NEWSLETTER

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M. V. DAMANIA & Co.

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INTERNATIONAL TAX

Overview of Section 195 of the Income Tax Act

With the increased globalization, more and more multinational Companies are setting up their business operations in India. India being the center stage of a lot of business activities in terms of Inbound Investments and Outbound Investments, it has been frequently observed that now even smaller Companies make payment to a foreign Companies or Non-resident individuals for variety of transactions like dividends, interest, royalties, fees for technical services etc.

Section 195 of The Income Tax Act deals the tax treatment of all such payments made to a non-resident. In this article, we have tried to understand the overview impact of the section.

Index:

- Overview of Section 195
- Persons covered under Section 195
- Payments covered under the section
- Consequences of Non or short deduction

Overview of Section 195

- Obligation on every person responsible for making payment to a non-resident for deducting appropriate tax at source corresponding to the tax liability of the non-resident under the Act.

- The objective is to ensure collection of tax at source so that the Tax authorities are not put to any difficulty of collecting it from non-resident who may not be easily traceable or their assets in India may not be sufficient to recover all their tax dues.

- Salary payment to a non-resident is not covered here since such payments are covered under section 192 of The Act.

- Tax deduction at source cannot be equated with completion of assessment of income of the non-resident. It is only tentative and subject to final adjustment at the time of final assessment.

- Section 90(2) of the Act provides that when India has entered into a Double Tax Avoidance Agreement with another country, then any person to whom such treaty applies, the provisions of the treaty shall apply to the extent it is beneficial to him.

- Any such person can resort to the treaty provisions to the extent it is beneficial to him in terms of chargeability of tax on specific sources of income or lower rate of tax on any income.

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Persons covered under Section 195

- Even Individuals and HUFs who are otherwise exempted from domestic payments are covered under section 195.
- A non-resident making payment to another non-resident is also liable to deduct tax at source under this section if the income in question is taxable in India.
- A "resident but not ordinary resident" payee is not covered by this section.
- Income earned by an Indian branch of a foreign bank is chargeable to tax in India. Therefore, any payment made to such branch is subject to tax deducted at source under this section. Practically, most of these branches obtain a certificate of Nil deduction of tax at source under section 195(3) from the Assessing Officer.

Payments covered under Section 195

- Any income which is received or is deemed to received in India
- Any income which accrues or arises or is deemed to accrue or arise in India.
- CBDT Circular No. 786 has clarified that the question of TDS under section 195 arises only if the payment to resident is chargeable to tax in India.
- Tax is required to be deducted at source at the time of accrual of income or its payment whichever is earlier.
- With regards to payment of salaries, the obligation to deduct tax at source under section 192 arises only at the time of payment.
- Section 195 is applicable even when the consideration for payment with respect to the income is in kind.
- Payment of interest on income tax refund under section 244A by the Income Tax Department is also liable to tax deduction at source under this section.
- When such payer believe that the whole of the sum payable to non-resident is not chargeable to tax, he may approach the Assessing Officer for him to determine that portion of sum that is chargeable to tax.
- The Payee ie. The non-resident may also approach and obtain a certificate from the Assessing Officer that such payment may be made without deduction of tax at source or at a rate that is lower than the prescribed rate of tax in force.
- If the tax is calculated by applying the rates as specified in the domestic Act, the same should be increased by the applicable surcharge and cess. However, when the treaty rates are applied, no surcharge or cess is leviable.
- According to Section 195A, if by virtue of any agreement, the tax has to be borne by the payer, the income shall be grossed up for the purpose of determining the TDS liability.

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- As per Rule 26, for the purpose of TDS on any income payable in foreign currency, the rate of exchange to be used shall be the "Telegraphic Transfer Buying rate" such currency as on the date on which the tax is required to be deducted at source. The telegraphic transfer buying rate means the exchange rate adopted by State Bank of India for buying such currency.

- The tax paid erroneously can be refunded only under following circumstances:

  - Contract is cancelled and remittance not made to non-resident.
  - Contract is cancelled, the remittance is made but the same is returned back.
  - The amount so remitted is subsequently exempted by amendment in law of notification.
  - An order is passed under section 154 or 248 or 264 reducing the tax deduction liability.
  - Deduction of tax twice from the same income by mistake.
  - Payment of tax was done by "grossing up" which was not required.
  - Payment was made under the domestic Act at higher rate of tax when lower rate was prescribed under the treaty.

- No interest is allowable on the refund of such TDS.

- Circular No. 10 of 2002 by CBDT has prescribed that for every payment to non-resident, payer would need to give an Undertaking and obtain a CA certificate with regards to the Tax deduction at source.

Consequences of Non or short deduction

- When the payer has not deducted the required tax at source or after deduction has not paid the tax so deducted, the Assessing Officer can recover the tax so not withheld from the payer treating him/her as an "assessee in default".

- Interest @ 1% per month or part of the month is payable by such person from the date on which the tax was deductible till the date on which such tax is deducted and 1.5% per month or part of the month from the date on which such tax was deducted till the date such tax is actually paid.

- It has been held by courts that in case of shortfall of TDS, if the tax has been paid by the payer then no further tax can be recovered from the payer.

- In addition to interest, the assessee may also be liable to pay penalty under section 221 as directed by the Assessing Officer unless the assessee proves to the satisfaction of the Officer that the default was for good and sufficient reasons.

- The penalty so levied by the Assessing Officer in no case should exceed the amount of tax in arrears.

- Section 271C provides for levy of penalty equal to the amount of tax not so deducted by a Joint Commissioner of Income Tax for failure to deduct tax at source wither in full or in part.

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- The assessee shall not be ceased to be liable to any penalty merely by the reason that before levy of penalty the tax has subsequently been paid.
- Where any tax is required to be deducted from the payment to any non-resident, the expenditure is not deductible from "Profit and Gain of Business or Profession" unless the tax has been deducted thereon and paid during the previous year or in the subsequent year before the time prescribed under the Act.
- In case of short deduction of tax, only the proportionate amount of expenditure should be disallowed from the Business Income.

Compiled by: Mr. Malay Damania

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ASSURANCE AND AUDIT

Brief overview and Implementation challenges - Revised Schedule VI

Till 2011, corporate sectors are preparing and presenting the Financial Statements in schedule VI format as prescribed by Ministry of Corporate Affairs. **The exiting Schedule VI** of the Indian Companies Act has been in existence for almost five decades. Considering the economic realities of the present day, innovations in transaction structuring, advancement in accounting principles and global financial reporting practices, a major overhaul of the Schedule has been long overdue. In this context, **introduction of the revised Schedule** is a welcome change.

Convergence of the **presentation principles** of corporate financial reporting to the **international practices** is a critical issue. India so far followed a distinguished unclassified presentation style like classifying liabilities by security, analyzing current assets and current liabilities without having distinct accounting definition, net presentation of current assets, separate presentation of negative profit taking out from equity, and mixing up tangible fixed assets and intangible assets. In addition, the existing Schedule VI does not prescribe any format for the presentation of profit and loss account leading to non-comparability. Part II of the Schedule VI also required lots of quantitative disclosures which might have lost their relevance over the decades as India moved from controlled economy to a growing economy.

Considering the above facts, **a new Schedule VI** (General Instruction for preparation of Balance Sheet and Statement of Accounts) has been notified by the Ministry of Corporate Affairs and made **applicable for the financial year commencing on or after 1st April 2011**.

The **revised Schedule** brings the financial statements prepared under Indian GAAP closer to **international disclosure practices**, albeit with a few differences. Overall, the attempt is largely successful in modernizing and simplifying the Schedule and making it more relevant to the present needs.

An **important feature** of the revised Schedule is that the **disclosure requirements** of the erstwhile Schedule, which were considered to be redundant, have been omitted and certain further disclosure requirements have been added. It is pertinent to note that the existing accounting standards do not lay down any format for the

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presentation of the financial statements but lays down certain specific disclosure requirements. Hence the notification makes it very clear that the **disclosure requirements** of the **revised schedule VI** are **in addition** to **the existing disclosure requirements** of **accounting standards**. It is also worth noting that the revised schedule VI is not in accordance with the ongoing International Financial Reporting Standards (IFRS) convergence project.

It introduces some significant **conceptual changes** such as current-non-current classification of assets and liabilities, primacy of accounting standards, reporting formats and so on. Classification of items of assets and liabilities with respect to current and non-current could have a domino/multiplying effect and may result in substantial impact on companies in complying with banking and other regulatory norms.

Additionally, as companies gear to meet up with the challenges arising from the new Schedule VI, it may be pertinent for companies to re-look at the current reporting structure. It may therefore be worthwhile to consider best practices in terms of a robust financial reporting system and MIS. Companies need to focus on these conceptual changes and implementation issues.

A.Critical Implementation issues are:

- Reclassification of Previous year/ Period figures. Substantial efforts required by Companies to recast and auditors to audit previous period figures
- Additional disclosures in share capital
- Concept of Current/ non-current assets and liabilities
- Concept of operating cycle
- Ageing of Receivables
- Analysis of cash and cash equivalents
- Presentation of share application money
- Segregation of Investment property
- Classification of investments, loans and advances
- Presentation of exceptional and extra-ordinary items
- Developments of notes to accounts
- Computation of CMA Data and accounting ratios for banking and other regulatory authorities
- Preparation of consolidated financial statements for entities having subsidiaries, associates and Joint Ventures.

The revised Schedule VI introduces various **new concepts** and **disclosure requirements**. The practical application of the revised schedule however, throws up a number of questions; the answers to which may not be straight-forward or may need additional guidelines from the MCA or the Institute of Chartered Accountants of India (ICAI).

Compiled by: Mr. Bharat Jain

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TRANSFER PRICING

An understanding of the Transfer Pricing Origin in India

Meaning:
Layman's understanding of Transfer pricing would mean the price that is assumed to have been charge by one part of a company for products and services it provides to another part of the same company, in order to calculate each division's profit and loss separately.

However, in the context of a Multi National Enterprise (MNE), "Transfer pricing" is the mechanism adopted by MNEs for valuing the goods and services traded with their Subsidiaries or Associate Companies abroad so as to lower taxes and to maximize profits.

The yardstick for acceptance of such transfer pricing is the "Arms Length Price" which should represent the price charged in comparable transactions between independent parties (i.e. parties which are not associated and can be assumed to operate independently), where price is not influenced by the relationship or business interest between the parties in the transaction. The Transfer Pricing policies of several countries are based on the OECD (Organization of Economic Cooperation and Development) Guidelines on the subject.

It is estimated that 60% of all global international trade is carried on between related or associated entities. To counter the effect of transfer of profits using favourable transfer prices the most prolific development in international tax systems in many developing and developed countries is introduction of extensive transfer pricing regulations. Further, the recent global crisis has increased the urgency of the countries to protect their tax base against aggressive planning by the multi-national companies.

An example will make it apparent why transfer pricing is necessary:

Let us consider a company "ABC Inc", a profitable manufacturing company in Spain that buys "raw materials" from its own subsidiary (ABC Pvt. Ltd.) in India. Now how much the parent company, ABC Inc pays its Indian subsidiary, ABC Pvt. Ltd.-the transfer price-will determine how much profit the Indian company (ABC Pvt. Ltd.) reports and how much local taxes it pays. If ABC Inc. pays below normal local market prices, the Indian unit may appear to be in financial difficulty, even when the completed product is sold.

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Now from the perspective of the tax authorities of Spain, the tax department might agree with the profit reported at their end by ABC Inc. But the tax department in India will not appreciate that they don't have the expected profit to tax on their side of the operation.

If ABC Inc. bought its raw materials from an independent company in India it would pay the market price and the supplier would pay taxes on its own profits in India in the normal way. This approach, as one can easily fathom, gives scope for transfer pricing manipulation where the parent or subsidiary, whichever is in a low-tax jurisdiction, can be shown to make a higher profit by fixing the transfer price appropriately and thereby minimizing its tax incidence.

So, when the various parts of the organization are under some form of common control, it may seem that transfers are not subject to the full play of market forces and the correct transfer price, or at least a range of reasonable transfer prices needs to be arrived at.

In this context, it becomes important to establish the right price, called the "transfer prices", for intra-group, cross-border transfer of goods, services, property, tangibles etc. Transfer pricing is thus the general term for the pricing of cross-border, intra-group transactions between related parties.

Origin/History of Transfer Pricing in India:
It is interesting and surprising to observe that the idea of transfer pricing is not conceptually new; in fact well before the Indian Income Tax Act 1922, in a period dating back to the British era there were essentially transfer pricing issues revolving around the determination of income between British India and erstwhile states not forming part of British rule.

In CIT vs. Ahmedbhai Umarbhai & Co. (1950 A.D.), the Supreme Court upheld the claim of the taxpayer that manufacturing profits arising in the Indian state cannot be taxed in British India at the time of sale.

Similarly in CIT vs. Abdul Aziz Sahib, the Madras High Court approved the action of the tax authorities in estimating the income on the basis of average rate of profits made by other manufacturers and also considering the profits of the taxpayer in previous years.

Transfer pricing provisions under 1922 & 1961 of Income Tax Acts prior to Finance Act, 2001:
Section 42(2) of the Income tax act (ITA), 1922 provided that where a non-resident carried out business with the person resident in the taxable territory and it appeared to the Assessing Office (AO) that on account of a "close connection" between such persons the business was so arranged that the business conducted by the resident with the non-resident either yielded no profit or less than ordinary profit which may be expected to arise in that business then the AO was empowered to tax profits which were derived or which may reasonably be deemed to be derived from the business in the hands of a person resident in the taxable territory.

Same provisions of section 42(2) of the ITA 1922 were reproduced in section 92 of ITA 1961.

Though there was a provision for transfer pricing in the erstwhile sections 42(2) and section 92 of the ITA 1922 and 1961 respectively, the fact is that these provisions were vague as the terms "close connection" was not defined. Further no detailed methodology was prescribed to compute what comprised "ordinary profits". The provisions did not specifically cover intangibles or transfer of services.

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Due to this overall lack of clarity, the Indian tax authorities were reluctant in using the provisions of section 92 of the ITA.

Introduction of Sections 92 to 92F (Chapter X) vide Finance Act, 2001:

CBDT vide Circular No. 12 dated 23rd August, 2001 has explained the need to introduce sections 92 to 92F in the ITA 1961 as follows:

"The aforesaid provisions (Sections 92 to 92F) have been enacted with a view to provide statutory framework which can lead to computation of reasonable, fair and equitable profit and tax in India so that the profits chargeable to tax in India do not get diverted elsewhere by altering the prices charged and paid in intra-group transactions leading to erosion of our tax revenues."

Hence it is evident from the above circular that the amendment of section 92 and the introduction of sections 92A to 92F was to address the shortcomings of the then existing section 92 of the ITA.

Under the existing section 92 of the Income-tax Act, which was the only section dealing specifically with cross border transactions, an adjustment could be made to the profits of a resident arising from a business carried on between the resident and a non-resident, if it appeared to the Assessing Officer that owing to the close connection between them, the course of business was so arranged so as to produce less than expected profits to the resident. Rule 11 of the Income Tax Rules, prescribed under the section, provided a method of estimation of reasonable profits in such cases.

However, this provision (i.e. the erstwhile section 92) was of a general nature and limited in scope. It did not allow adjustment of income in the case of non-residents. It referred to a "close connection" which was undefined and vague. It provided for adjustment of profits rather than adjustment of prices, and the rule prescribed for estimating profits was not scientific. It also did not apply to individual transactions such as payment of royalty, etc., which are not part of a regular business carried on between a resident and a non-resident. There were also no detailed rules prescribing the documentation required to be maintained.

With a view to provide a detailed statutory framework which can lead to computation of reasonable, fair and equitable profits and tax in India, in the case of such multinational enterprises, the Act has substituted section 92 with a new section, and has introduced new sections 92A to 92F in the Income-tax Act, relating to computation of income from an international transaction having regard to the arm's length price, meaning of associated enterprise, meaning of international transaction, computation of arm's length price, maintenance of information and documents by persons entering into international transactions, furnishing of a report from an accountant by persons entering into international transactions and definitions of certain expressions occurring in the said sections.

The newly substituted section 92 provides that income arising from an international transaction between associated enterprises shall be computed having regard to the arm's length price. Any expense or outgoing in an international transaction is also to be computed having regard to the arms length price. Thus in the case of a manufacturer, for example, the provisions will apply to exports made to the associated enterprise as also to imports from the same or any other associated enterprise. The provision is also applicable in a case where the international transaction comprises only an outgoing from the Indian assessee.

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A summary of the transfer pricing provisions under the current Income Tax Act is shown below:

Section & Rules	Provisions
Section 92	Income computation, expenses, cost contribution arrangement
Section 92A	Definition of Associated Enterprise
Section 92B	International Transactions
Section 92C (Rule 10B/10C)	Arm's Length Price Computation
Section 92C/92CA	Transfer Pricing Officer and AO's powers
Section 92D (Rule 10D)	Documentation requirements.
Section92E (Rule 10E and Form 3CEB)	Chartered Accountant's Report
Section 92F (Rule 10A)	Definitions
Section 271(1)(c), 271AA, 271BA, 271G	Penalties

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INCOME TAX

The term "perquisite" is defined in Webster's New International Dictionary as "a gain or profit incidentally made from employment in addition to regular salary or wages , especially one of a kind expected or promised". Perquisite means any casual emolument or benefit attached to an office or position in addition to salary or wages.

Thus following propositions should be kept in mind while deciding taxability or otherwise of perquisites.

- **Personal benefit**-"Perquisite" denotes something that benefits a person by going into his/her own pocket, it does not, however, cover a mere reimbursement of necessary expenses incurred by him/her.
- **Cash or kind**- It may be provided in cash or kind.
- **Should be provided by employer**- Perquisite are included in salary income if they are received by an employee from his employer (may be former, present or prospective).
- Perquisite, received from a person other than employer, are taxable under the head "**Profit and gains of business or profession**" or "**Income from other sources**".
- **Enforceable right**- A benefit or advantage would be taxable as perquisite only if it has a legal origin. As an unauthorized advantage taken by an employee without his employer's authority would create a legal obligation to restore such advantage, it would not amount to "perquisite" taxable under the act.
- **Personal accident policy**- Premium paid by employer towards personal accident policy of employee is not taxable as perquisite.
- **Pensionary deferred annuity benefits**- Payment made by an employer to provide pensionary/ deferred annuity benefit to his employees are taxable as perquisite only when a vested interest accrues to the employee.
- **Contingent rights**- One cannot be said to allow a perquisite to an employee if the employee has no right to the same. It cannot apply to contingent payment to which the employee has no right till the contingency occurs.

Perquisite is taxable under the head salary only if all the following conditions are satisfied.

1. Allowed by an employer to his employee
2. Allowed during the continuance of employment

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3. Directly dependent upon on service
4. Resulting in the nature of personal advantage to the employee
5. Derived by virtue of employer's authority

Section 17(2) of Income Tax Act 1961 gives an inclusive definition of perquisite, as including

<table>
<tr><th>Description of Perquisites</th><th>Valuation/Taxability</th></tr>
<tr><td>1. Unfurnished accommodation without rent or at concessional rent.</td><td>Following accommodations are not taxable
1. Provided at remote area.
2. Hotel accommodation for 15 days during previous year (immediately after transfer to new location).
3. Provided to Judge of High Court/Supreme Court, Union Minister. Leader of Opposition in Parliament and Official in Parliament.
Valuation
Central & State Government employee: License fees determined by the Government in accordance with rules framed by the Government for allotment of houses to its officers.

Other Employee
<table>
<tr><th>Population of the city (2001 Census)</th><th>Owned by Employer</th><th>Taken on lease</th></tr>
<tr><td>> 25 lakhs</td><td>15% of salary</td><td>Amount of lease rent or</td></tr>
<tr><td>>10 ;<25 lakhs</td><td>10% of salary</td><td>15% of salary whichever is</td></tr>
<tr><td>Other</td><td>7.5% of salary</td><td>lower</td></tr>
</table></td></tr>
<tr><td>2. Furnished accommodation without rent or at concessional rent</td><td>Value of unfurnished accommodation as determined in para 1 above plus value of furniture that is 10% of cost of furniture if furniture is owned by employer OR
Actual hire charges if furniture is hired by employer</td></tr>
<tr><td>3. Furnished accommodation in Hotel</td><td>24% of salary for the period during which accommodation is provided OR
Actual charges paid/payable by employer
whichever is lower</td></tr>
<tr><td>4. Service of sweeper, gardener, watchman or personal attendant.</td><td>Actual cost to employer less amount recovered from employee</td></tr>
<tr><td>5. Supply of gas, electricity or water for household purposes</td><td></td></tr>
</table>

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<table>
<tr><th>Description of Perquisites</th><th>Valuation/Taxability</th></tr>
<tr><td>6. Education facility to employee's family members</td><td>1. Fixed education allowance of Rs. 100/- per month per child (upto two children) and hostel expenditure of Rs. 300/- per month per child (upto two children) is exempt from tax u/s 10(14)
2. Payment of school fees & reimbursement of school fees is taxable in all cases.
3. Education facility in employers institute
Not taxable where cost of education does not exceed Rs. 1000/- per child per month.
Where cost of education exceeds Rs. 1000/-, Cost of education in a similar institute less Rs. 1000/- less amount recovered from employee is taxable</td></tr>
<tr><td>7. Leave travel concession</td><td>Two journey in block of four calendar year is exempt u/s 10(5) as per following valuation rule
<table>
<tr><td>Different situations</td><td>Amount of exemption</td></tr>
<tr><td>Where journey is performed by air</td><td>Amount of economy class air fare of the National carrier by the shortest route or the amount spent, whichever is less</td></tr>
<tr><td>Where journey is performed by rail</td><td>Amount of air conditioned first class rail fare by the shortest route or amount spent, whichever is lower</td></tr>
<tr><td>Where the place of origin of journey and destination are connected by rail and journey is performed by any other mode of transport.</td><td>Amount of air conditioned first class rail fare by the shortest route or amount spent, whichever is lower</td></tr>
<tr><td colspan="2">Where the place of journey and destination not connected by rail</td></tr>
<tr><td>If public transport exist</td><td>First class or deluxe class fare by the shortest route or the amount spent, whichever is less</td></tr>
<tr><td>If public transport not exist</td><td>Air conditioned first class rail fare by the shortest route or amount spent, whichever is lower</td></tr>
</table>
</td></tr>
<tr><td>8. Amount paid by an employer in respect any obligation which otherwise would have been payable by the employee</td><td>Taxable in all cases</td></tr>
</table>

cont.

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Description of Perquisites	Valuation/Taxability
9. Amount payable by an employer directly or indirectly to effect an assurance on the life of employee or to effect a contract of an annuity.	Taxable in the hands of all employee except following payment by employers 1. Recognized provident fund upto 12% of salary 2. Approved superannuation fund upto Rs. 1 Lakhs 3. Group insurance scheme 4. Employees state insurance schemes
10. Interest free / concessional loan	Interest chargeable at the rate specified by SBI for specified purpose on monthly basis less amount of interest paid to employer is taxable. However if a loan is available for medical treatment for specified diseases is not taxable. Where original loan amount is not exceeding of Rs. 20,000/- is not taxable.
11. Providing use of movable asset	Providing Computer, Laptop, is not taxable. Other Assets :- 10% of cost of assets less amount recovered from employee is taxable
12. Transfer of movable asset	Electronics items/Computers: Cost of Asset less depreciation @ 50% for each completed year (WDV method) less amount recovered from employee is taxable. Motor Car: Cost of Asset less depreciation @ 20% for each completed year (WDV method) less amount recovered from employee is taxable. Other Assets: Cost of Asset less depreciation @ 10% for each completed year (SLM method) less amount recovered from employee is taxable.
13. Medical facility	1. Any amount incurred or reimbursed by employer for treatment of any disease in hospital maintained by employer/central/state government/local authority is not taxable. 2. Any amount incurred or reimbursed by employer for treatment of disease specified in rule 3A(2) in the hospitals approved by Chief Commissioner of Income Tax is not taxable. 3. Reimbursement of medical expenses upto 15,000/- in any hospital is not taxable
14. Medical facility outside India	▪ Cost of medical treatment ? exempt to the extent permitted by RBI ▪ Cost of travel ? exempt only if gross total income does not exceed Rs. 2,00,000/- ▪ Cost of stay abroad - exempt to the extent permitted by RBI

cont.

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Description of Perquisites	Valuation/Taxability
14. Medical facility outside India	▪ Cost of medical treatment ? exempt to the extent permitted by RBI ▪ Cost of travel ? exempt only if gross total income does not exceed Rs. 2,00,000/- ▪ Cost of stay abroad - exempt to the extent permitted by RBI
15. Car or any other automotive expenses.	1. Not taxable if car is used for official purpose. 2. Car facility between office and residence is not taxable. 3. If car is used for private purpose deduction is allowed for amount recovered from employee. 4. If used partly for official purpose and partly for private purpose ? value of perquisite would be Rs. 1800/-(upto 1.6 CC engine) or Rs. 2400 (above 1.6 CC engine) per month plus Rs. 900 (if is also provided)
16. Transport facility by a transport undertaking	1. Not taxable if provided by airline or railway company to its employee 2. Not taxable if employee is non-specified employee 3. In other cases ? deduction is allowed for the amount recovered from employee from the value at which service is offered to general public by the employer
17. Free food and beverage	1. Food & non alcoholic beverages provided in working hours in remote area or in an offshore installation is not chargeable 2. Tea & snacks in working hours is not taxable 3. Cost of food & beverages not exceeding Rs. 50/- is not taxable
18. Gift or gift voucher	Gift in kind upto Rs. 5000/- in aggregate during pervious year is exempt
19. Credit card	Deduction is allowed for the amount recovered from employee and the amount spent for official purpose from total cost to employer
20. Club expenditure	1. Health club, sport facilities etc provided by employer at its premises uniformly to all employees are exempt. 2. Initial one time deposit for corporate membership is not taxable 3. In other cases ? deduction is allowable for the amount recovered from employee and amount spent for official purpose.
21. Value of any specified security/ sweat equity shares allotted or transferred to an employee or former employee	Taxable only if specified security or sweet equity shares are allotted or transfer on or after April, 1, 2009. Deduction is allowable for the amount recovered from employee from the fair market value of the security on the date of exercise of option

cont.

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Description of Perquisites	Valuation/Taxability
22. Any other benefit or amenity, service, right or privilege.	The value of benefit/amenity shall be determined on the basis of cost to the employer under an arm's length transaction less amount recovered from employee

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SERVICE TAX

E-Governance of Service Tax
E-filing of Service Tax Return (ST-3)

General Clarifications Regarding E-Filing

Service Tax Returns is required to be filed six monthly, earlier the same were filed manually by the assessee or their representative. In this era of Internet and e-governance, the government has introduced a facility for the electronic filing of Service Tax Returns, which is known as E-Filing.

Notification No. 1/2010 – ST - E-filing of service tax return is mandatory effective from 01-04-2010 in case the assessee has paid a total Service Tax of rupees ten lakhs or more including the amount paid by utilization of CENVAT credit, in the preceding financial year, is required to file the return electronically under sub-rule (2) of Rule 7 of the Service Tax Rules, 1994. (Service Tax dated the 19th February, 2010)

However, E-filing of Service Tax Returns (ST-3) made mandatory for All Assessees wef 01.10.2011 vide Notification No. 43/2011 - Service Tax, dated 25.08.2011

Perquisites for E-filing are very basic. Assessee is required to possess :

- 15 digit Service Tax Payer Code i.e. Popularly known as Service Tax Registration No. based on PAN allotted by Income Tax Department. In case, if assessee is not having PAN Based 15 digit Registration No., he can use temporary 15 digit no. given by the department.
- Computer having Internet Connection
- Valid E-mail Address
- Java Enabled Browser i.e. Internet Explorer 6.0 and above or Netscape Navigator 5.0 and above or Mozilla Firefox 3.0 and above.
- User ID and password to login into service tax site (aces.gov.in). (It will be generated from tipin issued by service tax department to its existing assesses on their e-mail id)

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Step by Step Procedure for E-filing of Service Tax Return:

1) Returns can be prepared and filed on line by selecting the 'Fill ST-3--Fill' option under RET module after logging into the ACES (aces.gov.in).
2) While preparing ST-3 online the step of validation of each and every sheet is escaped since the same are validated simultaneously during the preparation of the return in this mode and the status of the return filed using the online mode is instantly shown by ACES.
3) Returns can also be prepared and filed off-line. Assessee can download the Offline return preparation utility available at http://www.aces.gov.in (Under Download)
4) Prepares the return offline using this utility. The return preparation utility contains preliminary validations which are thrown up by the utility from time to time.
5) Assessee logs in using the User ID and password
6) Selects 'E-Filing -- upload' option under RET module from the main menu and uploads the return. Instructions for using the offline utilities are given in detail in the Help section, under 'Download' link and assessees are advised to follow them.
7) Returns uploaded through this procedure are validated by the ACES before acceptance into the system which may take up to one business day. Assessee can track the status of the return by selecting the 'E-filing—view status' option in the RET sub menu. The status will appear as "uploaded" meaning under process by ACES, "Filed" meaning successfully accepted by the system or "Rejected" meaning the ACES has rejected the return due to validation error. Common reasons for rejection are 'incorrect premises code' or 'assessee code' filled by ST-3 Preparer The rejected returns can be resubmitted after corrections.
8) Once the Central Excise returns are filed online in ACES or uploaded to the system using the off-line utility, the same can not be modified or cancelled by the assessee. The Service Tax returns, however, can be modified once as per rules up to 90 days from the date of filing the initial return.

During e-filing of return the assessee must file details as mentioned in Form ST-3 and that of duty paying challans. A key number and acknowledgment would be generated by the system along with a copy of Form ST when return is completely submitted.

BENEFITS OF E-FILING OF SERVICE TAX RETURN FOR ASSESSEE:

1. Reduce Physical Interface with the Department
2. Save Time
3. Reduction of Paper Work
4. System-generated E-Acknowledgement
5. Online tracking of the status of selected documents
6. Online view facility to see selected documents

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