



Sanchar Nigam Pensioners' Welfare Association

Reg.No: SOCIETY/WEST/2021/8902564

CHQ : B-11/1 , Ramesh Nagar, New Delhi-110015, India



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SNPWA/ CHQ/Dir (F)/ 23

Dated 08th May 23.

To

Sh. Rajivkumar,
Dir(F)/ BSNL,
New Delhi.

Sir,

Sub: Clarification issued by BSNL Co to GS/ SNPWA (Annexure1) regarding applicability of Tax on migration fees to CGHS paid by BSNL completely contravenes the settled provisions of IT department issued vide annexure (2). Besides, IT department has adequately clarified in response to an RTI query filed by a retired official (annexure 3) that it is entirely an internal affair of BSNL and that IT department is not involved in interpretation of whether it is taxable or not

Ref:

1. BSNLCO-TAXN/13(18)3/2020-Taxation/4713 dtd 28-07-2022 addressed to GS SNPWA
2. Extract of tax payers information on valuation of perquisites series 36 Ch. 4.5 pg 23 &24 published by the income tax Department (extract enclosed)
3. F No. Addl.DIT/TDS&BIFR/RTI/2019-20/1928 dated 11.02.2020 (copy enclosed)
4. BSNLCO-TAXN/13(18)/3/2020-Taxation/4362 dated 22-09-2021

Sir,

we are extremely thankful to your good self for your kind positive intervention on the subject matter. We would like to bring to your kind notice that the CMD BSNL had approved the direct payment of CGHS contribution by the BSNL itself without involvement of the concerned Pensioner. Even though it could not take off due to the inherent limitations of the BSNL ERP system, the intention and the spirit behind his magnanimous decision in this direction cannot be denied.

1. However, Sir, the taxation cell has issued directions vide ref 4 above that the refund of CGHS fees is taxable, which itself is against the spirit of the order of the CMD for direct payment by BSNL, in which case neither refund nor taxation on that account would have accrued.

2. However, what is extremely important and surprising is that BSNL CO has issued instructions to treat CGHS Migration fees as a perquisite and thus taxable. This is in complete disregard and contravention of the IT Provisions in this regard, an extract of which is enclosed at (2) and also of the clarification issued by IT Department in response to an RTI query filed by an retired employee stating that it is entirely an internal matter of BSNL ref 3 above.

Sir, transgressing into the domain of IT department which has clearly stipulated that any kind of reimbursement by employer towards medical insurance or any reimbursement by the employer in this regard are not chargeable to tax is not only unfair but a serious violation of the settled IT Provisions. Besides, reply of IT department in response to an RTI query stating that it is an entirely matter of BSNL adequately establishes that Provisions of IT do not treat such reimbursement as taxable

3. BSNL Corporate Office letter referred 4 above in its order clearly states that even though there is no specific IT provisions in the Income Tax Act 1961, it is simply taking a conservative view and charging such CGHS

refund as income chargeable to the head 'salaries'. Such instructions, your good self may understand is totally unfounded and violative of IT Act 1961, merely intended to punish the pensioners. We believe that your kind self will be considerate more than conservative.

4. Further, Sir, it may also be pointed out that the life time CGHS contribution is calculated for a span of ten years and is payable even monthly or yearly. Even if it comes under the purview of perquisites, there is an exemption of ₹15000 per year for perquisites, which works out to ₹ 1,50,000 for 10 years. Taking this into consideration also the CGHS refund should be fully tax-free.

5. It may also kindly be noted that the CGHS facility has been in force for BSNL/MTNL from 2014 onwards. Until this time, no tax was charged on the refund. The argument that a wrong had to be corrected is also untenable because the silence of IT Act 1961 on the subject, which is the Bible for taxpayers and pinpoints all taxable items, proves beyond doubt that such refund does not come under taxable items.

It is precisely In the context of these irrefutable facts that your benign intervention is sought to get the entire issue reexamined in the light of the unambiguous IT Provisions on the issue, we request your benign intervention to rectify the orders on the subject.

We shall be grateful for an expeditious review of the issue.

With kind regards,

Sincerely Yours




G. L. Jogi
General Secretary

Copy
Sh Y. N. Singh, Sr. GM taxation, BSNL CO

Encls Ref 1, 2, 3 and 4. above.

Encl-1

CORPORATE OFFICE, TAXATION SECTION 5 th FLOOR, BHARAT SANCHAR BHAWAN, JANPATH, NEW DELHI-110001 Ph.No. 011-23017306/23734087, Fax : 011-23718886 Email: bsnldsco@gmail.com		BHARAT SANCHAR NIGAM LIMITED [A Government of India Enterprise]
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No. BSNLCO-TAXN/13(18)/3/2020-Taxation/4713

Dated: - 28-07-2022

To
The General Secretary,
Sanchar Nigam Pensioners' Welfare Association.

Sub:- Unwarranted transgression and infringement into settled taxation laws of I.T Department, by the Taxation Wing of BSNL. Immediate rescinding of the order solicited to safeguard BSNL Retirees from being imposed tax arbitrarily and in complete contravention of the existing provisions of I.T Department -Reg.

The undersigned is directed to refer to your letter no. SNPWA/CHQ/CMD/16/22 dated 19.07.2022 regarding unwarranted transgression and infringement into settle taxation laws of I.T Department, by the taxation wing of BSNL. In this connection, the following is intimated:-

a) **Regarding Gratuity:-** Vide letter no. BSNLCO-TAXN/13(18)/3/2020-Taxation/4362 dated 22.09.2021, clarification was issued by this office regarding the "*Gratuity/Leave Encashment payable to Nominee/Legal Heirs of BSNL employees on death, whether it is to be shown as Income of employee or legal heirs and under which head it is chargeable*".

The clarification issued by Taxation Section for the above query is as under:-

As per Circular No. 573 dated 21.08.1990, Gratuity payment to a widow or other legal heirs of any employee who dies in active service shall be exempt from Income Tax.

b) **Regarding CGHS Reimbursement:-** Further, in respect of Taxability of CGHS Contribution reimbursed to Retired employees, the clarification was issued by this office vide letter dated 22.09.2021 that TDS may be deducted at Source under the head of salary.

Basis your complaint the case has been re-examined with the following observations:-

- Retired employee is obliged to make contribution to the CGHS in order to avail the benefits of the scheme;
- The reimbursement made by BSNL is voluntary and is gratuitous in nature.

Hence, the amount reimbursed by BSNL should be treated as a perquisite in the hands of Retired employee and BSNL is liable to deduct TDS on the said amount of contribution reimbursed. Further, there are no express provisions under the Income-tax Act, 1961 ('Act') which provides for specific exemption of such contribution amount. **This is for your kind information and necessary action please.**

This issues with the approval of Sr. GM (Taxation).

Harish
DM (Taxation),
BSNL, C.O.

Tax Payers Information Series-36

VALUATION OF PERQUISITES



INCOME TAX DEPARTMENT

Directorate of Income Tax (PR,P&P)

6th Floor, Mayur Bhawan,

Connaught Circus,

New Delhi-110001

4.5 Medical facilities in India [Proviso to section 17(2)]

a. Expense incurred or reimbursed by the employer for the medical treatment of the employee or his family (spouse and children, dependent - parents, brothers and sisters) in any of the following hospital is not chargeable to tax in the hands of the employee:-

i.) Hospital maintained by the employer.

ii.) Hospital maintained by the Government or Local Authority or any other hospital approved by Government for the treatment of its employees.

iii.) Hospital approved by the Principal Chief Commissioner or Chief Commissioner having regard to the prescribed guidelines for treatment of the prescribed diseases.

b. Medical insurance premium paid or reimbursed by the employer is not chargeable to tax.

- c. Any other expenditure incurred or reimbursed by the employer for providing medical facility in India is not chargeable to tax up to Rs. 15,000 in aggregate per assessment year.

4.6 ~~Medical facilities outside India [Proviso to section 17(2)]~~

~~Any expenditure incurred or reimbursed by the employer for medical treatment of the employee or his family member outside India is exempt to the extent of following (subject to certain conditions):~~

- ~~a. Expenses on medical treatment - exempt to the extent permitted by RBI.~~
- ~~b. Expenses on stay abroad for patient and one attendant - exempt to the extent permitted by RBI.~~
- ~~c. Expenditure incurred on travelling of patient and one attendant- exempt, if Gross Total Income (before including the~~



DIRECTORATE OF INCOME TAX (TPS-1 & TDS),
आयकर निदेशालय टी.पी.एस.-1 & टी.डी.एस.)
5th Floor, Mayur Bhawan/ 5वां तल ,मयूर भवन,
Connaught Circus, New Delhi – 110001/ कनॉट प्लेस ,नई दिल्ली- 110001
Phone: 011-2341 2641 Fax: 011-2341 2052
E-mail – delhi.addldit.tds.bifr@incometax.gov.in

F. No. Addl.DIT/TDS & BIFR/RTI/2019-20/1928 Dated: 11.02.2020

Name & Address of the applicant	Sh. Amit Kumar Gupta, 1/4 Rajendra Banerjee Road, Behala, Kolkata-700034
Date of Receipt of application	13.01.2020
Date of Order	11.02.2020

ORDER U/S 7 OF THE RIGHT TO INFORMATION ACT, 2005

An application filed by Sh. Amit Kumar Gupta, 1/4 Rajendra Banerjee Road, Behala, Kolkata-700034 was received in this office on 13.01.2020 which was forwarded to this office by Addl. DIT(TDS&BIFR), New Delhi wherein the para wise information is provided as under.


Information sought	Reply
1 (a) (b) (c)	Yes, according to Union Budget 2018, reimbursement on actual expenses for outdoor & indoor medical treatment to senior citizens is considered as taxable income in respect of employees other than Government employees and for which TDS is to be deducted and income Tax is to be paid.
2	Reimbursement received by CGHS beneficiaries on account of 1(a) & 1(b) above is not a taxable income
3 (a) (b)	*TDS on medical reimbursement claim is deducted on actual payment u/s 192 of IT Act, 1961 & Rule 3 of Income Tax Rules, 1962. *Any person making specified payment mentioned under the Income Tax Act are required to deduct TDS at the time of making such specified payment which is to be deposited to the Government by 7 th of the subsequent month. *Since, this issue relates to the internal practice of the BSNL. Hence, this office is unable to give any specific reply
4	Same as mentioned in point 3

3 of 3

Copy to :
The AADIT (TPS-1) & CPIO, O/o ADG (TPS-1&TDS), New Delhi.

(M)
AADIT

AADIT (BIFR/RTI)

CORPORATE OFFICE,TAXATION SECTION 5 th FLOOR,BHARAT SANCHAR BHAWAN, JANPATH, NEW DELHI-110001 Ph.No.011-23037306/23734087, Fax : 011-23718886 Email:bsnldtsc@gmail.com	 BHARAT SANCHAR NIGAM LTD.	BHARAT SANCHAR NIGAM LIMITED [A Government of India Enterprise]
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No. BSNLCO-TAXN/13(18)/3/2020-TAXATION/4362

Dated:-22-09-2021

To

- 1) The Chief General Managers and IFAs, All BSNL Circles/Units.
- 2) Sr.GM (CA/ERP-FICO/HCM), Corporate Office
- 3) GM (EF/ R&P), Corporate Office

Sub.- Clarification on taxability of payments made to retired employees and nominees of deceased employees-reg.

The undersigned is directed to intimate that, this office is receiving queries from the various circle on the subject mentioned above. In this connection the para wise replies to the queries raised by circles are as follows:-

Query: Whether reimbursement of CGHS subscription to BSNL absorbed retired employees is to be treated as income of the retired employee? And, if the answer is in affirmative, the head under which it is chargeable.

Reply: As per the proviso to section 17(2) of the Income Tax Act,1961 any reimbursement by the employer in respect of any insurance premium paid by the employee to effect an insurance on his health or the health of his family under any approved scheme by Central Govt. or IRDA is a tax free perquisite. However, in the absence of clarity on whether reimbursement to BSNL absorbed retired employees on account of CGHS subscription is an insurance premium or not, on a conservative basis, tax may be deducted at source under the head of salary.

Query: Gratuity/Leave encashment payable to Nominee/Legal Heirs of BSNL employee on death while in employment is to be shown as Income of the employee or legal heirs? And the head under which it is chargeable.

Reply:

- (i) Gratuity is a payment made by Employer to an Employee in appreciation of the past services rendered by the employee. Gratuity can either be received by:-
- a) The employee himself at the time of retirement.
 - b) The legal heir on the event of the death of the employee.

Gratuity received by an employee on his retirement is taxable under the head "Salary" Whereas gratuity received by the legal heir of the deceased employee shall be taxable under the head "Income From Other sources".

As per circular No. 573 dated 21.08.1990, Gratuity payment to a widow or other legal heirs of any employee who dies in active service shall be exempt from income tax.

- (ii) Leave salary paid to the legal heir of deceased employee is not taxable as salary. [Letter No. F.35/1/65-IT(B), dated 5/11/1965]. Further, leave salary by a legal heir of the Government employee who died in harness is not taxable in the hands of the recipient [Circulars No.309, dated 3/7/1981].