CERTIFICATE COURSE ON TDS

Today's Content – Deduction of TDS from Salary u/s 192

What is Salary?

"Salary" is a fixed and regular remuneration made by an employer to an employee on a periodic basis. The actual receipt of salary in the previous year is not material as far as its taxability is concerned.

The existence of employer-employee relationship is the absolutely essential for taxing a particular receipt under the head "salaries". The term 'salary' includes both monetary payments (e.g. basic salary, DA, bonus, commission, allowances etc.) as well as nonmonetary facilities (e.g. housing accommodation, medical facility, interest-free loans etc.).

Salaries also include:

(i) Wages

(ii) Annuity or pension

(iii) Gratuity

(iv) Fees, commission, perquisites or profits in lieu of salary

(v) Advance of salary

(vi) Amount transferred from unrecognized provident fund to recognized provident fund

(vii) Contribution of employer to a Recognized Provident Fund in excess of the prescribed limit

(viii) Leave Encashment

(ix) Compensation as a result of variation in Service Contract etc.

(x) Contribution made by the Central Government to the account of an employee under a notified pension scheme etc.

Perquisite

As per Section 17(2) of the Income Tax Act, 1961, “Perquisite” refers to any casual emolument or benefit attached to an office or position in addition to salary or wages including:

(a) Value of rent-free/ concessional rent accommodation provided by the employer

(b) Any sum paid by an employer in respect of an obligation which was actually payable by the assessee

(c) Value of any benefit/ amenity granted free, or at concessional rate to specified employees etc.

(d) 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.

(e) 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

(f) The value of any other fringe benefit or amenity as may be prescribed.

**As desired by students during class, complete details in respect to perquisites taxation is given in last page of this document.*

Allowances

Allowance is defined as fixed monetary benefit given regularly by an employee, in addition to salary, for meeting specific requirements of the employees. As a general rule, all allowances are to be included in the total income unless specifically exempted.

Exemption in respect of following allowances is allowable to the extent mentioned against each:

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

(i) HRA received

(ii) Rent paid minus 10% of salary

(iii) 40% of Salary (50% in case of Mumbai, Chennai, Kolkata, and Delhi).

Salary here means Basic +Dearness Allowance, if Dearness Allowance is provided by the terms of employment

(b) Leave Travel Allowance (LTA): The amount actually incurred on performance of travel on leave to any place in India by the shortest route to that place is exempt. This is dependent upon the entitlement of an employee and the upper limit of LTA allocated by the employer for an employee, provided that the exemption shall be available only in respect of two journeys performed in a block of 4 calendar years.

Certain allowances given by the employer to the employee are exempt u/s 10(14). All these exempt allowances are detailed in Rule 2 BB of Income-tax Rules and reference may be made to the same for details.

OVER VIEW OF THE TDS PROVISIONS

Section 192 of the I.T.Act, 1961 provides that every person responsible for paying any income which is chargeable under the head '**salary**', shall deduct income tax on the **estimated income** of the assessee under the head salaries. The tax is required to be calculated at the **average rate** of income tax as computed on the basis of the rates in force.

The deduction is to be made at the time of the actual payment. However, no tax is required to be deducted at source, unless the estimated salary income exceeds the maximum amount not chargeable to tax applicable in case of an individual during the relevant financial year.

The tax once deducted is required to be deposited in government account, the employer/deductor is required to prepare and file quarterly statements in Form No.24Q with the Income-tax Department and a certificate of deduction of tax at source (also referred as **Form No.16**) is to be issued to the employee.

This certificate is to be used by the employee for his income tax return filing.

Who is required to deduct TDS?

The statute requires deduction of tax at source from the income under the head salary. As such the existence of **"employer-employee"** relationship is the "sine-qua-non" for taxing a particular receipt under the head salaries. Such a relationship is said to exist when the employee not only works under the direct control and supervision of his employer but also is subject to the right of the employer to control the manner in which he carries out the instructions. Thus the law essentially requires the deduction of tax when;

(a) Payment is made by the employer to the employee.

(b) The payment is in the nature of salary and

(c) The income under the head salaries is above the maximum amount not chargeable to tax.

The employer can be:

Companies (Private or Public)

Individuals

HUF

Trusts

Partnership firms

Co-operative societies

All these employers are required to deduct TDS every month and deposit it with the government within a specific time period. The employer's status such as HUF, firm or company is irrelevant for the deduction of tax at source under this section. Only employer-employee relationship matters. According to section 192 of the Income Tax Act, there must be an employer-employee relationship between the deductor and deductee for the deduction of tax at source. Moreover, the number of employees employed by the employer also does not matter for deducting TDS.

Section 192 casts the responsibility on the employer, of tax deduction at source, at the time of actual payment of salary to the employee. Unlike the provisions of TDS, pertaining to payments other than salary where the obligation to deduct tax arises at the time of credit or payment, which ever is earlier, the responsibility to deduct tax from salaries arises only at the time of payment. Thus, when advance salary and arrears of salary has been paid, the employer has to take the same into account while computing the tax deductible.

Rate of Deduction of Tax

As per Section 192, the employer is required to deduct tax at source on the amount payable at the **average rate** of income tax. This is to be computed on the basis of rates in force for the financial Year in which payment is made.

The Finance Act of each financial year specifies the rates in force for deduction of tax at source. For F.Y. 2024-25 rate of TDS as specified in Finance Act 2024 is as follows :-

Old Tax Regime Slabs:

Individuals aged below 60 years & HUF

Income Slabs	Tax rate
Up to Rs 2,50,000	NIL
Rs 2,50,001 - Rs 5,00,000	5%
Rs 5,00,001 to Rs 10,00,000	20%
Rs 10,00,001 and above	30%

New Tax Regime Slabs:

Tax Slab for FY 2024-25	Tax Rate
Up to Rs 3 lakh	NIL
Rs 3h lakh - Rs 7 lak	5%
Rs 7 lakh - Rs 10 lakh	10%
Rs10 lakh - Rs 12 lakh	15%
Rs 12 lakh - Rs 15 lakh	20%
Above Rs 15 lakh	30%

Section 192 does not specify a TDS rate. TDS will be deducted as per the income tax slab rates applicable to the taxpayer for the relevant financial year for which the salary is paid.

After the introduction of the new tax regime under section 115BAC, employees will be provided with an option to choose the tax regime, old or new tax regime, at the beginning of the financial year accordingly, the income tax shall be calculated on the total income after consideration of applicable exemptions, deductions etc.,

If the employee fails to choose the tax regime, the default tax regime shall be applied, and taxes shall be calculated. For FY 2023-24 and onwards, the new tax regime is the default tax regime.

The tax calculation is usually done by the employer at the beginning of the financial year. The TDS is to be deducted by dividing the estimated tax liability of the employee for the financial year by the number of months of his employment under the particular employer.

The employer adjusts any excess or deficit arising out of any earlier deduction by increasing or decreasing the number of subsequent deductions during the same financial year.

If the employee has made any payment as an advance tax, then the same can be adjusted for the calculation of TDS. The employee needs to intimate the same to the employer.

How to Calculate TDS?

Step 1: At first, the employer estimates employee's salary for the relevant financial year. This should include basic pay, dearness allowance, perquisites granted by the employer, other allowances granted by the employer like HRA, LTA, meal coupons, etc., EPF contributions, bonus, commissions, gratuity, salary from the previous employer, if any, etc.

Step 2: In the next step, the employer calculates exemptions under Section 10 of the Income Tax Act. The exemptions can be applicable on allowances like HRA, travel expenses, uniform expenses, children's education allowances, etc. Also, reduce the amount of professional tax paid, entertainment allowance and standard deduction of Rs 50,000/75,000/-

Step 3: The employer reduces such exemption from the gross monthly income and the net amount will be treated as the taxable salary income.

Step 4: If the employee has provided the information about other incomes such as rental income from house property or bank deposits, etc. In that case, such amounts should be added to the net taxable salary. Further, the interest paid on housing loans is deducted from the house property income, but if there is no income from house property, there will be a negative figure under the head 'income from house property'. After adding or reducing the said amounts, the calculated figure will be the employee's gross total income.

Step 5: Now, the employer reduces the investments for the year, which fall under Chapter VI-A of the Income Tax Act declared by the employees as per the investment declaration submitted. The declaration may include the amounts of investments such as PPF, employee's provident fund, ELSS mutual funds, NSC and Sukanya Samridhi account. It may also include expenditures such as home loan repayment, life insurance premiums, NSC Sukanya Samridhi account, etc. Similarly, the employer allows a deduction under various other sections such as Section 80D, 80G, etc.

Note: From FY 2023-24, the new tax regime is the default tax regime and your tax calculation will be done as per the new regime tax rates. If you wish to opt for the old tax regime, then you will have to intimate the same to the employer at the time of making the investment declaration. You can exercise this option between the old and new tax regime each year. The employer may deduct his/her income tax according to the tax regime selected.

Also, if the employee has declared to calculate income tax as per the new tax regime, then the Income Tax act does not allow majority of the exemptions and deductions which are allowed in the old tax regime. Hence, the employer will calculate the net taxable income as per the income tax regime chosen by the employee.

Salary from more than one Employer

If someone is engaged with two or more employers simultaneously, he can provide details about your salary and TDS in Form 12B to any one of the employers. Once the employer receives all kinds of information from you, he/she will be responsible for computing your gross salary to deduct TDS.

Subsequently, if you resign and join a different employer, you can provide details of your previous employment in Form 12B to your new employer. This employer will consider your previous salary and TDS will be deducted for the remaining months of the financial year.

If you choose not to provide details of income of other employment, each employer will deduct TDS only from the salary paid by him respectively.

Relief under section 89(1)

There are several deductions you can claim from your total income to bring down the taxable income and thereby reduce the tax outgo.

Section 89, the tax deducted in respect of salary paid to employees of the government, companies, co-operative societies, local authorities, universities, association or bodies, etc. should be adjusted for marginal relief as per Section 89 of the Income Tax Act, if applicable. Marginal relief is provided in respect of salary or arrears of salary being subject to a higher rate of tax due to change in the slab rates.

To get this relief, you must file Form 10E on the official income tax portal. In the absence of this form, you will not receive relief under Section 89.

Compliance requirement to Employer

I. Time Limit to Deposit the Tax Under Section 192

If the TDS is deducted by any employer that is other than the government office:

a. TDS is deducted in March – On or before 30 April

b. TDS is deducted in any month other than March– Within seven days of next month

II. TDS Return to be filed by Employer

The employer has to file a salary TDS return in Form 24Q. The said form is to be submitted every quarter. Details of salary paid to the employees and TDS deducted on such payment is to be reported in 24Q.

Form 24Q consists of 2 annexures – Annexure I and Annexure II

While Annexure I has to be submitted for all four quarters of a FY, Annexure II is not required to be submitted for the first three quarters. Annexure-II has to be submitted in the last quarter, i.e. Jan – Mar quarter only.

Besides, if the employer doesn't deduct TDS or deducts TDS at a lower rate, he'll have to provide the reasons for such non-deduction or lower deduction

III. Due dates for filing Form 24Q

Quarter	Due Date
April to June	31st July
July to September	31st Oct

October to December	31st Jan
January to March	31st May

IV. TDS Certificate

The employer is responsible for providing a TDS certificate to the employee for tax deducted from the salary.

After filing the TDS return, the TDS certificate (Form 16) is generated in a specified format and it can be downloaded from the TRACES utility. Form 16 contains Part-A & Part-B.

Part A of Form 16 mainly contains the details of quarterly TDS deducted and deposited and details of PAN and TAN of the employer, and other information.

Part B of Form 16 is an Annexure to Part A. Part B is to be prepared by the employer for their employees. It contains salary breakup, exemptions, deductions approved under Chapter VI-A and the income tax amount.

V. Consequences of Non-Compliance under Section 192?

Levy of Interest: If the employer does not deduct the TDS on salary or deduct the TDS but does not deposit it to the government, then interest is required to be paid on such amount.

Disallowance of expenses: Also, the employer is only eligible to claim the deduction of salary expense from PGBP income if TDS is deducted on time.

The amount of disallowed salary expenses shall be

30% of the salary payment goes to the resident.

100% of Salary payment to Non-Resident.

Section 192A : TDS on EPF Withdrawal

- Section 192A of the Income Tax Act is related to TDS on premature withdrawals from PF.
- This is a comparatively newer addition to the existing income tax rules. It was added in 2015.
- According to this section, the deduction of tax must be made before the amount withdrawn from an Employee's Provident Fund (EPF) account.
- Tax is to be deducted by the trustees of Employees' Provident Fund Scheme, 1952 or any other person authorized under the scheme to make payment of accumulated sum to employees.

- Tax is deductible at the rate of 10 per cent of taxable component of lump sum payment. However, if employee fails to furnish PAN, then tax shall be deducted at maximum marginal rate.

When TDS u/s 192A is not applicable?

- The withdrawal amount from an EPF account is below ₹ 50,000.
- An individual withdraws an amount from EPF after rendering 5 years of consistent service.
- An individual furnishes Form 15H or Form 15G, along with his or her PAN card.
- If the employment contract of the employee is terminated due to completion of the project for which they were hired
- If the contract was terminated due to the employee's illness
- If the business venture was discontinued

What amount is subject to TDS u/s 192A?

Component of lump sum payment	Is this component taxable in the hands of employee not completing continuous 5 years of service?	Is it subject to TDS if other conditions of section 192A are satisfied?
Employer's Contribution	Taxable under head "Salary"	Subject to TDS
Interest on Employer's Contribution	Taxable under head "Salary"	Subject to TDS
Employee's Contribution	Not Taxable	No TDS required
Interest on Employee's Contribution	Taxable under head "Other Sources"	Subject to TDS

<u>*Taxation of Perquisites</u>

The taxation of perquisites is governed by the Income Tax Act, 1961, in India. A **perquisite** refers to any benefit or advantage provided by an employer to an employee in addition to their salary or wages. These benefits may be taxable in the hands of the employee as part of their income under the head **"Salaries"**.

1. Perquisites are benefits in addition to salary and include:

- Rent-free accommodation
- Use of company car for personal purposes
- Employer-provided club memberships
- Free or concessional education for children
- Loans at concessional interest rates
- Medical reimbursements or facility

2. Categories of Perquisites

Perquisites are categorized into three types:

a. Taxable Perquisites

These are fully taxable in the hands of the employee:

- Rent-free or concessional housing
- Value of free or concessional domestic help
- Value of gifts exceeding ₹5,000
- Employer-provided motor car (used for personal purposes)
- Medical Reimbursement

b. Exempt Perquisites

These are not taxable, subject to conditions:

- Contribution to the Recognized Provident Fund (up to prescribed limits of 12%)
- Leave travel allowance (LTA) as per rules
- Free meals during office hours (up to ₹50 per meal)

c. Perquisites Taxable in Specified Cases

These are taxable only in certain conditions:

- Loan at concessional interest or interest-free loan (above ₹20,000)
- Employer’s contribution to superannuation fund (above ₹7.5 lakh)

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3. Valuation of Perquisites

The Central Board of Direct Taxes (CBDT) has laid down rules for valuing perquisites. Some examples include:

- **Rent-free Accommodation**: Taxable value depends on the city of residence and the employee's salary.
- **Company Car**: Taxable based on usage (personal or mixed use) and engine capacity.
- **Concessional Loans**: Taxable based on the difference between actual and prescribed interest rates.

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4. Tax Treatment of Perquisites

- Perquisites form part of the **Gross Salary** of an employee and are taxed as per the income tax slab rates applicable.
- Employers are required to deduct **TDS (Tax Deducted at Source)** on the value of taxable perquisites under **Section 192**.


THANK
YOU