



FINAL EXAMINATION

SET - 2

MODEL ANSWERS

TERM – DEC 2024

PAPER – 15

SYLLABUS 2022

DIRECT TAX LAWS AND INTERNATIONAL TAXATION

Time Allowed: 3 Hours

Full Marks: 100

The figures in the margin on the right side indicate full marks.

Where considered necessary, suitable assumptions may be made and clearly indicated in the answer.

SECTION – A (Compulsory)

1. Choose the correct option:

[15 x 2 =30]

- i. Book profit for the purposes of section 115JB means net profit as shown in the Statement of the Profit and Loss prepared in accordance with _____ of the Companies Act as increased and decreased by certain items prescribed in this regard.
 - a. Schedule V
 - b. Schedule IV
 - c. Schedule III
 - d. Schedule II

- ii. What is the due date of filing the return of income in case of a company who is required to furnish a report in Form No. 3CEB under section 92E?
 - a. September 30 of the assessment year
 - b. November 30 of the assessment the year
 - c. July 31 of the assessment year
 - d. June 30 of relevant assessment the year

- iii. While computing book profit u/s 115JB, one of the following is required to be reduced from the net profit
 - a. Unabsorbed Depreciation as per books of account
 - b. Brought forward business loss as per books of account
 - c. Brought forward loss or unabsorbed depreciation, whichever is less as per books of account
 - d. Income-tax paid or payable if not already debited to the Statement of Profit and Loss

- iv. Prosecution can be launched and the taxpayer can be punished if he commits wilful failure to produce before the tax authorities the accounts and documents as demanded u/s _____.
 - a. 154
 - b. 147
 - c. 143(1)
 - d. 142(1)



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- v. Mr. KOKO and Mr. POPO sold their residential house property in Pune for ₹ 3 crore and ₹ 4 crore, respectively, in January, 2024. The house property was purchased by them 25 months back. The indexed cost of acquisition is ₹ 1 crore and ₹ 1.75 crore, respectively. Mr. KOKO purchased two residential flats, one in Delhi and one in Agra for ₹ 70 lakhs and ₹ 80 lakhs, respectively, in April, 2024. On the same date, Mr. POPO also purchased two residential flats, one in Mumbai and the other in Pune, for ₹ 80 lakhs and ₹ 75 lakhs, respectively. Both of them invested ₹ 30 lakhs in bonds of NHAI in March, 2024 and ₹ 30 lakhs in bonds of RECL in April, 2024. What is the income taxable under the head "Capital Gains" for A.Y.2024-25 in the hands of Mr. KOKO and Mr. POPO?
- Nil and ₹ 70 lakhs, respectively
 - ₹ 70 lakhs and ₹ 85 lakhs, respectively
 - Nil and ₹ 95 lakhs, respectively
 - ₹ 70 lakhs and ₹ 95 lakhs, respectively
- vi. ICDS VII is:
- Effects of Changes in Foreign Exchange Rates
 - Tangible Fixed Assets
 - Revenue Recognition
 - Government Grants
- vii. The Assessing Officer within his jurisdiction surveyed a popular Cyber Café at 2 a.m. in night for the purpose of collecting information which may be useful for the purposes of the Income-tax Act, 1961. The Cyber Café is kept open for business every day between 3 p.m. and 3 a.m. He impounded and retained in his custody, books of account and other documents inspected by him, after recording his reasons for doing so, for 13 days. Which of the following statements is correct?
- The Assessing Officer's action in entering the cybercafé at 2 a.m. and impounding books of account and documents inspected by him is in order
 - The Assessing Officer's action in entering the cyber café at 2 a.m. is not in order, since he can enter the cyber café only after sunrise but before sunset
 - The Assessing Officer's action in entering the cyber café at 2 a.m. and in impounding books of account and documents inspected by him are not in order, since he can enter the cyber café only after sunrise but before sunset and he does not have the power to impound books of account under section 133B
 - The Assessing Officer's action in entering the cyber café at 2 a.m. is in order but impounding books of account and documents inspected by him is not in order, since he does not have the power to impound books of account under section 133B
- viii. Who among the following is not mandated to file the return of income under section 139 for A.Y. 2024-25?
- PQR Pvt. Ltd., having incurred a loss of ₹2,45,000 during the year.
 - Mr. Sekhar, aged 63 years, having a total income of ₹3,30,000 before deduction under section 80C of ₹1,50,000.
 - Mr. Rakesh, who travelled to England during the year, spent ₹3,50,000 on his travel and hotel stay.
 - Ms. Sunita, a non-resident having assets worth ₹2 crores in India and ₹5 crores outside India. She has not earned or received any income in India.

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- ix. In the year restructuring, depreciation shall be:
- available to the successor company fully
 - apportioned between successor and predecessor on the basis of number of days
 - available to the predecessor company fully
 - None of the above
- x. Q is a foreign company having permanent establishment in India namely P. R, a non-resident associated enterprise, has invested ₹600 crores through debt in P. Earnings before interest, taxes, depreciation and amortisation (EBITDA) of P during the financial year was ₹150 crores. What is the amount of interest allowable in respect of the debt assuming that the debt was invested on the first day of the financial year and the rate of interest is 10% p.a.?
- ₹45 crores
 - ₹90 crores
 - ₹60 crores
 - ₹15 crores
- xi. XYZ Ltd. has failed to report an international transaction entered into by it with PQR Inc., which is a specified foreign company in relation to XYZ Ltd. What would be the penalty leviable in this case?
- 200% of tax payable on under-reported income
 - 2% of the value of the international transaction
 - Both (a) and (b)
 - 50% of tax payable on under-reported income
- xii. As per section _____ when any specified domestic transaction is carried out between associated enterprises, the said transaction should be carried out at arm's length price.
- 90
 - 91
 - 92
 - 90A
- xiii. Information and documents required to maintain u/s 92D shall be kept and maintained for a period of _____ from the end of the relevant assessment year.
- 8 years
 - 5 years
 - 10 years
 - 16 years
- xiv. In the context of Double Taxation Avoidance Agreements, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on. The term “permanent establishment” does not include:
- a mine, an oil or gas well, a quarry or any other place of extraction of natural resources
 - a workshop
 - The maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the enterprise.
 - a farm, plantation or other place where agricultural, pastoral, forestry or plantation activities are carried on



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- xv. When an Advance Pricing Agreement is entered between the taxpayers, the tax administration of the host country and the foreign tax administration, it is called:
- Unilateral Advance Pricing Agreement
 - Bilateral Advance Pricing Agreement
 - Multilateral Advance Pricing Agreement
 - None of the above.

Answer:

(i)	(ii)	(iii)	(iv)	(v)	(vi)	(vii)	(viii)	(ix)	(x)	(xi)	(xii)	(xiii)	(xiv)	(xv)
c	b	c	d	c	d	a	d	b	a	c	c	a	c	b

SECTION – B

(Answer any five questions out of seven questions given. Each question carries 14 Marks)

[5x14=70]

2. Syniper Ltd., engaged in diversified activities, earned a profit of ₹14,25,000 after debit/credit of the following items to its statement of profit and loss for the year ended on 31.3.2024:

(a) Items debited to Statement of Profit and Loss	₹
Provision for loss of subsidiary	85,000
Provision for income-tax demand	1,05,000
Depreciation	3,60,000
Interest on deposit credited to buyers on 31.3.2024 for advance received from them, on which tax was deducted in April 2024 and was deposited on 31.7.2024	1,00,000
(b) Items credited to Statement of Profit and Loss	
Long term capital gain on sale of equity shares on which securities transaction tax was paid at the time of acquisition and sale	3,60,000
Income from units of UTI (Gross)	75,000

The company provides the following additional information:

- Depreciation includes ₹1,50,000 on account of revaluation of fixed assets.
- Depreciation allowable as per Income-tax Rules is ₹2,80,000.
- Brought forward Business Loss/Unabsorbed Depreciation:

F.Y	Amount as per books		Amount as per Income-tax	
	Loss ₹	Depreciation ₹	Loss ₹	Depreciation ₹
2020-21	2,50,000	3,00,000	2,00,000	2,50,000
2021-22	Nil	2,70,000	1,00,000	1,80,000
2022-23	3,50,000	3,15,000	1,20,000	2,10,000

You are required to:

- Calculate the total income of the company for the assessment year 2024-25 giving the reasons for treatment of items and
- Examine the applicability of section 115JB of the Income-tax Act, 1961, and compute book profit and the tax credit to be carried forward.

Assume the tax rate applicable to Syniper Ltd. for the P.Y. 2023-24 is 30%. Ignore the provisions of section 115BAA.

[14]



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Answer:

Computation of Total Income for the A.Y 2024-2025

Particulars	₹	₹
Profit as per P&L statement		14,25,000
Add: Items disallowed/considered separately		
Provision for loss of subsidiary [since it is not wholly and exclusively for the purpose of business of the assessee]	85,000	
Provision for income-tax [disallowed under section 40(a)(ii)]	1,05,000	
Interest on deposit credited to buyers on 31.3.2024 and tax deducted in April 2024 which was deposited on 31.7.2024 [30% disallowed under section 40(a)(ia) since tax is deducted only in the next year].	30,000	
Depreciation debited to statement of profit and loss [only depreciation calculated as per the Income-tax Rules, 1962 is allowable as deduction]	3,60,000	5,80,000
		20,05,000
Less: Items credited but not includible under business income or are exempt under the provisions of the Act		
Long-term capital gain on sale of equity shares on which securities transaction tax was paid, since it is not a business income.	3,60,000	
Income from units of UTI, since it is not a business income.	75,000	4,35,000
		15,70,000
Less: Depreciation (allowable as per the Income-tax Rules, 1962)		2,80,000
		12,90,000
Less: Set-off of brought forward business loss and unabsorbed depreciation		
Brought forward business loss under section 72	4,20,000	
Brought forward depreciation under section 32	6,40,000	10,60,000
Income from business		2,30,000
Capital Gains		
Long term capital gain on sale of equity shares on which securities transaction tax was paid at the time of acquisition and sale		3,60,000
Income from Other Sources		
Income from units of UTI		75,000
Total Income		6,65,000
Tax on LTCG exceeding 1 lakh @ 10% of ₹ 2,60,000		26,000
Tax on other income of ₹ 3,05,000 @ 30%		91,500
		1,17,500
Add: Health and Education cess @ 4%		4,700
Tax Payable as per the Income-tax Act, 1961		1,22,200



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Computation of Book Profit under section 115JB

Particulars	₹	₹
Profit as per Statement of Profit & Loss		14,25,000
Add: Net Profit to be increased by the following amounts as per Explanation 1 below section 115JB(2)		
Provision for loss of subsidiary	85,000	
Provision for income-tax	1,05,000	
Depreciation debited to statement of profit and loss	3,60,000	5,50,000
		19,75,000
Less: Net Profit to be reduced by the following amounts as per Explanation 1 below section 115JB(2)		
Depreciation debited to statement of profit and loss (excluding depreciation on account of revaluation of fixed assets) (i.e., ₹3,60,000-₹1,50,000)	2,10,000	
Brought forward business loss or unabsorbed depreciation as per books of account, whichever is less, taken on cumulative basis	6,00,000	8,10,000
Book Profit		11,65,000
15% of book profit		1,74,750
Add: Health and Education cess @4%		6,990
Minimum Alternate Tax u/s 115JB		1,81,740

In case of a company, it has been provided that where income-tax payable on total income computed as per the provisions of the Act is less than 15% of book profit, the book profit shall be deemed as the total income and the tax payable on such total income shall be 15% thereof plus health and education cess @4%.

Accordingly, in this case, since income-tax payable on total income computed as per the provisions of the Act is less than 15% of book profit, the book profit of 11,65,000 is deemed to be the total income and income-tax is payable @ 15% thereof plus health and education cess @4%. The tax liability, therefore, works out to be ₹1,81,740.

Computation of tax credit

Particulars	₹
Tax on book profit under section 115JB	1,81,740
Less: Tax on total income computed as per the other provisions of the Act	1,22,200
Tax credit to be carried forward under section 115JAA (can be carried forward for 15 assessment years succeeding A.Y. 2024-25]	59,540

3. (a) In respect of the following independent transactions undertaken during the previous year 2023-24, Discuss whether they are tax planning or tax management or tax evasion:
- Filing ITR before the 'due date' in order to carry forward business loss.
 - Setting up of a warehouse to avail tax benefit under section 35AD.
 - Payment of medical insurance premium of 45,000 for a parent, aged 76.
 - Collecting PAN Details of contractors to whom TDS as per section 194C is to be made.
 - Recording in the books of account, salary payment to J, who is not actually employed by the assessee.
 - Paying advance tax instalments in accordance with section 211.
 - Gifting a property to major son in order to divert rental income so that it is taxed at a lower slab rate.

[7]

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Tax Planning, Tax Management, Tax Evasion

- (i) Filing ITR before the due date for availing carry forward benefit of business loss is Tax management
- (ii) Setting up of a warehouse to avail tax benefit u/s 35AD - Tax planning
- (iii) Payment of medical insurance premium of D 45,000 for a parent, aged 76 - Tax planning
- (iv) Collecting PAN Details of contractors to whom TDS as per section 194C is to be made – Tax management
- (v) Recording in the books of account, salary payment to J, who is not actually employed by the assessee - Tax evasion
- (vi) Paying advance tax instalments in accordance with section 211. – Tax management
- (vii) Gifting a property to major son in order to divert rental income being taxed at a lower rate of tax – Tax planning

(b) Discuss with brief reason, whether the following would fall in the category of tax planning, tax avoidance or tax evasion

- (i) Setting up of a liaison office in India by a foreign company, instead of a full-fledged establishment to run its business activities in India**
- (ii) Claiming depreciation for business purposes for a solar power generation system installed in the residential premises of Proprietor**
- (iii) Investment in bonds approved under section 54EC** [7]

Answer:

- (i) Setting up of a liaison office in India by a foreign company, instead of a full-fledged establishment to run its business activities in India: This is an act of tax planning.
- (ii) Claiming depreciation on an asset used for personal purposes as a business asset is an act of Tax evasion. Depreciation is allowable only for assets used for business purposes. Even though the asset is installed at residence, showing it as a business asset and claiming depreciation with a view to evade tax, constitutes tax evasion.
- (iii) Investment in bonds approved u/s. 54EC: it is an act of tax planning. Investment in section 54EC bond is a genuine investment to reduce/mitigate incidence of tax on capital gain. Hence, it is tax planning

4. (a) **Tiger (P) Ltd. is engaged in manufacture of textile garments and automobile parts. It has been incurring losses in manufacture of automobile parts. The management of the company wants to divest automobile parts manufacture for a lump sum consideration of 500 lakhs. The net worth of the automobile division has been computed @ 340 lakhs. The automobile division was in existence for the past 10 years. The management has identified a potential buyer by name Lion Ltd. There are two options available to Tiger (P) Ltd. regarding divesting of automobile division viz. (i) slump sale; or (ii) demerger.**

Examine and Analyse the comparative pros and cons of slump sale and demerger of automobile division. [7]

**DIRECT TAX LAWS AND INTERNATIONAL TAXATION****Answer:****(i) In the case of slump sale**

- Slump sale means transfer of one or more undertaking for a lump sum consideration without values being assigned to individual assets and liabilities in such transfer.
- Any profits or gains arising from slump sale affected shall be chargeable to income-tax as capital gain arising from long-term capital asset if the undertaking was owned and held for more than 36 months preceding the date of transfer. Since it is stated that the automobile division was operational for more than 10 years the capital gain is liable to tax as long-term capital gain.
- It is liable to tax @ 20% + surcharge @7% + HEC @4%. The effective rate would be 22.256% on ₹ 160 lakhs (₹ 500 lakhs minus ₹ 340 lakhs).
- The tax liability would be ₹ 35,60,960.

(ii) In the case of demerger

- Demerger is defined in section 2(19AA) where all the property of the undertaking of the demerged company held immediately before demerger is transferred and becomes the property of the resulting company. In this case, Tiger (P) Ltd would be demerged company and Lion Ltd would be the resulting company.
- Section 47(vib) says any transfer in a demerger, of a capital asset by the demerged company to the resulting company is not to be regarded as transfer, if the resulting company is an Indian company. In this case, both Tiger (P) Ltd and Lion Ltd are Indian companies. Therefore, the transaction of demerger will not attract any tax liability.
- If the sale consideration is discharged by the resulting company by issuing shares to the demerged company, there would be no tax consequence. On the other hand, if the shareholders of the demerged company receive shares in return for the shares held in demerged company it would attract capital gains tax based on their individual holding, cost of acquisition, period of holding and other factors.
- It is advisable to prefer demerger than slump sale of automobile division.

(b) Examine with reasons whether the following transactions attract income-tax in India, in the hands of recipients under section 9 of income-tax Act, 1961:

- (i) A non-resident USA company, which did not have a permanent establishment in India, entered into an agreement for execution of electrical work in India. Separate payments were made towards drawings & designs, which were described as "Engineering Fee". The assessee contended that such business profits should be taxable in USA as there is no business connection within the meaning of section 9(1)(i) of the Income-tax Act, 1961.**
- (ii) A firm of solicitors in Delhi engaged a barrister in UK for arguing a case before Supreme Court of India. A payment of 5000 pounds was made as per terms of professional engagement.**
- (iii) Amount paid by Government of India for use of a patent developed by Mr. X. who is a non-resident.**
- (iv) Om Engineering, a non-resident foreign company entered into a collaboration agreement on 25/6/2023, with an Indian Company and was in receipt of interest on 8% debentures for 20**

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lakhs, issued by Indian Company, in consideration of providing technical know-how utilised in its business in Pune during previous year 2023-24. [7]

Answer:

- (i) Fees for technical services is taxable under section 9(1)(vii). In this case, the separate payments made towards drawings and designs (described as "engineering fee") are in the nature of fee for technical services and, therefore, it is taxable in India by virtue of section 9(1)(vii), since the services are utilized for execution of electrical work in India.
- As per Explanation below section 9(2), where income is deemed to accrue or arise in India under section 9(1)(vii), such income shall be included in the total income of the non-resident USA company, regardless of whether it has a residence or place of business or business connection in India.
- (ii) As per section 9(1)(i), all income accruing or arising, whether directly or indirectly, through or from any business connection in India is deemed to accrue or arise in India.
- In this case, there was a professional connection between the firm of solicitors in Delhi and the barrister in UK. The expression "business" includes not only trade and manufacture; it includes, within its scope: "profession" as well. Therefore, the existence of professional connection amounts to existence of "business connection under section 9(1)(i). It was so held by the Supreme Court in Barendra Prasad Roy v. ITO (1981) 129 ITR 295
- Hence, the amount of 5,000 pounds paid to the barrister in UK as per the terms of the professional engagement constitutes income which is deemed to accrue or arise in India under section 9(1)(i). Hence, it is taxable in India.
- (iii) As per section 9(1)(vi), income by way of royalty payable by the Government of India is deemed to accrue or arise in India. "Royalty means consideration for inter alia, use of patent. Therefore, the amount paid by Government of India for use of patent developed by Mr. X, a non-resident, is deemed to accrue or arise in India. Hence, it is taxable in India in the hands of Mr. X
- (iv) 20 lakhs, being the value of debentures issued by an Indian company in consideration of providing technical know-how for use in its business in India, is in the nature of fee for technical services, deemed to accrue or arise in India to Om Engineering, a non-resident foreign company, under section 9(1)(vii). Hence, it is taxable in India.
- Further, as per section 9(1)(v), income by way of interest payable by a person who is a resident of India is deemed to accrue or arise in India. Therefore, interest Income from debentures of an Indian company is deemed to accrue or arise in India in the hands of Om Engineering by virtue of section 9(1)(v). Hence, it is taxable in India.

5. (a) **Who can file memorandum of cross-objections before the Income-tax Appellate Tribunal? Discuss the Time limit & fee for filing memorandum of cross objections.** [7]

Answer:

Section 253(4) of the Income-tax Act, 1961 gives the respondent (assessee or the Assessing Officer), in every appeal filed before the Income-tax Appellate Tribunal, a right to file a memorandum of cross-objections against any order of the Joint Commissioner (Appeals) or the Commissioner (Appeals). This right of filing a memorandum of cross-objections is an independent right given to the respondent in an



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appeal and is in addition to the right of appeal which may or may not be exercised by the assessee or the Assessing Officer under section 253(1) or section 253(2). The memorandum of cross-objections has to be in the prescribed form and verified in the prescribed manner and has to be filed within 30 days of the receipt of notice of the appeal. The Tribunal is empowered to permit filing of memorandum of cross objections after the expiry of the prescribed period if sufficient cause is shown. Such memorandum of cross-objections will be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in section 253(3). There is no fee for filing a memorandum of cross-objections.

- (b) Julian (P) Ltd. provides the following information in respect of plant and equipment for the year ended 31st March, 2024:

Block 1-Plant and machinery (Rate of Depreciation 15%)

- (i) Opening WDV ₹ 15,00,000
(ii) Purchase of a new plant on 31.10.2023 (put to use on 30th November, 2023)
Original cost of the plant ₹12,00,000
Trade discount 10%
Total amount paid ₹ 10,80,000
(iii) Expenses on installation of plant ₹ 40,000.
(iv) Cost of stand by equipment required for operating the new plant ₹ 80,000.
(v) Cost of machinery spare parts ₹ 70,000.

Also, it gave the value of securities held as stock in trade as on 31st March, 2024 as under:

Security	A	B	C	D		E	F	G	H	
Category	Equity shares				Total	Debt security				Total
Actual cost of purchase	100	120	140	200	560	150	105	125	220	600
Net realisable value as on 31.03.2024	75	150	120	190	535	160	90	135	230	615

You are required to calculate: (i) depreciation on plant and equipment; and (ii) carrying value of securities as per applicable Income Computation and Disclosure Standards for the assessment year 2024-25. [7]

Answer:

Disclosure as per ICDS V – In respect of plant and equipment	₹	₹
Opening WDV (1st April, 2023)		15,00,000
Add: Assets acquired during the year (used for less than 180 days)		
Purchase cost (after allowing trade discount)	10,80,000	
Add: Cost of installation	40,000	
Add: Stand by equipment	80,000	
Add: Cost of machinery spares	Nil	12,00,000
Note: As per ICDS V, these are charged to Statement of Profit and Loss and are not to be added to the cost of machine.		
		27,00,000
Less: Depreciation rate @15%		
On opening WDV @15%	2,25,000	

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On Addition @7.50% (Since used for less than 180 days)	90,000	
		(3,15,000)
WDV as on 31st March 2024		23,85,000

Computation of value of security as per ICDS VIII

Securities held as stock in trade shall be valued at actual cost initially recognised or the net realisable value at the end of the year, whichever is lower.

The comparison of actual cost initially recognised and net realisable value shall be done category-wise (viz. shares; debt securities; convertible debentures and any other securities) and not each individual security.

In respect of equity shares the actual cost ₹ 560 which is more than NRV which is ₹ 535 and therefore the NRV ₹ 535 would be adopted.

In respect of debt security the actual cost ₹ 600 is less than NRV of ₹ 615 and therefore actual cost ₹ 600 would be adopted.

6. (a) Explain, what is Permanent Establishment in the context of Double Taxation Avoidance Agreement? Describe the items which are excluded from the list of Permanent Establishment. [7]

Answer:

One of the important terms that occur in all the Double Taxation Avoidance Agreements is the term 'Permanent Establishment' (PE) which has not been defined in the Income Tax Act. However as per the Double Taxation Avoidance Agreements, PE includes, a wide variety of arrangements i.e. a place of management, a branch, an office, a factory, a workshop or a warehouse, a mine, a quarry, an oilfield etc. Imposition of tax on a foreign enterprise is done only if it has a PE in the contracting state. Tax is computed by treating the PE as a distinct and independent enterprise.

Generally, in Indian context, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on. The term "permanent establishment" shall also include:

1. a place of management;
2. a branch;
3. an office;
4. a factory;
5. a workshop;
6. a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
7. a warehouse in relation to a person providing storage facilities for others;
8. a farm, plantation or other place where agricultural, pastoral, forestry or plantation activities are carried on;
9. premises used as a sales outlet or for receiving or soliciting orders;
10. an installation or structure, or plant or equipment, used for the exploration for or exploitation of natural resources;
11. a building site or construction, installation or assembly project, or supervisory activities in connection with such a site or project, where that site or project exists or those activities are carried

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on (whether separately or together with other sites, projects or activities) for more than specified months (generally 6 months).

Exclusion:

An enterprise shall not be deemed to have a permanent establishment merely by reason of:

1. the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
2. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
3. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
4. the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise; or
5. the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the enterprise.

An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, a general commission agent or any other agent of an independent status, where that person is acting in the ordinary course of the person's business as such a broker or agent. However, when the activities of such a broker or agent are carried on wholly or principally on behalf of that enterprise itself or on behalf of that enterprise and other enterprises controlling, or controlled by or subject to the same common control as, that enterprise, the person will not be considered a broker or agent of an independent status within the meaning of this paragraph.

- (b) **Mr. Avinash, a resident aged 45 years is a salaried employee employed with ZZ P Ltd. He received the following components of his salary income during the previous year 2023-24.**

- **Basic Salary** ₹60,000 p.m.
- **Dearness Allowance** 12% of basic salary
- **Transport Allowance** ₹10,000 p.m.
- **Medical Allowance** ₹5,000 p.m.

He contributed ₹18,000 to approved Pension Fund of LIC. He also paid ₹2,00,000 by crossed cheque for Mediclaim premium to insure the health of his mother, a resident aged 63 years, who is not dependent on him as a lump sum payment for 5 years including the current previous year. He also delivered guest lecture in a reputed university in Country A during the year. He received ₹8,00,000 from such university after deduction of tax of ₹2,00,000 in Country A. India does not have any double taxation avoidance agreement under section 90 of the Income-tax Act, 1961, with Country A. Calculate the tax liability of Mr. Avinash for the A.Y. 2024-25. He has opted out of the Default Tax Regime.

[7]



DIRECT TAX LAWS AND INTERNATIONAL TAXATION

Answer:

Computation of total income of Mr. Avinash for the A.Y. 2024-25

Particulars	Amount (₹)	Amount (₹)
Salaries [Indian Income]		
Basic Salary (₹60,000 × 12 months)	7,20,000	
Dearness Allowance (12% of basic salary of ₹7,20,000)	86,400	
Transport Allowance (₹10,000 × 12) [Fully taxable]	1,20,000	
Medical Allowance (₹ 5,000 × 12) [Fully taxable]	60,000	
Gross Salary	9,86,400	
Less: Standard deduction u/s 16(ia) Lower of actual salary or ₹ 50,000	50,000	
Net Salary		9,36,400
Income from Other Sources [Foreign Income]		
Income from lectures in foreign university [₹ 8,00,000 plus tax deducted at source of ₹ 2,00,000]		10,00,000
Gross Total Income		19,36,400
Less: Deduction under Chapter VIA		
Under section 80CCC – Contribution to approved Pension Fund of LIC	18,000	
Under section 80D – Medical insurance premium of mother, being a resident senior citizen for the year 2023-24, ₹40,000 [being 1/5th of the lump sum premium of ₹2,00,000 paid for 5 years] fully allowable, even though she is not dependent on him, since the same does not exceed ₹50,000	40,000	58,000
Total Income		18,78,400

Computation of tax liability of Mr. Avinash for A.Y.2024-25

Particulars		Amount (₹)
Tax on total income [₹ 2,63,520 (i.e., 30% of ₹ 8,78,400) plus ₹ 1,12,500 (Tax on income of ₹ 10 lakh)]		3,76,020
Add: Health and education cess@4%		15,041
Tax Liability		3,91,061
Average rate of tax in India [i.e., 3,91,061 / 18,78,400 × 100]	20.82%	
Tax rate in Country A [2,00,000 / 10,00,000] × 100	20%	
Deduction under section 91 on ₹ 10,00,000, being the doubly taxed income@ 20% [being the lower of Indian rate of tax (20.82%) and Country A tax rate (20%)]		2,00,000
Tax Payable		1,91,061
Tax Payable (rounded off)		1,91,061



DIRECT TAX LAWS AND INTERNATIONAL TAXATION

7. (a) SD LLP, a foreign company, holds 32% of the voting powers in ZX Ltd, Mumbai, an Indian company. ZX Ltd. provides banking related software services to its clients. SD LLP is one of the major customers of ZX Ltd.
- During the previous year 2023-24, ZX Ltd. has billed SD LLP for 30,000 man-hours at USD 36 per man hour. Direct costs may be taken as USD 18 per man hour and indirect costs at USD 12 per man hour. TY Inc. Colombo is also a client of ZX Ltd. to whom similar services are provided at 45% profit to operating costs. However, the following aspects may be noted as between the services rendered to SD LLP and TY Inc:
- Since SD LLP gives huge volume of business, ZX Ltd. offered a special quantity discount as per market norms, which may be taken as 8% of the gross operating margin;
 - SD LLP provides some technical support to ZX Ltd. because of its specialised knowledge in the banking domain; no such support is derived by the assessee from TY Inc. The value of the technical support of SD LLP to ZX Ltd. may be taken as 10% of the gross operating margin.
 - SD LLP is given a credit period of 15 days, whilst the unrelated party TY Inc. is given a credit period of 45 days. The impact of the extra credit period provided may be taken as 5% of the gross operating margin.

Using Cost Plus Method (CPM), Calculate the ALP (in INR) and the amount, if any, to be added to the total income of ZX Ltd. for the assessment year 2024-25. (1 USD=80).

Note: All calculations may be done up to 3 decimal places.

[7]

Answer:

Computation of ALP of ZX Ltd

Two enterprises are deemed to be associated enterprises where one enterprise, directly or indirectly, holds shares carrying not less than 26% of the voting power in the other enterprise.

In this case, since SD LLP., a foreign company holds 32% of the voting powers in ZX Ltd, an Indian company, these two entities, are deemed to be associated enterprises.

Since the transaction of developing software and providing related support service by the assessee to SD LLP is an international transaction between associated enterprises, the provisions of transfer pricing would be attracted in this case.

ALP in INR	₹ 9,69,48,000
Actual price charged to SD LLP	₹ 8,64,00,000
Difference in profit to be adjusted by way of addition in the hands of ZX Ltd.	₹ 1,05,48,000

- (b) PKD Ltd., an Indian Company, has borrowed ₹90 crores on 01-04-2023 from M/s. KK Inc, a company incorporated in London, at an interest rate of 10% p.a. The said loan is repayable over a period of 5 years. Further, this loan is guaranteed by M/s JJ Inc. incorporated in UK. M/s. BB Inc, a non-resident, holds shares carrying 43% of voting power both in M/s PKD Ltd. and M/s JJ Inc. Net profit of M/s. PKD Ltd. for P.Y. 2023-24 was ₹11 crores after debiting the above interest, depreciation of ₹5 crores and income-tax of ₹4 crores.
- Calculate the amount of interest to be allowed to be claimed under the head "Profits and gains of business or profession" in the computation of M/s PKD Ltd. giving appropriate reasons. Also explain allowability of such disallowed interest, if any.

[7]

Answer:

**DIRECT TAX LAWS AND INTERNATIONAL TAXATION**

If an Indian company, being the borrower, incurs any expenditure by way of interest in respect of any debt issued by its non-resident associated enterprise (AE) and such interest exceeds ₹1 crore, then, the interest paid or payable by such Indian company in excess of 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA) or interest paid or payable to associated enterprise, whichever is lower, shall not be allowed as deduction as per section 94B. Further, where the debt is issued by a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise and limitation of interest deduction would be applicable.

In the present case, since M/s BB Inc holds 43% of voting power i.e., more than 26% of voting power in both PKD Ltd and M/s JJ Inc, PKD Ltd. and M/s JJ Inc are deemed to be associated enterprises.

Since loan of ₹90 crores taken by PKD Ltd., an Indian company from M/s KK Inc, is guaranteed by M/s JJ Inc, an associated enterprise of PKD Ltd., such debt shall be deemed to have been issued by an associated enterprise and interest payable to M/s KK Inc shall be considered for the purpose of limitation of interest deduction u/s 94B.

Computation of interest to be allowed as per section 94B in the computation of income under the head profits and gains of business or profession of PKD Ltd.

Particulars		₹ (in crores)
Net profit		11.00
Add: Interest already debited (₹ 90 crores × 10%)		9.00
Depreciation		5.00
Income-tax		4.00
EBITDA		29.00
Interest paid or payable by PKD Ltd.		9.00
Lower of the following would be disallowed		
- Total interest paid or payable in excess of 30% of EBITDA (₹ 9,00,00,000 – ₹ 8,70,00,000)	0.30	
- Interest paid or payable to non-resident AE	9.00	
Interest to be disallowed as deduction		0.30
Interest allowable as deduction under the head "Profits and gains from business or profession (₹ 9,00,00,000 – ₹ 30,00,000)		8.70

Disallowed interest of ₹30 lakhs can be carried forward to the subsequent assessment year and it would be allowed as deduction against profits and gains, to the extent of allowable interest expenditure u/s 94B.

8. (a) **Mr. Karan, a resident Indian, is in retail business and his turnover for F.Y.2022-23 was ₹13 crores. He regularly purchases goods from another resident, Mr. Ranjan, a wholesaler, and the aggregate payments during the F.Y.2023-24 was ₹95 lakh (₹21 lakh on 1.6.2023, ₹ 24 lakh on 12.8.2023, ₹22 lakh on 23.11.2023 and ₹ 28 lakh on 25.3.2024). Assume that the said amounts were credited to Mr. Ranjan's account in the books of Mr. Karan on the same date. Mr. Ranjan's turnover for F.Y.2022-23 was ₹14 crores.**
- (i) Based on the above facts, examine the TDS/TCS implications, if any, under the Income-tax Act, 1961.
- (ii) Would your answer be different if Mr. Karan's turnover for F.Y.2022-23 was ₹6 crores, all other facts remaining the same?

**DIRECT TAX LAWS AND INTERNATIONAL TAXATION**

- (iii) **Would your answer to (i) and (ii) change, if PAN has not been furnished by the buyer or seller, as required?** [7]

Answer:

- (i) Since Mr. Karan's turnover for F.Y.2022-23 exceeds ₹10 crores, and payments made by him to Mr. Ranjan, a resident seller exceed ₹50 lakhs in the P.Y.2023-24, he is liable to deduct tax @ 0.1% of ₹45 lakhs (being the sum exceeding ₹50 lakhs) in the following manner –
No tax is to be deducted u/s 194Q on the payments made on 1.6.2023 and 12.8.2023, since the aggregate payments till that date i.e., 45 lakhs, has not exceeded the threshold of ₹ 50 lakhs. Tax of ₹1,700 [i.e., 0.1% of ₹17 lakhs (₹22 lakhs – ₹ 5 lakhs, being the balance unexhausted threshold limit)] has to be deducted u/s 194Q from the payment/ credit of ₹22 lakhs on 23.11.2023. Tax of ₹2,800 (i.e., 0.1% of ₹28 lakhs) has to be deducted u/s 194Q from the payment/ credit of ₹28 lakhs on 25.3.2024.
Note – In this case, since both section 194Q and 206C(1H) applies, tax has to be deducted u/s 194Q.
- (ii) If Mr. Karan's turnover for the F.Y.2022-23 was only ₹6 crores, TDS provisions under section 194Q would not be attracted. However, TCS provisions under section 206C(1H) would be attracted in the hands of Mr. Ranjan, since his turnover exceeds ₹10 crores in the F.Y.2022-23 and his receipts from Mr. Karan exceed ₹50 lakhs. No tax is to be collected u/s 206C(1H) on 1.6.2023 and 12.8.2023, since the aggregate receipts till that date i.e., ₹45 lakhs, has not exceeded the threshold of ₹50 lakhs. Tax of ₹1,700 [i.e., 0.1% of ₹17 lakhs (₹22 lakhs – ₹ 5 lakhs, being the balance unexhausted threshold limits)] has to be collected u/s 206C(1H) on 23.11.2023. Tax of ₹2,800 (i.e., 0.1% of ₹28 lakhs) has to be collected u/s 206C(1H) on 25.3.2024.
- (iii) In case (i), if PAN is not furnished by Mr. Ranjan to Mr. Karan, then, Mr. Karan has to deduct tax @5%, instead of 0.1%. Accordingly, tax of ₹85,000 (i.e., 5% of ₹17 lakhs) and ₹1,40,000 (5% of ₹28 lakhs) has to be deducted by Mr. Karan u/s 194Q on 23.11.2023 and 25.3.2024, respectively. In case (ii), if PAN is not furnished by Mr. Karan to Mr. Ranjan, then, Mr. Ranjan has to collect tax@1% instead of 0.1%. Accordingly, tax of ₹17,000 (i.e., 1% of ₹17 lakhs) and ₹28,000 (1% of ₹28 lakhs) has to be collected by Mr. Ranjan u/s 206C(1H) on 23.11.2023 and 25.3.2024, respectively.
- (b) **On 1-4-2023, Rohit Ltd., an Indian company, advanced a loan of ₹6 crores to Virat Inc., a company resident in Dubai. As on the date of loan, the book value of total assets in the books of Virat Inc. was ₹4 crores. In the Financial Year 2022-23, Virat Inc. had revalued its assets and accordingly the value of assets had increased by ₹2 crores. Virat Ltd. paid the entire loan along with interest thereon on 31st August, 2023. During the Financial Year 2023-24, Rohit Ltd. also entered into an agreement with Virat Inc. to provide 20 thousand medical equipment's at a cost of ₹7,400 per unit. The Assessing Officer treats them as associate enterprise and wants to re-compute the income of Rohit Ltd. at arms' length price. You are required to answer the following questions in this respect:**
- (1) **Examine whether, Rohit Ltd. and Virat Ltd. be treated as associate enterprises for the purpose of transfer pricing adopted by the Assessing Officer?**

**DIRECT TAX LAWS AND INTERNATIONAL TAXATION**

- (2) Calculate the arm's length price of Rohit Ltd. which sells the same equipment's at the rate of ₹9,000 per unit to Y Ltd. and at the rate of ₹9,500 per unit to X LLP (both of them are unrelated parties in respect of Rohit Ltd.). Rohit Ltd. is not a wholesale dealer.
- (3) What are the options available to Virat Inc. in respect of such increase in transfer price by income tax authorities, if Rohit Ltd. accepts such transfer price? [7]

Answer:

- (1) Two enterprises are deemed to be associated enterprises as per section 92A(2)(c), if a loan advanced by one enterprise to the other enterprise constitutes not less than 51% of the book value of total assets of the other enterprise. Since Rohit Ltd., an Indian company, advanced loan of an amount of ₹6 crores to Virat Inc., a Dubai company, which is 150% of the book value of the total assets of Virat Inc. (i.e., 150% of ₹4 crores), Rohit Ltd. and Virat Inc. are deemed to be associated enterprises.
- (2) Rohit Ltd. sells equipment's at the rate of ₹9,000 per unit to Y Ltd. and at ₹9,500 per unit to X LLP, both of them being unrelated parties. Since the transactions can be considered as comparable uncontrolled transactions for the purpose of determining the arm's length price, Comparable Uncontrolled Price (CUP) method would be most appropriate method.

Since two prices are determined by the most appropriate method, and data set comprises of only two entries, the arm's length price shall be the arithmetical mean of both the values included in the dataset. Accordingly, arm's length price would be ₹9,250 $[(₹9,000 + ₹9,500)/2]$. Since the deviation between the arm's length price and actual sale price of the equipment to Virat Inc. i.e., ₹7,400 per unit is 25%, which exceeds 3% of the price of the international transaction, the arm's length price would be ₹9,250 per unit and the total income would increase by ₹3.7 crores [i.e. ₹ 1,850 $(9,250 - 7,400) \times 20,000$ units].

- (3) On account of the primary adjustment of ₹3.7 crores $(₹1850 \times 20,000$ units) made by the Assessing Officer, in the total income of Rohit Ltd. for A.Y. 2024-25, secondary adjustment has to be made under section 92CE, since –
- The company has accepted the primary adjustment made by the Assessing Officer;
 - The primary adjustment is in respect of A.Y. 2024-25; and
 - The primary adjustment exceeds ₹100 lakhs.

Accordingly, the excess money i.e., ₹3.7 crores available with the Virat Inc. has to be repatriated to India within 90 days of the date of the order of the Assessing Officer.

Alternatively, Rohit Ltd. can opt to pay additional income-tax @ 20.9664% (Tax @18% plus surcharge @ 12% plus cess @ 4%) on ₹3.7 crores, which amounts to ₹77,57,568.