

4. Any payment from unrecognised provident fund or such other fund to the extent to which it does not consist of contributions by the assessee or interest on such contributions.
5. Any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.
6. Any amount received (in lump sum or otherwise) prior to employment or after cessation of employment.

■ ■ DIFFERENT FORMS OF ALLOWANCES - HOW TAXED

42. Allowance is generally defined as a fixed quantity of money or other substance given regularly in addition to salary for the purpose of meeting some particular requirement connected with the services rendered by the employee or as compensation for unusual conditions of that service. It is fixed, pre-determined and given irrespective of actual expenditure. Under the Act, it is taxable under section 15 on "due" or "receipt" basis, whichever comes earlier, irrespective of the fact that it is paid in addition to or in lieu of salary. Tax treatment of different allowances is given below :

<i>Different allowances</i>	<i>Tax treatment</i>
City compensatory allowance	Taxable
House rent allowance	Exempt in some cases [see para 42.1]
Entertainment allowance	Deductible in some cases [see para 42.2]
Special allowance	Notified special allowances are exempt [see para 42.3]
Foreign allowance	Exempt from tax if paid outside India by the Government to an Indian citizen for rendering service outside India
Tiffin allowance, fixed medical allowance and servant allowance	Taxable
Allowance to High Court Judges	Not taxable
Allowance from United Nations Organisation	Not taxable
Compensatory allowance under article 222(2) of the Constitution	Not taxable
Sumptuary allowance to serving Chairman/ members of UPSC	Not chargeable to tax.
Allowance to retired Chairman and retired members of UPSC	An allowance (subject to a maximum of Rs. 14,000 per month) for defraying the service of an orderly and for meeting expenses incurred towards secretarial assistance on contract basis, is not chargeable to tax.
Any other allowance	Taxable

42.1 House rent allowance [Sec. 10(13A) and rule 2A] - Exemption in respect of house rent allowance is regulated by rule 2A. It is based upon the following —

1.	An amount equal to 50 per cent of salary, where residential house is situated at Bombay, Calcutta, Delhi or Madras and an amount equal to 40 per cent of salary where residential house is situated at any other place.
2.	House rent allowance received by the employee in respect of the period during which rental accommodation is occupied by the employee during the previous year.
3.	The excess of rent paid over 10 per cent of salary.

► *Amount exempt from tax* - The least of the above three is exempt from tax.

42.1-1 OTHER POINTS - The following other points should also be kept in view :

► *What is "salary"* - "Salary" for this purpose means basic salary and includes dearness allowance if terms of employment so provide.* It also includes commission based on fixed percentage of turnover achieved by an employee as per terms of contract of employment — But it does not include any other allowance and perquisite.

► *"Salary" shall be determined on "due" basis* - Basic salary, dearness allowance and commission are determined on "due" basis in respect of the period during which rental accommodation is occupied by the employee in the previous year [Explanation (ii) to rule 2A]. It, therefore, follows that salary of a period, other than the previous

*Dearness allowance/pay shall be considered only when it is part of salary for computing all retirement benefits (like provident fund, pension, leave encashment, gratuity, etc.). If dearness allowance/pay is part of salary for computing only some (not all) of the retirement benefits, then it is not taken into consideration for this purpose.

year, is not considered even though such amount is received during the previous year and is taxable on "receipt" basis. Likewise, salary of the period during which rented accommodation is not occupied in the previous year, is left out of the aforesaid computations.

► *When exemption is not available* - Exemption is denied where an employee lives in his own house, or in a house for which he does not pay any rent or pays rent which does not exceed 10 per cent of salary.

► *Mode of computation of exemption* - The amount of exemption in respect of house rent allowance received by an employee depends upon the following –

- "salary" of the employee ;
- house rent allowance ;
- rent paid ; and
- the place where house is taken on rent.

When these four are same throughout the previous year, the exemption should be calculated on "annual" basis. When, however, there is a change in respect of any of the aforesaid factors, then the exemption shall be worked out on "monthly" basis.

Problems

42.1-P1 X, who resides in Madras, gets Rs. 3,00,000 per annum as basic salary. He receives Rs. 50,000 per annum as house rent allowance. Rent paid by him is Rs. 40,000 per annum. Find out the amount of taxable house rent allowance for the assessment year 2019-20.

Solution : Out of Rs. 50,000 received as house rent allowance, the least of the following will be exempt from tax :

- Rs. 1,50,000 (being 50% of salary) ;
- Rs. 50,000 (being the house rent allowance received) ; or
- Rs. 10,000 (being the excess of rent paid over 10% of salary, i.e., Rs. 40,000 – Rs. 30,000).

Rs. 10,000 (being the least of the three) is exempt from tax. The balance of Rs. 40,000 (i.e., Rs. 50,000 – Rs. 10,000) will be chargeable to tax.

42.1-E1 [P4.33]* X, who resides in Poona, gets Rs. 2,00,000 per annum as basic salary. He receives Rs. 55,000 per annum as house rent allowance, though he pays Rs. 50,000 per annum as house rent. Determine the amount of house rent allowance chargeable to tax for the assessment year 2019-20.

42.1-P2 X, a resident of Ajmer, receives Rs. 1,92,000 per annum as basic salary during the previous year 2018-19. In addition, he gets Rs. 19,200 per annum as dearness allowance forming part of basic salary for computation of all retirement benefits, 7 per cent commission on sales made by him (sale made by X during the relevant previous year is Rs. 86,000) and Rs. 24,000 per annum as house rent allowance. He, however, pays Rs. 21,500 per annum as house rent. Determine the quantum of house rent allowance exempt from tax.

Solution : "Salary", for the purpose of computing house rent allowance exempt from tax, works out to be Rs. 2,17,220 (i.e., basic salary : Rs. 1,92,000 + dearness allowance : Rs. 19,200 + commission @ 7% on Rs. 86,000 : Rs. 6,020).

Out of the house rent allowance of Rs. 24,000, the least of the following is exempt from tax:

- Rs. 86,888 (being 40% of salary) ;
- Rs. 24,000 (being the amount of house rent allowance) ; or
- Nil [being the excess of rent paid (i.e., Rs. 21,500) over 10% of salary (i.e., Rs. 21,722)].

As the least of the three sums is nil, the entire house rent allowance is chargeable to tax.

42.1-E2 [P4.35]* X, a resident of Mandi, receives Rs. 3,80,000 per annum as basic salary. In addition, he gets Rs. 30,000 per annum as dearness allowance, which forms part of basic salary for computing pension (but not gratuity), 4 per cent commission on turnover achieved by him (turnover achieved by him during the relevant previous year 2018-19 is Rs. 60,00,000) and Rs. 60,000 per annum as house rent allowance. He, however, pays Rs. 70,000 per annum as house rent. Determine the quantum of house rent allowance exempt from tax.

42.1-P3 X is an employee of AB Insurance Co. Ltd. During the previous year 2018-19, he gets Rs. 80,000 per month as salary and Rs. 10,000 per month as dearness allowance (40 per cent of dearness allowance is considered for calculating provident fund but only 30 per cent is considered for calculating gratuity). He gets Rs. 55,000 per month as house rent allowance. X resides with his joint family up to June 30, 2018 for which no rent is paid. From July 1, 2018, he takes a house on rent (monthly rent being Rs. 10,000) at Noida. However, he shifts to Delhi with effect from January 1, 2019 (monthly rent being Rs. 53,000). Find out the house rent allowance chargeable to tax for the assessment year 2019-20.

Solution : "Salary" for the purpose of computing house rent allowance exemption shall be Rs. 83,000 per month (Rs. 80,000 + 30% of dearness allowance which is considered for calculating all retirement benefits). Exemption shall be calculated as follows –

*The number given in brackets represents a similar solved Problem No. of another book entitled "Students' Guide to Income-tax - Problems & Solutions", November 2018 edition. This book includes many more solved problems focusing on contemporary issues.

GST –

- CGST (@ 9% of Rs. 16,00,000)	1,44,000
- SGST (Karnataka) (@ 9% of Rs. 16,00,000)	1,44,000
Total amount charged by X	2,88,000

Note - X has paid fire insurance premium and expenditure on repair of buildings. These expenses are not deductible while calculating taxable value of supply. However, input tax credit pertaining to these expenses can be claimed.

413.10-E1 X Ltd. is in the business of letting out of properties on rent. From the information given below pertaining to December 2018, find out GST payable by X Ltd. (GST rate is 18 per cent) –

	Rs.
Rent of a residential building situated at 612, Star Enclave, Nagpur (given on rent to SBI to operate its Mall Road branch from the residential building)	36,00,000
Rent of another residential building situated at 9/25, MM Road, Nagpur (given on rent to SBI for using it as residence of the Branch Manager of Mall Road branch)	6,00,000
Rent of a vacant plot of land situated at 614, Star Enclave, Nagpur (given on rent to SBI for using it as parking space for the staff and customers of Mall Road branch)	1,20,000
Star Enclave is a residential plotted colony. However, some of the buildings are used unauthorisedly for commercial purposes. MM Road is fully residential area.	

413.10-P2 X of Hyderabad owns the following properties in Telangana. Find out GST liability for the quarter ending March 31, 2019. All figures are exclusive of GST, if any. GST rate is 18 per cent –

	Rs.
Commercial property given on rent to a recognised college affiliated to Osmania University (municipal tax paid by X : Rs. 75,000)	30,75,000
A vacant plot of land given on rent for animal husbandry (municipal tax paid by X : Rs. 10,000)	2,00,000
Residential building given on rent to a departmental store for placing vending machines (municipal tax paid by X : Rs. 30,000)	3,30,000
Terrace of a residential building given on rent to Airtel for erecting communication tower (municipal tax of terrace paid by X : Rs. 10,000)	6,10,000
Renting of a building for organizing entertainment events for temporary basis (municipal tax is zero)	50,000
Renting of a theatre (rent is not received, under profit sharing arrangement, share of profit of Rs. 7,25,000 is received from the other party, municipal tax paid by X : Rs. 25,000)	7,25,000

Solution:

Rent of commercial property	30,75,000
Rent of a plot of land (not chargeable as it is covered in exemption notification)	Nil
Rent of residential building given to a departmental store for placing vending machines (residential building given on rent for commercial use is chargeable to GST)	3,30,000
Rent of terrace (chargeable to tax)	6,10,000
Rent of a building for organizing entertainment events (chargeable to tax even if used on temporary basis)	50,000
Rent of a theatre (chargeable to GST as the arrangement amounts to renting of immovable property)	7,25,000
Taxable value of supply	47,90,000
GST –	
- CGST (@ 9% of Rs. 47,90,000)	4,31,100
- SGST (Telangana) (@ 9% of Rs. 47,90,000)	4,31,100
Total amount charged by X	8,62,200

413.10-E2 Recalculate tax liability in Problem 413.10-P2 if properties given in the problem are owned by X Ltd. (shares in X Ltd. are equally held by the Punjab Government, RBI and the Institute of Chartered Accountants of India).

413.11 Construction of a complex, building, civil structure - This service was taxable even prior to July 1, 2012, when negative list concept was not implemented. It is specifically included in declared services only to remove any uncertainty on its taxability in future.

This entry covers the services provided by builders or developers or any other person for construction of a complex, building, civil structure or a part thereof. It also includes building/complex intended for sale to a buyer, wholly or partly. It does not, however, include the building where the entire consideration has been received after –



- a. issuance of completion certificate (where required) by a competent authority; or
 - b. building's first occupation,
- whichever is earlier.

Construction for this purpose includes additions, alterations, replacements or remodelling of any existing civil structure.

Provisions illustrated

► *Case 1.* Raheja Developers constructs a commercial complex in Vijayawada. Completion certificate is issued by municipality on March 23, 2019. However, the occupants are using the complex for commercial purposes since November 1, 2018. The complex has three commercial flats which are sold to A Ltd., B Ltd. and C Ltd. as follows –

(Rs. in thousands)

	Consideration (it includes cost of land)	Amount received during October 2018	Amount received on or after November 1, 2018
Flat 1 : A Ltd.	92,00	1,00	91,00
Flat 2 : B Ltd.	94,00	94,00	Nil
Flat 3 : C Ltd.	91,00	Nil	91,00

Completion certificate is issued on March 23, 2019. Commercial building was first occupied on November 1, 2018. The earlier date is November 1, 2018.

Entire consideration is received from C Ltd. after November 1, 2018. Consequently, service provided to C Ltd. is not deemed supply under Schedule II and not chargeable to GST. However, supply of service to A Ltd. and B Ltd. is deemed supply under Schedule II and chargeable to GST.

► *Case 2.* X enters into a contract with DLF Construction Ltd. for purchase of a flat for which the payment has to be made in 10 monthly instalments of Rs. 30,00,000 each. The first instalment is paid at the time of signing of the contract on July 1, 2018. The flat is likely to be completed during June 2019. On February 1, 2019, X transfers his right to Y after paying 6 instalments. The point for consideration is whether such activity of transfer by X to Y is treated as “declared supply” under Schedule II.

The activity of transfer of right in the flat by X to Y does not fall in “deemed supply”, as X is not providing any construction service to Y. It is a case of transfer of interest in immovable property. Such transfer of immovable property (or any interest therein) is outside the ambit of GST. However, on 6 instalments paid to DLF by X (and subsequent 4 instalments payable to DLF by Y) GST will be applicable.

413.12 Temporary transfer (or permitting the use or enjoyment) of any intellectual property right - Service by way of temporary transfer of any intellectual property right, is deemed supply and chargeable to GST. It also includes service by permitting use or enjoyment of any intellectual property right.

► *Meaning of intellectual property right* - Intellectual property right has not been defined in the Act. The phrase has to be understood as in normal trade parlance as per which intellectual property right includes the following –

- a. copyright;
- b. patents;
- c. trademarks;
- d. designs and
- e. any other similar right to an intangible property.

► *Registration in India or outside India* - Since there is no condition regarding the law under which an intellectual right should be registered, temporary transfer of a patent registered outside India would also be covered in this entry. However, it will become taxable to GST only if place of supply of temporary transfer of intellectual property right is in India.

Provisions illustrated

X is a scientist. He owns a patent right to manufacture art paper by using grass. The patent right is transferred on temporary basis to Y Ltd. By virtue of this arrangement, Y Ltd. can use the patent for manufacture of art paper for the quarter ending December 2018 against payment of Rs. 20 lakh. This is deemed supply under Schedule II and chargeable to GST.

413.13 Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software - These are taken as deemed supply. The term ‘information technology software’ may be defined as ‘any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment’.

