


<p>CORPORATE OFFICE TAXATION SECTION 1<sup>ST</sup> FLOOR, BHARAT SANCHAR BHAWAN, JANPATH, NEW DELHI-110001</p>		<p>BHARAT SANCHAR NIGAM LIMITED (A Government of India Enterprise)</p>
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No.1001-06/2008/Taxation/BSNL/SAL-IT/ACC.PERQ/703 Dated:24th December,2008

To,

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

**Sub:** Bearing the TDS liability on perquisite tax of accommodation owned by BSNL/DOT/Central Pool provided to BSNL employees either rent free or license fee recovery basis from the F.Y.2001-02 to 2007-08 & 2008-2009.

Ref: 1. 1001-06/2005/Taxation/BSNL/SAL-IT/ACC.PERQ/99 dated 25<sup>th</sup> February, 2008.

Ref: 2. 1001-06/2005/Taxation/BSNL/SAL-IT/ACC.PERQ/149 dated 19<sup>th</sup> March, 2008.

Ref: 3. 1001-06/2008/Taxation/BSNL/SAL-IT/ACC.PERQ/629 dated 24<sup>th</sup> November, 2008.

Kindly refer to this office letter of even no. dated 25/02/2008 wherein it was intimated that since employees on deemed deputation/deputation had protested against the levy of perquisite tax of accommodation, reference was made to CBDT on 17/01/2008. In view of reply not received at that time it was instructed that payment of perquisite tax to income tax authorities for officers on deemed deputation/deputation may be withheld till further orders. At the time of issue of letter of even no. dated 21/11/2008 we were yet to receive any clarification as mentioned above from CBDT regarding the issue of tax on perquisites in respect of officers on deemed deputation/deputation and hence instructions were issued neither to deduct nor to pay perquisite tax on behalf of these officers to Income Tax Authorities till further order.

Now clarification has been received from CBDT vide their letter no. F.No.275/67/2007-IT(B) dated 28/11/08 . It has been clarified by CBDT that if a Central Government employee is on deputation to a PSU, he is an employee of the PSU during the period of his deputation. However, in many instances such Central Government employees are allowed to retain their Central Government accommodation either in exchange for the accommodation to be provided by the PSU or, in the alternative, because the PSU does not provide any accommodation.

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to its employees. In the case of the former, the accommodation, though owned by the Central Government, is in substance provided by the PSU. Therefore, the perquisite value in such cases would be computed in the same manner as in the case of employees of all employers other than Central Government and the State Government. In the later case, the accommodation will be treated as provided by the Central Government and the perquisite value will be computed in the manner provided in Sl. no. 1 of table 1 of rule 3 of the Income Tax Rules, 1962.

A PSU employee (other than an employee who is on deputation from the Central Government or State Government) provided with an accommodation by the Central Government would be liable to pay tax on perquisite value of the accommodation in the same manner 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 view of the clarification given by the CBDT, deemed deputationists/ deputationists are falling within the ambit of recovery of Income Tax on perquisite of accommodation as in the case of employees of all employers other than Central Govt. & State Govt.

You are therefore requested to make payment of tax on perquisites of accommodation for the F.Y.2008-09 on behalf of these employees also as per instruction circulated vide this office letter of even no. dated 24.11.2008. Also payment of Tax on perquisites of accommodation by BSNL on behalf of these employees for the period F.Y. 2001-02 to 2007-2008 may be done now as per instructions contained in our office letter of even no. dated 19.03.2008.

  
(Arundati Panda)  
GM (Taxation)

Encl: As Stated

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

New Delhi, the 28<sup>th</sup> November, 2008

To,  
**Shri Kuldeep Goyal**  
Chairman & Managing Director of BSNL  
Bharat Sanchar Bhawan  
H C Mathur Lane, Janpath  
New Delhi-11001



Dear Sir,

**Subject: Valuation of Rent Free Accommodation – Clarification sought by BSNL in respect of levy of tax on accommodation provided to Central Government employees working in BSNL on deemed deputation basis.**

I am directed to refer to your letters dated 05.08.2008, 31.05.2008 and 31.03.2008 seeking clarification regarding computation of perquisite in respect of residential accommodation provided to officers of Indian Telecom Service working with BSNL. Further, other similar references have also been received by the CBDT from Director (Finance), BSNL Board and other employees of BSNL on this issue.

The matter has been examined by the CBDT and the various questions arising from the representation of Bharat Sanchar Nigam Ltd. (BSNL) have also been considered. The relevant queries and the response on those issues are presented in the Table below:

S.No.	BSNL's query	Answer
1.	Whether an employer is bound to recover TDS on perquisite, wherever applicable in a case, for the period before financial year 2006-07, since TDS was so far made on the basis of law prevailing at that time and as confirmed by the Supreme Court in Arun Kumar's case?	The employer is bound to deduct TDS, 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.

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2.	<p>Since the amendment has been brought about in mid-2007, cannot the liability to deduct tax on the perquisite for the period 2001-02 to 2006-07 be treated as arrears for the current financial year and tax be deducted thereon based on computation and relief under section 89(1) of the Income-tax Act? Further, cannot quarterly annual returns be filed and Form 16 issued accordingly?</p>	<p>The tax for the period 2001-02 to 2006-07 under-deducted consequent to amendment brought in by Finance Act, 2007 can now be deducted by treating the perquisite as arrear. Relief under section 89(1) can also be provided.</p>
3.	<p>In case of a Government employee working in a PSU on deemed deputation or deputation basis who would be the employer – the Government or the PSU?</p>	<p>The employer in such cases would be the public sector undertaking (PSU).</p>
4.	<p>If the PSU is held to be the employer, then :-</p> <p>(i) What is the perquisite value in case of a Government employee working in a PSU on deputation and residing in an accommodation owned and/or provided by such PSUs?</p> <p>(ii) What is the perquisite value in case of a Government employee working in a PSU on deputation and residing in an accommodation owned and/or provided by the Central Government? (It may be noted that for such accommodation, an amount equal to licence fees plus HRA entitlement of such employee, is paid by the PSU to the Central Government/Estate Officer).</p>	<p>(i) The perquisite value in such cases would be computed in the same manner as in the case of employees of all employers other than the Central Government and the State Government.</p> <p>(ii) As indicated above, if a Central Government employee is on deputation to a PSU, he is an employee of the PSU during the period of his deputation. However, in many instances such Central Government employees are allowed to retain their Central Government accommodation either in exchange for the accommodation to be provided by the PSU or, in the alternative, because the PSU does not provide any accommodation to its employees. In the case of the former, the accommodation, though owned by the Central Government, is in substance provided by the PSU. Therefore, the perquisite value</p>

		in such cases would be computed in the same manner as in the case of employees of all employers other than the Central Government and the State Government. In the later case, the accommodation will be treated as provided by the Central Government and the perquisite value will be computed in the manner provided in Serial No.1 of Table 1 of Rule-3 of the Income-tax Rules, 1962.
5.	What is the perquisite value in case of a PSU employee residing in an accommodation owned and/or provided by the Central Government? (It may be noted that for such accommodation, an amount equal to licence fees plus HRA entitlement of such employee, is paid by the PSU to the Central Government/Estate Officer.	A PSU employee (other than an employee who is on deputation from the Central Government or State Government) provided with an accommodation by the Central Government would be liable to pay tax on the perquisite value of the accommodation in the same manner 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.

I hope this letter clarifies all your queries on the above subject.

  
**Ansuman Pattnaik**  
**Director (Budget)**  
**Tele/Fax- 23092641**