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| IndiaBroadband²⁰⁰⁷ <i>Linking India</i>  | | |
| CORPORATE OFFICE TAXATION SECTION 1 ST FLOOR, BHARAT SANCHAR BHAWAN, JANPATH, NEW DELHI- 110001 |  | BHARAT SANCHAR NIGAM LIMITED [A Government of India Enterprise] |

No. 1001-06/2005/Taxation/BSNL/SAL-IT/ACC.PERQ/847 Dated: 27th Nov, 2007

To,

Heads of All Telecom Circles/ADG(R&P), C.O/Metro Districts/ Maintenance Region/ Project Circles/ Task Force/ Data Network/ NCES/ ALTTC/ BRBRAITT/ NATFM/ QA/ T&D/ Telecom Stores/ Telecom Factories/ CPAO (ITI Bills)/ TCO, Kolkata / IT Circle, Pune.

Sub: Valuation of Perquisite of Accommodation in respect of BSNL Employees in occupation of Staff Quarters for the purpose of Income Tax reg.

Kindly refer to this office letter of even no. dated: 21/08/2007 wherein you were requested to calculate the amount of tax liability on perquisite for the past years (A.Y. 2002-03 to 2007-08) and await the detailed instructions in the matter.

In this regard guidelines had also been sought for from CBDT regarding recovery of Income Tax on perquisites of accommodation for the past years (Lt. No. 1001-06/2005/Taxation/Sal-IT/Acc.Perq/BSNL/Vol-II/718 dated 09/10/2007 enclosed herewith). As per clarification received, BSNL is bound to deduct TDS for the period before F.Y. 2006-07. Also since the amendment has been brought about in mid-2007, it can be said that liability to deduct tax on perquisites of accommodation in respect of prior years, arises only in the current financial year and therefore can together be treated as "Arrears" for current financial year 2007-08 and tax to be deducted thereon based on computation and relief u/s 89(1) may be provided. Quarterly and annual returns to be filed and Form-16 may be issued accordingly. The CBDT has agreed to the same and replied that tax for the period 2001-02 to 2006-07 can be deducted on arrears & relief u/s89(1) can be provided.

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Hence Income Tax on arrears of perquisites of accommodation may be deducted from the salary of concerned employees and deposited to the Income Tax Department. Any further delay in deposit may result in demand of interest from the department. In some cases Income Tax on arrears of perquisites of accommodation of all the past years taken together for individual employees may exceed monthly salary payable to the employees. In these cases employees may deposit the tax in cash in BSNL. However, if the employee gives an undertaking in writing that the Income Tax may be recovered in instalments from his salary then BSNL may pay the Income tax upfront on behalf of the concerned employees for the past years. The amount of tax liability may be recovered in suitable instalments from the salary of the employees by March-2008. DDOs may stop recovery of other recoveries/advances as per existing rules to facilitate employees, if necessary.

Relief U/s 89(1) of the Income Tax Act-1961 may be provided and Form-16 for the current year may be issued accordingly.

We have also received queries from several circle units seeking clarifications surrounding the issue on the following points:

1. Whether Income tax on value of the perquisite of accommodation is applicable to employees not absorbed in BSNL being on Deputation/Deemed Deputation basis and residing in accommodation owned and/or provided by BSNL.
2. Whether Income Tax on value of perquisites of accommodation is applicable to absorbed BSNL employees residing in accommodation owned or provided by central/state Govt. or Central Pool.
3. Whether Income Tax on value of perquisite of accommodation is applicable to unabsorbed govt. employee working in BSNL on deemed deputation basis and residing in accommodation owned and /or provided by Central/State Govt. or Central Pool.

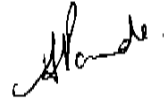
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For the clarification of the aforesaid points a copy of letter no.275/67/2007-IT (B) dated: 12th November, 2007 from CBDT is forwarded.(Para No. III,IV,V,VI of the letter may kindly be seen).

As this is a matter of serious concern involving statutory responsibility you are requested to ensure that payment of tax for the previous years is made by 31/12/2007 to Income Tax Department & positively reflected in the TDS returns to be submitted by 15/01/2008 and matter reported to the Corporate Office by the last week of January-2008.

Encl: As above



A. Panda

DDG (Taxation)

F.No.275/67/2007-IT(B)
Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Direct Taxes

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New Delhi, the 12th November, 2007.

To

Shri S.D. Saxena,
Director(Finance),
Bharat Sanchar Nigam Limited,
Bharat Sanchar Bhawan,
H.C. Mathur Lane, Janpath,
New Delhi-110001

Sub:- Clarifications regarding valuation of perquisite on Rent-free Accommodation and TDS thereon in the light of Amendment to Section 17(2)(ii), by the Finance Act, 2007 – reg.

Sir,

This has reference to your letter No. 1001-06/2005/Taxation/Sal-IT/Acc.Perq/BSNL/Vol.-II/7181 dated Nil October, 2007 on the above subject wherein you have sought certain clarifications. In this regard it is to clarify/inform as under:-

- (i) As regards query at Serial No.3 of your letter referred to above i.e. whether an 'employer' is bound to recover TDS on perquisite, wherever applicable in a case, for the period before FY 2006-07, since TDS was so far made on the basis of law ~~prevailing at that time and as confirmed by Supreme Court in Arun Kumar's Case (Supra)~~, the employer is bound to deduct TDS on perquisites, wherever applicable, on perquisites in cases of concessional rent residential accommodation on the basis of law prevailing at that time i.e. for the period before Financial Year 2006-07.
- (ii) As regards observations/query at Para 4 (1) to (3) of your letter referred to above, the tax for the period 2001-02 to 2006-07 can be deducted on arrears and relief u/s. 89(1) can be provided.
- (iii) As regards query in Para 4(4)(a) of your letter referred to above, it is to clarify that when a Government employee works with a PSU on deemed deputation or deputation, his employer would be the PSU.
- (iv) Coming to the situation mentioned in Para 4(4)(b)(i) of your letter, it is to clarify that when such an employee resides in an accommodation provided by the PSU, the perquisite value in his case would be similar to what is applicable to

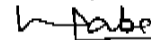
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21/11/07
2006 (Tax)



employees of all employers other than the Central Government and the State Governments.

- (v) As regards situation mentioned in Para 4(4)(b)(ii) of your letter, when the Government employee resides in an accommodation provided by the Central Government, he would continue to be assessed to perquisite tax in line with the method applicable to Central and State Government employees as clearly mentioned at serial no. 1 of Table I of Rule 3 of the Income-tax Rules.
- (vi) Coming to the situation mentioned in Para 4(4)(b)(iii) of your letter, when a PSU employee is provided with an accommodation of the Central Government, he would be liable to pay perquisite tax as applicable to PSU employees residing in accommodation provided by the PSUs. His staying in an accommodation of the Central Government does not alter his status as an employee of a PSU. In any case, the accommodation is arranged for him by the PSU and he resides in the Government accommodation by virtue of his employment in the PSU.

Yours faithfully,



(V.N. Gaba)

Under Secretary(ITB)

Tel:23093526

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भारत संचार निगम लिमिटेड
(भारत संचार का उद्यम)

BHARAT SANCHARNIGAM LIMITED
(A Govt. of India Enterprise)

IndiaBroadband²⁰⁰⁷
Linking India

एस.डी. सक्सेना
निदेशक (वित्त)
बी.एस.एन.एल बोर्ड
S.D. Saxena
Director (Finance)
B.S.N.L. Board

No.1001-06/2005/Taxation/Sal-IT/Acc. Perq/BSNL/Vol.-II | 718
Dated: 09.10.2007

To
The Chairman
Central Board of Direct Taxes
Department of Revenue
Ministry of Finance
North Block, New Delhi



Sub:-Clarifications regarding valuation of perquisite on Rent-free Accommodation and TDS thereon in the light of Amendment to Section 17(2)(ii), by the Finance Act, 2007. - Reg.

We draw your kind attention to the amendments made with retrospective effect in the Finance Act, 2007, in Section 17(2)(ii) of the Income Tax Act re: valuation of perquisite in respect of rent-free accommodation.

2. The valuation of perquisites on accommodation and Tax thereon was being made as per law prevailing at that time and confirmed by Hon'ble Supreme Court in Arun Kumar And Others. vs. Union of India And Others. 286 ITR 89; 2006 (SC), whose effect was, in fact, sought to be nullified by the retrospective amendment.

However, the insertion of the new Explanation 1 with effect from 1.4.2002 has consequently had serious repercussions and practical implications of implementation of the TDS provisions relating thereto for the prior previous years. This is particularly difficult for Corporates of the size of BSNL, in view of the more than 700 D.D.O's of the Company spread across the country, covering approximately 40,000 employees, being required to give effect to the retrospective amendment.

3. The Primary question that remains is as to Whether an 'employer' is bound to recover TDS on perquisite, wherever applicable in a case, for the period before FY 2006-07, since TDS was so far made on the basis of law prevailing at that time and as confirmed by Supreme Court in Arun Kumar's Case (supra)?

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4. The further difficulties of implementation being faced by BSNL (and perhaps by other PSU's & Govt. Companies), are briefly outlined as follows:

- (1) Annual Returns of TDS have already been filed by D.D.O's. Whether they are now required to file Revised TDS Returns from FY 2001-02 to F.Y 2006-07, separately for each quarter and financial year?
- (2) Similarly, Form 16 for FY 2001-02 to F.Y 2006-07 have been issued to approximately 40,000 employees of the Company, who in turn would have filed their returns. Whether D.D.O's of BSNL are required to issue revised Form -16, and what would be the consequent effect of the same in the case of the individual returns and assessments of the 40,000 odd employees?
- (3) Since the amendment has been brought about in mid- 2007 by assent of Parliament, is it not correct to say that a liability to deduct tax on the perquisite, in respect of prior previous years, viz. FY 2001-02 to F.Y 2006-07, wherever applicable in the case of an employer-Company, arises thereby only in the current Financial Year, and therefore can together be treated as "Arrears" for the current financial year 2007-08, and tax be deducted thereon based on computation and relief u/s 89(1). Cannot Quarterly and Annual Returns be filed and Form 16 issued accordingly?
- (4) A further specific and related query arising in the case of Government-owned Companies (PSU), brought into existence by the corporatisation of a Govt. Deptt (namely DOT in this case), requires clarification from Govt. as follows :
 - (a) In case of a Government Employee working in a PSU on "deemed deputation" or "deputation" basis, who can be said to be the 'Employer', whether BSNL or the Central Govt./ State Govt.?
 - (b) If the PSU is held to be the 'employer', then: -
 - (i) What is the perquisite value in case of a Govt. employee working in a PSU on deemed deputation/deputation basis and residing in Accommodation owned and/or provided by such PSU?
 - (ii) What is the perquisite value in case of a Govt. employee working in a PSU on deemed deputation/deputation basis and

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residing in accommodation owned and/or provided by Central Govt./ Central Pool? (It may be noted that for such accommodation, an amount equivalent to License Fees plus HRA entitlement of such employee, is paid by PSU to Central Government / Estate Officer).

(iii)What is the perquisite value in case of a PSU Employee, residing in Accommodation owned and/or provided by Central Govt./Central Pool? (It may be noted that for such accommodation, an amount equivalent to License Fees plus HRA entitlement of such employee, is paid by PSU to Central Government / Estate Officer).

We shall deeply appreciate your early clarification in the matter, which will enable us to give immediate effect to the clarifications received, preferably latest by the 15th December, whereby we can give effect to the same in the third Quarterly return for the FY 2007-08 itself.

Yours faithfully



(S.D. Saxena)
Director (Finance)