TDS ON SALARIES

WESTERN INDIA REGIONAL COUNCIL
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

ICAI BHAWAN – BKC, MUMAI

24th January 2015

I AM THE COUNTRY'S DRAFTSMAN,

I DRAFT THE COUNTRY'S LAWS,

FOR MOST OF THE LITIGATION,

I AM THE CAUSE!

AS QUOTED BY RETD.JUSTICE SMT. SUJATA MANOHAR

OVER VIEW:

- **Section 192 and Circulars related thereto**
- **Judgments leading to amendments in circular**
- **Other judgments affecting what is taxable under the head "Salaries".**
- **Recent judgments on various issues related to "Salaries"**
- **Form 24Q quarterly and annual statement in Q4.**
- **Issues related to Form 24Q**

RELEVANT SECTIONS, RULES, CIRCULARS :

- **SECTION 192**

Salary.

(1) Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax on the amount payable at the **average rate** of income-tax computed on the basis of the rates in force for the financial year in which the payment is made **on the estimated income** of the assessee under this head for that financial year.

- Circular 17/2014 dated 10.12.2014
- Circular 8/2013 dated 10.10.2013
- Circular 8/2012 dated 5.10.2012
- Circular No. 5/2011 dated 16.08.2011
- Circular No. 8/2010 dated 13.12.2010
- Circular No. 1/2010 dated 11.01.2010

MAX MUELLER BHAVAN, *268 ITR 31 AAR*

May 31, 2004

Section 192 of the Income-tax Act, 1961 - Deduction of tax at source - Salary - Applicant-Institute has proposed to engage honorary part-time teachers on contract basis to take classes in German language - Terms of proposed agreement between applicant and part-time teachers clearly indicate fact of control of teachers by applicant both in regard to work to be done and manner in which it should be done - Whether mere fact that agreement gives liberty to teachers to work for any place, institute or company during tenure of agreement and it clarifies that teacher shall not have status of employee nor shall be entitled to avail benefits of regular employees, will militate against relationship of master and servant between applicant and teacher - Held, no - Whether, therefore, applicant is obliged to deduct tax at source from payment of honorarium to honorary part-time teachers under section 192 - Held, yes

The circulars generally start with explaining the provisions as enacted in the Law:

*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 ….. The income-tax is required to be calculated on the basis of the rates given above, subject to the provisions related to requirement to furnish PAN as per sec 206AA of the Act, and shall be deducted at the time of each payment. No tax, however, **will 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 ……., as the case may be, depending upon the age of the employee.*

The circulars generally further contain the general spirit in the following words:

The amount of tax as arrived at para 6.3 should be deducted every month in equal installments. Any excess or **deficit arising out of any previous deduction can be adjusted by increasing or decreasing the amount of subsequent deductions** during the same financial year.

These instructions are **not exhaustive** and are issued only with a **view to help the employers to understand the various provisions relating to deduction of tax from salaries.**

However the terms used have been interpreted and applied in a manner to lead to following decisions:

Commissioner of Income Tax v. ITI Ltd. 183 Taxman 219 (SC)
Commissioner of Income Tax & anr. V. Larsen & Toubro ltd. 313 ITR 1 (SC)

JANUARY 21, 2009

Section 10(5), read with section 192, of the Income-tax Act, 1961 - Leave travel concession - Whether an employer is under no statutory Obligation to collect evidence to show that its employee has actually utilized amount paid towards leave travel concession/conveyance allowance for purpose of TDS under section 192 - Held, yes

HELD

The beneficiary of exemption under section 10(5) is an individual employee. Further, ***there is no circular of the Central Board of Direct Taxes (CBDT) requiring the employer under section 192 to collect and examine the supporting evidence*** *to the declaration to be submitted by an employee(s). For the above reasons, it was to be held that the assessee-employer was under no statutory obligation to collect the evidence to show that its employees had actually utilized the amount paid towards leave travel concession/conveyance allowance.*

DCIT vs. HCL INFOSYSTEMS LTD. (2005) 4 SOT 428 (Del)

TDS—Salary—Non deduction of tax from leave travel allowance—If the **estimate** of salary income made by the employer for the purpose of deduction of tax at source is **bona fide and honest**, the requirements of s. 192 stand complied with and the employer in such case cannot be made liable for the amount of short deduction of tax, if any—Assessee had obtained categoric declarations from the concerned employees of having incurred leave travel expenditure—Thus, there was sufficient material on record for the assessee to entertain a **bona fide belief** that the leave travel allowance granted to its employees was exempt under s. 10(5)—Therefore, the **obligation cast on the assessee-company under s. 192 was duly discharged by it**—There being nothing on record to show any instance of any of the employees having not actually incurred the amount of leave travel allowance granted, there was no case to treat the assessee-company as an assessee in default in respect of the short deduction of tax from salaries as well as to charge interest under s. 201(1A)

CIRCULAR OF 2013 and 2014 – Stark Difference in comparison with all earlier circulars. The recommendatory tone is now the mandatory tone.

"*DDOS TO SATISFY THEMSELVES ABOUT THE GENUINENESS OF CLAIM:*

*The Drawing and Disbursing Officers **should** satisfy themselves about the actual deposits/ subscriptions / payments made by the employees, by calling for such particulars/ information as they deem necessary before allowing the aforesaid deductions. In case the DDO is not satisfied about the genuineness of the employee's claim regarding any deposit/ subscription/ payment made by the employee, he **should not** allow the same, and the employee would be free to claim the deduction/ rebate on such amount by filing his return of income and furnishing the necessary proof etc., therewith, to the satisfaction of the Assessing Officer."*

TDS ON SALARIES - WIRC ICAI - APR 2014

Comparison between Circular of 2013 and Circular of 2014

Para No	Particulars
2.1	Rates of taxes – effect has been given to the increase in the basic exemption limit from Rs.2,00,000 to 2,50,000
3.6.1	Income from House Property – the allowable interest only in respect of house property which is owned and is in the occupation of the employee for his own residence.
4.3	Lower rate of tax deduction – Unique Identification number to be reported in quarterly statement.
4.6	Certain essential points regarding filing of Statement (24Q) and obtaining TDS certificates: a. Form 16 downloading possible only if PAN is correct – use facility for verification of PAN on site www.tdscpc.gov.in b. Gross salary includes exempt income in column 321 c. Salary excluding exempt income in column 337 d. TDS on Income column 353 e. Employer to quote Total Income Column 346 in Annexure II without rounding off.
4.9.5	Rectification of mistake in filing TDS statement, refer Annexure VI procedure
5.2.1	Family Benefit Scheme – NO TDS
5.3.1	Leave Travel Concession – Foreign Travel Not allowed in BOLD
5.3.9	House Rent Allowance – Landlord PAN must if rent > Rs.1,00,000
5.5.3	Section 80CCD – though limit of 80C, 80CCC and 80CCD combined is increased to Rs.1,50,000 the limit of Pension fund u/s 80CCD remains at Rs. 100000
8	Principal Officers to satisfy themselves about genuineness of all claims made and allowed for purpose of determining income to be taxed.
Form 10BA	Declaration to be filed by the assesse claiming the deduction u/s 80GG

Om Parkash Gupta *v.* ITO, Chandigarh

58 SOT 304 (Chd) (Trib) APRIL 29, 2013

Section 10(5) of the Income-tax Act, 1961, read with rule 2B of the Income-tax Rules, 1962 - Leave Travel Concession [Foreign travel] - Assessment year 2007-08 - Whether, leave travel concession is exempt under section 10(5), read with rule 2B, only if assessee-employee undertakes journey to **any place in India** - Held, yes - Whether section 10(5), read with **rule 2B no way provides that assessee is at liberty to claim exemption out of his total ticket package spent on his overseas travel and part of journey within India** - Held, yes

SECTION 17(2)(vii): Superannuation fund contribution: When FBT provisions were introduced, the contribution to Superannuation was subjected to FBT in the hands of the employer. After one year, it was revised and the amount subjected tax was only in excess of Rs.1 lac per employee per year. With the withdrawal of FBT the taxability has shifted back to the employee and thus the contribution of amounts exceeding Rs. 1 lac is subjected to tax in the hands of the employee. The employee is thus taxed for an amount which he does not receive in hand. Further on retirement, when the annuity is taken, the same is again subject to tax therefore the same income is being taxed twice, which needs amendment.

SUGGESTION:

Restore position to prior to FBT regime, the contribution to Superannuation was not taxed in the hands of the employee and pension to be taxed as and when received.

229 ITR 394 [1998] 98 TAXMAN 138 (BOM.)
Commissioner of Income-tax *v.* D.P. Malhotra
JULY 28, 1997
Section 10(10AA) of the Income-tax Act, 1961 - Exemption - Leave encashment - Assessment year 1982-83 - Whether, if on retirement or even on resignation from employment, assessee gets by way of leave encashment any amount, he is entitled to benefit of section 10(10AA) - Held, yes

" it is clear from the language of cl. (10AA) itself that it has been used in the widest possible terms to mean and include all cases of retirement, whether on superannuation or otherwise. What is relevant is "retirement"—how it took place is immaterial for the purpose of this clause. It is, therefore, clear that if on retirement, even on resignation by the employee, an employee gets by way of leave encashment any amount, cl. 10(10AA) would apply and the assessee will be entitled to the benefit of the said clause to the extent mentioned therein.—CIT vs. R.J. Shahney 159 ITR 160 (Mad) **relied on.**

Approved Provident Fund Schedule IV Part A

There are various provisions contained in this part of the Act which create a liability to tax under the head "Salaries":

- Employer's annual contributions in excess of twelve per cent of the salary of the employee, and
- interest credited on the balance to the credit of the employee in so far as it 9.5%
- Withdrawal (not transfer) of accumulated balance where the employment with the employer is less than 5 years, except due to particular circumstances;
- Withdrawal to be taxed as "salaries"
- Tax on accumulated balance. As per Rule 9 of the said Schedule.

SECTION 9

Income deemed to accrue or arise in India.

(1) The following incomes shall be deemed to accrue or arise in India—

(i) …..

(ii) income which falls under the head "Salaries", if it is earned in India.

[**Explanation :** For the removal of doubts, it is hereby declared that the income of the nature referred to in this clause payable for—

(a) service rendered in India; and

(b) the rest period or leave period which is preceded and succeeded by services rendered in India and forms part of the service contract of employment,

shall be regarded as income earned in India.]

HISTORY:

- CIT v. S G Pgnatale 124 ITR 391 (Guj)
- Amendment
- CIT v. Eli Lilly Company India Private Limited. 312 ITR 225 SC
- Impact on Indians deputed abroad

Arvind Singh Chauhan *v.* Income-tax Officer, Ward 1(2), Gwalior
42 taxmann.com 285 (Agra - Trib.)
IT/ILT-I : Salary income cant be said to accrue in India merely because appointment letter is issued in India
IT/ILT-II : Non-resident cant be deemed resident by applying sec. 6(5) as the said provision has become redundant since 1989-90

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S.5: Scope of total income–Non–resident-Salary income-Accrual of Income from employment could not be taxed in India-DTAA-India-UK [S.90, Art.16]

Where assessee, a NRI, received salary income in India against employment exercised in U.K. and offered same for taxation in U.K. in pursuance of article 16, it could not be taxed in India as per DTAA between India and U.K. (AY.2006-07)

ITO v. Sri Sunil Chitranjan Muncif (2013) 58 SOT 356 (Ahd.)(Trib.)

Form 24 Q

Corrections Statements

Defect memos

Four quarters versus quarter 4

Openness of the data and amendments thereto.

Thank you for a patient hearing!