

## PAPER 7: DIRECT TAX LAWS & INTERNATIONAL TAXATION

### SECTION – A: STATUTORY UPDATE

The direct tax laws, as amended by the Finance Act, 2019, the Finance (No.2) Act, 2019 and Taxation Laws (Amendment) Act, 2019, including significant notifications and circulars issued upto 31<sup>st</sup> October, 2019 are applicable for May, 2020 examination. The relevant assessment year for May, 2020 examination is A.Y.2020-21. The amendments made by the Taxation Laws (Amendment) Act, 2019 and significant notifications/circulars issued upto 31<sup>st</sup> October, 2019, relevant for May, 2020 examination but not covered in the October, 2019 edition of the Study Material, are given hereunder:

### PART – I : DIRECT TAX LAWS

#### Chapter 12: Assessment of Various Entities

The October, 2019 edition of the Study Material incorporates the amendments made by the Taxation Laws (Amendment) Ordinance, 2019, promulgated by the President of India on 20.9.2019. The same has been subsequently approved by the Cabinet, consequent to which, the Taxation Laws (Amendment) Bill, 2019, with certain further changes, was introduced in the Parliament. The same has been passed by both Houses of the Parliament and has received the assent of the President of India. This Act shall be deemed to have come into force on 20.9.2019.

On account of the subsequent amendments brought in through the Taxation Laws (Amendment) Bill, 2019 introduced in the Parliament, **students are advised to ignore Annexures 1, 2 and 3 of Chapter 12 in the printed copy of Module 2 of the October 2019 edition and instead, read the Annexures given hereunder:**

#### Annexure 1

#### Insertion of new sections 115BAB and 115BAA providing for concessional rate of tax in respect of certain domestic companies

New sections 115BAB and 115BAA have been inserted by the Taxation Laws (Amendment) Act, 2019, providing for concessional rates of tax and exemption from minimum alternate tax (MAT) in respect of certain domestic companies with effect from A.Y.2020-21. The provisions of these two new sections are tabulated hereunder -

(1)	(2)	(3)	(4)
	Particulars	Section 115BAB	Section 115BAA
(1)	Applicability	Domestic manufacturing company	Any domestic company
(2)	Rate of tax	15%	22%
(3)	Rate of surcharge	10%	10%

(4)	Effective rate of tax (including surcharge & HEC)	<b>17.16%</b> [Tax@15% (+) Surcharge@10% (+) HEC@4%]	<b>25.168%</b> [Tax@22% (+) Surcharge@10% (+) HEC@4%]
(5)	Applicability of MAT	Not applicable	Not applicable
(6)	<b>Manner of computation of tax liability</b>		
	<b>Particulars</b>	<b>Section 115BAB</b>	<b>Section 115BAA</b>
	<b>Income on which concessional rate of tax is applicable</b>	The rate of tax (i.e., <b>17.16%</b> ) is notwithstanding anything contained in the Income-tax Act, 1961 but subject to the provisions of Chapter XII, other than sections 115BA and 115BAA. <b>[Read with point no.11 below, wherein the rate of 34.32% (i.e., Tax@30% + surcharge@10% + HEC@4%) would be applicable in specified circumstance]</b>	The rate of tax (i.e., <b>25.168%</b> ) is notwithstanding anything contained in the Income-tax Act, 1961, but subject to the provisions of Chapter XII, other than section 115BA and 115BAB.
	<b>Rate of tax on income covered under Chapter XII</b> [for example, long-term capital gains chargeable to tax u/s 112 and 112A, short-term capital gains chargeable to tax u/s 111A]	Such income would be subject to tax at the rates mentioned in the said sections in Chapter XII. Surcharge@10% would be levied on tax computed on such income. HEC@4% would be levied on the income-tax <i>plus</i> surcharge.	Such income would be subject to tax at the rates mentioned in the said sections in Chapter XII. Surcharge@10% is leviable on tax computed on such income. HEC@4% would be levied on the income-tax <i>plus</i> surcharge.
	<b>Rate of tax on other income in respect of which no specific rate of tax is provided in Chapter XII</b>	The applicable tax rate is <b>25.168%</b> (i.e., tax@22%, <i>plus</i> surcharge @10% <i>plus</i> HEC@4%), if such income has neither been derived from nor is incidental to manufacturing or production of an article or thing (For example, income from house property and income from other sources).	The applicable tax rate is <b>25.168%</b> (i.e., tax@22% <i>plus</i> surcharge@10% <i>plus</i> HEC@4%). There is, however, <b>no restriction regarding claim of any deduction or allowance</b> permissible under the relevant provisions of the

	In respect of such income, <b>no deduction or allowance in respect of any expenditure or allowance</b> shall be allowed in computing such income.	Act.
<b>Rate of tax on STCG from transfer of a capital asset on which no depreciation is allowable under the Act</b>	The applicable rate of tax is <b>25.168% (i.e., tax@22%, plus surcharge@10% plus HEC@4%)</b> . There is, however, no restriction regarding claiming of deduction or allowance in this regard.	The applicable rate of tax is <b>25.168% i.e., tax @22%, plus surcharge @10% plus cess@4%</b> . There is no restriction regarding claiming of deduction or allowance in this regard.
(7)	<b>Conditions to be fulfilled for availing concessional rate of tax and exemption from MAT</b>	
	<b>Particulars</b>	<b>Section 115BAB</b>
		<b>Section 115BAA</b>
	Conditions to be fulfilled for availing concessional rate of tax and exemption from MAT	(i) The company should be <b>set-up and registered on or after 1.10.2019</b> .
		(ii) It should <b>commence manufacturing or production of an article or thing on or before 31.3.2023</b> .
		(iii) It should <b>not be formed by splitting up or the reconstruction of a business already in existence</b> (except in case of a company, business of which is formed as a result of the re-establishment, reconstruction or revival by the person of the business of any undertaking referred to in section 33B in the circumstances and within the period specified therein)
		No time limit specified. Both existing companies and new companies can avail benefit.
		Need not be a manufacturing or a production company
		No similar condition has been prescribed

(iv)	It does <b>not</b> use any machinery or plant previously used for any purpose <b>[Refer Note at the end]</b>	No similar condition has been prescribed
(v)	It does <b>not</b> use any building previously used as a hotel or a convention centre [meanings assigned in section 80-ID(6)] in respect of which deduction u/s 80-ID has been claimed and allowed.	No similar condition has been prescribed
(vi)	<p>It should <b>not</b> be engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it.</p> <p><b>Note</b> – <i>Business of manufacture or production of any article or thing does <b>not</b> include business of –</i></p> <p>(1) <i>Development of computer software in any form or in any media</i></p> <p>(2) <i>Mining</i></p> <p>(3) <i>Conversion of marble blocks or similar items into slabs</i></p> <p>(4) <i>Bottling of gas into cylinder</i></p> <p>(5) <i>Printing of books or production of cinematograph films</i></p> <p>(6) <i>Any other business</i></p>	No similar condition has been prescribed

		<p>as may be notified by the Central Govt. in this behalf.</p> <p><b>Note</b> - If difficulty arises regarding fulfilment of conditions listed in (iv) to (vi) above, the CBDT may, with the approval of the Central Government, issue guidelines for the purpose of removing difficulty and to promote manufacturing or production of article or thing using new plant and machinery. Every guideline issued by the CBDT has to be laid before each House of Parliament, and shall be binding on the person, and the income-tax authorities subordinate to it.</p>										
(8)	<p>Common conditions for both sections for availing the concessional rate of tax and exemption from MAT</p>	<p>In case of a company opting for either section 115BAA or 115BAB, the total income should be computed -</p> <p>(i) without providing for deduction under any of the following provisions:</p> <table border="1"> <thead> <tr> <th>Section</th> <th>Provision</th> </tr> </thead> <tbody> <tr> <td>10AA</td> <td>Exemption of profits and gains derived from export of articles or things or from services by an assessee, being an entrepreneur from his Unit in SEZ.</td> </tr> <tr> <td>32(1)(iia)</td> <td>Additional depreciation @20% or 35%, as the case may be, of actual cost of new plant and machinery acquired and installed by manufacturing undertakings.</td> </tr> <tr> <td>32AD</td> <td>Deduction@15% of actual cost of new plant and machinery acquired and installed by an assessee in a manufacturing undertaking located in the notified backward areas of Andhra Pradesh, Telengana, Bihar and West Bengal.</td> </tr> <tr> <td>33AB</td> <td>Deduction@40% of profits and gains of business of growing and manufacturing tea, coffee or rubber in India, to the extent deposited with</td> </tr> </tbody> </table>	Section	Provision	10AA	Exemption of profits and gains derived from export of articles or things or from services by an assessee, being an entrepreneur from his Unit in SEZ.	32(1)(iia)	Additional depreciation @20% or 35%, as the case may be, of actual cost of new plant and machinery acquired and installed by manufacturing undertakings.	32AD	Deduction@15% of actual cost of new plant and machinery acquired and installed by an assessee in a manufacturing undertaking located in the notified backward areas of Andhra Pradesh, Telengana, Bihar and West Bengal.	33AB	Deduction@40% of profits and gains of business of growing and manufacturing tea, coffee or rubber in India, to the extent deposited with
Section	Provision											
10AA	Exemption of profits and gains derived from export of articles or things or from services by an assessee, being an entrepreneur from his Unit in SEZ.											
32(1)(iia)	Additional depreciation @20% or 35%, as the case may be, of actual cost of new plant and machinery acquired and installed by manufacturing undertakings.											
32AD	Deduction@15% of actual cost of new plant and machinery acquired and installed by an assessee in a manufacturing undertaking located in the notified backward areas of Andhra Pradesh, Telengana, Bihar and West Bengal.											
33AB	Deduction@40% of profits and gains of business of growing and manufacturing tea, coffee or rubber in India, to the extent deposited with											

	NABARD in accordance with scheme approved by the Tea/Coffee/ Rubber Board.
33ABA	Deduction@20% of the profits of a business of prospecting for, or extraction or production of, petroleum or natural gas or both in India, to the extent deposited with SBI in an approved scheme or deposited in Site Restoration Account.
35(1)(ii)/(iia)/(iii)	Deduction/weighted deduction for payment to any research association, company, university etc. for undertaking scientific research or social science or statistical research.
35(2AA)	Weighted deduction@150% of payment to a National Laboratory or University or IIT or approved specified person for scientific research
35(2AB)	Weighted deduction@150% of in-house scientific research expenditure incurred by a company engaged in the business of bio-technology or in the business of manufacture or production of an article or thing.
35AD	Investment-linked tax deduction for specified businesses.
35CCC	Weighted deduction@150% of expenditure incurred on notified agricultural extension project
35CCD	Weighted deduction@150% of expenditure incurred by a company on notified skill development project.
80-IA to 80RRB	Deductions from gross total income under Chapter VI-A under the heading "C- Deductions in respect of certain incomes" <b>other than the provisions of section 80JJAA.</b>

- (ii) without set-off of any loss or allowance for unabsorbed depreciation deemed so u/s 72A, where such loss or depreciation is attributable to any of the deductions listed in (i) above [Such loss and depreciation would be deemed to have been already given effect to and no further deduction for such loss shall be allowed for any subsequent year]
- (iii) by claiming depreciation u/s 32 determined in the prescribed manner. However, additional depreciation u/s 32(1)(iia) cannot be claimed.

<p><b>Note – <u>Additional points relevant in the context of section 115BAA:</u></b></p> <p>(1) In case of a company opting for section 115BAA, total income should be computed without set-off of any loss carried forward or depreciation from any earlier assessment year, where such loss or depreciation is attributable to any of the deductions listed in (i) above [Such loss and depreciation would be deemed to have been already given effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year]</p> <p>(2) In the case of a person having a Unit in the IFSC, referred to in section 80LA(1A), which has exercised option for section 115BAA, deduction u/s 80LA would be allowed subject to fulfilment of the conditions specified in that section.</p> <p>(3) Where there is a depreciation allowance in respect of a block of asset which has not been given full effect to prior to A.Y.2020-21, corresponding adjustment shall be made to the WDV of such block of assets as on 1.4.2019 in the prescribed manner, if option for section 115BAA is exercised for P.Y.2019-20 relevant to A.Y.2020-21.[For example, in case of an asset acquired and put to use for less than 180 days in P.Y. 2018-19, the effect of balance additional depreciation to be allowed in P.Y. 2019-20 will be made in the WDV of the block as on 1.4.2019, if option for section 115BAA is exercised for P.Y.2019-20 relevant to A.Y.2020-21]</p> <p>(4) Since there is no time line within which option under section 115BAA can be exercised, a domestic company having brought forward losses and depreciation on account of deductions listed in (i) above may, if it so desires, postpone exercise the option under section 115BAA to a later assessment year, after set off of the losses and depreciation so accumulated.</p>			
	<b>Particulars</b>	<b>Section 115BAB</b>	<b>Section 115BAA</b>
(9)	Failure to satisfy conditions	On failure to satisfy the conditions mentioned in point no. (7) and (8) above, the option exercised would be <b>invalid</b> in respect of the assessment year relevant to that previous year and subsequent assessment years; Consequently, the other provisions of the Act would apply to the person as if the option had not been exercised for the assessment year relevant to that previous year and subsequent	On failure to satisfy the conditions mentioned in point no. (8) above, the option exercised would be <b>invalid</b> in respect of the assessment year relevant to that previous year and subsequent assessment years; Consequently, the other provisions of the Act

		assessment years. <b>Note</b> – Where option exercised under section 115BAB is rendered invalid due to violation of conditions stipulated in point no.7 [(iv) to (vi)] above, such person may exercise option under section 115BAA.	would apply to the person as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years.
	<b>Particulars</b>	<b>Section 115BAB</b>	<b>Section 115BAA</b>
(10)	Availability of set-off of MAT credit brought forward from earlier years	Since it is a new company, there would be no brought forward MAT credit	Brought forward MAT credit cannot be set-off against income u/s 115BAA. <b>Note</b> - If a company has b/f MAT credit, it can first exhaust the MAT credit, and thereafter opt for section 115BAA in a subsequent previous year.
	<b>Particulars</b>	<b>Section 115BAB</b>	<b>Section 115BAA</b>
(11)	Adjustments for transactions with persons having close connection	If the Assessing Officer opines that the course of business between the company and any other person having close connection therewith is so arranged that the business transacted between them produces more than the ordinary profits to the company, he is empowered to take into account the amount of profits as may be reasonably deemed to have been derived therefrom, while computing profits and gains of such company.  In case the arrangement referred to above involves a specified domestic transaction referred to in section 92BA, then, the amount of profits from such transaction would be determined by considering the arm's length price (ALP).  <b>The amount, being profits in excess of the amount of the profits</b>	No such requirement to make any adjustment



		<p>determined by the Assessing Officer, shall be deemed to be the income of the person.</p> <p>The income-tax on the income so deemed shall be subject to tax@34.32%(i.e., tax@30% + surcharge @10% +HEC@4%).</p> <p><i>Note – The scope of “specified domestic transaction” referred to in section 92BA has been expanded to include within its ambit, any business transacted between such persons with close connection, where one such person is a company claiming benefit under section 115BAB.</i></p>	
	<b>Particulars</b>	<b>Section 115BAB</b>	<b>Section 115BAA</b>
(12)	Exercise of option by the company within the prescribed time	<p>The beneficial provisions of this section would apply only if option is exercised in the prescribed manner on or before the due date u/s 139(1) for furnishing <b>the first of the returns of income for any previous year</b> relevant to A.Y.2020-21 or any subsequent assessment year.</p> <p>Such option, once exercised, would apply to subsequent assessment years.</p> <p>Further, once the option has been exercised for any previous year, it <b>cannot be subsequently withdrawn</b> for the same or any other previous year.</p> <p><i>Notes – (1) The option has to be exercised at the time of furnishing the <b>first of the returns of income</b> for any previous year. If a person fails to so exercise such option, it cannot be exercised thereafter for any subsequent previous year.</i></p>	<p>The beneficial provisions of this section would apply if option is exercised in the prescribed manner on or before the due date u/s 139(1) for furnishing the return of income for any previous year relevant to A.Y.2020-21 or any subsequent assessment year.</p> <p>Such option, once exercised, would apply to subsequent assessment years.</p> <p>Further, once the option has been exercised for any previous year, it <b>cannot be subsequently withdrawn</b> for the same or any other previous year.</p>

	<p>(2) In case of amalgamation, the option exercised u/s 115BAB shall remain valid in the case of the amalgamated company only and if the conditions mentioned in point no.(7) and (8) are continued to be satisfied by such company.</p>	<p><b>Note</b> – The option can be exercised even in a later year, but once exercised, cannot be withdrawn subsequently. Further, where the person exercises option under section 115BAA, the option under section 115BA may be withdrawn.</p>
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**Note** - For the purpose of point no.7(iv) in column (3) of the above table in relation to a company exercising option under section 115BAB, any machinery or plant which was used outside India by any other person shall not be regarded as machinery or plant previously used for any purpose, if all the following conditions are fulfilled, namely:—

- (a) such machinery or plant was not, at any time previous to the date of the installation, used in India;
- (b) such machinery or plant is imported into India from any country outside India;
- (c) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of the Income-tax Act, 1961 in computing the total income of any person for any period prior to the date of installation of the machinery or plant by the person.

Further, where in the case of a person, any machinery or plant or any part thereof previously used for any purpose is put to use by the company and the total value of the machinery or plant or part so transferred does not exceed 20% of the total value of the machinery or plant used by the company, then, the condition specified that the company does not use any machinery or plant previously used for any purpose would be deemed to have been complied with.

**Note** - Students are advised to ***ignore the last paragraph in page no.1.38 and the first paragraph in page no. 1.39*** given in italics in Chapter 1: Basic Concepts of the printed copy of Module 1 of the October, 2019 Edition of the Study Material, which incorporates the provision relating to surcharge as inserted by the Taxation Laws (Amendment) Ordinance, 2019 promulgated on 20.9.2019. Consequent to the amendment effected by the Taxation Laws (Amendment) Act, 2019 as assented by the President of India on 11.12.2019, **surcharge of 10% would be leviable on the income-tax computed on the total income of a company opting for the provisions of section 115BAA or 115BAB.**

**Annexure 2****Rate of Surcharge applicable to Individuals/HUF/AOPs/BOIs/Artificial Juridical Person for A.Y.2020-21**

	Particulars	Rate of surcharge on income-tax	Example	
			Components of total income	Applicable rate of surcharge
(i)	Where the total income (including income under section 111A and 112A) > ₹ 50 lakhs but ≤ ₹ 1 crore	10%	<ul style="list-style-type: none"> <li>STCG u/s 111A ₹ 30 lakhs;</li> <li>LTCG u/s 112A ₹ 25 lakhs; and</li> <li>Other income ₹ 40 lakhs</li> </ul>	Surcharge would be levied @10% on income-tax computed on total income of ₹ 95 lakhs.
(ii)	Where total income (including income under section 111A and 112A) exceeds ₹ 1 crore but does not exceed ₹ 2 crore	15%	<ul style="list-style-type: none"> <li>STCG u/s 111A ₹ 60 lakhs;</li> <li>LTCG u/s 112A ₹ 65 lakhs; and</li> <li>Other income ₹ 50 lakhs</li> </ul>	Surcharge would be levied @15% on income-tax computed on total income of ₹ 1.75 crores.
(iii)	Where total income (excluding income under section 111A and 112A) exceeds ₹ 2 crore but does not exceed ₹ 5 crore  The rate of surcharge on the income-tax payable on the portion of income chargeable to tax under section 111A and 112A	25%  Not exceeding 15%	<ul style="list-style-type: none"> <li>STCG u/s 111A ₹ 54 lakh;</li> <li>LTCG u/s 112A ₹ 55 lakh; and</li> <li>Other income ₹ 3 crores</li> </ul>	Surcharge would be levied @15% on income-tax on: <ul style="list-style-type: none"> <li>STCG of ₹ 54 lakhs chargeable to tax u/s 111A; and</li> <li>LTCG of ₹ 55 lakhs chargeable to tax u/s 112A.</li> </ul> Surcharge @25% would be leviable on income-tax computed on other income of

				₹ 3 crores included in total income
(iv)	Where total income (excluding income under section 111A and 112A) exceeds ₹ 5 crore  Rate of surcharge on the income-tax payable on the portion of income chargeable to tax under section 111A and 112A	37%  Not exceeding 15%	<ul style="list-style-type: none"> <li>• STCG u/s 111A ₹ 50 lakhs;</li> <li>• LTCG u/s 112A ₹ 65 lakhs; and</li> <li>• Other income ₹ 6 crore</li> </ul>	<p>Surcharge@15% would be levied on income-tax on:</p> <ul style="list-style-type: none"> <li>• STCG of ₹ 50 lakhs chargeable to tax u/s 111A; and</li> <li>• LTCG of ₹ 65 lakhs chargeable to tax u/s 112A.</li> </ul> <p>Surcharge@37% would be leviable on the income-tax computed on other income of ₹ 6 crores included in total income.</p>
(v)	Where total income (including income under section 111A and 112A) exceeds ₹ 2 crore in cases not covered under (iii) and (iv) above	15%	<ul style="list-style-type: none"> <li>• STCG u/s 111A ₹ 60 lakhs;</li> <li>• LTCG u/s 112A ₹ 55 lakhs; and</li> <li>• Other income ₹ 1.10 crore</li> </ul>	Surcharge would be levied@15% on income-tax computed on total income of ₹ 2.25 crore.

**Note** – Students are advised to **ignore** the table containing rates of surcharge for individuals/HUF/AOP/BOI and Artificial Juridical Persons given in **pages 1.35-1.36 of Chapter 1 in Module 1** of the printed copy of the October, 2019 Edition of the Study Material and instead, read the contents of the above table.

## Annexure 3

**Rate of Surcharge applicable on tax on total income of Individuals/AOPs/BOIs/Artificial Juridical Persons (having any income under section 115AD) for payment of advance tax for A.Y.2020-21**

	Particulars	Rate of surcharge on income-tax	Example	
			Components of total income	Applicable rate of surcharge
(i)	Where the total income > ₹ 50 lakhs but is ≤ ₹ 1 crore	10%	<ul style="list-style-type: none"> <li>Capital gains on securities referred to in section 115AD(1)(b) ₹ 60 lakhs; and</li> <li>Other income ₹ 35 lakhs;</li> </ul>	Surcharge would be levied@10% on income-tax computed on total income of ₹ 95 lakhs.
(ii)	Where total income > ₹ 1 crore but is ≤ ₹ 2 crore	15%	<ul style="list-style-type: none"> <li>Capital gains on securities referred to in section 115AD(1)(b) ₹ 1.20 crore; and</li> <li>Other income ₹ 60 lakhs;</li> </ul>	Surcharge would be levied@15% on income-tax computed on total income of ₹ 1.80 crore.
(iii)	Where total income [excluding STCG/LTCG on securities referred to in section 115AD(1)(b)] > ₹ 2 crore ≤ ₹ 5 crore  Rate of surcharge on the income-tax payable on the portion of income chargeable to tax u/s 115AD(1)(b)	25%  Not exceeding 15%	<ul style="list-style-type: none"> <li>Capital gains on securities referred to in section 115AD(1)(b) ₹ 1.20 crore; and</li> <li>Other income ₹ 3 crores;</li> </ul>	Surcharge would be levied: @15% on income-tax leviable on capital gains of ₹ 1.20 crore referred to in section 115AD; and @25% on income-tax computed on other income of ₹ 3 crores included in total income.

(iv)	Where total income [excluding STCG/LTCG on securities referred to in section 115AD(1)(b)] > ₹ 5 crore	37%	<ul style="list-style-type: none"> <li>Capital gains on securities referred to in section 115AD(1)(b) ₹ 1.70 crore; and</li> <li>Other income ₹ 6 crore</li> </ul>	Surcharge would be levied @15% on income-tax leviable on capital gains of ₹ 1.70 crore referred to in 115AD; and @37% on income-tax computed on other income of ₹ 6 crore included in total income
	Rate of surcharge on the income-tax payable on the portion of income chargeable to tax u/s 115AD(1)(b)	Not exceeding 15%		
(v)	Where total income [including STCG/LTCG on securities referred to in 115AD(1)(b)] > ₹ 2 crore in cases not covered under (iii) and (iv) above	15%	<ul style="list-style-type: none"> <li>Capital gains on securities referred to in section 115AD(1)(b) ₹ 1.10 crore; and</li> <li>Other income ₹ 1.60 crore;</li> </ul>	Surcharge would be levied @15% on tax on total income of ₹ 2.70 crore.

#### Chapter 15: Deduction, Collection and Recovery of Tax

**Clarification as to the applicability of section 194N and manner of computing the threshold limit of ₹ 1 crore thereunder, where cash withdrawals have taken place prior to 1.9.2019 [Press Release dated 30.8.2019]**

The Finance (No. 2) Act, 2019 has inserted section 194N, with effect from 1.9.2019 to require every person, being a banking company, a co-operative society engaged in carrying on the business of banking or a post office who is responsible for paying, in cash, any sum or aggregate of sums exceeding ₹ 1 crore during the previous year to any person from one or more accounts maintained by such recipient-person with it, to deduct tax at source @2% of sum exceeding ₹ 1 crore. The deduction is to be made at the time of payment of such sum.

The CBDT has, vide Press Release dated 30.8.2019, clarified that section 194N is to come into effect from 1st September, 2019. Hence, any cash withdrawal prior to 1st September, 2019 will not be subjected to the TDS under section 194N. However, since the threshold of ₹ 1 crore is with respect to the previous year 2019-20, calculation of amount of cash

withdrawal for triggering deduction under section 194N shall be counted from 1<sup>st</sup> April, 2019. Hence, if a person has already withdrawn ₹ 1 crore or more in cash upto 31st August, 2019 from one or more accounts maintained with a banking company or a cooperative bank or a post office, TDS@2% shall apply on all subsequent cash withdrawals.

**No tax is required to be deducted at source under section 194N on cash withdrawals by persons or class of persons as notified by the Central Government [Notification No. 80/2019, dated 15.10.2019]**

The proviso to section 194N provides that no tax is, however, required to be deducted at source on payments made to *inter alia* such other person or class of persons as notified by the Central Government.

Accordingly, the Central Government has, vide this notification, after consultation with the Reserve Bank of India (RBI), specified -

- (a) the authorised dealer and its franchise agent and sub-agent; and
- (b) Full-Fledged Money Changer (FFMC) licensed by the RBI and its franchise agent;

Such persons should maintain a separate bank account from which withdrawal is made only for the purposes of -

- (i) purchase of foreign currency from foreign tourists or non-residents visiting India or from resident Indians on their return to India, in cash as per the directions or guidelines issued by RBI; or
- (ii) disbursement of inward remittances to the recipient beneficiaries in India in cash under Money Transfer Service Scheme (MTSS) of the RBI;

The exemption from the requirement to deduct tax u/s 194N would be available only if a certificate is furnished by the authorised dealers and their franchise agent and sub-agent, and the Full-Fledged Money Changers (FFMC) and their franchise agent to the bank that withdrawal is only for the purposes specified above and the directions or guidelines issued by the RBI have been adhered to.

“Authorised dealer” means any person who is authorised by the RBI as an authorised dealer to deal in foreign exchange [Section 10(1) of the Foreign Exchange Management Act, 1999].

## PART - II: INTERNATIONAL TAXATION

### Chapter 3: Transfer Pricing & Other Anti-avoidance Measures

**Time limit for repatriation of excess money or part thereof and manner of computation of interest on excess money not repatriated prescribed [Notification No. 76/2019, dated 30.9.2019]**

Section 92CE(2) requires repatriation, within the prescribed time, of the excess money or part thereof, as the case may be, which is available with the associated enterprise, in a case

where, as a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss, as the case may be, of the assessee. If the excess money or part thereof is not repatriated to India within the prescribed time, it shall be deemed to be an advance made by the assessee to such associated enterprise and the interest on such advance, shall be computed in the prescribed manner.

The CBDT has, *vide this notification*, amended Rule 10CB(1) which prescribes the time limit for repatriation of excess money or part thereof i.e., on or before 90 days from the specified date. The 90 days period is to be reckoned from the date specified in column (2) in the cases mentioned in column (1) of the table below. Further, the date from which interest is chargeable on the excess money or part thereof which is not repatriated in the cases mentioned in column (1) is given in column (3) in the table below:

Case	Time limit for repatriation of excess money or part thereof: <u>Within 90 days from</u>	Date from which interest is chargeable on the non-repatriated excess money or part thereof within the specified time limit
(1)	(2)	(3)
(i) Where primary adjustments to transfer price have been made suo-motu by the assessee in his return of income	the due date of filing of return u/s 139(1)	the due date of filing of return u/s 139(1)
(ii) If primary adjustments to transfer price as determined in the order of the Assessing Officer or the appellate authority has been accepted by the assessee	the date of the said order	the date of the said order
(iii) Where primary adjustment to transfer price is determined by an advance pricing agreement (APA) entered into by the assessee u/s 92CC in respect of a previous year -		
• If the APA has been entered into on or before the due date of filing of return for the relevant P.Y.	the date of filing of return u/s 139(1)	the <b>due date</b> of filing of return u/s 139(1)
• If the APA has been entered into on or after the due date of filing of return for the relevant P.Y.	the end of the month in which the APA has been entered into	the end of the month in which the APA has been entered into



(iv) Where option has been exercised by the assessee as per the safe harbour rules u/s 92CB	the due date of filing of return u/s 139(1)	the due date of filing of return u/s 139(1)
(v) Where the primary adjustment to the transfer price is determined by a resolution arrived at under Mutual Agreement Procedure under a DTAA has been entered into u/s 90 or 90A	the date of giving effect by the A.O. under Rule 44H to such resolution	the date of giving effect by the A.O. under Rule 44H to such resolution

Rule 10CB(2) prescribes the rate at which the per annum interest income shall be computed in case of failure to repatriate the excess money or part thereof within the above time limit. The interest would be computed *inter alia* at six month London Interbank Offered Rate (LIBOR) as on 30th September of the relevant previous year + 3.00%, where the international transaction is denominated in foreign currency.

Rate of exchange for the calculation of the value in rupees of the international transaction denominated in foreign currency shall be the telegraphic transfer buying rate of such currency on the last day of the previous year in which such international transaction was undertaken.

### SECTION – B: QUESTIONS AND ANSWERS

#### OBJECTIVE TYPE QUESTIONS

From the options (a), (b), (c) and (d) given in each question, choose the most appropriate option.

1. A business trust, registered under SEBI (Real Estate Investment Trusts) Regulations, 2014, gives particulars of its income for the P.Y.2019-20:
  - (i) Interest income from Z Ltd. – ₹ 10 lakh;
  - (ii) Dividend income from Z Ltd. – ₹ 5 lakh;
  - (iii) Short-term capital gains on sale of listed shares (STT paid both at the time of purchase and sale) of Indian companies – ₹ 4 lakh;
  - (iv) Short-term capital gains on sale of developmental properties – ₹ 8 lakh
  - (v) Interest received from investments in unlisted debentures of real estate companies – ₹ 1 lakh;
  - (vi) Rental income from directly owned real estate assets – ₹ 20 lakh

Z Ltd. is an Indian company in which the business trust holds 100% of the shareholding.

Assume that the business trust has distributed the entire ₹ 48 lakh to the unit holders in the P.Y. 2019-20. Mr. X is a resident holder holding 100 units and Mr. Y is a non-resident holder holding 500 units. The total number of units subscribed to by all unit holders is 5,000.

- (i) In respect of the component of interest income from Z Ltd. distributed by the business trust to unit-holders X and Y -
- (a) No tax is deductible by the business trust, since such income is not taxable in the hands of unit holders.
  - (b) Tax is deductible@5% on ₹ 20,000 distributed to Mr. X and @5.2% on ₹ 1 lakh distributed to Mr. Y
  - (c) Tax is deductible@10% on ₹ 20,000 distributed to Mr. X and @5.2% on ₹ 1 lakh distributed to Mr. Y
  - (d) Tax is deductible@5% on ₹ 20,000 distributed to Mr. X and 10.4% on ₹ 1 lakh distributed to Mr. Y
- (ii) In respect of short-term capital gains of ₹ 4 lakh on sale of listed shares of Indian companies and ₹ 8 lakh on sale of developmental properties -
- (a) The business trust is liable to pay tax@15.6% and 31.2%, respectively
  - (b) The business trust is liable to pay tax@42.744%.
  - (c) The business trust enjoys pass through status and hence, it need not pay any tax on such short-term capital gains; such income is subject to tax in the hands of unit-holders.
  - (d) The business trust is liable to pay tax@15.6% and 42.744%, respectively
- (iii) The dividend component of income from Z Ltd., distributed to unit-holders -
- (a) would be subject to distribution tax in the hands of Z Ltd., hence exempt in the hands of the business trust and the unit holders.
  - (b) is exempt in the hands of the business trust, and consequently, would be subject to tax in the hands of the unit holders
  - (c) would be exempt from distribution tax in the hands of Z Ltd., and hence taxable in the hands of the business trust.
  - (d) would be exempt from distribution tax in the hands of Z Ltd., and not taxable either in the hands of the business trust or in the hands of the unit holders.
- (iv) Interest received by the business trust from investments in unlisted debentures of real estate companies and distributed to unit holders would be -
- (a) Subject to tax in the hands of the unit holders
  - (b) Subject to tax in the hands of the business trust@31.2%
  - (c) Subject to tax in the hands of the business trust @42.744%
  - (d) Subject to tax in the hands of the business trust at the average rate of tax

- (v) The rental component of income from real estate assets received by the business trust and distributed to its unit holders X and Y would be -
- Subject to tax in the hands of the business trust@42.744%
  - Subject to tax in the hands of the business trust@31.2%
  - Subject to tax in the hands of the unit-holder X@10% (on ₹ 40,000) and Y@the rates in force (on ₹ 2,00,000); such tax has to be deducted at source by the business trust.
  - Subject to tax in the hands of the unit-holders X and Y; business trust has to deduct tax@10% on ₹ 40,000 distributed to X and at the rates in force on ₹ 2,00,000 distributed to Y.
2. M/s. MNO is a firm liable to tax@30%. The following are the particulars furnished by the firm for A.Y.2020-21:

	Particulars of total income	₹
(1)	As per the return of income furnished u/s 139(1)	40,00,000
(2)	Determined under section 143(1)(a)	50,00,000
(3)	Assessed under section 143(3)	65,00,000
(4)	Reassessed under section 147	85,00,000

Mr. N, a resident individual of the age of 58 years and a partner of the above firm, has not furnished his return of income for A.Y.2020-21. However, his total income assessed in respect of such year under section 144 is ₹ 15 lakh.

- (i) M/s. MNO is deemed to have under-reported its income since:
- Income determined under section 143(1)(a) exceeds income declared as per return of income furnished u/s 139(1)
  - Income assessed under section 143(3) exceeds income determined under section 143(1)(a)
  - Income reassessed under section 147 exceeds income assessed under section 143(3)

The correct answer is -

- (1) and (2) above
- (1) and (3) above
- (2) and (3) above
- (1), (2) and (3) above

- (ii) Mr. N is deemed to have under-reported his income since:
- (1) He is a partner of a firm which has under-reported its income
  - (2) He has not filed his return of income
  - (3) His assessed income exceeds ₹ 2,50,000
- The correct answer is -
- (a) (1) and (2) above
  - (b) (1) and (3) above
  - (c) (2) and (3) above
  - (d) (1), (2) and (3) above
- (iii) Assuming that the underreporting of income is not on account of misreporting and none of the additions or disallowances made in assessment qualifies under section 270A(6), penalty leviable on M/s. MNO under section 270A at the time of assessment would be:
- (a) ₹ 3,12,000
  - (b) ₹ 1,56,000
  - (c) ₹ 4,68,000
  - (d) ₹ 2,34,000
- (iv) Assuming that the underreporting of income is on account of misreporting and all the additions or disallowances made in reassessment qualifies under section 270A(6), penalty leviable on M/s. MNO under section 270A at the time of reassessment would be:
- (a) ₹ 3,12,000
  - (b) ₹ 2,34,000
  - (c) ₹ 12,48,000
  - (d) ₹ 6,24,000
- (v) Assuming that the under-reporting of income is not on account of misreporting, the under-reported income of Mr. N and penalty leviable on Mr. N under section 270A would be:
- (a) Under-reported income ₹ 15,00,000; penalty u/s 270A ₹ 2,34,000
  - (b) Under-reported income ₹ 12,50,000; penalty u/s 270A ₹ 97,500
  - (c) Under-reported income ₹ 15,00,000; penalty u/s 270A ₹ 1,36,500
  - (d) Under-reported income ₹ 12,50,000; penalty u/s 270A ₹ 1,36,500

3. Mr. Sanjay, a salaried individual, pays brokerage of ₹ 40 lakhs on 5.1.2020 to buy a residential house. His father, Mr. Hari, a retired pensioner, makes contract payments of ₹ 15 lakhs, ₹ 25 lakhs and ₹ 12 lakhs on 28.9.2019, 3.11.2019 and 15.2.2020 for reconstruction of residential house. With respect to the above payments made by Mr. Sanjay and Mr. Hari, which of the following statements is correct?
- (a) Neither Mr. Sanjay nor Mr. Hari is required to deduct tax at source, since they are not subject to tax audit, on account of being a salaried individual and pensioner, respectively.
  - (b) Both Mr. Sanjay and Mr. Hari are required to deduct tax at source under the provisions of the Income-tax Act, even though they are not subject to tax audit.
  - (c) Mr. Sanjay is required to deduct tax at source but Mr. Hari is not required to deduct tax at source.
  - (d) Mr. Hari is required to deduct tax at source but Mr. Sanjay is not required to deduct tax at source.
4. Mr. Rajesh and Mr. Brijesh, resident individuals, received ₹ 12 lakhs each on 31.3.2020 on maturity of life insurance policy taken on 31.3.2012 and 1.4.2012, respectively, the sum assured of which is ₹ 10 lakhs. They had paid an annual premium of ₹ 1.10 lakhs each. Are provisions of tax deduction at source attracted on maturity proceeds received by Mr. Rajesh and Mr. Brijesh?
- (a) Yes; Tax is deductible at source on maturity proceeds received by both Mr. Rajesh and Mr. Brijesh, since the annual premium is more than ₹ 1,00,000, being 10% of ₹ 10 lakhs.
  - (b) No; Tax is not deductible at source on maturity proceeds received by either Mr. Rajesh or Mr. Brijesh, since the annual premium is less than ₹ 1,20,000, being 10% of ₹ 12 lakhs.
  - (c) No tax is deductible at source on maturity proceeds received by Mr. Rajesh. Tax is deductible at source on maturity proceeds received by Mr. Brijesh and the tax deductible at source is ₹ 12,000
  - (d) No tax is deductible at source on maturity proceeds received by Mr. Rajesh. Tax is deductible at source on maturity proceeds received by Mr. Brijesh and the tax deductible at source is ₹ 16,000.
5. A Inc. and B Inc., incorporated in Country A and Country B, respectively, whose place of effective management is also in the said countries, are engaged in the business of operation of ships and aircraft, respectively. The details of receipts etc. during the P.Y.2019-20 are as follows –

Particulars	A Inc.	B Inc.
Amount paid/payable in Mumbai on account of carriage of passengers: Shipped from Mumbai port to port in Country A From Mumbai airport to airport in Country B	₹ 20 lakhs	₹ 15 lakhs
Amount paid/payable in Country A/B on account of carriage of passengers: Shipped from Mumbai port to port in Country A From Mumbai airport to airport in Country B	₹ 5 lakhs	₹ 4 lakhs
Amount received/deemed to be received in India on account of carriage of passengers: Shipped from port in Country A to Mumbai port From airport in Country B to Mumbai airport	₹ 7 lakhs	₹ 8 lakhs
Amount received/deemed to be received in Country A/B on account of carriage of passengers: Shipped from port in Country A to Mumbai port From airport in Country B to Mumbai airport	₹ 22 lakhs	₹ 18 lakhs
Profit (pertaining to Indian operations) computed as per books of account maintained by A Inc. and B Inc., after providing the deductions under the Income-tax Act, 1961	₹ 2.20 lakhs	₹ 1.20 lakhs

The profits and gains of business of A Inc. and B Inc. chargeable to tax in India under the Income-tax Act, 1961 for A.Y.2020-21 is –

- (a) ₹ 2.20 lakhs and ₹ 1.20 lakhs, respectively, provided the books of accounts are audited under section 44AB of the Income-tax Act, 1961
  - (b) ₹ 2.025 lakhs and ₹ 1.15 lakhs, respectively
  - (c) ₹ 2.40 lakhs and ₹ 1.35 lakhs, respectively
  - (d) ₹ 2.70 lakhs and ₹ 3.375 lakhs, respectively
6. Kaveri Ltd. is an Indian Company in which Andes Inc., a Country A company holds 30% shareholding and voting power. During the previous year 2016-17, the Indian company supplied computers to the Country A based company @CAD 2200 per piece. The price of computer supplied to other unrelated parties in Country A is @CAD 2500 per piece. During the course of assessment proceedings relating to A.Y.2017-18, the Assessing Officer carried out primary adjustments and added a sum of ₹ 138 lakhs, being the difference between actual price of computer and arm's length price for 500 pieces and it was duly accepted by the assessee. The Assessing Officer passed the order, in which the primary adjustments were made, on 1.7.2019. On account of this adjustment, the

excess money of ₹ 138 lakhs is available with Andes Inc, Country A. What would be the effect of this transaction while computing the total income of Kaveri Ltd. for the assessment year 2020-21, assuming that –

- (i) Kaveri Ltd. declared an income of ₹ 220 lakhs;
  - (ii) the excess money is still lying with Andes Inc. till today,
  - (iii) Kaveri Ltd. has not opted to pay additional income-tax on such excess money not repatriated; and
  - (iv) the rate of exchange is 1 CAD = ₹ 92 and the six-month LIBOR as on 30.9.2019 is 10%. [CAD stands for Country A Dollars, which is the currency of Country A] –
    - (a) Interest of ₹ 13.80 lakhs would be added to the total income of Kaveri Ltd
    - (b) Interest of ₹ 13.455 lakhs would be added to the total income of Kaveri Ltd.
    - (c) Interest of ₹ 10.35 lakhs would be added to the total income of Kaveri Ltd.
    - (d) Interest of ₹ 8.97 lakhs would be added to the total income of Kaveri Ltd.
7. An investment fund's income for A.Y.2020-21 comprised of the following components: business income ₹ 5 crore and capital loss ₹ 3 crore. All the unit holders of the investment fund have held units in the investment fund for more than 12 months. What would be the tax treatment?
- (a) Business income of ₹ 5 crore is taxable in the hands of the investment fund. The capital loss of ₹ 3 crore has to be carried forward by the investment fund.
  - (b) Business income of ₹ 5 crore is taxable in the hands of the unit-holders. Capital loss of ₹ 3 crore can be carried forward only by the unit holders.
  - (c) Business income of ₹ 5 crore is taxable in the hands of the investment fund. The capital loss of ₹ 3 crore cannot be carried forward by either the investment or the unit holders.
  - (d) Business income of ₹ 5 crore is taxable in the hands of the investment fund. Capital loss of ₹ 3 crore can be carried forward only by the unit holders.
8. During the P.Y.2019-20, Mr. Aakash has ₹ 80 lakhs of short-term capital gains taxable u/s 111A, ₹ 70 lakhs of long-term capital gains taxable u/s 112A and business income of ₹ 90 lakhs. Which of the following statements is correct?
- (a) Surcharge@25% is leviable on income-tax computed on total income of ₹ 2.40 crore, since the total income exceeds ₹ 2 crore.
  - (b) Surcharge@15% is leviable on income-tax computed on total income of ₹ 2.40 crore

- (c) Surcharge@15% is leviable in respect of income-tax computed on capital gains of ₹ 1.50 crore, since such income exceeds ₹ 1 crore but is less than ₹ 2 crore; in respect of business income of ₹ 90 lakhs, surcharge is leviable@25% on income-tax, since the total income exceeds ₹ 2 crore.
- (d) Surcharge@15% is leviable in respect of income-tax computed on capital gains of ₹ 1.50 crore, since such income exceeds ₹ 1 crore but is less than ₹ 2 crore; in respect of business income of ₹ 90 lakhs, surcharge is leviable@10% on income-tax, since such income exceeds ₹ 50 lakhs but is less than ₹ 1 crore.

### DESCRIPTIVE QUESTIONS

9. M/s. Beta & Co., a partnership firm in India, is engaged in development of software and providing IT enabled services through two units, one of which is located in a notified Special Economic Zone (SEZ) in Noida (commenced operations from 01.04.2008) and the other located in a domestic tariff area (DTA). The particulars relating to previous year 2019-20 furnished by the assessee are as follows:

Total Turnover: SEZ unit ₹ 210 lakhs; DTA unit ₹ 90 lakhs

Export Turnover: SEZ unit ₹ 150 lakhs; DTA unit ₹ 50 lakhs

Profit: SEZ unit ₹ 50 lakhs; DTA unit ₹ 40 lakhs.

Amount debited to Statement of Profit and Loss and credited to Special Economic Zone Re-Investment Reserve Account ₹ 20 lakhs.

Considering that the firm has no other income during the year, compute the tax payable by the firm for the A.Y.2020-21 by integrating, analysing and applying the relevant provisions of income-tax law.

10. Gamma (P) Ltd., an Indian company established in the year 2007, reports total income of ₹ 22 lakh for the previous year ended 31<sup>st</sup> March, 2020. Tax deducted at source by different payers amounted to ₹ 1,68,000 and tax paid in Country A on a doubly taxed income amounted to ₹ 30,000 for which the company is entitled to relief under section 90 as per the double taxation avoidance agreement.

During the year, the company paid advance tax as under:

Date of payment	Advance tax paid (₹)
13-06-2019	45,000
14-09-2019	90,000
13-12-2019	1,00,000
14-03-2020	1,05,000

The company filed its return of income for the A.Y. 2020-21 on 3rd November, 2020.



Compute interest, if any, payable by the company under sections 234A, 234B and 234C and fee payable under section 234F. Assume that transfer pricing provisions are not applicable and that the company has not opted for the provisions of section 115BAA.

**Note** – Turnover of Gamma (P) Ltd. for P.Y. 2017-18 is ₹ 251 crore.

11. Determine the capital gains/loss on transfer of listed equity shares (STT paid both at the time of acquisition and transfer of shares) and units of equity oriented mutual fund (STT paid at the time of transfer of units) for the A.Y.2020-21 and tax, if any, payable thereon, in the following cases, assuming that these are the only transactions covered under section 112A during the P.Y.2019-20 in respect of these assessees:

- (i) Mr. Prasun purchased 300 shares in A Ltd. on 20.5.2017 at a cost of ₹ 400 per share. He sold all the shares of A Ltd. on 31.5.2019 for ₹ 1200. The price at which these shares were traded in National Stock Exchange on 31.1.2018 is as follows –

Particulars	Amount in ₹
Highest Trading Price	700
Average Trading Price	680
Lowest Trading Price	660

- (ii) Mr. Raj purchased 200 units each of equity oriented funds, Fund A and Fund B on 1.2.2017 at a cost of ₹ 550 per unit. The units were not listed at the time of purchase. Subsequently, units of Fund A were listed on 1.1.2018 and units of Fund B were listed on 1.2.2018 on the National Stock Exchange. Mr. Raj sold all the units on 3.4.2019 for ₹ 900 each. The details relating to quoted price on National Stock Exchange and net asset value of the units as on 31.1.2018 are given hereunder:

Particulars	Fund A	Fund B
	Amount in ₹	Amount in ₹
Highest Trading Price	750 (on 31.1.2018)	800 (on 1.2.2018)
Average Trading Price	700 (on 31.1.2018)	750 (on 1.2.2018)
Lowest Trading Price	650 (on 31.1.2018)	700 (on 1.2.2018)
Net Asset Value on 31.1.2018	800	950

12. Epsilon Limited has two units - one engaged in manufacture of computer hardware and the other involved in developing software. The company has not opted for the provisions of section 115BAA. As a restructuring drive, the company has decided to sell its software unit as a going concern by way of slump sale for ₹ 840 lacs to a new company called Phi Limited, in which it holds 90% equity shares.

The balance sheet of Epsilon limited as on 31<sup>st</sup> March 2020, being the date on which software unit has been transferred, is given hereunder –

**Balance Sheet as on 31.3.2020**

Liabilities	₹ in lakhs	Assets	₹ in lakhs
Paid up Share Capital	600	<u>Fixed Assets</u>	
General Reserve	300	Hardware unit	340
Share Premium	100	Software unit	400
Revaluation Reserve	240	<u>Debtors</u>	
<u>Current Liabilities</u>		Hardware unit	280
Hardware unit	80	Software unit	220
Software unit	180	<u>Inventories</u>	
		Hardware unit	190
		Software unit	70
	<u>1500</u>		<u>1500</u>

**Additional Information:**

- (i) The Software unit is in existence since April, 2015.
  - (ii) Fixed assets of software unit includes land which was purchased at ₹ 80 lakhs in the year 2010 and revalued at ₹ 120 lakhs as on March 31, 2020.
  - (iii) Fixed assets of software unit reflected at ₹ 280 lakhs (₹ 400 lakhs less ₹ 120 lakhs, being the value of land) is written down value of depreciable assets as per books of account. However, the written down value of these assets under section 43(6) of the Income-tax Act, 1961 is ₹ 180 lakhs.
    - (a) Determine the tax liability arising from slump sale.
    - (b) How can the restructuring plan of the company be made more tax-savvy, without changing the amount of sale consideration?
13. Delta Ltd., an Indian company, earned a profit of ₹ 36 lakhs after debit/credit of the following items to its Statement of Profit and Loss for the year ended on 31.3.2020 -
- (i) Items debited to Statement of Profit and Loss:

No.	Particulars	₹
1.	Provision for the loss of subsidiary	92,000
2.	Provision for doubtful debts	1,05,000
3.	Provision for income-tax	2,17,000
4.	Provision for gratuity based on actuarial valuation	3,25,000
5.	Depreciation	2,70,000
6.	Interest to financial institution (unpaid before filing of return)	80,000
7.	Penalty for infraction of law	27,000

(ii) Items credited to Statement of Profit and Loss:

No.	Particulars	₹
1.	Profit from unit established in special economic zone.	12,00,000
2.	Share in income of an AOP as a member	2,25,000
3.	Income from units of UTI	52,000
4.	Long term capital gains	2,50,000

**Other Information:**

- (i) Depreciation includes ₹ 1,20,000 on account of revaluation of fixed assets.
- (ii) Depreciation as per Income-tax Rules, 1962 is ₹ 3,20,000.
- (iii) Balance of Statement of Profit and Loss shown in Balance Sheet at the asset side as at 31.3.2019 was ₹ 25 lakhs which includes unabsorbed depreciation of ₹ 12 lakhs.
- (iv) The AOP, of which the company is a member, has paid tax at maximum marginal rate.
- (v) Provision for income-tax includes ₹ 70,000 of interest payable on income-tax.

Compute minimum alternate tax under section 115JB of the Income-tax Act, 1961, for A.Y. 2020-21.

14. Alpha Ltd. is engaged in commercial production of mineral oil. It claimed deduction under section 80-IB in respect of profits and gains derived by it from such business, including transport subsidy, interest subsidy and power subsidy received from the Government. The Assessing Officer disallowed the deduction in respect of these three subsidies contending that such subsidies were not "derived" from the business of commercial production of mineral oil but belonged to the category of ancillary profits and hence do not qualify for deduction under section 80-IB. Discuss the correctness of the action of the Assessing Officer.
15. Examine the correctness or otherwise of the following statements with reference to the provisions of the Income-tax Act, 1961:
  - (i) The Commissioner (Appeals) cannot admit an appeal filed beyond 30 days from the date of receipt of order by an assessee.
  - (ii) The Appellate Tribunal is empowered to grant indefinite stay for the demand disputed in appeals before it.
16. Helpage is a charitable trust set up on 1.4.2010 with the object of providing relief of the poor. Later on, in April, 2012, it changed its object to medical relief. It applied for registration on the basis of its new object, i.e., medical relief, on 1.9.2012 and was granted registration on 1.2.2013.

On 1.4.2019, Helpage got merged with M/s. Medicare (P) Ltd, a pharmaceutical company not entitled for registration under section 12AA. All the assets and liabilities of the erstwhile trust became the assets and liabilities of M/s. Medicare (P) Ltd. The trust appointed a registered valuer for the valuation of its assets and liabilities. From the following particulars (including the valuation report), calculate the tax liability in the hands of the trust arising as a result of such merger:

## (i) Land

Location	Date of purchase	Stamp duty value on 1.4.2019	Value which the land would fetch, if sold in the open market on 1.4.2019	Book Value on 1.4.2019
		₹	₹	₹
Noida	1.9.2010	55 lakhs	58 lakhs	50 lakhs
Gurgaon	1.9.2013	100 lakhs	120 lakhs	110 lakhs

## (ii) Shares

Type of shares	Date of purchase	Face value of each share	Purchase price of each share	Price at which each share is quoted on BSE as on 1.4.2019		Open market value as on 1.4.2019 #
				Highest price	Lowest price	
		₹	₹	₹	₹	₹
5000 Quoted equity shares of A Ltd.	1.5.2014	100	110	320	300	
2000 Preference shares of B Ltd.	1.9.2015	100	100	-	-	180

# on the basis of report of Merchant Banker

## (iii) Liabilities

Book value of liabilities on 1.4.2019 = ₹ 120 lakhs. This includes –

- Corpus fund ₹ 12 Lakhs.
- Provision for taxation ₹ 8 lakhs; and
- Reserves and Surplus ₹ 18 lakhs

17. Lambda Ltd. is engaged in the manufacture of fabrics since 01-04-2012. Its Statement of Profit and Loss for the previous year ended 31<sup>st</sup> March, 2020 shows a profit of ₹ 750 lakhs after debiting or crediting the following items:
- (a) Depreciation charged on the basis of useful life of assets as per Companies Act is ₹ 52 Lakhs.
  - (b) Industrial power tariff concession of ₹ 4.80 lakhs, received from Maharashtra State Government was credited to Statement of profit and loss.
  - (c) The company had provided ₹ 18 lakhs being sum fairly estimated as payable with reasonable certainty, to workers on agreement to be entered with the workers union towards periodical wage revision once in every three years.
  - (d) Dividend received from a US company ₹ 12 Lakhs.
  - (e) Loss ₹ 17 lakhs, due to destruction of a machine worth ₹ 24 lakhs by fire due to short circuit and ₹ 3 lakh received as scrap value. The insurance company did not admit the claim of the company on charge of gross negligence.
  - (f) Provision for gratuity based on actuarial valuation was ₹ 320 lakhs. Actual gratuity paid debited to gratuity provision account was ₹ 180 lakhs.
  - (g) The company has purchased 1000 bales of raw cotton at a price of ₹ 20,000 per bale from M/s. Omicron, a firm in which majority of the directors of Lambda Ltd. are partners. The firm's normal selling price of the same material in market is ₹ 18,000 per bale.
  - (h) Advertisement charges ₹ 2.30 lakhs, paid by cheque for advertisement published in the souvenir of a political party registered with the Election Commission of India.
  - (i) Long term capital gain ₹ 3 lakhs on sale of equity shares on which Securities Transaction Tax (STT) was paid at the time of acquisition and sale.

**Additional Information:**

- (i) Normal depreciation computed as per Income-tax Rules is ₹ 71 lakhs.
- (ii) GST ₹ 8 lakhs collected from its customers was paid by the company on the due dates. On an appeal, the High Court directed the GST department to refund ₹ 3 lakhs to the company. The company in turn refunded ₹ 2 lakhs to the customers from whom it was collected and the balance ₹ 1 lakh is still lying under the head "Current Liabilities".

Compute the total income of Lambda Ltd. for the A.Y. 2020-21 by analyzing and applying the relevant provisions of income-tax law. Briefly explain the reasons for treatment of each item. Ignore the provisions relating to Minimum Alternate Tax. Assume that the company has not opted for section 115BAA.

18. Mr. Anil, aged 49 years, a resident individual furnishes the following particulars of income earned by him in India and Country N for the previous year 2019-20. India does not have a double taxation avoidance agreement (DTAA) with Country N.

Particulars	Amount (₹)
Income from profession carried on in Mumbai	8,50,000
Agricultural Income in Country N	1,30,000
Dividend from a company incorporated in Country N	85,000
Royalty income from a literary book from Country N	6,25,000
Expenses incurred for earning royalty	75,000
Business loss in Country N	1,10,000

The domestic tax laws of Country N does not permit set-off of business loss against any other income. The rate of income-tax in Country N is 18%. Compute total income and tax payable by Mr. Anil in India for A.Y. 2020-21, assuming that he satisfies all conditions for the purpose of section 91.

19. Examine with reasons whether the two enterprises referred to in the independent situations given below can be deemed to be associated enterprises under the Indian transfer pricing regulations:
- (i) Kingston Inc, a US company having its place of effective management also in the USA, has advanced a loan equivalent to ₹ 130 crores to Ganga Ltd., an Indian company on 10-4-2019. The total book value of assets of Ganga Ltd. is ₹ 250 crores. The market value of the assets, however, is ₹ 300 crores. Ganga Ltd. repaid ₹ 22 crores before 31-3-2020.
  - (ii) Charles plc., a UK company having its place of effective management also in the UK, has the power to appoint 4 of the directors of Andes Ltd, an Indian company, whose total number of directors in the Board is 9.
  - (iii) Total value of raw materials and consumables of Kaveri Ltd., an Indian company, is ₹ 720 crores. Of this, supplies to the tune of ₹ 650 crores are by Aurubis GmbH, a German company having its place of effective management in Germany, at prices and terms decided by the German company.
20. Singtel Ltd. is a company incorporated in Singapore and 55% of its shares are held by Godavari (P) Ltd., an Indian company. Singtel Ltd. has its presence in India also. The details relating to Singtel Ltd. for the P.Y.2019-20, are as under:

Particulars	India	Singapore
Fixed assets at depreciated values for tax purposes (₹ in crores)	120	80
Intangible assets (₹ in crores)	50	200

Other assets (value as per books of account) (₹ in crores)	40	120
Income from trading operations (₹ in crores)	25	50
The above figure includes:		
(i) Income from transactions where purchases are from associated enterprises	2	4
(ii) Income from transactions where sales are to associated enterprises	3	5
(iii) Income from transactions where both purchases and sales are from/to associated enterprises	5	10
Interest and dividend from investments (₹ in crores)	20	15
Number of employees (Residents in respective countries)	70	90
Payroll expenses on employees (₹ in crores)	8	12

Determine the residential status of Singtel Ltd. for A.Y.2020-21, if during the F.Y.2019-20, seven board meetings were held – 3 in India and 4 in Singapore.

21. What are the differences between the OECD Model Convention and UN Model Convention in relation to the article on Permanent Establishment? Examine.

**MOST APPROPRIATE OPTION – OBJECTIVE TYPE QUESTIONS**

MCQ No.	Sub-part	Most Appropriate Answer
1.	(i)	(c)
	(ii)	(d)
	(iii)	(d)
	(iv)	(c)
	(v)	(d)
2.	(i)	(c)
	(ii)	(c)
	(iii)	(d)
	(iv)	(c)
	(v)	(d)

MCQ No.	Most Appropriate Answer
3.	(d)
4.	(d)
5.	(c)
6.	(b)
7.	(d)
8.	(b)

**SUGGESTED ANSWERS/HINTS – DESCRIPTIVE QUESTIONS**

9. Computation of total income and tax liability of M/s. Beta & Co., a partnership firm, as per the normal provisions of the Act for A.Y. 2020-21

Particulars		₹ (in lakhs)
<b>Business income (before deduction under section 10AA)</b>		
SEZ Unit		50.00
Add: Amount debited to SEZ Re-investment Reserve		<u>20.00</u>
		70.00
DTA Unit		<u>40.00</u>
		110.00
Less: Deduction u/s 10AA		
= ₹ 70 lakhs × ₹ 150 lakhs/₹ 210 lakhs = 50 × 50% (being the 12 <sup>th</sup> year)	25.00	
Amount credited to SEZ Re-investment Reserve Account	<u>20.00</u>	
- whichever is less is deductible		<u>20.00</u>
<b>Total Income</b>		<u>90.00</u>
Tax on total income@30%		27.00
Add: Health and Education Cess@4%		<u>1.08</u>
<b>Tax liability (as per normal provisions)</b>		<u>28.08</u>

**Computation of Adjusted total income and Alternate Minimum tax of M/s. Beta & Co., a partnership firm, as per the provisions of section 115JC for A.Y.2020-21**

Particulars	₹ (in lakh)
Total income as per the normal provisions	90.00
Add: Deduction under section 10AA	<u>20.00</u>
Adjusted total income	<u>110.00</u>
Tax@18.5% of Adjusted Total Income	20.350
Add: Surcharge @12% as the adjusted total income is > ₹ 1 crore	<u>2.442</u>
	22.792
Add: Health and Education cess @4%	<u>0.912</u>
<b>Alternate Minimum Tax as per section 115JC</b>	<u>23.704</u>



Since the tax payable as per the normal provisions of the Act is more than the alternate minimum tax payable, the total income as per normal provisions shall be liable to tax and the tax payable for A.Y. 2020-21 shall be ₹ 28.08 lakhs.

10. **Interest under section 234A:** Since the return of income has been furnished by Gamma (P) Ltd. on 3<sup>rd</sup> November, 2020 i.e., after the due date for filing return of income (30.9.2020), interest under section 234A will be payable for 2 months @ 1% p.m. on the amount of tax payable on the total income, as reduced by tax reliefs and prepaid taxes.

Particulars	₹
Tax on total income (₹ 22,00,000 x 26%) [Since turnover of P.Y. 2017-18 does not exceed ₹ 400 crore, the rate of tax would be 26% (i.e., 25% + HEC@4%)]	5,72,000
Less: Advance tax paid	3,40,000
Less: Tax deducted at source	1,68,000
Less: Relief of tax allowed under section 90	<u>30,000</u>
<b>Tax payable on self-assessment</b>	<b><u>34,000</u></b>
Interest under section 234A = ₹ 34,000 x 1% x 2 months= ₹ 680	

**Interest under section 234B:** Where the advance tax paid by the assessee is less than 90% of the assessed tax, the assessee would be liable to pay interest under section 234B.

Computation of assessed tax	₹
<b>Tax on total income (₹ 22,00,000 x 26%)</b>	5,72,000
Less: Tax deducted at source	1,68,000
Less: Relief of tax allowed under section 90	<u>30,000</u>
<b>Assessed tax</b>	<b><u>3,74,000</u></b>
90% of assessed tax = ₹ 3,74,000 x 90% = ₹ 3,36,600	

Since the advance tax paid by Gamma (P) Ltd. (₹ 3,40,000) is more than ₹ 3,36,600, being 90% of the assessed tax (₹ 3,74,000), it is not liable to pay interest under section 234B.

**Interest under section 234C**

Particulars	₹
Tax on total income (₹ 22,00,000 x 26%)	5,72,000
Less: Tax deducted at source	1,68,000
Less: Relief of tax allowed under section 90	<u>30,000</u>
Tax due on returned income/Total advance tax payable	<b><u>3,74,000</u></b>

**Calculation of interest payable under section 234C:**

Due Date for payment of advance tax	Advance tax paid till date (₹)	Advance tax payable till date %	Minimum % of tax due on returned income to be paid till date to avoid interest u/s 234C (c)		Shortfall (₹)	Interest (₹)
			%	Amt (₹)		
15.6.2019	45,000	15%	12%	44,880	-	Nil (See Note below)
15.9.2019	1,35,000	45%	36%	1,34,640	-	Nil (See Note below)
15.12.2019	2,35,000	75%	75%	2,80,500	45,500	45,500 x 1% x 3 months = 1,365
15.3.2020	3,40,000	100%	100%	3,74,000	34,000	34,000 x 1% = 340
<b>Interest payable under section 234C (Nil + Nil + ₹ 1,365 + ₹ 340)</b>						<b>₹ 1,705</b>

**Note:** Since the advance tax paid by Gamma (P) Ltd. on 13<sup>th</sup> June, 2019 is more than 12% of the tax due on returned income (i.e., ₹ 3,74,000) and the advance tax paid on 14<sup>th</sup> September, 2019 is more than 36% of the tax due on returned income, it is not liable to pay any interest under section 234C in respect of these two quarters.

**Fee under section 234F**

₹ 5,000 is payable under section 234F by way of fee, since the return was filed after the due date but before 31.12.2020.

11. (i) For the purpose of computation of long-term capital gains chargeable to tax under section 112A, the cost of acquisition in relation to the long-term capital asset, being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust acquired before 1<sup>st</sup> February, 2018 shall be the higher of
- (i) cost of acquisition of such asset, i.e., actual cost; and
  - (ii) lower of
    - (a) the fair market value of such asset as on 31.1.2018; and
    - (b) the full value of consideration received or accruing as a result of the transfer of the capital asset.

The fair market value of listed equity shares as on 31.1.2018 is the highest price quoted on the recognized stock exchange as on that date.

Accordingly, long-term capital gain on transfer of STT paid listed equity shares by Mr. Prasun would be determined as follows:

The FMV of shares of A Ltd. would be ₹ 700, being the highest price quoted on National Stock Exchange on 31.1.2018. The cost of acquisition of each equity share in A Ltd. would be ₹ 700, being higher of actual cost i.e., ₹ 400 and ₹ 700 [being the lower of FMV of ₹ 700 as on 31.1.2018 (i.e., the highest trading price) and actual sale consideration of ₹ 1,200]. Thus, the long-term capital gain would be ₹ 1,50,000 i.e.,  $(₹ 1,200 - ₹ 700) \times 300$  shares. The long-term capital gain of ₹ 50,000 (i.e., the amount in excess of ₹ 1,00,000) would be subject to tax@10% under section 112A, without benefit of indexation.

- (ii) In the case of units listed on recognised stock exchange on the date of transfer, the FMV as on 31.1.2018 would be the highest trading price on recognised stock exchange as on 31.1.2018 (if shares are listed on that date), else, it would be the net asset value as on 31.1.2018 (where shares are unlisted on that date).

Accordingly, the FMV of units of Fund A as on 31.1.2018 would be ₹ 750 (being the highest trading price on 31.1.2018, since the units of Fund A are listed on that date) and the FMV of units of Fund B as on 31.1.2018 would be ₹ 950 (being the net asset value as on 31.1.2018, since the units of Fund B are unlisted on that date).

The cost of acquisition of a unit of Fund A would be ₹ 750, being higher of actual cost i.e., ₹ 550 and ₹ 750 (being the lower of FMV of ₹ 750 as on 31.1.2018 and actual sale consideration of ₹ 900). Thus, the long-term capital gains on sale of units of Fund A would be ₹ 30,000  $(₹ 900 - ₹ 750) \times 200$  units.

The cost of acquisition of a unit of Fund B would be ₹ 900, being higher of actual cost i.e., ₹ 550 and ₹ 900 (being the lower of FMV of ₹ 950 as on 31.1.2018 (net asset value) and actual sale consideration of ₹ 900). Thus, the long-term capital gains on sale of units of Fund B would be Nil  $(₹ 900 - ₹ 900) \times 200$  units.

Since the long-term capital gains on sale of units is ₹ 30,000, which is less than ₹ 1,00,000, the said sum is not chargeable to tax under section 112A.

12. (a) As per section 50B, any profits and gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains arising from the transfer of capital assets and shall be deemed to be the income of the previous year in which the transfer took place.

If the assessee owned and held the undertaking transferred under slump sale for more than 36 months before slump sale, the capital gain shall be deemed to be long-term capital gain. Indexation benefit is not available in case of slump sale as per section 50B(2).

**Ascertainment of tax liability of Epsilon Limited from slump sale of software unit**

Particulars	₹ (in lakhs)
Sale consideration for slump sale of Software Unit	840
Less: Cost of acquisition being the net worth of Software Unit	<u>370</u>
Long term capital gains arising on slump sale	<u>470</u>
(The capital gains is long-term as the Software Unit is held for more than 36 months)	
<b><u>Tax liability on LTCG</u></b>	
Under section 112@20% on ₹ 470 lakhs	94.00
Add: Surcharge@7% (since total income exceeds ₹ 1 crore but does not exceed ₹ 10 crores)	<u>6.58</u>
	100.58
Add: Health and education cess@4%	<u>4.02</u>
	<b><u>104.60</u></b>

**Working Note: Computation of net worth of Software Unit**

Particulars	₹ (in lacs)
(1) Book value of non-depreciable assets	
(i) Land (Revaluation not to be considered)	80
(ii) Debtors	220
(iii) Inventories	70
(2) Written down value of depreciable assets under section 43(6)	<u>180</u>
<b>(See Note below)</b>	
Aggregate value of total assets	550
Less: Current liabilities of software unit	<u>180</u>
<b>Net worth of software unit</b>	<b><u>370</u></b>

**Note:** For computing net worth, the aggregate value of total assets in the case of depreciable assets shall be the written down value of the block of assets as per section 43(6).

**(b) Tax advice**

- (i) Transfer of any capital asset by a holding company to its 100% Indian subsidiary company is exempt from capital gains under section 47(iv). Hence,

Epsilon Limited should try to acquire the remaining 10% equity shares in Phi Limited then make the slump sale in the above said manner, in which case the slump sale shall be exempt from tax. For this exemption, Epsilon Limited will have to keep such 100% holding in Phi Limited for a period of 8 years from the date of slump sale, otherwise the amount exempted would be deemed to be income chargeable under the head “Capital Gains” of the previous year in which such transfer took place.

- (ii) Alternatively, if acquisition of 10% share is not feasible, Epsilon Limited may think about demerger plan of Software Unit to get benefit of section 47(vib) of the Income-tax Act, 1961.

### 13. Computation of “Book Profit” for levy of MAT under section 115JB for A.Y.2020-21

Particulars	₹	₹
Net Profit as per Statement of Profit and Loss		36,00,000
<i>Add: Net profit to be increased by the following amounts as per Explanation 1 to section 115JB:</i>		
- Provision for the loss of subsidiary	92,000	
- Provision for doubtful debts, being the amount set aside as provision for diminution in the value of any asset	1,05,000	
- Provision for income-tax	2,17,000	
Further, as per Explanation 2 to section 115JB, income-tax shall include, <i>inter alia</i> , any interest charged under the Act, therefore, whole of the amount of provision for income-tax including ₹ 70,000 towards interest payable has to be added]		
- Depreciation as per books of account	<u>2,70,000</u>	<u>6,84,000</u>
		42,84,000
<i>Less: Net profit to be decreased by the following amounts as per Explanation 1 to section 115JB:</i>		
- Share in income of an AOP as a member	2,25,000	
<i>[In a case where AOP has paid tax on its total income at maximum marginal rate, no income-tax is payable by the company, being a member of AOP, in accordance with the provisions of section 86. Therefore, share in income of an AOP on which no income-tax is payable in accordance with the provisions of section 86, would be reduced while computing book profit, since the same has been credited to statement of profit and loss]</i>		

-	Income from units in UTI <i>[Income from units in UTI shall be reduced while computing the book profits, since the same is exempt under section 10(35)]</i>	52,000	
-	Depreciation other than depreciation on revaluation of assets (₹ 2,70,000 – ₹ 1,20,000)	1,50,000	
-	Unabsorbed depreciation or brought forward business loss, whichever is less, as per the books of account. <i>[Lower of unabsorbed depreciation ₹ 12,00,000 and brought forward business loss ₹ 13,00,000 as per books of accounts has to be reduced while computing the book profit]</i>	12,00,000	
			<u>16,27,000</u>
	<b>Book Profit</b>		<b><u>26,57,000</u></b>

**Computation of MAT liability under section 115JB**

Particulars	₹
15% of book profit	3,98,550
Add: Health & Education Cess@4%	<u>15,942</u>
<b>Minimum Alternate Tax liability</b>	<b><u>4,14,492</u></b>
MAT liability (rounded off)	4,14,490

**Notes:**

- (1) It is only the specific items mentioned under *Explanation 1* to section 115JB, which can be adjusted from the net profit as per the Statement of Profit and Loss prepared as per the Companies Act for computing book profit for levy of MAT. Since the following items are not specified thereunder, the same cannot be adjusted for computing book profit:
    - Interest to financial institution (unpaid before filing of return) and
    - Penalty for infraction of law
  - (2) Provision for gratuity based on actuarial valuation is an ascertained liability [*CIT v. Echjay Forgings (P) Ltd. (2001) 251 ITR 15 (Bom.)*]. Hence, the same should not be added back to compute book profit.
  - (3) As per proviso to section 115JB(6), the profits from unit established in special economic zone cannot be excluded while computing the book profit, and hence, such income would be liable for MAT.
14. As per section 80-IB(1) read with section 80-IB(9), where the gross total income of an assessee includes any profits and gains derived from, *inter alia*, the business of

commercial production of mineral oil, deduction will be allowed at 100% of such profits for a period of seven consecutive assessment years.

The issue under consideration in this case is whether transport subsidy, interest subsidy and power subsidy received from the Government can be treated as profits derived from business or undertaking to qualify for deduction under section 80-IB.

This issue came up before the Supreme Court in *CIT v. Meghalaya Steels Ltd. (2016) 383 ITR 217*, wherein it was observed that an important test to determine whether the profits and gains are derived from business or an undertaking is that there should be a direct nexus between such profits and gains and the undertaking or business. Such nexus should not be only incidental. The profits and gains referred to in section 80-IB has reference to net profit, which can be calculated by deducting from the sale price of an article, all elements of cost which go into manufacturing or selling it. Thus, the profits arrived at after deducting manufacturing costs and selling costs reimbursed to the assessee by the Government, is the profits and gains derived from the business of the assessee.

The Supreme Court observed that section 28(iib) specifically states that income from cash assistance, by whatever name called, received or receivable by any person against exports under any scheme of the Government of India, will be income chargeable to income-tax under the head "Profits and gains of business or profession". The Apex Court further observed that if cash assistance received or receivable against exports schemes are being included as income under the head "Profits and gains of business or profession", subsidies which go to reimbursement of cost in the production of goods of a particular business would also have to be included under the head "Profits and gains of business or profession", and not under the head "Income from other sources".

Accordingly, the Supreme Court held that transport subsidy, interest subsidy and power subsidy from Government were revenue receipts which were reimbursed to the assessee for elements of cost relating to manufacture or sale of their products. Therefore, there is a direct nexus between profits and gains of the undertaking or business, and reimbursement of such subsidies. The subsidies were only in order to reimburse, wholly or partially, costs actually incurred by the assessee in the manufacturing and selling of its products.

Applying the rationale of the Supreme Court ruling in the above case, the action of the Assessing Officer in not allowing deduction under section 80-IB in respect of transport subsidy, interest subsidy and power subsidy received by Alpha Ltd. from the Government, is **not** correct.

15. (i) The statement is **not** correct.

As per section 249(3) of the Income-tax Act, 1961, the Commissioner (Appeals) may admit an appeal after the expiry of the period of 30 days specified in section 249(2), if he is satisfied that the appellant had sufficient cause for not presenting the appeal within the prescribed time.

(ii) The statement is **not** correct.

Section 254(2A) provides that the Appellate Tribunal, where it is possible, may hear and decide an appeal within a period of four years from the end of the financial year in which such appeal is filed.

The Appellate Tribunal may, on merit, pass an order of stay in any proceedings relating to an appeal. However, such period of stay cannot exceed 180 days from the date of such order. The Appellate Tribunal has to dispose of the appeal within this period of stay.

Where the appeal has not been disposed of within this period and the delay in disposing the appeal is not attributable to the assessee, the Appellate Tribunal can further extend the period of stay originally allowed. However, the aggregate of period originally allowed and the period so extended should not exceed 365 days even if the delay in disposing of the appeal is not attributable to the assessee. The Appellate Tribunal is required to dispose off the appeal within this extended period. If the appeal is not disposed of within such period or periods, the order of stay shall stand vacated after the expiry of such period or periods.

16. As per section 115TD, the accreted income of "Helpage", a charitable trust, registered under section 12AA which is merged with M/s Medicare (P) Ltd., an entity not entitled for registration under section 12AA, would be chargeable to tax at the rate of 34.944% [30% plus surcharge @12% plus cess@4%].

**Computation of accreted income and tax liability in the hands of the Helpage trust arising as a result of merger with M/s. Medicare (P) Ltd.**

Particulars	Amount (₹)
Aggregate FMV of total assets as on 1.4.2019, being the specified date (date of merger) <b>[See Working Note 1]</b>	1,39,10,000
Less: Total liability computed in accordance with the prescribed method of valuation <b>[See Working Note 2]</b>	<u>82,00,000</u>
<b>Accreted Income</b>	<b><u>57,10,000</u></b>
Tax Liability @ 34.944% of ₹ 57,10,000 (rounded off)	<b>19,95,300</b>
<b>Working Notes:</b>	
(1) <b>Aggregate fair market value of total assets on the date of merger</b>	
- <b>Land at Noida, being immovable property, purchased on 1.9.2010</b>	-
Since the trust was registered only on 1.2.2013 and benefit of	



<p>section 11 and 12 was available to the trust only from A.Y.2013-14, relevant to P.Y.2012-13, being the previous year in which the application for registration is made, the value of land purchased in P.Y.2010-11, in respect of which benefit under sections 11 and 12 was not availed, has to be ignored for computing accreted income.</p>	
<p>- <b>Land at Gurgaon, being an immovable property, purchased on 1.9.2013</b></p> <p>[The fair market value of land would be higher of ₹ 120 lakhs i.e., price that the land would ordinarily fetch if sold in the open market and ₹ 100 lakhs, being stamp duty value as on the specified date, i.e., 1.4.2019]</p>	1,20,00,000
<p>- <b>Quoted equity shares of A Ltd. [5,000 x ₹ 310 per share]</b></p> <p>[₹ 310 per share, being the average of the lowest (₹ 300) and highest price (₹ 320) of such shares on the specified date]</p>	15,50,000
<p>- <b>Preference shares of B Ltd. [2,000 x ₹ 180 per share]</b></p> <p>[The fair market value which it would fetch if sold in the open market on the specified date i.e. FMV on 1.4.2019]</p>	3,60,000
	<u>1,39,10,000</u>
<b>(2) Total liability</b>	
- Reserves and Surplus ₹ 18 lakhs [not includible]	-
- Corpus Fund of ₹ 12 lakhs [not includible]	-
- Provision for taxation ₹ 8 lakhs [not includible]	-
- Other Liabilities	
[₹ 120 lakhs - ₹ 18 lakhs - ₹ 12 lakhs - ₹ 8 lakhs]	82,00,000
	<u>82,00,000</u>

17. **Computation of Total Income of Lambda Ltd. for the A.Y. 2020-21**

	Particulars	Amount (₹)	
I	<b>Profits and gains of business and profession</b>		
	Net profit as per the statement of profit and loss		7,50,00,000
	<b>Add: Items debited but to be considered separately or items of expenditure to be disallowed</b>		
	(a) <b>Depreciation as per Companies Act</b>	52,00,000	
	(c) <b>Provision for wages payable to workers</b>	-	
	[Since the provision is based on a fair		

	<p>estimate of wages payable with reasonable certainty, the provision is allowable as deduction. ICDS X requires a reliable estimate of the amount of obligation and 'reasonable certainty' for recognition of a provision, which is present in this case.</p> <p>As the provision of ₹ 18 lakhs has been debited to statement of profit and loss, no adjustment is required while computing business income]</p>	
(e)	<p><b>Loss due to destruction of machinery by fire</b></p> <p>[Loss of ₹ 17 lakhs due to destruction of machinery caused by fire is not deductible since it is capital in nature.</p> <p>Since the loss has been debited to statement of profit and loss, the same is required to added back while computing business income]</p>	17,00,000
(f)	<p><b>Provision for gratuity</b></p> <p>[Provision of ₹ 320 lakhs for gratuity based on actuarial valuation is not allowable as deduction.</p> <p>However, actual gratuity of ₹ 180 lakhs paid is allowable as deduction.</p> <p>Hence, the difference has to be added back to income [₹ 320 lakhs (-) ₹ 180 lakhs]</p>	1,40,00,000
(g)	<p><b>Purchase of raw cotton at a price higher than the fair market value</b></p> <p>[Since the purchase is from a related party, a firm in which majority of the directors of the company are partners, at a price higher than the fair market value, the difference between the purchase price (₹ 20,000 per bale) and the fair market value (₹ 18,000 per bale) multiplied by the quantity purchased (1000 bales, i.e., [₹ 2,000 x 1,000) has to be added back]</p>	20,00,000

<p>(h) <b>Advertisement in souvenir of a political party</b>  [Advertisement charges paid in respect of souvenir published by a political party is not allowable as deduction from business profits of the company. Since, the expenditure has been debited to statement of profit and loss, the same has to be added back while computing business income]</p>	2,30,000	
		<u>2,31,30,000</u>
		<b>9,81,30,000</b>
<p><b>Add: Income taxable but not credited to statement of profit and loss</b></p> <p>Al(ii) <b>GST not refunded to customers out of GST refund received from State Govt.</b>  [The amount of GST refunded to the company by the Government is a revenue receipt chargeable to tax.  Out of the refunded amount of ₹ 3 lakhs, the amount of ₹ 2 lakh stands refunded to customers would not be chargeable to tax.<sup>1</sup>  The balance amount of ₹ 1,00,000 lying with the company would be chargeable to tax]</p>		1,00,000
		<b>9,82,30,000</b>
<p><b>Less: Items credited to statement of profit and loss, but not includible in business income/ permissible expenditure and allowances</b></p> <p>(b) <b>Industrial power tariff concession received from State Government</b>  [Any assistance in the form of, <i>inter alia</i>, concession received from the Central or State Government would be treated as income. Since the same has been credited</p>	-	

<sup>1</sup>CIT v. Thirumalaiswamy Naidu & Sons (1998) 230 ITR 534 (SC)

	to statement of profit and loss, no adjustment is required]		
(d)	<b>Dividend received from US company</b> [Dividend received from foreign company is taxable under "Income from other sources". Since the same has been credited to the statement of profit and loss, it has to be deducted while computing business income]	12,00,000	
(e)	<b>Scrap value of machinery</b> [Scrap value of machinery, being capital in nature, has to be reduced from WDV of machinery. Since the same has been credited to the statement of profit and loss, it has to be deducted while computing business income]	3,00,000	
(i)	<b>Long term capital gains of sale of equity shares</b> [The taxability or otherwise of long term capital gain on sale of equity shares has to be considered while computing income under the head "Capital Gains". Since such capital gains has been credited to statement of profit and loss, the same has to be reduced to arrive at the business income.]	3,00,000	
Al(i)	<b>Depreciation as per Income-tax Rules, 1961 [See Note below]</b>	<u>71,00,000</u>	<u>89,00,000</u>
	<b>Profits and gains from business and profession</b>		<b>8,93,30,000</b>
II	<b>Income from Other Sources</b>		
	<b>Dividend received from foreign company</b> [Dividend received from a foreign company is chargeable to tax under the head "Income from other sources"]		12,00,000
III	<b>Capital Gains</b>		
	<b>Long term capital gain on sale of equity shares</b> [Long term capital gains in excess of ₹ 1 lakh (i.e., ₹ 2 lakh, being ₹ 3 lakh – ₹ 1 lakh) on sale		3,00,000

of equity shares on which STT is paid at the time of acquisition and sale would be taxable@10% u/s 112A, without indexation benefit.]	
<b>Gross Total Income</b>	<b>9,08,30,000</b>
<b>Less: Deduction under Chapter VI-A</b>	
Under section 80GGB [Contribution by a company to a registered political party is allowable as deduction, since payment is made otherwise than by cash. Expenditure incurred by an Indian company on advertisement in souvenir published by such political party tantamounts to contribution to such political party.]	
	<u>2,30,000</u>
<b>Total Income</b>	<b>9,06,00,000</b>

**Note –** As per section 43(6)(c), for computation of written down value (WDV) of a block of asset at the end of the year, the amount of scrap value received has to be reduced from the value of block of assets at the beginning of the previous year and cost of assets purchased during the year. Depreciation is calculated on the value so arrived of the block of asset as on 31.3.2020. In the question, adjustment (e) states that scrap value of ₹ 3 lakh is received in respect of destroyed machinery and same is credited in the statement of profit and loss. In the additional information, since, depreciation as per Income-tax Rules, 1962 is given, no further adjustment for scrap value is done, presuming that the same has already been reduced to arrive at the value of the block as on 31.3.2020 and depreciation has been calculated on the said value of the block.

Alternatively, since scrap value has been credited to the statement of profit and loss, it is possible to take a view that the amount of scrap value is not reduced while computing the value of the assets. In such a case, depreciation allowable would be ₹ 70,55,000 [i.e., ₹ 71,00,000 – ₹ 45,000, being 15% of ₹ 3,00,000]. The business income and total income would be ₹ 8,93,75,000 and ₹ 9,06,45,000, respectively.

18. **Computation of total income of Mr. Anil for A.Y.2020-21**

Particulars	₹	₹
<b>Profits and Gains of Business or Profession</b>		
Income from profession carried on in India	8,50,000	
Less: Business loss in Country N	<u>1,10,000</u>	7,40,000
<b>Income from Other Sources</b>		
Agricultural income in Country N [Not exempt u/s 10(1)]	1,30,000	
Dividend received from a company incorporated in Country N [Not exempt u/s 10(34)]	85,000	
Royalty income from a literary book in Country N (after		

deducting expenses of ₹ 75,000)	<u>5,50,000</u>	<u>7,65,000</u>
<b>Gross Total Income</b>		<b>15,05,000</b>
<b>Less: Deduction under Chapter VIA</b>		
<b>Under section 80QQB – Royalty income of a resident from a literary book<sup>2</sup></b>		<u>3,00,000</u>
<b>Total Income</b>		<b><u>12,05,000</u></b>
<b>Computation of tax liability of Mr. Anil for A.Y.2020-21</b>		
<b>Particulars</b>		<b>₹</b>
Tax on total income [30% of ₹ 2,05,000 plus ₹ 1,12,500]		1,74,000
Add: Health and education cess @4%		<u>6,960</u>
Tax Liability		1,80,960
<b>Calculation of Rebate under section 91:</b>		
Average rate of tax in India [i.e., ₹ 1,80,960 / ₹ 12,05,000 x 100]	<b>15.0174%</b>	
<b>Average rate of tax in Country N</b>	<b>18%</b>	
<b>Doubly taxed income pertaining to Country N</b>		<b>₹</b>
Agricultural Income	1,30,000	
Royalty Income [₹ 6,25,000 – ₹ 75,000 (Expenses) – ₹ 3,00,000 (deduction under section 80QQB)] <sup>3</sup>	2,50,000	
Dividend income	<u>85,000</u>	
	4,65,000	
Less: Business Loss set off	<u>1,10,000</u>	
	<b><u>3,55,000</u></b>	
Rebate under section 91 on ₹ 3,55,000 @ 15.0174% [being the lower of average Indian tax rate (15.0174%) and foreign tax rate (18%)]		<u>53,312</u>
<b>Tax Payable</b>		<b><u>1,27,648</u></b>
Tax Payable (Rounded off)		1,27,650

19. (i) Kingston Inc, a foreign company, has advanced loan of ₹ 130 crores to Ganga Ltd., an Indian company, which amounts to 52% of book value of assets of Ganga Ltd. Since the loan advanced by Kingston Inc. is 51% or more of the book value of assets of Ganga Ltd., Kingston Inc. and Ganga Ltd. are deemed to be associated

<sup>2</sup> It is assumed that the royalty earned outside India has been brought into India in convertible foreign exchange within a period of six months from the end of the previous year.

<sup>3</sup> Doubly taxed income includes only that part of income which is included in the assessee's total income. The amount deducted under Chapter VIA is not doubly taxed and hence, no relief is allowable in respect of such amount – CIT v. Dr. R.N. Jhanji (1990) 185 ITR 586 (Raj.).

enterprises under the Indian transfer pricing regulations.

The deeming provisions would be attracted even if there is a repayment of loan during the same previous year which brings down the said percentage below 51%.

- (ii) Charles plc, a foreign company has the power to appoint 44.44% (4 out of 9) of the directors of an Indian company, Andes Ltd.

Two enterprises would be deemed to be associated enterprises **if more than half of the board of directors** of one enterprise **are appointed by the other enterprise**.

In this case, since Charles plc has the power to appoint only 44.44% (which is less than half) of the directors of an Indian company, Andes Ltd., Charles plc and Andes Ltd. are **not** deemed to be associated enterprises.

- (iii) Since Aurubis GmbH, a German company, supplies 90.27% of the raw materials and consumables required by Kaveri Ltd., an Indian company, which is more than the specified threshold of 90%; and the prices and terms of supply are decided by the German company, the two companies are deemed to be associated enterprises.

20. The residential status of a foreign company is determined on the basis of place of effective management (POEM) of the company.

For determining the POEM of a foreign company, the important criteria is whether the company is engaged in active business outside India or not.

A company shall be said to be engaged in “**Active Business Outside India**” (ABOI) for POEM, if

- the passive income is not more than 50% of its total income; **and**
- less than 50% of its total assets are situated in India; **and**
- less than 50% of total number of employees are situated in India or are resident in India; **and**
- the payroll expenses incurred on such employees is less than 50% of its total payroll expenditure.

Singtel Ltd. shall be regarded as a company engaged in active business outside India for P.Y.2019-20 for POEM purpose only if it satisfies all the four conditions cumulatively.

**Condition 1: The passive income of Singtel Ltd. should not be more than 50% of its total income**

Total income of Singtel Ltd. during the P.Y. 2019-20 is ₹ 110 crores [(₹ 25 crores + ₹ 50 crores) + (₹ 20 crores + ₹ 15 crores)]

Passive income is the aggregate of, -

- (i) income from the transactions where both the purchase and sale of goods is from/to its associated enterprises; and

(ii) income by way of royalty, dividend, capital gains, interest or rental income;

**Passive Income of Singtel Ltd. is ₹ 50 crores**, being sum total of :

- (i) ₹ 15 crores, income from transactions where both purchases and sales are from/to associated enterprises (₹ 5 crores in India and ₹ 10 crores in Singapore)
- (ii) ₹ 35 crores, being interest and dividend from investment (₹ 20 crores in India and ₹ 15 crores in Singapore)

Percentage of passive income to total income = ₹ 50 crore/ ₹ 110 crore x 100 = 45.45%

Since passive income of Singtel Ltd. is **45.45%**, which is not more than 50% of its total income, the first condition is satisfied.

**Condition 2: Singtel Ltd. should have less than 50% of its total assets situated in India**

Value of total assets of Singtel Ltd. during the P.Y. 2019-20 is ₹ 610 crores [₹ 210 crores, in India + ₹ 400 crores, in Singapore]

Value of total assets of Singtel Ltd. in India during the P.Y. 2019-20 is ₹ 210 crores

**Percentage of assets situated in India to total assets** = ₹ 210 crores/₹ 610 crores x 100 = 34.43%

Since the value of assets of Singtel Ltd. **situated in India is less than 50%** of its total assets, the second condition for ABOI test is satisfied.

**Condition 3: Less than 50% of the total number of employees of Singtel Ltd. should be situated in India or should be resident in India**

Number of employees situated in India or are resident in India is 70

Total number of employees of Singtel Ltd. is 160 [ 70 + 90]

**Percentage of employees situated in India or are resident in India to total number of employees** is 70/160 x 100 = **43.75%**

Since employees situated in India or are residents in India of Singtel Ltd. **are less than 50%** of its total employees, the third condition for ABOI test is satisfied.

**Condition 4: The payroll expenses incurred on employees situated in India or resident in India should be less than 50% of its total payroll expenditure**

Payroll expenses on employees employed in and resident of India = ₹ 8 crores.

Total payroll expenses = ₹ 20 crores (₹ 8 crores + ₹ 12 crores)

**Percentage of payroll expenses of employees situated in India or are resident in India to the total payroll expenses** = 8 x 100/20 = **40%**



Since the payroll expenses incurred on employees situated in India or resident in India is **less than 50% of its total payroll expenditure**, the fourth condition for ABOI test is also satisfied.

Thus, since Singtel Ltd. has satisfied all the four conditions, the company would be said to be engaged in “active business outside India” during the P.Y.2019-20.

POEM of a company engaged in active business outside India shall be presumed to be outside India, if the majority of the board meetings are held outside India.

Since Singtel Ltd. is engaged in active business outside India in P.Y. 2019--20 and majority of its board meetings i.e., 4 out of 7, were held outside India, POEM of Singtel Ltd. would be outside India.

Therefore, Singtel Ltd. would be non-resident in India for the P.Y. 2019-20.

**21.** In relation to Article 5 on Permanent Establishment, the UN Model Convention varies from the OECD Model Convention in the following aspects:

(i) As per Article 5(3)(a) of the OECD Model Convention, a building site or construction or installation project constitutes a PE if it lasts more than twelve months. The UN Model Convention is wider as it covers “assembly and installation project” and “supervisory” activities in connection thereto and requires the activity in question to continue only for six months for constituting a PE.

(ii) Article 5(3)(b) of the UN Model Convention makes a specific reference to Service PE which is absent in the OECD Model Convention. Under the UN Model Convention, furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose would constitute a PE, but only if activities of that nature continue within a Contracting State for a period or periods aggregating more than 183 days in any 12 month period commencing or ending in the fiscal year concerned.

In the absence of a Service PE reference in OECD Model Convention, the presence has to be ascertained through general principles under Article 5(1).

(iii) The UN Model Convention has an additional Article 5(6) relating to insurance which is absent in OECD Model Convention. As per this Article in the UN Model Convention, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person.

In the absence of similar Article in the OECD Model Convention, a PE of an insurance Enterprise has to be determined in accordance with provisions of Article 5(1) or 5(2) of the OECD Model Convention.