the assessee, being a Government servant or an employee in a company, co-operative society, local authority, university, institution, association or body is entitled to the relief under Sub-section (1) of Section 89, he may furnish to the person responsible for making the payment referred to in Para (3.1), such particulars in Form No. 10E duly verified by him, and thereupon the person responsible as aforesaid shall compute the relief on the basis of such particulars and take the same into account in making the deduction under Para(3.1) above.

Explanation :- For this purpose "University means a University established or incorporated by or under a Central, State or Provincial Act, and includes an institution declared under section 3 of the University Grants Commission Act, 1956(3 of 1956), to be University for the purposes of the Act.

With effect from 1/04/2010 (AY 2010-11), no such relief shall be granted in respect of any amount received or receivable by an assessee on his voluntary retirement or termination of his service, In accordance with any scheme or schemes of voluntary retirement or in the case of a public sector company referred to in sub-clause (l) of clause (10C) of section 10 (read with Rule 2BA), a scheme of voluntary separation, If an exemption in respect of any amount received or receivable on such voluntary retirement or termination of his service or voluntary separation has been claimed by the assessee under clause (10C) of section 10 in respect of such, or any other, assessment year.

3.6 (i) Sub-section (2B) of section 192 enables a taxpayer to furnish particulars of income under any head other than "Salaries" and of any tax deducted at source thereon. Form no. 12C, which was earlier prescribed for furnishing such particulars, has since been omitted from the Income Tax Rules by the IT (24th amendment) Rules, 2003, w.e.f. 01.10.2003. However, the particulars may now be furnished in a simple statement, which is properly verified by the taxpayer in the same manner as was required to be done in Form 12C.

(ii) Such income should not be a loss under any such head other than the loss under the head "Income from House Property" for the same financial year. The person responsible for making payment (DDO) shall take such other income and tax deducted at source, if any, from such income and the loss, if any, under the head "Income from House Property" into account for the purpose of computing tax deductible under section 192 of the Income-tax Act. However, this subsection shall not in any case have the effect of reducing the tax deductible (except where the loss under the head "Income from House Property" has been taken into account) from income under the head "Salaries" below the amount that would be so deductible if the other income and the tax deducted thereon had not been taken into account. In other words, the DDO can take into account any loss (negative income) only under the head "Income from House Property" and no other head for working out the amount of total tax to be deducted. While taking into account the loss from House Property, the DDO shall ensure that the assessee files the declaration referred to above and encloses therewith the computation of such loss from House Property.

(iii) Sub-section (2C) lays down that a person responsible for paying any income chargeable under the head "salaries shall furnish to the person to whom such payment is made a statement giving correct and complete particulars of perquisite or profits in lieu of salary provided to him and the value thereof in form no. 12BA (Annexure-II). Form no. 12BA along with form no. 16, as issued by the employer, are required to be produced on demand before the Assessing Officer in terms of Section 139C of the Income Tax Act.

Conditions for Claim of Deduction of Interest on Borrowed Capital for Computation of Income From House Property

3.7 (j) For the purpose of computing income / loss under the head 'Income from House Property' in respect of self-occupied residential house, a normal deduction of Rs.30,000/- is allowable in respect of interest on borrowe capital. However, a deduction on account of interest up to a maximum limit of Rs.1,50,000/- is available if such loan ha
been taken on or after 1.4.1999 for constructing or acquiring the residential house and the construction or acquisition of the residential unit out of such loan has been completed within three years from the end of the financial year in which capital was borrowed. Such higher deduction is not allowable in respect of interest on capital borrowed for the purposes of repairs or renovation of an existing residential house. To claim the higher deduction in respect of interest up to Rs.1,50,000/-, the employee should furnish a certificate from the person to whom any interest is payable on the capital borrowed, specifying the amount of interest payable by such employee for the purpose of construction or acquisition of the residential house or for conversion of a part or whole of the capital borrowed, which remains to be repaid as a new loan.

3.7 (ii) The essential conditions for availing higher deduction of interest of Rs. 1,50,000/- in respect of a self-occupied residential house are that the amount of capital must have been borrowed on or after 01.4.1999 and if a acquisition or construction of residential house must have been completed within three years from the end of the financial year in which capital was borrowed. There is no stipulation regarding the date of commencement of construction. Consequently, the construction of the residential house could have commenced before 01.4.1999 but, as long as its construction/acquisition is completed within three years, from the end of the financial year in which capital was borrowed the higher deduction would be available in respect of the capital borrowed after 1.4.1999. It may also be noted that there is no stipulation regarding the construction/ acquisition of the residential unit being entirely financed by capital borrowed on or after 01.4.1999. The loan taken prior to 01.4.1999 will carry deduction of interest up to Rs.30,000/- only. However, in any case the total amount of deduction of interest on borrowed capital will not exceed Rs.1,50,000/- in a year.

Adjustment for Excess or Shortfall of Deduction:
3.8 The provisions of sub-section (3) of Section 192 allow the deductor to make adjustments for any excess or shortfall in the deduction of tax already made during the financial year, in subsequent deductions for that employee within that financial year itself.

TDS on Payment of Accumulated Balance Under Recognised Provident Fund and contribution from Approved Superannuation Fund:
3.9 The trustee of a Recognised Provident Fund, or any person authorized by the regulations of the Fund to make payment of accumulated balances due to employees, shall, in cases where sub-rule(1) of rule 9 of Part A of the Fourth Schedule to the Act applies, at the time when the accumulated balance due to an employee is paid, make there from the deduction specified in rule 10 of Part A of the Fourth Schedule to the Act.

3.10 Where any contribution made by an employer, including interest on such contributions, if any, in an approved Superannuation Fund is paid to the employee, tax on the amount so paid shall be deducted by the trustees of the Fund to the extent provided in rule 6 of Part B of the Fourth Schedule to the Act.

Salary Paid in Foreign Currency:
3.11 For the purposes of deduction of tax on salary payable in foreign currency, the value in rupees of such salary shall be calculated at the prescribed rate of exchange.

4. PERSONS RESPONSIBLE FOR DEDUCTING TAX AND THEIR DUTIES:
4.1. Under clause (i) of Section 204 of the Act the "persons responsible for paying" for the purpose of Section 192 means the employer himself or if the employer is a Company, the Company itself including the Principal Officer thereof.

4.2. The tax determined as per para 6 should be deducted from the salary w/s 192 of the Act.

Deduction of Tax at Lower Rate:
4.3. Section 197 enables the tax-payer to make an application in form No.13 to his Assessing Officer, and, if the Assessing Officer is satisfied that the total income of the tax-payer justifies the deduction of income-tax at any lower rate or no deduction of income tax, he may issue an appropriate certificate to that effect which should be taken into account by the Drawing and Disbursing Officer while deducting tax at source. In the absence of such a certificate furnished by the employee, the employer should deduct income tax on the salary payable at the normal rates: (Circular No. 147 dated 28.10.1974.)

Deposit of Tax Deducted:
4.4. Rule 30 of Income Tax Rules, 1962, as amended by S.O. 1251(E), Notification dated 31.05.2010, prescribes mode of payment of tax deducted to the account of Central Government as detailed below:

4.4.1. (a) The Tax deducted at source in accordance with the provisions of Chapter XVII-B of the Income tax Act, 1961 by an office of the Government shall be paid to the credit of the Central Government on the same day where the tax is paid without production of an income tax challan; and
(ii) on or before seven days from the end of the month in which the deduction is made or income-tax is due under sub-section (1A) of section 192, where tax is paid accompanied by an income-tax challan.

(b) The tax deducted at source in accordance with the provisions of Chapter XVII-B of the Income-tax Act, 1961 by deductors other than an officer of the Government shall be paid to the credit of the Central Government?

(i) on or before 30th day of April where the income or amount is credited or paid in the month of March; and

(ii) in any other case, on or before seven days from the end of the month in which the deduction is made; or income-tax is due under sub-section (1A) of section 192.

(c) Notwithstanding anything contained in (b) above, in special cases, the Assessing Officer may, with the prior approval of the Joint Commissioner, permit quarterly payment of the tax deducted under section 192 or section 194A or section 194D or section 194H for the quarters of the financial year specified in column (2) of the Table below by the date referred to in column (3) of the said Table:

<table>
<thead>
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<th>Sl. No.</th>
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<th>Data for quarterly payment</th>
</tr>
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<tbody>
<tr>
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<td>7th July</td>
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<tr>
<td>2</td>
<td>30th September</td>
<td>7th October</td>
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<td>3</td>
<td>31st December</td>
<td>7th January</td>
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<td>4</td>
<td>31st March</td>
<td>30th April</td>
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Mode of Payment of TDS

4.4.2. In the case of an office of the Government, where tax has been paid to the credit of the Central Government without the production of a challan, the Pay and Accounts Officer or the Treasurer Officer or the Cheque Drawing and Disbursing Officer or any other person by whatever name called to whom the deductor reports the tax so deducted and who is responsible for crediting such sum to the credit of the Central Government, shall:

(a) submit a statement in Form No. 24G within ten days from the end of the month to the agency authorised by the Director General of Income-tax (Systems) in respect of tax deducted by the deductors and reported to him for that month; and

(b) intimate the number (hereinafter referred to as the Book Identification Number or BIN generated by the agency to each of the deductors in respect of whom the sum deducted has been credited. BIN consist of: receipt number of Form 24G, DDO sequence number and date on which tax is deposited.

For the purpose of the above, the Director General of Income-tax (Systems) shall specify the procedures, formats and standards for ensuring secure capture and transmission of data, and shall also be responsible for the day-to-day administration in relation to furnishing the information in the manner so specified.

4.4.3 (i) Where tax has been deposited accompanied by an income-tax challan, the amount of tax so deducted or collected shall be deposited to the credit of the Central Government by remitting within the time specified above into any branch of the Reserve Bank of India or of the State Bank of India or of any authorised bank;

(ii) in case of a company and a person (other than a company), to whom provisions of section 44AB are applicable, the amount deducted shall be electronically remitted into the Reserve Bank of India or the State Bank of India or any authorised bank accompanied by an electronic income-tax challan.

For the purpose of this rule, the amount shall be construed as electronically remitted to the Reserve Bank of India or to the State Bank of India or to any authorised bank, if the amount is remitted by way of:

(a) Internet banking facility of the Reserve Bank of India or of the State Bank of India or of any authorised bank; or

(b) debit card.

Interest, Penalty & Prosecution for Failure to Deposit Tax Deducted:

4.5 If a person fails to deduct the whole or any part of the tax at source, or, after deducting, fails to pay the whole or any part of the tax to the credit of the Central Government within the prescribed time, he shall be liable to action in accordance with the provisions of section 201. Sub-section (1A) of section 201 lays down that such person shall be liable to pay simple interest (i) at one percent for every month or part of the month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted and (ii) at one and one-half percent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which
such tax is actually paid. Such interest, if chargeable, has to be paid before furnishing of quarterly statement of TDS for each quarter. Section 271C lays down that if any person fails to deduct whole or any part of tax at source or fails to pay the whole or part of tax deducted, he shall be liable to pay, by way of penalty, a sum equal to the amount of tax not deducted or paid by him. Further, section 276B lays down that if a person fails to pay to the credit of the Central Government within the prescribed time the tax deducted at source by him, he shall be punishable with rigorous imprisonment for a term which shall be between 3 months and 7 years, along with fine.

Furnishing of Certificate for Tax Deducted:
4.6.1 According to the provisions of section 203, every person responsible for deducting tax at source is required to furnish a certificate in Form 16 to the payee to the effect that tax has been deducted and to specify therein the amount deducted and certain other particulars. The certificates in Forms 16 specified above shall be furnished to the employee by 31st day of May of the financial year immediately following the financial year in which the income was paid and tax deducted. Due care should be taken indicating correct CIN/ BIN in TDS certificate. Even the banks deducting tax at the time of payment of pension are required to issue such certificates. The Form16 has been revised and TDS certificated only determine tax payable on total income and tax deducted is to be reported in annexe 'A' and 'B' of the Form 16 (revised Form 16 annexe to Notification dated 31.05.2010 is enclosed). The certificate in Form 16 shall specify

(a) valid permanent account number (PAN) of the deductor;
(b) valid tax deduction and collection account number (TAN) of the deductor;
(c) (i) book identification number or numbers where deposit of tax deducted is without production of challan in case of an office of the Government;
   (ii) challan identification number or numbers in case of payment through bank.
(d) receipt numbers of all the relevant quarterly statements in case the statement referred to in clause (i) is for tax deducted at source from income chargeable under the head "Salaries". The receipt number of the quarterly statement is of 8 digit.

It may be noted that under the new TDS procedure, the accuracy and availability of TAN, PAN and receipt number of TDS statement filed by the deductor will be unique identifier for granting online credit for TDS. Hence due care should be taken in filling these particulars.

It is, however, clarified that there is no obligation to issue the TDS certificate in case tax at source is not deductible/ deducted by virtue of claims of exemptions and deductions.

4.6.2. If an assessee is employed by more than one employer during the year, each of the employers shall issue Part A of the certificate in Form No. 16 pertaining to the period for which such assessee was employed with each of the employers and Part B may be issued by each of the employers or the last employer at the option of the assessee.

4.6.3. The employer may issue a duplicate certificate in Form No. 16 if the deductee has lost the original certificate so issued and makes a request for issuance of a duplicate certificate and such duplicate certificate is certified as duplicate by the deductor.

4.6.4. (i) Where a certificate is to be furnished in Form No. 16, the deductor may, at his option, use digital signatures to authenticate such certificates.
   (ii) In case of certificates issued under clause (i), the deductor shall ensure that
      (a) the conditions prescribed in para 4.6.1 above are complied with;
      (b) once the certificate is digitally signed, the contents of the certificates are not amenable to change; and
      (c) the certificates have a control number and a log of such certificates is maintained by the deductor.

Explanation. For the purpose of this rule, challan identification number (CIN) means the number comprising the Basic Statistical Returns (BSR) Code of the Bank branch where the tax has been deposited, the date on which the tax has been deposited and challan serial number given by the bank.

4.6.5. As per section 192, the responsibility of providing correct and complete particulars of perquisites or profits in lieu of salary given to an employee is placed on the person responsible for paying such income i.e., the person responsible for deducting tax at source. The form and manner of such particulars are prescribed in Rule 26A, Form 12BA and Form 16 of the Income-tax Rules. Information relating to the nature and value of perquisites is to be provided by the employer in Form no. 12BA in case of salary paid or payable is above Rs. 1,60,000/-. In other cases, the information would have to be provided by the employer in Form 16 itself. In either case, Form 16 with Form 12BA or Form 16 by itself will have to be furnished within a period of one month from the end of relevant financial year.
4.6.6. An employer, who has paid the tax on perquisites on behalf of the employee as per the provisions discussed in paras 3.2 and 3.3 of this circular, shall furnish to the employee concerned a certificate to the effect that tax has been paid to the Central Government and specify the amount so paid, the rate at which tax has been paid and certain other particulars in the amended Form 16.

4.6.7. The obligation cast on the employer under Section 192(2C) for furnishing a statement showing the value of perquisites provided to the employee is a serious responsibility of the employer, which is expected to be discharged in accordance with law and rules of valuation framed thereunder. Any false information, fabricated documentation or suppression of requisite information will entail consequences thereof provided under the law. The certificates in Forms 16 specified above shall be furnished to the employee by 31st day of May of the financial year immediately following the financial year in which the income was paid and tax deducted. If he fails to issue these certificates to the person concerned, as required by section 203, he will be liable to pay, by way of penalty, under section 272A, a sum which shall be Rs.100/- for every day during which the failure continues.

Mandatory Quoting of PAN and TAN:

4.7.1 According to the provisions of section 203A of the Income-tax Act, it is obligatory for all persons responsible for deducting tax at source to obtain and quote the Tax-deduction Account No. (TAN) in the challans, TDS-certificates, statements and other documents. Detailed instructions in this regard are available in this Department’s Circular No. 497 (F.No. 275/11/87-IT(B) dated 9.10.1987). If a person fails to comply with the provisions of section 203A, he will be liable to pay, by way of penalty, under section 272BB, a sum of ten thousand rupees. Similarly, as per Section 139A(5B), it is obligatory for persons deducting tax at source to quote PAN of the persons from whose income tax has been deducted in the statement furnished u/s 192(2C), certificates furnished u/s 203 and all returns prepared and delivered as per the provisions of section 200(3) of the Income Tax Act, 1961.

4.7.2 All tax deductors/collectors are required to file the TDS returns in Form No. 24Q (for tax deducted from salaries). As the requirement of filing TDS/TCS certificates has been done away with, the lack of PAN of deductees is creating difficulties in giving credit for the tax deducted. Tax deductors and tax collectors are, therefore, advised to quote correct PAN details of all deductees in the TDS returns for salaries in Form 24Q. Taxpayers liable to TDS are also advised to furnish their correct PAN with their deductors, it may be noted that non-furnishing of PAN by the deductee (employee) to the deductor (employer) will result in deduction of TDS at higher rates u/s 206AA of the income-tax Act, 1961 mentioned in para 4.9 below.

4.8 Section 206AA.

4.8.1 Finance Act (No. 2) 2009, w.e.f. 01/04/2010 has inserted sec. 206AA in the Income-tax Act which makes furnishing of PAN by the employee compulsory in case of payments liable to TDS. If employee (deductee) fails to furnish his/her PAN to the deductor, the deductor shall make TDS at a higher rate of the following rates

- i. at the rate specified in the relevant provision of this Act; or
- ii. at the rate or rates in force; or
- iii. at the rate of twenty per cent.

4.8.2 The deductor has to determine the tax amount in all the three conditions and apply the higher rate of TDS. This section applies to any person entitled to receive any sum or income or amount, on which tax is deductible under Chapter XVII-B of Income Tax Act. As chapter XVII-B covers all Payments including Salaries, Salaries are also covered by Section 206AA. In case of salaries there can be following situations

- a) Where the income of the employee computed for TDS u/s 192 is below taxable limit.
- b) Where the income of the employee computed for TDS u/s 192 is above taxable limit.

In first situation, as the tax is not liable to be deducted no tax will be deducted. In the second case, if PAN is not furnished by the employee, the deductor will calculate the average rate of Income-tax based on rates in force as provided in sec 192. If the tax so calculated is below 20%, deduction of tax will be made at the rate of 20% and in case the average rate exceeds 20%, tax is to be deducted at the average rate. Education cess @ 2% and Secondary and Higher Education Cess @ 1% is not to be deducted, in case the TDS is deducted at 20% u/s 206AA of the Income-tax Act.

Quarterly Statement of TDS:

4.9. Statement of deduction of tax under subsection (3) of section 200.

4.9.1. The person deducting the tax (employer in case of salary income), is required to file Quarterly Statements of TDS in Form 24Q for the periods ending on 30th June, 30th September, 31st December and 31st March of each financial year, duly verified, to the Director General of Income Tax (Systems) or its National Securities Depository Ltd (NSDL). These statements are required to be filed on or before the 15th July, the 15th October, the 15th January in respect of the
first three quarters of the financial year and on or before the 15th May following the last quarter of the financial year. The requirement of filing an annual return of TDS has been done away with w.e.f. 1.4.2005. The quarterly statement for the last quarter filed in Form 24Q (as amended by Notification No. S.O.704(E) dated 12.5.2005) shall be treated as the annual return of TDS.

4.9.2. The statements referred above may be furnished in paper form or electronically in accordance with the procedures, formats and standards specified by the Director General of Income-tax (Systems) along with the verification of the statement in Form 27A.

4.9.3. It is now mandatory for all Govt. deductors or companies or other deductors who are required to get their accounts audited under section 44AB of the Income Tax Act or where the number of deductee's records in a statement for any quarter of the financial year are twenty or more to file, quarterly statements of TDS on computer media only in accordance with the "Electronic Filing of Returns of Tax Deducted at Source Scheme, 2003" as notified vide Notification No. S.O. 974 (E) dated 26.8.2003 read with Notification No. SO 1261(E) dated 31.5.2010. The quarterly statements are to be filed by such deductors in electronic format with the e-TDS intermediary at any of the Tin Facilitation Centres, particulars of which are available at www.incometaxindia.gov.in and at http://tin-nadi.com. If a person fails to furnish the quarterly statements in due time, he shall be liable to pay by way of penalty under section 272A(2)(K), a sum which shall be Rs. 100/- for every day during which the failure continues. However, this sum shall not exceed the amount of tax which was deductible at source.

4.9.4. At the time of preparing statements of tax deducted, the deductor is required to quote

(i) his tax deduction and collection account number (TAN) in the statement;

(ii) quote his permanent account number (PAN) in the statement except in the case where the deductor is an officer of the Government. In case of Government deductors “PANNOTREOD” to be quoted in the e-TDS statement.

(iii) quote the permanent account number of all deductees;

(iv) furnish particulars of the tax paid to the Central Government including book identification number or challan identification number, as the case may be.

4.10. A return filed on the prescribed computer readable media shall be deemed to be a return for the purposes of section 200(3) and the Rules made thereunder, and shall be admissible in any proceeding there under, without further proof of production of the original, as evidence of any contents of the original.

TDS on Income from Pension:

4.11. In the case of pensioners who receive their pension from a nationalized bank, the instructions contained in this circular shall apply in the same manner as they apply to salary-income. The deductions from the amount of pension under section 80C on account of contribution to Life Insurance, Provident Fund, NSC etc., if the pensioner furnishes the relevant details to the banks, may be allowed. Necessary instructions in this regard were issued by the Reserve Bank of India to the State Bank of India and other nationalized Banks vide RBI's Pension Circular(Central Series) No.7/C.D.R./1992 (Ref: CO; DGBA; GA (NBS) No.60/GA.54(11CVL)/92) dated the 27th April, 1992, and, these instructions should be followed by all the branches of the Banks, which have been entrusted with the task of payment of pensions. Further all branches of the banks are bound u/s 203 to issue certificate of tax deducted in Form 16 to the pensioners also vide CBDT circular no. 761 dated 13.1.98.

New Pension Scheme

The New Pension Scheme(NPS) has become operational since 1st Jan, 2004 and is mandatory for all new recruits to the Central Government Services from 1st January, 2004. Since then it has been opened to employees of State Governments, Private Sector and Self Employed (both organized and unorganized).

The income received by the NPS trust is exempt. The NPS trust is exempt from the Dividend Distribution Tax and is also exempt from the Securities Transaction Tax on all purchases and sales of equities and derivatives. The NPS trust will also receive income without tax deduction at source. The above amendments are retrospectively effective from 1/4/09 (AY 2009-10) onwards.

4.12. Where Non-Residents are deputed to work in India and taxes are borne by the employer, if any refund becomes due to the employee after he has already left India and has no bank account in India by the time the assessment orders are passed, the refund can be issued to the employer as the tax has been borne by it: Circular No. 707 dated 11.7.1995.

4.13. In respect of non-residents, the salary paid for services rendered in India shall be regarded as income earned in India. It has been specifically provided in the Act that any salary payable for rest period or leave period which is both
preceded or succeeded by service in India and forms part of the service contract of employment will also be regarded as income earned in India.

5. COMPUTATION OF INCOME UNDER THE HEAD "SALARIES"

5.1 Income chargeable under the head "Salaries".

(1) The following income shall be chargeable to income-tax under the head "Salaries":

(a) any salary due from an employer or a former employer to an assessee in the previous year, whether paid or not;

(b) any salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer though not due or before it became due to him.

(c) any arrears of salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer, if not charged to income-tax for any earlier previous year.

(2) For the removal of doubts, it is clarified that where any salary paid in advance is included in the total income of any person for any previous year it shall not be included again in the total income of the person when the salary becomes due. Any salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from the firm shall not be regarded as "Salary".

Definition of Salary:

(3) "Salary" includes wages, fees, commissions, perquisites, profits in lieu of, or, in addition to salary, advance of salary, annuity or pension, gratuity, payments in respect of encashment of leave etc. It also includes the annual accretion to the employee's account in a recognized provident fund to the extent it is chargeable to tax under rule 8 of Part A of the Fourth Schedule of the Income-tax Act. Contributions made by the employer to the account of the employee in a recognized provident fund in excess of 12% of the salary of the employee, along with interest applicable, shall be included in the income of the assessee for the previous year. Any contribution made by the Central Government or any other employer to the account of the employee under the New Pension Scheme as notified vide Notification No. F.N. 5/7/2003-ECB&P dated 22.12.2003 (enclosed as Annexure-IVA) referred to in section 80CCD (para 5.4(C) of this Circular) shall also be included in the salary income. Other items included in salary, profits in lieu of salary and perquisites are described in Section 17 of the Income-tax Act. It may be noted that, since salary includes pensions, tax at source would have to be deducted from pension also, if otherwise called for. However, no tax is required to be deducted from the commuted portion of pension which is exempt, as explained in clause (3) of para 5.2 of this Circular.

(4) Section 17 defines the terms "salary", "perquisite" and "profits in lieu of salary".

Perquisite includes:

I) The value of rent free accommodation provided to the employee by his employer;

II) The value of any concession in the matter of rent in respect of any accommodation provided to the employee by his employer;

III) The value of any benefit or amenity granted or provided free of cost or at concessional rate in any of the following cases:

i) By a company to an employee who is a director of such company;

ii) By a company to an employee who has a substantial interest in the company;

iii) By an employer (including a company) to an employee, who is not covered by (i) or (ii) above and whose income under the head Salaries (whether due from or paid or allowed by one or more employers), exclusive of the value of all benefits and amenities not provided by way of monetary payment, exceeds Rs.50,000/.-

IV. Any sum paid by the employer in respect of any obligation which would have been paid by the assessee.

V. Any sum payable by the employer, whether directly or through a fund, other than a recognized provident fund or an approved superannuation fund or other specified funds u/s 17, to effect an assurance on the life of an assessee or to effect a contract for an annuity.

VI. With effect from 1/04/2010 (AY 2010-11) It is further clarified that the value of any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer, or former employer, free of cost or at concessional rate to the assessee, shall be constituted as perquisites in the hand of employees.

Explanation.-For the purposes of this sub-clause,-
(a) "specified security" means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and, where employee's stock option has been granted under any plan or scheme therefore, includes the securities offered under such plan or scheme;

(b) "sweat equity shares" means equity shares issued by a company to its employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;

(c) the value of any specified security or sweat equity shares shall be the fair market value of the specified security or sweat equity shares, as the case may be, on the date on which the option is exercised by the assessee as reduced by the amount actually paid by, or recovered from the assessee in respect of such security or shares;

(d) "fair market value" means the value determined in accordance with the method as may be prescribed;

(e) "option" means a right but not an obligation granted to an employee to apply for the specified security or sweat equity shares at a predetermined price;

VII. 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

VIII. The value of any other fringe benefit or amenity as may be prescribed.

It is further provided that 'profits in lieu of salary' shall include amounts received in lump sum or otherwise, prior to employment or after cessation of employment for the purposes of taxation.

The rules for valuation of perquisites are as under:

1. Accommodation: For purpose of valuation of the perquisite of unfurnished accommodation, all employees are divided into two categories: (i) Central Govt. & State Govt. employees; and (ii) Others.

   For employees of the Central and State governments the value of perquisite shall be equal to the licence fee charged for such accommodation as reduced by the rent actually paid by the employee.

   For all others, i.e., those salaried taxpayers not in employment of the Central government and the State government, the valuation of perquisite in respect of accommodation would be at prescribed rates, as discussed below:

   1. Where the accommodation provided to the employee is owned by the employer, the rate is 15% of 'salary' in cities having population exceeding 25 lakhs as per the 2001 census. The rate is 10% of salary in cities having population exceeding 10 lakhs but not exceeding 25 lakhs as per 2001 Census. For other places, the perquisite value would be 7½% of the salary.

   2. Where the accommodation so provided is taken on lease/rent by the employer, the prescribed rate is 15% of the salary or the actual amount of lease rental payable by the employer, whichever is lower, as reduced by any amount of rent paid by the employee.

For furnished accommodation, the value of perquisite as determined by the above method shall be increased by-

i) 10% of the cost of furniture, appliances and equipments, or

ii) where the furniture, appliances and equipments have been taken on hire, by the amount of actual hire charges payable.

- as reduced by any charges paid by the employee himself.

"Accommodation" includes a house, flat, farm house, hotel accommodation, motel, service apartment, guest house, a caravan, mobile home, ship etc. However, the value of any accommodation provided to an employee working at a mining site or an on-shore or offshore exploration site or a project execution site or a dam site or a power generation site or an off-shore site will not be treated as a perquisite. However, such accommodation should either be located in a "remote area" or where it is not located in a "remote area", the accommodation should be of a temporary nature having plinth area of not more than 500 square feet and should not be located within 8 kilometers of the local limits of any municipality or cantonment board. A project execution site for the purposes of this sub-rule means a site of project up to the stage of its commissioning. A "remote area" means an area located at least 40 kilometers away from a town having a population not exceeding 20,000 as per the latest published all-India census.

If an accommodation is provided by an employer in a hotel the value of the benefit in such a case shall be 24% of the annual salary or the actual charges paid or payable to such hotel, whichever is lower, for the period during which such accommodation is provided as reduced by any rent actually paid or payable by the employee. However, where in cases
the employee is provided such accommodation for a period not exceeding in aggregate fifteen days on transfer from one place to another, no perquisite value for such accommodation provided in a hotel shall be charged. It may be clarified that while services provided as an integral part of the accommodation, need not be valued separately as perquisite, any other services and shall be valued as such perquisite as per the residual clause. In other words, composite tariff for accommodation will be valued as per these Rules and any other charges for other facilities provided by the hotel will be separately valued under the residual clause. Also, if on account of an employee's transfer from one place to another, the employee is provided with accommodation at the new place of posting while retaining the accommodation at the other place, the value of perquisite shall be determined with reference to only one such accommodation which has the lower value as per the table prescribed in Rule 3 of the Income Tax Rules, for a period up to 90 days. However, after that the value of perquisite shall be charged for both accommodations as prescribed.

II. Personal attendants etc.: The value of free service of all personal attendants including a sweeper, gardener and a watchman is to be taken at actual cost to the employer. Where the attendant is provided at the residence of the employee, full cost will be treated as perquisite in the hands of the employee irrespective of the degree of personal service rendered to him. Any amount paid by the employee for such facilities or services shall be reduced from the above amount.

III. Gas, electricity & water: For free supply of gas, electricity and water for household consumption, the rules provide that the amount paid by the employer to the agency supplying the amenity shall be the value of perquisite. Where the supply is made from the employer's own resources, the manufacturing cost per unit incurred by the employer would be taken for the valuation of perquisite. Any amount paid by the employee for such facilities or services shall be reduced from the above amount.

IV. Free or concessional education: Perquisite on account of free or concessional education shall be valued in a manner assuming that such expenses are borne by the employee, and would cover cases where an employer is running, maintaining or directly or indirectly financing the educational institution. Any amount paid by the employee for such facilities or services shall be reduced from the above amount. However, where such educational institution is maintained and owned by the employer or where such free educational facilities are provided in any institution by reason of his being in employment of that employer, the value of the perquisite to the employee shall be determined with reference to the cost of such education in a similar institution in or near the locality if the cost of such education or such benefit per child exceeds Rs. 1000/- p.m.

V. Interest free or concessional loans - It is common practice, particularly in financial Institutions, to provide interest free or concessional loans to employees or any member of his household. The value of perquisites arising from such loans would be the excess of interest payable at prescribed interest rate over interest, if any, actually paid by the employee or any member of his household. The prescribed interest rate would now be the rate charged per annum by the State Bank of India as on the 1st day of the relevant financial year in respect of loans of same type and for the same purpose advanced by it to the general public. Perquisite value would be calculated on the basis of the maximum outstanding monthly balance method. For valuing perquisites under this rule, any other method of calculation and adjustment otherwise adopted by the employer shall not be relevant.

However, small loans (up to Rs. 20,000/- in the aggregate) are exempt. Loans for medical treatment specified in Rule 3A are also exempt provided the amount of loan for medical reimbursement is not reimbursed under any medical insurance scheme. Where any medical insurance reimbursement is received, the perquisite value at the prescribed rate shall be charged from the date of reimbursement on the amount reimbursed, but not repaid against the outstanding loan taken specifically for this purpose.

VI. Use of assets: It is common practice for an asset owned by the employer to be used by the employee or any member of his household. This perquisite is to be charged at the rate of 10% of the original cost of the asset as reduced by any charge recovered from the employee for such use. However, the use of Computers and Laptops would not give rise to any perquisite.

VII. Transfer of assets: Often an employee or member of his household benefits from the transfer of moveable asset (not being shares or securities) at no cost or at a cost less than its market value from the employer. The difference between the original cost of the moveable asset (not being shares or securities) and the sum, if any, paid by the employee, shall be taken as the value of perquisite. In case of a moveable asset, which has already been put to use, the original cost shall be reduced by a sum of 10% of such original cost for every completed year of use of the asset. Owing to a higher degree of obsolescence, in case of computers and electronic gadgets, however, the value of perquisite shall be worked out by reducing 50% of the actual cost by the reducing balance method for each completed year of use. Electronic gadgets in this case means data storage and handling devices like computer, digital diaries and printers. They do not include household appliance (i.e. white goods) like washing machines, microwave ovens, mixers, hot plates, ovens etc. Similarly, in case of cars, the value of perquisite shall be worked out by reducing 20% of its actual cost by the reducing balance method for each completed year of use.
VIII. Medical Reimbursement by the employer exceeding Rs. 15,000/- p.a. u/s. 17(2)(v) is to be taken as perquisites.

It is further clarified that the rule position regarding valuation of perquisites are given at Section 17(2) of Income Tax Act, 1961 and at Rule 3 of Income Tax Rules, 1962. The deductors may look into the above provisions carefully before they determine the perquisite value for deduction purposes.

It is pertinent to mention that benefits specifically exempt u/s 10(13A), 10(5), 10(14), 17 etc. would continue to be exempt. These include benefits like travel on tour and transfer, leave travel, daily allowance to meet tour expenses as prescribed, medical facilities subject to conditions.

5.2 Incomes not included in the Head “Salaries” (Exemptions)

Any income falling within any of the following clauses shall not be included in computing the income from salaries for the purpose of Section 192 of the Act:-

(1) The value of any travel concession or assistance received by or due to an employee from his employer or former employer for himself and his family, in connection with his proceeding (a) on leave to any place in India or (b) on retirement from service, or, after termination of service to any place in India is exempt under clause (5) of Section 10 subject, however, to the conditions prescribed in rule 2B of the Income-tax Rules, 1962.

For the purpose of this clause, “family” in relation to an individual means:

(i) The spouse and children of the individual; and

(ii) the parents, brothers and sisters of the individual or any of them, wholly or mainly dependent on the individual.

It may also be noted that the amount exempt under this clause shall in no case exceed the amount of expenses actually incurred for the purpose of such travel.

(2) Death-cum-retirement gratuity or any other gratuity which is exempt to the extent specified from inclusion in computing the total income under clause (10) of Section 10. Any death-cum-retirement gratuity received under the revised Pension Rules of the Central Government or, as the case may be, the Central Civil Services (Pension) Rules, 1972, or under any similar scheme applicable to the members of the civil services of the Union or holders of posts connected with defence or of civil posts under the Union (such members or holders being persons not governed by the said Rules) or to the members of the all-India services or to the members of the civil services of a State or holders of civil posts under a State or to the employees of a local authority or any payment of retiring gratuity received under the Pension Code or Regulations applicable to the members of the defence service. Gratuity received in cases other than above on retirement, termination etc is exempt up to the limit as prescribed by the Board. Presently the limit is Rs. ten lakh w.e.f. 24.05.2010 in view of notification number 43/2010 S.O. 1414(E) issued under F.N. 250/33/2009-ITA-1.

(3) Any payment in commutation of pension received under the Civil Pension (Commutation) Rules of the Central Government or under any similar scheme applicable to the members of the civil services of the Union, or holders of civil posts/posts connected with defence, under the Union, or civil posts under a State, or to the members of the All India Services/Defence Service, or to the employees of a local authority or a corporation established by a Central, State or Provincial Act, is exempt under sub-clause (i) of clause (10A) of Section 10. As regards payments in commutation of pension received under any scheme of any other employer, exemption will be governed by the provisions of sub-clause (ii) of clause (10A) of section 10. Also, any payment in commutation of pension received from a Regimental Fund or Non-Public Fund established by the Armed Forces of the Union referred to in Section 10(23AAB) is exempt under sub-clause (iii) of clause (10A) of Section 10.

(4) Any payment received by an employee of the Central Government or a State Government, as cash-equivalent of the leave salary in respect of the period of earned leave at his credit at the time of his retirement, whether on superannuation or otherwise, is exempt under sub-clause (i) of clause 10AA of Section 10. In the case of other employees, this exemption will be determined with reference to the leave to their credit at the time of retirement on superannuation, or otherwise, subject to a maximum of ten months’ leave. This exemption will be further limited to the maximum amount specified by the Government of India Notification No. S.O. S88(E) dated 31.05.2002 at Rs. 3,00,000/- in relation to such employees who retire, whether on superannuation or otherwise, after 1.4.1998.

(5) Under Section 10(10B), the retrenchment compensation received by a workman is exempt from income-tax subject to certain limits. The maximum amount of retrenchment compensation exempt is the sum calculated on the basis provided in section 25F(b) of the Industrial Disputes Act, 1947 or any amount not less than Rs.50,000/- as the Central Government may by notification specify in the official gazette, whichever is less. These limits shall not apply in the case where the compensation is paid under any scheme which is approved in this behalf by the Central Government, having regard to the need for extending special protection to the workmen in the undertaking to which the scheme applies and other relevant circumstances. The maximum limit of such payment is Rs. 5,00,000 where retrenchment is on or after 1.1.1997.