

INCOME TAX

What is included in Income From Salary?

Income under the head Salaries includes, Wages, Annuity, Pension, Gratuity, Fees, Commission, Perquisites, Profits in lieu of or in addition to Salary or Wages, Advance of Salary, Annual accretion to the balance of Recognized Provident Fund, Transferred balance in Recognized Provident Fund, Contribution by Central Government or any other employer to Employees Pension Account, etc.

What is profits in lieu of Salary?

An employee sometimes receives bonus or commission or remuneration for something that he has done during the course of employment. This is included in the income from Salary as Profits in lieu of Salary.

What is meant by Perquisites?

As an employee you tend to receive certain benefits from your employer like rent free accommodation, motor car, interest free loans and advances etc. Such benefits received on account of employer-employee relationship are 'perquisites' or 'perks'.

How are perquisites taxed?

The perquisites or perks received by an employee are valued in monetary terms as per the computation provided in Income Tax Act and Rules and such a value or amount is included in Income under the head 'Salaries'. These are also included for the purpose of computation of TDS.

I have received non-monetary perquisites from the employer on the value of which he has paid tax. Do I need to include the amount of such tax in my Salary income?

No. The tax amount on such non-monetary perquisite is exempt u/s 10(10CC) of the IT Act.

What are allowances?

An allowance is a financial benefit allowed by the employer to an employee with a specific purpose attached to such amount of allowances. Some of such allowances are for incurring expenses in discharge of duties by the employee.

How are allowances taxed?

The allowances are taxed as Income under the head 'Salaries'. These are also included for the purpose of computation of TDS.

Allowances are granted to the employees by the employer. These are neither due nor mandatory for the employer to give to employees. Then why are they taxed as income from SALARY?

Clause (c) of section 15 includes Salary allowed in taxable income. The allowances are covered under this clause. (Sect. 15 & 17, Income Tax Act)

What is Pension and how is it taxed?

The pension is a periodical allowance or an amount of stipend received by a person on account of a past service or a particular merit of a person. The pension is actually a compensation for past service and is taxed as 'Income from SALARY'.

What is Gratuity and how is it taxable?

Gratuity is given by the employers to their employees for the services rendered by them during the period of employment. It is usually paid at the time of retirement but it can be paid before also. An employee becomes eligible for gratuity only after completion of five years of service with employer. It is taxed as 'Income from Salary'. However, the taxable amount of gratuity should be computed properly.

I am an employee of an Insurance Company. I am paid a commission or incentive on the business I bring to my company. How should this commission or incentive be treated?

Since in addition to Salary payable, you also receive incentive bonus/commission based on the insurance business brought by you, the additional income so derived during the course of and pursuant to the terms and conditions of the employment can be brought to tax only under the head 'Salaries', and not under 'Business Income'.

How is Leave Travel Concession taxed?

If the employee is allowed a leave travel allowance or concession by his employer towards travel for himself and his family (includes spouse, dependent parents and siblings of the employee and his two children) in India, such an amount of allowance is exempt from tax. This is not allowed for travel outside India nor is it allowed beyond the actual expenses incurred by employee on his travel. The exemption can be availed only in respect of two journeys performed in a block of four calendar years.

What is the taxability of the Salary and pension received by UN employees in India?

Salaries received by employees of the UNO or any person covered under the UN (Privileges and Immunities) Act, 1947 as well as pension received by them from the UN will be exempt from income tax.

I receive a certain income from someone regularly at certain intervals. How do I determine whether it is income from Salary, other sources or business income?

An income can be taxed as income from Salary only when there is an employer-employee relationship. Your relation with the person paying income to you may be tested on the parameters: 1. Whether the payer is in complete control of your activity 2. Whether he controls how you carry it out, 3. Whether the payer has unquestioned right to control the manners and method of your activity and you have to obey him. If the answers to these questions are 'YES' then the income may be taxed as income from 'Salary', and if answer to any of these or all of these is 'NO' then the income may not be taxed as income from 'Salary'.

I am the Director of the company. Is my Salary received from company to be taxed as income from 'Salary'?

A director of a company is not a servant but an agent inasmuch as the company cannot act in its own person but has only to act through directors who *qua* the company have relationship of an agent with the company. In this case, their income is taxable as income from 'Other sources'. However, if the director is working to carry out certain functions for a company and the company can prove it on facts then he may be treated as employee of the company and his income may be taxed accordingly as income from 'Salary'.

Is the income received by the Managing Director of the company to be taxed as Income from 'Salary'?

Whether or not a managing director is a servant of the company apart from being a director can only be determined by the Articles of Association and the terms of his employment. If the company is itself carrying on the business in terms of its articles, and the managing director is employed to manage its affairs under the agreement, he could be dismissed or his employment could be terminated by the company if his work is not satisfactory, his income from the company deserves to be treated as income from 'Salary'.

I am a professional tutor. Incidentally, I teach regularly at a school as per the offer made by them and I get paid as per my hours of teaching work. Is my income liable to be taxed as income from Salary?

No. On these facts there doesn't exist an employer-employee relationship since you get paid for your services and time spent. The income may be liable to be taxed as business income.

Can the income of remuneration, commission and bonus received from a partnership firm by a partner be taxed as income from 'Salary'?

No. It has to be treated as and taxed as income from Business and Profession.

Judges of High Court and Supreme Court are not subject to control about the manner and method of their work. How is their income treated?

The Salary of a Judge of a High Court and the Supreme Court is income and is taxable by Act of Parliament in the same manner as the income of any other citizen. It is true that such judges have no employer but that, ipso facto, does not mean that they do not receive salaries. They are constitutional functionaries. Articles 125 and 221 of the Constitution deal with salaries of such judges, and expressly state what the judges received are salaries. Hence, their income is treated as Income from 'Salaries'.

How is the remuneration received by Chief Ministers treated and taxed?

Pay and allowances received by the Chief Ministers are assessable as Salary and not as income from other sources, in view of the provisions of article 164 of the Constitution.

How is the remuneration received by MLAs/MPs/elected representatives is treated and taxed as?

The basic ingredient of employer-employee relationship 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. They may be receiving remuneration after swearing in but that is not attracted by section 15 of the Income tax Act. Hence, remuneration received by MLAs/MPs/elected representatives is taxes as 'Income from other sources'.

In the hospitality and entertainment Industry, customers often pay tips to waiters and artistes who often are employees of a certain organisation. Is this income by way of tips taxed as income from 'Salary'?

Since the basic ingredients of employer-employee relationships are missing in this scenario, the income from tips is not to be taxed as income from Salary but is to be taxed as income from other sources. But if such tips are paid by an Employer to an Employee, this income is to be taxed as Income from 'Salary'.

My employer paid me Salary for a part of the financial year but my services were rendered for the full year. Do I need to pay tax on the entire amount of Salary due to me from the employer?

Clause(a) of section 15 provides that any Salary due from an employer or a former employer to an assessee in the previous year *whether paid or not*, is chargeable to income-tax under the head 'Salaries'. In other words, the Salary accrued or which becomes due need not be actually paid in order to make it chargeable income. What is relevant is whether the Salary is due to an employee from an employer. Income from 'Salary' is chargeable to tax on "due basis" or "receipt basis" whichever is earlier.

What is the tax treatment of amount of compensation received on Voluntary Retirement (VRS)

Compensation on account of VRS is taxable as profits in lieu of Salary as per section 17(3) of the Income Tax Act. But in case of VRS by employees of Government/Semi-Government/Local Authorities/PSUs etc, this compensation is exempt up to the amount of Rs. 500,000/-. However, no exemption under any other section for this amount is admissible to the taxpayer nor is he eligible to claim the benefits u/s 89(1) of the Act.

How is the VRS compensation computed?

The compensation of VRS is computed by the authority as per the scheme framed by that authority. It should meet following requirements:

i)The amount receivable on account of voluntary retirement of the employee does not exceed the amount equivalent to 'three months' salary for each completed year of service,

OR

ii)Salary at the time of retirement multiplied by the balance months of service left before the date of his retirement on superannuation.

I am entitled to the compensation from the employer on account of VRS in a particular year but have received the same in the succeeding years in instalments. When is it taxable?

In terms of section 15 and 17(3) the VRS compensation has accrued in the year in which your right to receive the same became crystallised. Therefore, the entire compensation will be taxable in the first year when it became due.

I am an employee of a Foreign Government working in India. Is my Salary paid by my employer i.e. Government, taxable in India?

Salary paid by a foreign Government to its employees serving in India is taxable under the head "Salaries" u/s 15 of the 1961 Act. The words 'an employer' occurring in clause (a) of that section are wide enough to include a foreign Government. But if you are not a citizen of India then you enjoy exemption on such income.

What is Leave Encashment?

Some employers allow the employees to accumulate leave in case the employee is not availing the admissible leave. This unavailed leave is eligible to be encashed in monetary terms by the employees from employer. This monetary encashment is called is Leave Salary or Leave Encashment Salary (**Sec. 17, Income Tax Act**)

Is leave encashment taxable as income from SALARY?

Yes. As per section 17(1) (va) of the Income Tax Act, leave encashment is taxable as income from 'Salary'

I am the legal heir of a Government Servant who died in harness. I have received certain amount as leave Salary encashment upon his death, in the capacity of his legal heir. Is it taxable as income from Salary?

This receipt in the hands of the family is not in the nature of one from an employer to an employee. The deceased had no right or interest in this receipt. This payment is only by way of financial benefit to the family

of the deceased Government servant, which would not have been due or paid had the Government servant been alive. In view thereof, the amount will not be liable to income-tax.

I am an employee of a Multinational Corporation and working in India. But my Salary is NOT paid in India but is paid outside India. Is my income from Salary taxable in India?

Salary accrues where the services are rendered even if it is paid outside India; Hence, the income received outside India against services rendered in India will be taxable in India. (Sec 15 & 9, Income Tax Act).

I am an employee of the Central/State Government in India. I am deployed on official duties outside India. Is my Salary paid to me in India taxable as income from Salary?

If a Citizen of India renders services outside India, and receives Salary from the Government of India, it would be taxable as Salary deemed to have accrued in India.

(Sec. 15 & 9, Income Tax Act)

The income received by me from my employer does not fit into any of the items specified in Section 15 and 17 of the IT Act. In that case, is my income still taxable as Salary income?

The definitions of various items specified in section 17 are exhaustive and comprehensive. They are also inclusive of the items which are not specified in any of the respective sections. Therefore, if the income received from the employer satisfies the criteria of receipt on account of 'employer-employee' relationship, then the income qualifies as 'Income from Salary'.

What is Tax Free Salary?

When the employer agrees to pay tax on the Salary paid to the employee without applying any cap on the amount of tax to be paid, it can be said to be a Tax Free Salary.

In case of Tax Free Salary, is the amount of income tax paid by the employer required to be included in the taxable income from Salary?

Yes. The amount of tax paid or payable by the employer must be included in the income from salaries.

My employer gives me tax allowance and does not pay my tax by himself. Do I need to include this allowance in my income from salaries?

Yes. It is a part of income from salaries.

I have received a lumpsum amount as advance Salary or commuted pension or arrears of Salary or gratuity or leave encashment or family pension which would have been due in earlier years. How should it be treated for tax purposes?

In the event of receipt of a lumpsum amount of Salary or other such sums, the tax on the total income may be more than the tax on the normal income. To safeguard the taxpayer from this additional tax burden, benefit is provided in section 89(1) of the Act. It is available only in respect of income from Salary and income from other sources (family pension). It is not available when the taxpayer avails exemption from tax in respect of VRS compensation.

I have received the arrears of Salary through the Order of the Court. Am I eligible for the benefits u/s 89?

Yes. The section does not prescribe the modes of receipt of arrears or advance Salary. Once you have received it, the benefit is admissible to you.

Is the benefit u/s 89 admissible to the lumpsum amount received by way of leave encashment?

Yes. It is available as per CIRCULAR : NO. 431 [F. NO. 174/43/82-IT(A-II)], DATED 12-9-1985 of CBDT, New Delhi.

How should I communicate the benefits u/s 89 and the consequent rate of deduction of TDS to my employer?

You have to calculate the amount of tax after availing benefits of deduction u/s 89 of the Act and submit it to your employer in Form No.10E. (Rule 21A, Income tax Rules, 1962).

Is it necessary for my employer to deduct income tax from my Salary?

Yes. It is his duty as per law to deduct tax from the income paid to you by him. In case you think that you may not have any tax liability, you may inform your employer about your claims (including loss for setting off) and demonstrate that there is no tax liability in your hand for that particular year.

How do I inform my employer about my estimated tax liability of a particular assessment year?

As per Rule 26B, you may inform about your other incomes, your loss or TDS deducted somewhere else through a statement prepared with requisite proofs.

What is the rate of deduction of tax (TDS) in case of income from Salary?

There is no fixed rate of deduction in case of Salary income unlike other incomes or payments. However, the TDS is deducted considering the likely tax amount on your income as per the rates in force for that particular assessment year.

What will happen if I do not provided my PAN to my employer deductor?

Any person who is entitled to receive the amount (income) on which tax is deductible, must provide PAN to the deductor. If you have not provided your PAN then your employer may deduct tax from your income at higher of the rates in force or 20% of the income credited to your account.

Inadvertently, I have given wrong PAN to my employer deductor. What are the consequences?

The consequences of providing wrong PAN are identical to those of not providing the PAN.

Besides Salary income I have other income on which tax is not deductible. Do I need to inform my employer about this for deduction of tax?

You may inform your employer so as to enable him to determine the correct tax deductible from your income. In case you don't provide these details to your employer, you may wish to pay advance tax on the income other than income from Salary.

I have capital loss in this year and I think my income from Salary may be reduced on account of that, should I inform my employer about the same?

Loss other than loss from house property is not eligible to be considered for set off against tax liability on the income from Salary. Hence the information would be irrelevant to the employer.

What is Certificate in Form No. 16?

The deductor of income tax is required to inform the deductee about the amount paid to deductee and the amount of tax deducted and deposited on behalf of the employee by the deductor. This information is provided by the deductor to the deductee through a certificate in Form No. 16.

[Learn More about Form No. 16\(Link\)](#)

What is Form No. 16A?

The certificate in Form No. 16 is issued by the employer in case of income from Salary. In respect of other types of incomes, certificate in Form 16A is issued.

What is Form No. 16B?

When a taxpayer sells an immovable property for a sale consideration more than Rs. 50 lakhs, the person purchasing is required to deduct tax at the rate of ONE percent of such sales consideration. After such deduction., the purchaser has to issue Form 16B to the seller indicating the details of such a transaction of immovable property.

What is Form No. 16C?

When a taxpayer pays rent more than Rs. 50000 per month to any person, he is required to deduct tax at the rate of 5% on such rent paid. After such deduction, the deductor is required to issue a certificate of deduction in Form No. 16C to the deductee.

Rules for Setting off losses**Can there be a loss under the head 'Salaries'?**

No. There cannot be a loss under the head of 'income from salaries'.

I have a loss under the head of 'Short term capital gains'. Can I set it off against income from salaries?

No. It cannot be set off against income from salaries.

I have a loss under the head of 'Long term capital gains'. Can I set it off against income from salaries?

No. It cannot be set off against income from salaries.

I have a loss under the head of 'Income from business and profession'. Can I set it off against income from salaries?

No. It cannot be set off against income from salaries.

I have loss under the head 'Income from House Property'. Can I set it off against income from Salaries?

Yes, it can be set off against income from salaries BUT only up to Rs. 2,00,000.