M/s PRANJAL JOSHI & CO
CHARTERED ACCOUNTANTS
Office No. 9, Suvan Apartments, Opp. Jog High School, HDFC Bank Building, Mayur Colony, Kothrud, Pune – 411 038. Tel – 020 – 25 43 02 76, Mob: 98500 35736, pranjal@capranjaljoshi.com

TDS Provisions on Pension Payments

CA Pranjal Joshi

Introduction –

TDS is the best medium of collecting tax from the citizens without much of hassles, as the responsibility to deduct tax is not on the government, but on citizen-payers. Tax department accords a lot of importance to TDS as a source of generating revenue and to administering the TDS provisions more vigorously. That is why several different payments and virtually all persons (barring the exception of non-tax audit Individuals & HUF) making such payments have been covered within the ambit of TDS provisions and the scope for the same is being increased day after day.

After the implementation of Sixth Pay Commission recommendations, substantial arrears were paid to the pensioners through nationalized banks. Because of which, several pensioners who hitherto having income less than exemption limit may now be subjected to tax during this year as well as in future years due to increase in the monthly pension amounts. While conducting concurrent audit of banks, the issue of applicability of TDS provisions on such pension payments came up for consideration.

An attempt therefore has been made in this article to discuss the TDS provisions on pension payments - its applicability & implications.

Scheme of Taxation for Pension –

Before we discuss the TDS provisions applicability on the pension payments, it is pertinent to discuss the scheme of taxation for the pension. The provisions for taxation of Pension under the Income Tax Act, 1961 may be summarized as follows –

1 **Regular Pension** (i.e. Pension Annuity - payment at periodical time interval generally on monthly basis) –

Definition under the Act	Not given. The common use of the term pension is to describe the payments a person receives upon retirement, usually under pre-determined legal and/or contractual terms.
Exemptions available, if any	Section 10(18)(i) - Pension received by individual who is in receipt of “Param Vir Chakra”, Maha Vir Chakra” or other gallantry awards from Central or State Govt as may be specified.
Taxability under which head	Except for above, taxable in all cases. Taxable under Income from Salary as Section 17(1)(ii) defines salary to include pension as well.

2 **Commutation of Pension** –

Definition under the Act	Not given. But, commutation of Pension means payment of lump sum amount in lieu of a portion of pension surrendered voluntarily by the pensioner based on a duration of period in relation to the age.
Exemptions available, if any	Section 10(10A) (i) (ii) and (iii) (i) Commutation of pension under Civil Pensions (Commutation) Rules or under any other scheme for Central, State or Local Authority employees (ii) For employees of other employers, 1/3rd or ½ of full value of pension is exempt depending upon the fact whether gratuity has also been paid to such person or not. (iii) Commutation of pension from fund under section 10(23AAB)
Taxability under which head	Excess amount received if any over and above the limits specified u/s 10(10A) above is taxable under the head Income From Salary.

3 **Family Pension** –

Definition under the Act	Explanation to Section 57 (iia) states that “Family Pension” means a regular monthly amount payable by the employer to a person belonging to the family of an employee in the event of his death
Exemptions, if any	Section 10(18)(ii) - Family pension received by any member of family of person specified in Section 10(18)(i) i.e. family members of individual who is in receipt of gallantry awards. Section 10(19) – family pension received by widow, or children or nominated heirs of member of armed forces of Union where death has occurred during operational duties subject to conditions specified.
Taxability under which head	Income from other sources (as there was no previous employer – employee relationship between the person receiving the pension and the employer)

From the above it is very clear that pension annuity & family pension is generally taxable while commutation of pension may be exempt from tax. Further, pension annuity is taxed under “Income from Salary” while family pension is taxed under “Income from other sources”. Thus, question of TDS will arise only in respect of taxable pensions only & not on exempt pension income for obvious reasons.

With this, let us move now to discuss the TDS applicability.

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TDS provisions on Pension –

Chapter XVII-B of The Income Tax Act, 1961 contains the provisions relating to deduction of tax at source (TDS). The very first section, i.e. Section 192 is TDS on Salary. Since we have already concluded that Pension annuity is taxed under Income from salary, let us study this section to find whether it covers pension as well.

Section 192 (1) of the Income Tax Act states that – *"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."*
After reading the section, one can easily understand that the section applies to *any income chargeable under the head "Salaries"*. Annuity pension as discussed above is covered by the definition of salary u/s 17 (1)(ii), so the **TDS provisions u/s 192 are applicable mutatis mutandis to Annuity pension payments as well (incl. arrears of pension)**. **Needless to say that family pension can not be covered under this section as family pension is taxed under "Income from other sources" and not under "Income from Salary"**

Going further, Please mark that the section casts responsibility on *"Any person responsible for paying any income chargeable under the head "Salaries".* The wording suggests that it is the "person responsible for paying" who has to comply with the TDS provisions & thus such person may not always be the past employer. In this connection, Section 204(i) is relevant which defines "person responsible for paying".

It states that "person responsible for paying" in the case of payments of income chargeable under the head "Salaries", other than payments by the Central Government or the Government of a State, the employer himself or, if the employer is a company, the company itself, including the principal officer thereof.

i.e. **it is the past employer who may be the "person responsible for payment' in case of non-government pensioners, while as far as Central and State Govt. pensioners are concerned it is the nationalized banks which have been entrusted with the task of payment of pension which are considered as person responsible for payment.** (Ref - RBI's Pension Circular (Central Series) No.7/C.D.R./1992 (Ref. CO: DGBA: GA (NBS) No.60/GA.64(11CVL)-/92) dt. 27th April, 1992). Further in cases where companies have entered into contract with the Insurance companies (called as superannuation plans) for payment of pension, then such Insurance Company will become the person responsible for payment and has to comply with the TDS provisions.

Lastly, except for Section 192 of Chapter XVII-B, there is no other section which covers pension payments & hence we can conclude that there is no TDS provision exists on payment of family pension under the Income Tax Act.

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Implication of TDS on Pension Annuity -
(for pensioners)

After concluding that Pension Annuity is subjected to TDS u/s 192(1), by past employer or Insurance companies, as the case may be for non-govt. pensioners and nationalized banks in case of govt. pensioners, let us discuss the implications of such applicability.

Q 1 - When TDS will be applicable on Annuity Pension ?

A 1 - When the pension annuity for the year exceeds the maximum exemption limit for the relevant financial year. (e.g. - In case of men below 65 years Rs. 1.60 Lacs, women below 65 years Rs. 1.90 Lacs & Sr. Citizens - Rs. 2.40 Lacs for F.Y. 2009-2010)

Q 2 - While employees submit the proofs of investments u/s 80 C, 80 D etc. to their employers to reduce / avoid TDS, can pensioners also submit the same to "person responsible for payment" which includes nationalized banks as well ?

A 2 - Answer is undoubtedly yes. Procedure to be followed once Section 192 is applicable will be the same irrespective of the fact whether it is salary or it is pension. CBDT generally issues circular every year explaining procedure to be followed & compliances to be done u/s 192 of the Income Tax Act, which states that pensioners can submit such proofs to person responsible for payment incl. banks. The recent CBDT circular is also no exception to this. (Refer Circular No. 1/2010 dt. 11-01-2010 para 4.13 TDS on Income from pension)

Q 3 - Then in case of arrears of pension, whether pensioners can claim relief u/s 89 of The Income Tax Act, 1961 ?

A 3 - Again the answer is same - "YES".
Section 89 applies to three receipts

- (i) a sum in the nature of salary paid in arrears
- (ii) payment covered under Section 17(3) i.e. profits in lieu of salary and even to
- (iii) arrears of family pension payment.

Out of above, (ii) category i.e. Section 17(3) covers profits in lieu of salary which is compensation received by assessee from his employer or former employer & hence, in my opinion the arrears of annuity pension will get covered by the same.

But, the person responsible for making payment will allow Relief u/s 89 only after the relevant particulars are submitted by the pensioner to it in Form No. 10E.

Q 4 - Whether pensioner can submit the Form 15G / 15 H or other declaration for non-deduction of TDS from pension payments ?

A 4 - The answer here is No. The reason is, the declarations viz form 15G / H etc. are prescribed by section 197A of The Income Tax Act, 1961 but it is does not cover TDS u/s 192. So where pension / arrears exceed the maximum exemption limit after permissible chapter VI A deductions & / or Relief u/s 89, banks & other persons responsible for payment are duty bound to deduct tax at source. But, pensioners can apply u/s 197 (Form No. 13) to the Assessing officer for obtaining lower or no deduction of tax at source.

Q 5 - After deduction of Tax at source from payment, pensioners are expected to receive TDS certificate in which from - whether Form 16 or Form 16 A ?

A 5 - In this connection CBDT Circular No. 761, dated 13-1-1998 is relevant, which states that -

(*a*) as per section 17(1)(*ii*) of the Income-tax Act, 1961, the term salary includes pension;
(*b*) once tax has been deducted under section 192 of the Income-tax Act, 1961, the tax-deductor is bound by section 203 to issue the certificate of tax deducted in Form 16. No employee-employer relationship is necessary for this purpose;
(*c*) the certificate in Form No. 16 cannot be denied on the ground that the tax deductor is unaware of the payees other income.

After understanding the implications of TDS on pension payments in brief, let us analyze its implications for payers (person responsible for payment).

Implication of TDS on Pension Annuity -
(for person responsible for payment incl. nationalised banks)

As far as implications for person responsible for payment is concerned, all the provisions of Chapter XVII-B as are applicable in the normal course shall be applicable in this case also incl. the penal provisions.

Few important points to be noted in this case are as follows –

- All tax deductors /collectors (incl. nationalized banks) are required to file the TDS returns for TDS on pension payments in Form No.24Q only.

- If a person (incl. nationalized bank) fails to deduct the tax at source, or, after deducting, fails to pay the tax to the Government within the prescribed time, then it shall be liable to pay interest u/s 201 (1A) @ 1% p.m.

- Further, penalty u/s 271C may also be applicable, while lastly as per section 276B person may be punishable with rigorous imprisonment for a term which shall be between 3 months and 7 years, along with fine.

In the forgoing paragraphs, we have already discussed that the pensioners can not give declarations like Form No. 15 G / H to avoid TDS. But whether it is possible where the bank has failed to deduct TDS, it can still save it by arguing that although it has failed to deduct TDS, pensioners have paid the tax on such pension while filing their returns or by way of Advance Tax & hence no liability of TDS incl. penal consequences shall be leviable against the bank.

In my opinion, in this connection the decision of **Supreme Court in Hindustan Coca Cola Beverages Ltd 2007 AIR 2930** may be of use, which confirms that –

- **The department could not recover once again the tax from the deductor where the tax has already been paid by the recipient.**
- **However, this will not alter the liability to charge interest under Section 201 (1A) of the Act till the date of payment of taxes or the liability for penalty under Section 271C of the Income-tax Act.**

Considering above, it may herculean task for the bank to collect details of tax payments by pensioners without which the liability of TDS can not be avoided, & in spite of doing this penal consequences may still become unavoidable. So the best option is to deduct tax in the first instance itself.

TDS Defaults and Role of the Auditors -

The matters discussed so far may be of useful for the consultation to be given to pensioners / persons responsible for payment, now we may have to consider the role that auditors have to perform while doing the attest function.

Form No. 3 CD, asks the tax auditors about implications of TDS defaults under following questions –

- **Q. No. 17 (f)** - amounts inadmissible under section 40(a)
- **Q. No. 27 (a)** Whether the assessee has complied with the provisions of Chapter XVII-B regarding deduction of tax at source and regarding the payment thereof to the credit of the Central Government.
- **Question 27 (b)** If the provisions of Chapter XVII-B have not been complied with, please give the following details, namely:-
    - (i) Tax deductible and not deducted at all
    - (ii) shortfall on account of lesser deduction than required to be deducted
    - (iii) tax deducted late
    - (iv) tax deducted but not paid to the credit of the Central Government

Out of above, Q. 17 (f) is not applicable in this case as, section 40(a) (ia) do not cover default of TDS from salary u/s 192. However both questions 27 (a) & (b) will be relevant. Pl. note here that pension may not be the expenditure for banks paying the same, still default of TDS is reportable under these two questions.

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Concluding remarks –

So, from above it may be concluded that –

a) Income from Pension Annuity is covered by TDS provisions u/s 192.

b) There is no TDS provision for payment of family pension.

c) Banks paying pension on behalf of govt. is the person responsible for payment & hence is liable to comply with the TDS provisions & will be penalized in case of default.

d) Pensioners can submit proofs for deduction u/s 80C, 80 D etc, & even entitled to relief u/s 89 (in case of arrears) to avoid TDS & are entitled to receive Form 16 from banks in case of tax deduction.

e) There is no provision to give declarations by pensioners like 15 G /H to avoid TDS except for applying to ITO in for No. 13.

f) Liability to deduct TDS may be escaped by the banks if pensioners have paid tax on it, but penal interest & penalty may still be leviable on them.

g) Auditors have to report default for TDS on pension in Form 3CD under question no. 27 (a) & (b) of it.

The points discussed above may be of use at the time of Concurrent Audit as well as Statutory Audit of Bank Branches for 2009-2010, as the banks have paid 60% of pension arrears during the year.