

Chapter 1

Introduction

Brief History of taxation of Income from Salary

1. Manu Smriti (ancient legal text)

It describes the social system from the time of the Aryans. This country had, by all accounts, an advanced civilisation and culture at the time, dating back to 3500 BC, even to 6000 or 8000 BC, according to some historians. The king should arrange the collection of taxes in such a manner that the taxpayer does not feel the pinch of paying taxes. He laid down that:

- (a) traders and artisans should pay 1/5th of their profits in silver and gold, while
- (b) the agriculturists were to pay 1/6th, 1/8th and 1/10th of their produce depending upon their circumstances.

2. Mauryan Empire (322 to 185BC)

Kautilya had specified in his time that:

- Land revenue was fixed at 1/6th share of the produce
- taxes on house construction be 20%, gold and other metals 20%
- border tax 20%
- gardens 5%
- singers, dancers and artistes 50%,

3. The Indian Income Tax Act of 1860

The Tax was introduced for the first time by Sir James Wilson. India's First "Union Budget" Introduced by Pre-independence Finance Minister, James Wilson on 7th April, 1860. The Indian Income Tax Act of 1860 was enforced to meet the losses sustained by the Government. Income was divided into four schedules taxed separately:

- (1) Income from landed property;
- (2) Income from professions and trades;
- (3) Income from Securities;
- (4) Income from Salaries and pensions.

Time to time this Act was replaced by several license taxes.

4. Indian Income Tax Act of 1886

Separate Income-tax Act was passed. Under the Indian Income Tax Act of 1886, income was divided into four schedules taxed separately:

- (1) Salaries, pensions or gratuities;
- (2) Net profits of companies;

- (3) Interests on the securities of the Government of India;
- (4) Other sources of income.

5. Indian Income Tax Act, 1922 [Section 6]

Heads of income chargeable to income-tax:

- (i) Salaries.
- (ii) Interest on securities.
- (iii) Income from property.
- (iv) Profits and gains of business, profession or vocation.
- (v) Income from other sources.
- (vi) Capital gains.

6. Income Tax Act, 1961 [Section 14]

Heads of income chargeable to income-tax:

- (1) Income from Salary;
- (2) Income from House Property;
- (3) Income from Profits and Gains of Business or Profession;
- (4) Income from Capital Gains;
- (5) Income from Other Sources.

7. Income Tax Act, 2025 [Section 13]

At present, there are five heads of Income:

- (a) Salaries;
- (b) Income from house property;
- (c) Profits and gains of business or profession;
- (d) Capital gains; and
- (e) Income from other sources.

Income from Salary

(i) SALARY

These are contractual payments that are agreed upon between the employer and the employee under the terms of employment. These are statutory in nature and would include salary, wages, advance salary, commission, arrears of salary, leave salary, annuity, gratuity, pension, bonus, *ex-gratia* payments, etc.

(ii) ALLOWANCE

These are the amounts given by the employer to the employee for carrying out the job responsibilities in the efficient manner. For example, an airhostess is given a kit allowance and a wardrobe allowance so that she can carry out her duties properly and stay beautiful which is a requirement of her job. Similarly sales man is given a travelling allowance because it is the requirement of the job that he should travel extensively for procuring business.

(iii) PERQUISITES

These are the non-cash benefits which an employee receives from his employer during the course of employment. The main important difference between the allowance and the perquisites is that the allowances are received by the employee in his hands and then they are spent, whereas in the case of perquisites the money is not received, it is only the advantage that is received. For example, free car given to the employee for his personal as well as official use by the employer is an example of perquisite because the employee does not receive any money but he gets a non-monetary benefit of using the car.

(iv) PROFITS IN LIEU OF SALARY

These are the payments that are made by the employer to the employee on account of distribution of the profit, which he shares, with the employee. These may include the direct and the indirect benefits of profits that may accrue to the employee from the employment. For example, ESOP or employee sweet option schemes are the best examples of profits in lieu of salary. It also includes any amount of any compensation due to or received by an assessee from his employer or former employer in connection with the termination of his employment. The amount of any compensation due to or received by an employee from his employer or former employer in connection with the modification of terms and conditions of the employment.

GROSS TOTAL SALARY

The total of all the above four items of the income part of the salary is known as the Gross Total Salary. [Gross Total Salary = Salary + Allowance + Perquisites + Profits in lieu of Salary]

Salary includes :

(a) MONETARY PAYMENTS:

For example – Basic Salary, Bonus, Commission, Allowances, etc.

(b) NON-MONETARY FACILITIES:

For example : Housing accommodation, medical facility, interest free loans.

Due date of Salary

In India, salaries are generally paid on the last working day of the month (Government, Public sector departments, Multi-national organizations as well as majority of other private sector companies). According to the Payment of Wages Act, if a company has less than 1000 Employees, salary is paid by the 7th of every month. If a company has more than 1000 Employees, salary is paid by the 10th of every month. Minimum wages in India are governed by the Minimum Wages Act, 1948.

In the case of government and semi-government employees

- Salary becomes due on the first day of next month.

In the case of other employees

- Salary becomes due on last day of each month.

Calculation period

- For Government Employee - 1st March to 28th February
- For Private Employee - 1st April to 31st March

Salary due or received in foreign currency

If the salary is earned in foreign currency, it will be converted into rupees.

- Conversion rate : Buying rate on specified date.
- Specified date : Last date of the month immediately preceding the month in which the salary is due/paid in advance/paid in arrears.

Number of Salary taxpayers

[For Assessment year : 2018-19]

Total	8,45,21,487	100%
Individual	8,04,45,511	95.17%
Salaried	5,87,13,458	69.46%

Taxpayer means : either has filed ITR or in whose case TDS has been deducted

Number of Salaried taxpayers filed ITR exceeding ₹ 1 Crore = 49,128

Salaried taxpayers in Slab 5,50,000 to 9,50,000, i.e., maximum = 81,55,335

Sections dealing with "Salary"

Article 265 of the Constitution of India provides that "no tax shall be levied or collected except by the authority of law". The Income-tax Act, 2025 was enacted to provide for levy and collection of tax on income earned by a person. Income Tax Act, 2025 is a self-contained Code and the taxability of the receipt of any amount or allowance is to be determined on the basis of meaning given to the words or phrases in the Act.

S. No.	Section	Corresponding to the Income Tax Act, 1961	Provides
1.	2(49)(d), (e) and (f)	2(24)(iii), (iiia) and (iiib)	"income" as defined under section 2(24) of the Act
2.	5(1)(a) and (b)	5(1)(a) and (b)	Salary of Non-resident employees in India – Taxability
3.	7	7	Income deemed to be received as Salary

4.	9(3)	9(1)(ii) & (iii)	Income deemed to accrue or arise in India as Salary
5.	15	15	Income chargeable to tax under the head "Salary"
6.	16	17(1)	Salary includes
7.	17	17(2)	Perquisite
8.	18	17(3)	Profits in lieu of Salary
9.	19	Section 16 & exemption which was allowed under erstwhile sections 10(10), 10(10A), 10(10AA), 10(10B) & 10(10C) of the Income Tax Act, 1961 now allowed as deduction after including the entire amount received in the meaning of salary	Deductions from Salaries

Chapter 2

Essential Characteristics of Salary

Section 16 does not define salary in a definitive manner. Hence, the salary has to be understood in its general or common parlance as the periodic payment of remuneration or compensation payable or paid to an employee for the personal services rendered by him to the employer under an express or implied contract of employment or service. Accordingly, following are the essential characteristics to constitute an income as salary:

- [1] **Existence of employer-employee relationship is the *sine-qua-non* (an essential condition) for taxing a particular receipt under the head "Salaries"**

There must exist an employer-employee relationship between the service provider and the service receiver. An income can be taxed under the head "Salaries" only if there is a relationship of an employer and employee between the payer and the payee. If this relationship does not exist, then the income would not be deemed to be income from salary. If it is found that there was no element of employer-employee relationship, the income is assessable under the head "Income from other sources". The employer-employee relationship is a contract of service as distinct from contract for service.

Definition of 'Employer'

"Employer" means a person who controls an individual under an express or implied contract of employment and is obliged to compensate him by way of salary.

Full-time or part-time employment does not matter

Once the relationship of employer and employee exists, the income is to be charged under the head "Salaries". It does not matter whether the employee is a full time employee or a part time one.

NOTE: Salary may come from one or more employers.

An "EMPLOYER" is a person who employs another person under a contract of employment.

"EMPLOYER" includes Former, Present and Prospective employer. The employer may be an individual, firm, association of persons, company, corporation, Central Government, State Government, public body or a local authority.

"CONTRACT FOR SERVICE" means the master can order what is to be done but does not exercise detailed supervision or control.

"CONTRACT OF SERVICE" means the master can order not only what is to be done but also how it shall be done.

EMPLOYEES

Where such persons are appointed in a regular job under a contract, verbal or written or implied, then they constitute employees and their remuneration is taxable under the head “Salaries”.

CONSULTANT OR RETAINER CANNOT BE CALLED AN EMPLOYEE

- (a) A medical practitioner
- (b) An advocate or
- (c) A chartered accountant
- (d) not employed by the employer but appointed as a consultant or a retainer cannot be called an employee and the amount so received by such persons will not be taxable under the head “Salaries”.

[2] Relationship between payer and payee

The relationship between payer and payee should be of an employer and employee. In other words, the amount received by an individual shall be treated as salary only when the relationship between payer and payee is of an employer and employee or master and servant.

Employer may be operating in India or abroad. The employee may be a full time employee or part-time employee. Employee may be an individual, firm, Company, Central Government, State Government, Public body or Local Authority. So if payment received by an individual from a person other than his employer cannot be treated as salary and hence not taxed under the head of “Salary”.

FOR EXAMPLE

If college lecturer receives any emoluments for academic or non-academic work is treated as salary. But if another university paid amount for setting up question paper to him is not treated as salary, as in this case there is no relation between employee and employer.

[3] Master and servant relations vis-à-vis principal and agent

The relation of employer and employee should be of master and servant. A master is one who not only directs what and when a thing is to be done but how it is to be done, and the servant is one who is bound to carry out the instruction given to him by such masters.

The relationship of master and servant distinctly differs from that of principal and agent. Whereas the principal has the right to direct, what work the agent has to do, the master has the further right to direct, how the work is to be done, even in its details.

A servant is a person engaged in to obey his employer’s orders from time to time. A servant works under the supervision and direction of his employer. Employee (Servant) is bound to follow the instructions, i.e., he has no free will.

Every servant is an employee; but an agent may or may not be an employee. - [*Lakshmi Narayan Ram Gopal & Son Ltd. v. Govt. of Hyderabad, (1954) 25 ITR 449 (SC)*]

[4] Rendering of service

Service must be provided as an employee and not in any other capacity. For this reason, remuneration of a doctor employed by a hospital will be taxable as salary. However, income of the same doctor will be professional income not salary if the doctor provides service in that hospital as a consultant and treats patients on that basis.

[5] Name not important

Salary may be called as such by whatever name. There is no difference between salary and wages so long as the relationship between the payer and payee is that of employer and employee and the payment is made as a compensation for the services rendered by the employee.

[6] Salary income must be real and not fictitious

Amount taxable under the head "Salaries" is real salary and not fictitious salary. There must exist an intention/obligation to pay and receive salary.

FOR EXAMPLE

There is any agreement between school and a teacher for granting certain salary to teacher and simultaneously there was an another agreement by which the same teacher will agree to return the same equal sum to the school as donation. Such set up is not treated as salary. So in such set up it is clearly understandable that there is no real intention to pay the salary but it was set up to show like that. In a similar way if there is no intention to render service and any agreement so made is also not to be treated as salary.

[7] Salary received by individual only

Salary is a compensation for personalized services, which can obviously be rendered by a normal human being and not a body corporate. Salary income is taxable in the hands of individuals only. No other type of person such as firm or HUF, companies can earn salary income.

[8] Income from mere holding of an office is not sufficient

The emoluments to be taxable under the head "Salaries" must be received by virtue of an office amounting to employment. Mere holding of an office is not, however, sufficient to bring the tax incidence under the head "Salaries".

- There should be an intention to pay and receive salary.
- Likewise there should be intention to render services.

[9] Payment received in capacity other than employee cannot be termed as Salary

A payment received by an individual from a person other than his employer cannot be termed as salary and consequently, such payment is not

chargeable to tax under the head “Salaries”. Such payment may be chargeable under the head “Profits and Gains of Business or Profession”.

FOR EXAMPLE

Commission received by a Director from a company is salary if the Director is also an employee of the company, then the commission cannot be termed as salary and would therefore not be taxable under the head “Salaries” commission in such a case would be taxable either under the head “Income from Business or Profession” or under the head “Income from other sources”.

[10] Method of accounting adopted by employee not relevant

Salary is chargeable to tax on “due” or “receipt” basis (whichever matures earlier) regardless of the fact whether books of account, in respect of salary income, are maintained by the assessee on mercantile basis or cash basis. Method of accounting cannot, therefore, vary the basis of charges fixed by section 15.

For calculating taxable income under the head “Salaries”, one has to follow the statutory provisions of the Act which expressly provide whether revenue (or expenditure) is taxable (or deductible) on accrual basis or cash basis.

Question with regard to employer-employee relationship was necessarily a question of fact. – [*CIT v. Deep Nursing Home & Children Hospital* (2008) 214 CTR 144 : 169 Taxman 189 (P&H)]

Chapter 3

Different Forms of Salary

[1] Bonus - Taxable as Salary

Bonus can be of different types. It can be based on performance, fixed or can also be paid on certain occasions, e.g., Diwali, etc. All types of Bonus are fully taxable. Bonus is charged to tax on receipt basis if the same was not taxed earlier on due basis. If it is not taxable on due basis, it is taxable on receipt basis.

Contractual bonus is charged to tax as salary. Gratuitous bonus is charged to tax as perquisite. If bonus is received in arrears, the assessee can claim relief under section 157 of the Income Tax Act, 2025.

[2] Arrear Salary

Arrears of salary received by an employee are taxed in the year of receipt if the same were not taxed earlier on due basis.

[3] Advance Salary

Salary is charged to tax on due or receipt basis. Hence, advance salary is received by an employee will be charged to tax in the year of receipt. It cannot be subsequently charged to tax in the year in which it becomes due. The recipient can, however, claim relief in terms of section 157 of the Income-Tax Act, 2025.

Difference between advance of salary and loan

While advance of salary is taxable, a loan by the employer to the employee is not taxable. The difference lies in the fact that the advance of salary by its very description is salary paid in advance and should be taxable on receipt basis, though it may not have accrued during the year. Amounts already taxed as advance ceases to be salary, when subsequent salary gets adjusted against the advances.

In the case of loan, the relationship between the employer and the employee is more in the nature of a lender and a borrower, while salary advance is ordinarily a routine matter governed by the policy of the employer for meeting personal expenses. Though it had also an element of loan, it does not involve discretion. It is a matter of discretion on the part of the employer with reference to the facts of each case. Even where the interest is borne by the employer, it is still a loan and not an advance.

[4] Salary in lieu of notice period

Salary in lieu of notice period is charged to tax as salary income on receipt basis, i.e., it is charged to tax in the year of receipt.

PROVISIONS ILLUSTRATED:**TAX TREATMENT OF SALARY IN LIEU OF NOTICE PERIOD**

Mr. 'X' was working in ABC Ltd. The company removed him from the job without giving him any notice. As per the terms of his employment, the employer had to give one month's notice or pay salary equivalent to one month's salary. The employer paid him salary of one month amounting to ₹ 1,00,000/- and terminated his job without giving him any notice.

SOLUTION:

In this case, ₹ 1,00,000/- will be taxed as salary income.

Notice pay received from previous employers after deducting notice period as per job agreement cannot be taxed as salary income - Where assessee received salary from his previous employers after deducting notice period as per job agreement with them, it was actual salary received by assessee that was taxable and amount not received as notice pay could not be taxed as salary income. - [In favour of assessee] (Related Assessment year: 2010-11) – [*Nandinho Rebello v. DCIT (2017) 164 ITD 440 : 80 taxmann.com 297 (ITAT Ahmedabad)*]

[5] Foregoing of Salary

Once salary has accrued to an employee its subsequent waiver is not exempt. Salary foregone after its accrual is charged to tax, even though it is not received by the employee. In other words, once salary accrues, the subsequently waiver by the employee does not absolve him from liability to income-tax. Such waiver is only an application and hence, chargeable to tax.

Salary foregone by an employee is charged to tax in any case, e.g., salary foregone by an employee due to heavy loss suffered by the employer. It is taxable as section 15 taxes salary on "due" basis even if it is not received.

PROVISIONS ILLUSTRATED – 1 :

Mr. 'A', an employee instructs his employer that he is not interested in receiving the salary for April 2025 and the same might be donated to a charitable institution. In this case, Mr. 'A' cannot claim that he cannot be charged in respect of the salary for April 2025. It is only due to his instruction that the donation was made to a charitable institution by his employer. It is only an application of income. Hence salary for the month of April 2025 will be taxable in the hands of Mr. 'A'.

PROVISIONS ILLUSTRATED - 2 :

Mr. 'A' is working in XYZ Ltd. In the month of January 2026, he won a game show and earned ₹ 2 Crores. Considering such a huge gain he decided to surrender his salary or to forego his salary.

SOLUTION:

Salary foregone after its accrual is charged to tax, even though it is not received by the employee. Thus if he foregoes his salary then it will be charged to tax.

Where payments accrued to members of religious congregations by way of salary/pension as their income in individual capacity, subsequent diversion of that income to religious congregations concerned was only a case of application of that income and not diversion by overriding title. [In favour of revenue] – [Fr. *Sunny Jose v. Union of India* (2015) 233 *Taxman* 454: 60 *taxmann.com* 386 (Ker.)]

[6] Voluntary payments to employees

Voluntary payments made by an employer to his employee is taxable in the hands of recipient as salary if such payment is made with reference to services rendered by virtue of employment. If such payment accrues to employee by virtue of his employment, it may be taxable, irrespective of the fact whether or not there is any legal obligation of the employer to make the payment.

A lump sum payment made gratuitously or by way of compensation or otherwise to the widow or other legal heirs of an employee, who dies while still in active service is not taxable. [Circular No. 573, dated 21.08.1990] If exgratia payment is received from the Central Government, local authority or a public sector undertaking, consequent upon injury to the person or on death while on duty, it is not liable to tax. [CBDT Circular No. 776, dated 08.06.1999]

[7] Salary paid tax-free shall be included in the taxable income of the employee

There is no concept of Tax-free salary in India. If salary is paid tax-free by the employer, the employer has to include in his taxable income not only salary received but also amount of tax paid by the employer. It does not make any difference whether tax is paid under terms of contract by the employer or voluntarily (i.e., Salary = Salary Received by the employee + Tax paid by the employer).

[8] Remuneration for extra duties

If an employee receives any payment in respect of extra work done by him then the same is charged to tax under the head "Salaries". In other words, where an employee agrees to do something outside the duties of his office, thereby enlarging scope of his office, for which he is given extra payment, that payment is taxable as salary. Even wardenship remuneration also taxed as salary.

[9] Overtime payments

When an employee works for extra hours over and above his normal hours of duty, he is given overtime allowance as extra wages. Any payment

made by the employer to the employees for working beyond the office hours or for any extra work done by the employees is fully taxable and therefore, included in Gross Salary.

[10] Salary from more than one employer

The aggregate salary of the employee is taxable. 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 taxpayer may choose) from the aggregate salary of the employee, who is or has been in receipt of salary from more than one employer. The employee 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).

[11] Salary from each source is taxable under the head "Salary"

For example: Mr. "X" works in two places part time job. His income is to be calculated under the head "salary" in both the places.

Loan against salary cannot be brought to tax as salary

When an employee takes a loan from his employer, which is repayable in certain specified instalments, the loan amount cannot be brought to tax as salary of the employee.

Loan received from the employer cannot be treated as advance salary, even though it is going to be deducted from the salary of the employee. Salary and loan are different items. Salary is the reward of the work done by the employee and loan is an obligation on the employee which is to be repaid to the employer. Thus, if loan is not to be directly repaid but is to be repaid in the form of deduction from salary it will not entitle the loan to be taxed as salary.

However, in case of interest free loan or concessional loan, taxable value of perquisite in respect of interest element will arise in the hands of the employee.

Sum received by a suspended employee is taxable under the head "Salary"

An employee, who has been suspended pending departmental enquiry continues to be the employee and the employer continues to be his employer. All that happens in the case, is that during the suspension period the employee is not allowed to actually work and he is not given full remuneration but only permissible subsistence allowance only by way of remuneration for remaining attached to the service of the employer as per the relevant service regulation governing the contract of service. - [*Regional Director, Employees' State Insurance Corporation v. Popular Automobiles* (1997) 7 SCC 665]

Chapter 4

Salary not treated as Income under the head ‘Salary’

Any income can be taxed under the head “salary” only if there is an employer and employee relationship between the payee and payer. If such relationship does not exist then income will not be taxable under the head “salary”. Following salaries are not treated as salary:—

(1) Salary received by Member of Parliament (MP) or of a State Legislature (MLA)

Member of Parliament (M.P.)/Member of Legislative Assembly (M.L.A.) are elected by the public from their respective constituency. They discharge their respective constituency functions, so they cannot be treated as Government employees. A Member of Parliament is not an employee of Government and therefore, the salary received by him as a Member of Parliament (M.P.)/ Member of Legislative Assembly (M.L.A.) is not chargeable to tax under the head “Salaries”. On the other hand it will be taxed under the head “Income from other Sources”. [*Letter F. No. 40/29/67 – IT (A – I), dated 22.05.1967*]

Provisions of section 93 of the Income Tax Act do not provide for any deduction of expenditure from such salary income, etc., of a Member of Parliament (M.P.)/Member of Legislative Assembly (M.L.A.). As such no deduction can be claimed for expenditure under section 93.

S. No.	Nature of Allowance	Section	Treatment
(i)	Special Allowance	Schedule III - (Table S. No. 12)	Allowances for conveyance, helper, etc., granted to meet expenses wholly, necessarily and exclusively for the performance of duties of an office or employment to the extent to which such expenses are actually incurred for the purpose are exempted up to the prescribed limit of Schedule III - (Table S. No. 12) and any surplus left out will be taxable
(ii)	Daily Allowance	Schedule III - (Table S. No. 5)	Daily allowances received by such Member of Parliament (M.P.) and Member of Legislative Assembly (M.L.A.) are exempted

(iii)	Constituency Allowance	Schedule III - (Table S. No. 6)	Any constituency allowance received by any person of his membership of any State Legislature
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(2) Salary received by a partner from his partnership firm

Salary received by a partner from his partnership firm chargeable as “Profits & Gains from business or profession” as salary paid to a partner by a firm is an appropriation of profits. It is, therefore, not chargeable under the head “Salary”.

Further, such remuneration would be treated as “Business Income” since the partner is not an employee of the entity.

(3) Salary received by a proprietor from his proprietorship firm

As proprietor and proprietorship firm are the same person and no one can earn from himself and Proprietor is not an employee and hence any amount received by him would not be treated as salary.

(4) Family Pension received by widow from former employer of her husband

Any family pension received by the widow or legal heirs of a deceased employee is not taxed under the head “Salaries”, but is taxable under the head “Income from other Sources”.

DEDUCTION:

Tax year /Assessment year	Quantum of Standard Deduction available
From Tax year 2026-27	(i) an amount equal to one-third of such income or ₹ 25,000, whichever is less, where income-tax is computed under section 202(1); and (ii) an amount equal to one-third of such income or ₹ 15,000, whichever is less, in any other case.
From Assessment year 2025-26 to 2026-27	a deduction of a sum equal to thirty-three and one-third per cent of such income or ₹ 25,000/-, whichever is less shall be made before computing the income chargeable under the head “Income from other sources”.
Upto Assessment year 2024-25	a deduction of a sum equal to thirty-three and one-third per cent of such income or ₹ 15,000/-, whichever is less, shall be made before computing the income chargeable under the head “Income from other sources”.

ELIGIBLE FOR FAMILY PENSION

- Spouse
- Children below 25 years of age
- Unmarried daughter

- “Divorced wife” loses the status of a legally wedded wife and as such is not entitled to the award of family pension. However, the eligible child/children from a divorced wife shall be entitled to the share of family pension which the mother would have received at the time of death of her husband had she not been divorced.

Family pension is chargeable as “Income from other sources”. [Letter No. F. No. 45/118/66-IT], dated 21.08.1967]

PROVISIONS ILLUSTRATED:

Mr. ‘X’, a Government servant, died on 01.04.2026, while in service. In terms of the rules governing his service, his widow Mrs. “X”, is paid a family pension of ` 30,000/- p.m. and a dearness allowance @ 90% thereof. Compute income of Mrs. X for the Tax year 2026-27.

SOLUTION:

Family pension received by Mrs. ‘X’ is chargeable under the head “Income from other sources”. She can claim the lower of ` 25,000/- or 1/3rd of her family pension, as deduction under section 93(1)(d) in respect of such income as per calculation given below:—

	<i>Particulars</i>	<i>Amount (In Rs.)</i>
(i)	Family Pension received (Rs. 30,000 × 12 months)	3,60,000
(ii)	Add : Dearness Allowance @ 90% of ₹ 3,60,000/-	3,24,000
(iii)	Total Pension received	6,84,000
(iv)	Less : Deduction under section 57(iia) : Least of the following :	
	(a) 1/3rd of Gross Pension (Rs. 6,84,000 × 1/3) = ₹ 2,28,000/-	
	(b) Maximum deduction ₹ 25,000/-	25,000
(v)	TAXABLE FAMILY PENSION (iii – iv)	6,59,000

(5) Honorarium received by the visiting doctors

Honorarium received by visiting doctors is not governed by conditions of service of the doctors. Hence the same cannot be treated as profit in lieu of salary. The same is professional fee. - [ITO v. Ranjan R Mehta (Dr), (1989) 33 TTJ 398 (ITAT Ahmedabad)]

Assessee-medical institute engaged number of visiting doctors as specialists for a limited period of one year only. Visiting doctors had to follow certain terms regarding attendance. They had to refer a specific number of patients to assessee-institute. Assessee-institute collected fees/charges from patients and paid same to visiting doctors after deducting @ 10 per cent of collection as administrative charges. Assessee-institute had provided infrastructure for visiting doctors to carry out their professional activities

in its premises in lieu of commission and whole arrangement was merely a profit-sharing arrangement between parties for fees collected. Therefore, in absence of any employer-employee relation, payments made to visiting doctors could not be held to be salary and, consequently, assessee-institute could not be held liable and penalised for not deducting tax at source. (Related Assessment year : 1990- 91) – [ITO v. Calcutta Medical Research, (1999) 107 Taxman 250 (ITAT Calcutta)]

(6) Remuneration paid to lecturer for setting question paper by a university

The remuneration is not salary, as it is not received from the employer, and is taxable under the head “Income from other sources”.

(7) Income from profession as a musician

Where an assessee deriving income from profession as a musician, incidentally rendered services to a college of music, it could not be said that there was a master and servant relationship. - [CIT v. Jnan Parkash Ghosh, (1994) 205 ITR 454 (Cal.)]

(8) Acting as guarantee commission agent

Commission received by an assessee from a bank for acting as guarantee commission agent. - [Bhargava (K.P.) v. CIT, (1954) 26 ITR 489 (All.)]

(9) Remuneration of directors

The remuneration received by a director from a company is taxable as salary, if the director is an employee of the company in terms of a contract of employment or the Articles of Association. Otherwise it is taxable as income from business or income from other sources depending upon the facts of each case.

In other words, any amount payable to any whole time director, who is also an employee of the company would be treated as salary. In any other case, the same would be treated as “Other Income”.

(10) Director’s Fees

Sitting fees paid to directors for attending Board’s Meetings is not a salary but taxable as “Income from Other Sources”.

Where assessee, a B-tech from IIT, had provided professional services for students of coaching institutes for which he was provided lump sum amount as per contract; coaching institute deducted TDS by treating such payments as professional; and assessee was free to do work with other institutions also, Held that the relationship between the assessee and the coaching institute was of consultant/professional and therefore, the assessee’s receipts were professional and expenses claimed by the assessee were to be considered by the Assessing Officer. [In favour of assessee] (Related Assessment year : 2009-10) - [Arvind Singh v. ITO, Kota, (2017) 81 taxmann.com 442 : (2016) 50 ITR(T) 108 (ITAT Jaipur)]

Section 15 is not attracted in respect of remuneration received by an MLA; when provisions of section 15 are not attracted to remuneration received by him, obviously, section 17 cannot be attracted, in respect of reimbursement of medical expenses, as section 17 only extends definition of 'salary', by providing certain items mentioned therein, to be included in salary

From reading of section 15 it is clear that fundamental requirement for attracting this section is that, there should be relationship of employer and employee, whether in existence, or in the past. Obviously, and inherently, in the very nature of things, for bringing about such relationship, the assessee, being the person concerned, should have been employed by the employer, and as a necessary corollary, the employer should have right to discharge or terminate the employee. This basic ingredient is missing in the case of MLAs and MPs, as they are not employed by anybody, rather, they are elected by the public, forming their election constituencies, and it is consequent upon such election, that they acquire constitutional position, and discharge constitutional functions and obligations. May be that they receive remunerations after swearing in, but then, it cannot be said to be salary, within the meaning of section 15, and therefore, the remuneration, received by the MLA or MP, cannot be taxed, under the head 'income from salary', but can be taxed under the head, 'income from other sources'.

When the provisions of section 5 are not attracted to the remuneration received by the assessee, obviously, section 17 cannot be attracted, in respect of reimbursement of medical expenses, as section 17 only extends the definition of 'salary', by providing certain item mentioned therein, to be included in salary. – [*CIT v. Shiv Charan Mathur (2008) 306 ITR 126 : 219 CTR 292 (Raj.)*]

A director is an employee of a company or not is dependent on nature and character of appointment and terms and conditions or other provisions contained in memorandum and articles of association. Where Board of Directors of a company by a resolution appointed assessee as a whole-time director for managing affairs of company by fixing his remuneration in accordance with articles and memorandum of association of company, it could be said that there was an employer and employee relationship between company and assessee. Therefore, remuneration received by assessee was assessable under section 15 and not under section 56. (Related Assessment years : 1993-94, 1995- 96 and 1996-97) – [*Sajid Mowjee v. ITO, (2005) 279 ITR 467 : 198 CTR 558 : 148 Taxman 502 (Cal.)*]

Where employer-company purchased single premium deferred annuity policy out of commission payable to employee managing directors (assesseees) in their names, amounts utilised for obtaining deferred annuity policies would form part of remuneration payable to assessee and as such be chargeable under head 'Salaries'. (Related Assessment year : 1973-74) – [*CIT v. Navnit Lal Sakar Lal, (2001) 247 ITR 70 (2000) 164 CTR 282 : 113 Taxman 692 (SC)*]

Where the assessee was appointed as an Assistant Honorary Surgeon in a Hospital and medical attendant of LIC, it was held that the income from honorarium received by the assessee-doctor from hospital and LIC should be assessed as income from profession and not under the head 'Salary' since there was no employer-employee relationship in the case of the assessee and hospital/LIC. – [*Sixth ITO v. Dr. N.P. Sheth*, (1989) 35 TTJ 481 (ITAT Bombay)]

Assessee - HUF was partner in a firm through its karta who received salary payments from firm in terms of partnership deed for services rendered by him to firm - Said salary payment was without detriment to HUF funds. Salary payments were not includible in assessment of HUF

It is a well-settled principle that payment by way of remuneration to the Karta or a coparcener of an HUF by a firm in which the HUF is a partner, cannot be assessed as the income of the family unless it has a direct nexus with the investment of funds of the family in the firm. In other words, unless such payment is to the detriment of the family funds invested in the firm, it cannot be treated as the income of the family. In the instant case, the disputed payments having been made to the Karta for services rendered by him to the firm and without any detriment to the funds invested by the assessee-HUF in the firm, could not be treated as the income of the assessee-HUF. (Related Assessment years : 1972-73 and 1973-74) – [*Laxman Das v. CIT*, (1982) 138 ITR 628 : 31 CTR 210 : (1983) 12 Taxman 58 (All.)]

Chapter 5

Exempted Salary

[1] Salary/Pension received from a United Nations Organisation

Salary received from a United Nations Organisation is not taxable in India. Section 2 of the United Nations (Privileges and Immunities) Act, 1947 grants exemption from income-tax to salaries and emoluments paid by the United Nations to its officials.

Pension received by erstwhile officials of United Nations - Exempt from tax in view of section 2 of UN (Privileges and Immunities) Act, 1947 - [CBDT Circular No. 293 [F. No. 200/140/80-IT(A-I)], dated 10.02.1981]

Section 15 of the Income-tax Act, 1961, read with section 18(b), of Article V of the United Nations (Privileges and Immunities) Act, 1947 – Pension received by a widow of an ex-employee of UNO from United Nations Joint Staff Pension Fund is eligible for exemption from Indian income-tax (Related Assessment years : 1972-73 to 1975-76) - [CIT v. Smt. Majjidunnisa Begum, (1996) 221 ITR 189 : (1997) 92 Taxman 436 (AP)]

PENSION PAID BY UNITED NATIONS ORGANISATION IS EXEMPT

Pension amount received by U.N. Pensioners is exempt from tax, since such pension is nothing but salary. - [CIT v. K. Ramaiah, (1980) 126 ITR 638 (Karn.)]

NOTE: The provision given under the United Nations (Privileges and Immunities) Act, 1947 shall override all other laws passed in India.

[2] Salary to teacher or professor from SAARC Member States [DTAA]

As per the double taxation avoidance agreement [India's first multilateral agreement (MA) signed on 13.11.2005 and is in force from 19.05.2010] among SAARC member States (i.e., Bangladesh/Bhutan/Maldives/Nepal/Pakistan/Sri Lanka/India) a professor (teacher or research scholar) is not chargeable to tax in respect of salary.

Salary including allowances and perquisites of a teacher or professor or research scholars from SAARC Member States shall not be taxable if following conditions are satisfied:

- (i) Such professor, teacher or research scholar is a resident of other SAARC member State (i.e., Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan & Sri Lanka) prior to visiting another member State.

NOTE: An individual is deemed to be a resident of a member State if he/ she is resident in that member State in the fiscal year in which he visits the other member State or in the immediately preceding fiscal year.

- (ii) Such visit is for the purposes of teaching or engaging in research or both at a university or college or similar approved institution in that other Member State.

Remuneration of such teacher shall be exempt from tax in India for a period not exceeding 2 years from the date of his/her arrival in India.

Grants Australia DTAA benefit to expat on salary credit in Indian bank a/c

Chennai ITAT rules that salary received by assessee (an employee with GEII India) in his Indian bank a/c with respect to services rendered in Australia, pursuant to his secondment to GEII Australia not taxable in India during Assessment year 2015-16, allows exemption claim under Article 15(1) [Dependent Personal Services] of India-Australia DTAA; During relevant Assessment year, assessee had stayed in India for 151 days and had left for employment thereafter to Australia, thus, assessee had acquired the 'non-resident' status in India, further, assessee had become a resident in Australia as per the relevant tax laws [for which Tax residency certificate/ TRC was furnished], also, assessee had duly filed his Australian tax returns offering the said salary income to tax therein; Assessing Officer had brought to tax the salary under section 5(2)(a) on receipt basis, however, referring to Section 15(a), ITAT remarks that the salary is always taxable on accrual basis., also referring to Section 9(1)(ii), holds that salary income could be deemed to accrue or arise in India, only if it is earned in India in respect of services rendered in India.; Further rules that assessee would be entitled to India-Australia Treaty wherein as per Article-15, salary income of resident of Australia is taxable only in Australia; Distinguishes Revenue's heavy reliance on co-ordinate bench ruling in case of Swaminathan Ravichandran on facts, relies on Karnataka High Court ruling in Prahlad Vijendra Rao, Bombay High Court ruling in Avtar Singh Wadhwan, Calcutta High Court ruling in Sumana Bandyopadhyay & Anr. as also CBDT Circular No.13/2017. - [*Shri Paul Xavier Antony Samy v. ITO, (2020) 183 ITD 143 : 78 ITR(IT) 48 (ITAT Chennai)*]

NOTE:

1. Article 1 of India-Australia DTAA reads as follows:

Personal Scope

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

Article 15 of the said Treaty reads as follows:

Article 15 – Dependent Personal Services

Subject to the provisions of Articles 16, 17, 18, 19 and 20, salaries, wages and other similar remuneration derived by an individual who is a resident of one of the Contracting States in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting