

Income from Salaries

(Section 15 to 17)

- Income under the head 'Salaries' comprise remuneration in any form(including perquisites) due for services in the nature of employment under an express or implied contract of employment or service Thus the contractual relationship should be as between an employer and employee.
- Income from "salaries" is chargeable to tax on due basis.
- Any amount received, whether in cash or in kind from the employer or ex-employer for the services rendered under the contract of service is chargeable under the head SALARY.

Principles of salary

- **Criteria for employer-employee relationship:**

The key criteria to hold this relationship is that, employee is always bound to work as per direction and supervision of the employer.

- **Payment in employer's capacity:** To treat any payment as salary it is necessary that payer, being the employer, must have made the payment in such (employer's) capacity.

- **Contract of service vs contract for service:** In "contract of service", the employer can direct and control the duties and the manner of performance of employee hence employer-employee relationship exists in such contract. However, in case of "contract for service" the contractee can simply decide and quote the object or target to be achieved but cannot decide or direct the manner of performance.

- **Agent and Principal:** If a person is acting as an agent for his principal, any commission or remuneration earned by the agent is not taxable under the head “Salaries”. This is because, an agent is not the employee of his principal.

- **Salary received by a partner** from its firm shall not be taxable as salary, because there is no employer-employee relationship between the firm and the partner. Such salary shall be taxable under the head “Profits & gains of business or profession”.

- **Salary received by proprietor** from his proprietorship firm is not an income. As proprietor and proprietorship firm are the same person and no one can earn from himself.

- **Remuneration to director** from his company can be treated as salary only if the director is employee of the company, otherwise the same shall be taxable under the head “Income from other sources”. Note: Directors’ sitting fee is taxable under the head “Income from other sources”.

- **Pension received by the widow** or legal heir of deceased employee is not taxable as salary as no employer-employee relationship exists between the payer and the payee. However such amount shall be taxable under the head “Income from other sources”.

- **Remuneration received by Judges** is taxable under the head “Salaries” even though they are not having any employer. Concluding the above discussions, a payment received for services rendered, from a person other than employer, is not taxable under the head “Salaries” but may be taxed under the head “Profits & gains of business or profession” or “Income from other sources”.

SALARY [SECTION 17]

Salary includes;

- Wages
- any annuity or pension,
- any gratuity any fee, commissions, perquisites or profits in lieu of or in addition to any salary or wages.
- Any advance of salary; any payment received by an employee in respect of any period of leave not availed of by him.
- employer's contribution to recognized provident fund in excess of 12% of salary of an employee.

Computation of income from salary

Particulars	Amount
Basic Salary
Add:
1. Fees, Commission and Bonus
2. Allowances
3. Perquisites
4. Retirement Benefits
5. Fees, Commission and Bonus
Gross Salary
Less: Deductions from Salary
1. Entertainment Allowance u/s 16
2. Professional Tax u/s 16
Net Salary

Specific Exemptions..

GRATUITY [Sec 10 (10)]

- Gratuity received during continuation of service is Fully Taxable.
- Maximum exemption available under this section during life time of the assessee cannot exceed ₹ 10,00,000/
- Completed year of service include period of service under current employer as well as previous employer (if no gratuity has been received from former employer at that time.)

Sr	Particulars	Exemption
1	Gratuity Received by Govt & Local Authority employees.	Fully Exempt
2	Gratuity in case of employees covered by Payment of Gratuity Act,1972. <i>(Here, Salary means, = Basic + DA entire)</i>	Lower of following, a. Actual Gratuity b. ₹ 10,00,000/- c. Salary last drawn x [15/26] x completed years of service or part thereof in excess of 6 months.
3	Gratuity in respect of other employees. <i>(Here, Salary means, = Basic + DA, if terms of employment so provide + Commission, if based on fixed % of turnover.)</i>	Lower of following, a. Actual Gratuity b. ₹ 10,00,000/- c. Salary last drawn x [15/30] x completed years of service. <i>{ ignore fraction. Only completed <u>years</u> to be taken, even more than 6 months not to be considered.}</i>