

**DRAFT QUERY 2 :**

***Who has the locus to object with regard to an assessment pertaining to Salary and Wages Tax under the Income Tax Act,1959 and who is responsible for making these deductions?***

Draft Reply

- i) Section 245 which contains the provision governing Objections states that ..Subject to Subsection (2), a taxpayer dissatisfied with an assessment under this Act may, within 60 days after service of the notice of assessment, post to or lodge with the Commissioner General an objection in writing against the assessment stating fully and in detail the grounds on which he relies.
- ii) As per Section 4(1) -“**taxpayer**” means a person deriving income. In the context of these proceedings the applicable tax is Salary or Wages Tax and therefore recourse is had to **Section 65D**- Interpretation which inter alia defines “taxable income” as gross amount of salary or wages income earned or derived without reference to allowable deductions.
- iii) **65G. Liability to pay tax.** A person who derives income to which this Division applies is liable to pay salary or wages tax upon that class of income at the rates declared by Act.
- iv) Section 65 I(3) states that -The Commissioner General may serve on an employer or employee by post or otherwise a notice in writing in which is specified
- v) “**employer**” means a person who pays or is liable to pay any salary or wages, and includes— (a) in the case of an unincorporated body of persons other than a partnership—the manager or other principal of that body; and  
(b) in the case of a partnership—each partner, and, except in relation to the imposition of a penalty, also includes the State, an authority of the State or a public authority constituted by or under an Act, a provincial government, a local government body, or a local level government body by whatever name known established by a provincial law; (c) in the case of the payment of a capital amount of any allowance, gratuity or compensation paid in a lump sum under Section 46B, the payer of that amount;
- vi) “**group employer**” means a person who is registered as a group employer under Section 299G and includes, unless the contrary intention appears, a person who is required to be registered pursuant to that section;
- vii) Section 299G(7) categorically states that the Group employer shall be liable to pay to the Commissioner General the amount of tax so determined. The usage of the word “shall” makes it clear that it is not an option but an obligation to be discharged by such employer at the earliest. Such a Group employer has the recourse of pursuing recovery such amount of tax from the respective employee. In the event of the Group employer defaulting in this matter then penal consequences prescribed under Section 299G(9) would be attracted