

STOP PRESS

Rule 3 provides valuation of perquisite. Such rules has substituted vide *The Income-Tax (Thirteenth Amendment) Rules, 2009 dated 18-12-2009*. The new rules are discussed here-in-below:

Valuation of rent-free accommodation (RFA)

Rent-free accommodation is taxable in the hands of all employees (except the Judges of High Court or Supreme Court and Official of the Parliament or Union Minister and a leader of Opposition).

Accommodation here includes fixed as well as floating structure.

Fixed Structure	A house, flat, farm house (or a part there of), accommodation in hotel, motel, service apartment, a guest house, etc.
Floating Structure	A caravan, mobile home, ship etc.

For the purpose of valuation, employees are divided into two categories:

- a. Employees of the Central or State Government or of any undertaking under the control of the Government; and
- b. *Accommodation provided by Government to an employee serving on deputation*
- c. Other employees

A) Central and State Government Employee (including military person)

The value of perquisite in respect of such accommodation is equal to the licence fee, which would have been determined by the Central or State Government in accordance with the rules framed by the Government.

{**Academically**, the taxable value of the perquisite will be mentioned in the problem}

Taxpoint: *Employees of a local authority or a foreign government are not covered under this category.*

B) Accommodation provided by Government to an employee serving on deputation

where the accommodation is provided by the Central Government or any State Government to an employee who is serving on deputation with any body or undertaking under the control of such Government, then the value of perquisite of such an accommodation shall be:

City in which accommodation is provided	Value of perquisite
Having population <i>exceeding 25 lacs</i> as per 2001 census	15% of salary for the period during which the employee <i>occupied</i> the said accommodation.
Having population <i>exceeding 10 lacs but not exceeding 25 lacs</i> as per 2001 census	10% of salary for the period during which the employee <i>occupied</i> the said accommodation.
Any other city	7.5% of salary for the period during which the employee <i>occupied</i> the said accommodation.

Note:

- a) **Salary for the purpose of Rent free accommodation**: Salary here means:

Basic + Dearness allowance/pay (if it forms a part of retirement benefit) + Bonus + Commission + Fees + All other taxable allowances (only taxable amount) + Any other *monetary* payment by whatever name called (*excluding perquisites and lump-sum payments received at the time of termination of service or superannuation or voluntary retirement, like gratuity, severance pay leave encashment, voluntary retrenchment benefits, commutation of pension and similar payments*)

Taxpoint

- *Salary shall be determined on due basis.*
- *Where an assessee is receiving salary from two or more employers, the aggregate salary for the period during which accommodation has been provided (by any of the employer) shall be taken into account.*
- *Monetary payments, which are not in the nature of perquisite, shall be taken into account. E.g. Leave encashment received during the continuation of service shall be included in salary for this purpose. However, if such pay leave is received at the time of retirement, then such receipt shall not be considered.*

➤ Here salary does not include employer's contribution to Provident Fund of the employee.

- b) The employer of such an employee shall be deemed to be that body or undertaking where the employee is serving on deputation; and

C) Other Employees (residual category)

The value of perquisite is determined as per the following table:

City in which accommodation is provided	Accommodation is owned by the employer	Accommodation is not owned by the employer
Having population exceeding 25 lacs as per 2001 census	15% of salary for the period during which the employee occupied the said accommodation.	Rent paid or payable by the employer or 15% of salary, whichever is lower.
Having population exceeding 10 lacs but not exceeding 25 lacs as per 2001 census	10% of salary for the period during which the employee occupied the said accommodation.	
Any other city	7.5% of salary for the period during which the employee occupied the said accommodation.	

Notes

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Basic + Dearness allowance/pay (if it forms a part of retirement benefit) + Bonus + Commission + Fees + All other taxable allowances (only taxable amount) + Any other *monetary* payment by whatever name called (*excluding perquisites and lump-sum payments received at the time of termination of service or superannuation or voluntary retirement, like gratuity, severance pay leave encashment, voluntary retrenchment benefits, commutation of pension and similar payments*)

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- Here salary does not include employer's contribution to Provident Fund of the employee.

- b) **Exemption of 90 days in case of two house allotment:** Where an employee is transferred from one place to another and he is provided with an accommodation at new place also, the value of perquisite shall be taken for only one such house having lower value for a period not exceeding 90 days. Thereafter, the values of both such houses are taxable.

- c) Any accommodation provided to an employee working at a mining site; or an on-shore oil exploration site; or a project execution site; or a dam site; or a power generation site; or an off-shore site, which

- being of a temporary nature and having plinth area not exceeding 800 sq.ft. is located not less than 8 kms away from the local limits of any municipality or a cantonment board; or
- is located in a remote area.

Remote area here means an area located at least 40 K.M. away from a town having population not exceeding 20000 as per latest published census.

Valuation of specified security or sweat equity shares allotted or transferred to the assessee

Meaning

- ⊛ Specified security means the securities as defined in sec.2(h) of the Securities Contracts (Regulation) Act, 1956 and, where employees' stock option has been granted under any plan or scheme therefor, includes the securities offered under such plan or scheme.

As per sec.2(h) of the Securities Contracts (Regulation) Act, 1956, securities includes:

- shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
- derivative;
- units or any other instrument issued by any collective investment scheme to the investors in such schemes;

- d. security receipt as defined in sec. 2(zg) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
- e. units or any other such instrument issued to the investors under any mutual fund scheme;
- f. any certificate or instrument (by whatever name called), issue to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be;
- g. Government securities;
- h. such other instruments as may be declared by the Central Government to be securities; and
- i. rights or interest in securities.

☛ Sweat equity shares means equity shares issued by a company to its employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

Taxpoint: If such shares are allotted or transferred not for above reasons (i.e., for providing know-how, etc.), then it is not taxable as perquisite. E.g., if such option is granted to the employee against acquisition of immovable property by the company, then such benefit shall not be considered as perquisite. However, employee is liable to pay tax, if any, under the head 'Capital Gain'

Perquisites

Value of any specified security or sweat equity shares shall be considered as perquisites in hands of employee if the following conditions are satisfied:

- a. Such security or sweat equity shares are allotted or transferred on or after 01-04-2009
- b. Such security or sweat equity shares are allotted or transferred by the employer (former or present) directly or indirectly.
- c. Such security or sweat equity shares are allotted or transferred free of cost or at concessional rate to the assessee

Valuation

Value of such perquisite shall be computed as under:

Particulars	Amount
The fair market value ^b of the specified security or sweat equity shares, as the case may be, on the <i>date on which the option is exercised by the assessee</i>	***
Less: The amount actually paid by, or recovered from the assessee in respect of such security or shares	***
Value of perquisite	***

Notes

- a. Option means a right but not an obligation granted to an employee to apply for the specified security or sweat equity shares at a predetermined price.
- b. Fair market value of the specified security or sweat equity shares on the date on which the option is exercised by the assessee shall be:

Case	Fair Market Value
<i>In case of equity shares [Rule 3(8)]</i>	
Where, on the date of the exercising of the option, the share in the company is listed on one recognized stock exchange	The average of the opening price and closing price of the share on that date on such stock exchange
	<i>Where, on the date of exercising of the option, there is no trading in the share on such recognized stock exchange</i> The closing price of the share on such recognised stock exchange on a date closest to the date of exercising of the option and immediately preceding such date
Where, on the date of exercising of the option, the share is listed on more than one recognized stock exchanges	The average of opening price and closing price of the share on the recognised stock exchange which records the highest volume of trading in the share
	<i>Where, on the date of exercising of the option, there is no trading in the share on any recognized stock exchange</i> The closing price of the share on a recognised stock exchange, which records the highest volume of trading in such share, if the closing price, as on the date closest to the date of exercising of the option and immediately preceding such date, is recorded on more than one recognized stock exchange.

Where, on the date of exercising of the option, the share in the company is not listed on a recognised stock exchange	Value of the share in the company as determined by a merchant banker on the date of exercising of the option. However, where as on that date, such price are not determined, then value determined by a merchant banker on any date earlier than the date of the exercising of the option, not being a date which is more than 180 days earlier than the date of the exercising shall be considered.
<i>In case of other securities [Rule 3(9)]</i>	
Specified security, not being an equity share in a company	Value of such security as determined by a merchant banker on the date of exercising of the option. However, where as on that date, such price are not determined, then value determined by a merchant banker on any date earlier than the date of the exercising of the option, not being a date which is more than 180 days earlier than the date of the exercising shall be considered.

Closing price of a share on a recognised stock exchange on a date shall be the price of the last settlement on such date on such stock exchange. However, where the stock exchange quotes both “buy” and “sell” prices, the closing price shall be the “sell” price of the last settlement.

Opening price of a share on a recognised stock exchange on a date shall be the price of the first settlement on such date on such stock exchange. However, where the stock exchange quotes both “buy” and “sell” prices, the opening price shall be the “sell” price of the first settlement.

Merchant banker means category I merchant banker registered with Securities and Exchange Board of India established u/s 3 of the Securities and Exchange Board of India Act, 1992

Valuation of perquisites in respect of Motor Car [Rule 3(2)]

Motor-car facility provided by an employer is taxable in the hands of employee on the following basis:

Car is owned by	Car is Maintained by	Used by employee for	Taxable value	Who is Chargeable
Employer		Office purpose	Not a perquisite	Not applicable
		Personal purpose	M ¹ + D ²	Specified Employee
		Both purpose	Rs.1800 or Rs.2400 p.m.³	
Employer	Employee	Office purpose	Not a perquisite	Not applicable
		Personal purpose	D	Specified employee
		Both purpose	Rs.600/Rs.900 p.m.⁴	
Employee	Employer	Office purpose	Not a perquisite	Not applicable
		Personal purpose	M	All employee
		Both purpose	Actual expenditure incurred by the employer as reduced by Rs.1800 / 2400 p.m. ³ (further deduction of Rs.900 p.m. for driver) or a higher deduction if prescribed conditions are satisfied ⁵	
Employee		Any purpose	Not a perquisite	Not applicable

¹ M = Maintenance cost

² D = Depreciation @ 10% of actual cost of the car. However, if the car is not owned by employer then actual hire charge incurred by employer shall be considered.

³ Rs.2400 p.m. in case of higher capacity car[#] and Rs.1800 p.m. for lower capacity car.

⁴ Rs.900 p.m. in case of higher capacity car[#] and Rs.600 p.m. for lower capacity car.

Higher capacity car means a car whose cubic capacity of engine exceeds 1.6 litres.

5. Conditions to be fulfilled for claiming higher deductions:

- The employer has maintained complete details of journey undertaken for official purpose, which may include date of journey, destination, mileage, and the amount of expenditure incurred thereon; and
- The employer gives the certificate to the effect that the expenditure was incurred wholly and exclusively for the performance of official duties.

Chauffeur / Driver

If chauffeur is also provided, then salary of chauffeur is further to be added to the value of perquisite (as computed above). However, if car is used for both i.e. official and personal purpose then Rs.900 p.m. (irrespective of higher or lower capacity of car) is to be taken as value of chauffeur perquisite.

Notes

- If motor car is provided at a concessional rate then charges paid by employee for such car, shall be reduced from the value of perquisite.
- The word "month" denotes completed month. Any part of the month shall be ignored.
- When more than one car is provided to the employee, otherwise than wholly and exclusively for office purpose, the value of perquisite for -
 - One car shall be taken as car is provided partly for office and partly for private purpose i.e. Rs.1800 or Rs.2400 p.m. (plus Rs.900 p.m. for chauffeur, if provided); and
 - For other car(s), value shall be calculated as car(s) are provided exclusively for private purpose.
- Further reminded, conveyance facility to the judges of High Court or Supreme Court is not taxable.
- Use of any vehicle provided to an employee for journey from residence to work place or vice versa shall not be a taxable perquisite.

Valuation of Perquisite in respect of Vehicle other than Motor Car

The facility provided by employer is taxable in the hands of employee on the following basis:

Owned by	Maintained by	Used for	Taxable Value of perquisite	Who is Chargeable
Employer		Office purpose	Nil	Not Applicable
		Personal purpose	Actual Maintenance + Depreciation @ 10% of Original cost	Specified employee
		Both purpose	Reasonable proportion of (Maintenance + Depreciation @ 10% of Original cost)	
Employee	Employer	Office purpose	Nil	Not Applicable
		Personal purpose	Actual Maintenance	All employee
		Both purpose	Actual expenditure incurred by the employer as reduced by Rs 900 p.m. or as reduced by higher sum if prescribed conditions (as discussed in case of Car facility) are satisfied.	

All other valuation rules remain unchanged

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