

**Paper 16 – Direct Tax Laws
And
International Taxation**

Paper 16 – Direct Tax Laws and International Taxation

Time Allowed: 3 Hours

Full Marks: 100

Answer Question No. 1 which is compulsory and any FIVE from Question No 2 to 8.

Section-A

1. Multiple Choice Questions:

10x 2 = 20

- i. The commissioner of IT Act (Appeal) shall dispose off the appeal within a period of _____ from the financial year in which appeal is made.
 - A. 1 yrs
 - B. 2 yrs
 - C. 3 yrs
 - D. None of the above

- ii. As per section 142(2A), the tax authorities can direct the taxpayer to get his accounts audited from a _____ nominated by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.
 - A. Cost Accountant
 - B. Chartered Accountant
 - C. Company Secretary
 - D. None of the above

- iii. The quantum of deduction in respect of royalty on patents as mentioned in Section 80RRB is
 - A. ₹ 1,50,000
 - B. ₹ 2,00,000
 - C. ₹ 2,50,000
 - D. ₹ 3,00,000

- iv. The additional tax will have to paid by the principal officer of the domestic company and the company within ____ days from the date of declaration of dividend.
 - A. 7 days
 - B. 9 days
 - C. 14 days
 - D. 21 days

- v. In case of the Local Authority the return is verified by the _____.
 - A. Karta
 - B. Managing Director
 - C. Principal officer
 - D. Liquidator

- vi. Pay as you earn scheme is known as
 - A. Interest
 - B. Income tax
 - C. Advance tax
 - D. None of the above

- vii. Form for making application of settlement of cases as specified u/s 245C(1)
 - A. Form 24A
 - B. Form 26AS
 - C. Form 34B
 - D. None of the above

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- viii. Application made to the authority for advance ruling can be withdrawn after the lapse of _____ days period of application with the permission of authority if facts and circumstances so justify.
- A. 15 days
 - B. 30 days
 - C. 45 days
 - D. 60 days
- ix. Monetary limit of disposing of a case by a single member of ITAT u/s 255(3) is _____.
- A. ₹ 15 lakh
 - B. ₹ 20 Lakh
 - C. ₹ 50 lakh
 - D. ₹ 65 Lakh
- x. An eligible business as referred to section 44AD shall pay the advance tax during each financial year on or before the _____.
- A. 15th September
 - B. 15th December
 - C. 15th March
 - D. 31st March

Answer:

- i. Correct Answer (A)
The commissioner of IT Act (Appeal) shall dispose of the appeal within a period of 1 yrs from the financial year in which appeal is made.
- ii. Correct answer (B)
As per section 142(2A), the tax authorities can direct the taxpayer to get his accounts audited from a chartered Accountant nominated by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and to furnish a report of such in a prescribed form.
- iii. Correct answer (D)
The quantum of deduction in respect of royalty on patents as mentioned in Section 80RRB is ₹ 3,00,000.
- iv. Correct answer (A)
The additional tax will have to paid by the principal officer of the domestic company and the company within 7 days from the date of declaration of dividend.
- v. Correct answer (C)
As per section 140, in case of the Local Authority the return is verified by the Principal Officer.
- vi. Correct answer (C)
Advance Tax is an additional means by which the central government collects revenue. Advance tax is known as you earn concept.
- vii. Correct answer (C)
Form 34B for making application of settlement of cases as specified u/s 245C(1) to settlements commission and have the case settled provided the stipulated conditions are satisfied.
- viii. Correct answer (B)
Application made to the authority for advance ruling can be withdrawn after the lapse of 30 days period of application with the permission of authority if facts and circumstances so justify.
- ix. Correct answer (C)
Single member bench may dispose of any case which pertains to an assessee whose total income as computed by the Assessing Officer does not exceeds ₹ 50 Lakh.
- x. Correct answer (C)

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- E. An eligible business as referred to section 44AD shall pay the advance tax during each financial year on or before the 15th March.

Section-B

(Answer any Five Questions out of seven questions)

2(a) Sagar submits the following information for previous year 2016-17 relevant to the A.Y 2017-18:

8 Marks

Particulars	Amount (₹)
Profit from Business A situated in Delhi	1,50,000
Profit from Business B situated in Bombay	1,00,000
Loss from Business C carried in New York (the business is controlled from India but profits are not received in India)	60,000
Unabsorbed depreciation of business C	35,000
Income from house property situated in India	10,000
Income from house property situated in London (rent received in London)	20,000

Find out the Gross Total Income of Sagar for the assessment year 2017-18 if he is (a) Resident in India (b) Not ordinarily resident in India and (c) Non-resident in India.

2(b) Ms. banerjee, a resident individual and self-employed industrial designer, furnished the following particulars for the year ended 31st March, 2017.

8 Marks

Particulars	Amount (₹)
Gross total income	5,00,000
Housing loan principal repayment. The property is under construction at Jaipur as on 31 st March, 2017	1,10,000
Principal repayment of housing loan from a relative. This property is self-occupied situated at Jodhpur	50,000
Contribution to Public Provident Fund in the name of her mother	70,000
She deposited per month in her account under a pension scheme notified by the Central Government.	4,000
Compute total income of Ms. banerjee for Assessment Year 2017-18 stating reasons for the deduction eligible under appropriate provisions of Chapter VI-A.	

Answer:2.a.

	Resident	Not Ordinary Resident	Non Resident
Business Income			
Business A (Profit)	1,50,000	1,50,000	1,50,000
Business B (Profit)	1,00,000	1,00,000	1,00,000
	2,50,000	2,50,000	2,50,000
Business C (Loss) (Controlled from India but received out of India)	(60,000)	(60,000)	(60,000)

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	1,90,000	1,90,000	2,50,000
Unabsorbed depreciation of business C	(35,000)	(35,000)	Nil
	1,55,000	1,55,000	2,50,000
Income from House property	-		
Property in India	10,000	10,000	10,000
Property in London	20,000	-	-
Gross Total Income	1,85,000	1,65,000	2,60,000

Answer:2.b.

Computation of total Income of MS Banerjee for the A.Y 2017-18

	₹	₹
Gross total income		5,00,000
Less: Deduction u/s chapter VI-A		
Section 80C		
Housing loan principal repayment. The property is under construction at Jaipur as on 31 st March,2017 (Not allowed as property is still under construction)	Nil	
Principal repayment of housing loan from a relative. This property is self-occupied situated at Jodhpur (Not allowed as not taken from specified Institution)	Nil	
Contribution to Public Provident Fund in the name of her mother (Not allowed)	Nil	
Section 80CCD		
She deposited per month in her account under a pension scheme notified by the Central Government. [₹ 48,000 which is less than 10% of GTI]	48,000	48,000
Total Income		4,52,000

3 The following is the profit and loss account for the year ending 31.3.2017 of ABC Bros. having three partners:

16 Marks

Profit & Loss A/c

Particulars	Amount (₹)	Particulars	Amount (₹)
Establishment & other expenses	48,00,000	By gross profit	78,20,000
Interest to partners @ 15%		Profit on sales of equity shares sold after 2 years through recognised stock	1,40,000
A 90,000			
B 1,20,000			
C 60,000			
	2,70,000		
Salary to designated partners		Rent from house property	60,000
A 2,40,000			
B 1,80,000	4,20,000		
Net profit	26,60,000	Interest on bank deposits	10,000
		Profit on equity shares sold after 10 months through RSE	1,20,000
	81,50,000		81,50,000

Other Information:

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1. Establishment expenses include ₹ 1,20,000 on account of bonus which was due on 31st March 2017.
2. The firm is eligible for 100% deduction under section 80-IC as it is established in notified area in Himachal Pradesh.
3. Shares were sold through recognized stock exchange and securities transaction tax of ₹1000 is included in the establishment expenses on account of the same

Compute the tax payable by the Limited Liability Firm.

Answer.3.

Computation of total income of ABC Bros. for the A.Y 2017-18

	₹	₹	₹
Income under the head house property			
Annual Rent		60,000	
Less: Deduction @ 30%		18,000	42,000
Business Income			
Net profit as per P & L Ac		26,60,000	
Less: Income credited but either exempted or taxable under other head			
Rent	60,000		
Profit on sale of shares after 2 years	1,40,000		
Interest on Bank Deposit	10,000		
Profit on sale of shares sold after 10 minutes	<u>1,20,000</u>	3,30,000	
		23,30,000	
Add: Expenses disallowed			
Bonus as per section 43B	1,20,000		
Securities Transaction tax	1,000		
Interest to partners in excess of 12%	54,000		
Salary to partners	<u>4,20,000</u>	5,95,000	
Book Profit		29,25,000	
Less: Salary as per section 40(b) (See working note)		4,20,000	25,05,000
Short term capital gain on sale of equity shares			1,20,000
Income from other sources			10,000
Gross Total Income			26,77,000
Less: Deduction u/s 80IC			25,05,000
Total Income			1,72,000

Regular Income tax payable on total income;

- | | |
|--|---------------|
| 1. Short term capital gain of ₹ 1,20,000 @ 15% | 18,000 |
| 2. Balance total income ₹ 52,000 @ 30% | <u>15,600</u> |
| | <u>33,600</u> |

Adjusted total income:

Total Income	1,72,000
Add: Deduction u/s chapter VIA	<u>25,05,000</u>
	<u>26,77,000</u>

Alternate minimum tax (AMT) 18.5% on ₹ 26,77,000 = ₹ 4,95,245

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Hence, adjusted total income shall be total income and tax payable shall be the alternate minimum tax i.e on ₹ 26,77,000 @ 15.5% + 3% (Ec and SHEC). Surcharge is not to be added as the adjusted total income does not exceeds ₹ 10 crore.

Tax Payable:

Alternate minimum tax 18.5% of ₹ 26,77,000	4,95,245
Add: 3% Education cess & SHEC	<u>14,857</u>
	<u>5,10,100</u>

Working Note:

Book Profit	29,25,000
Maximum salary allowed	
First 3,00,000 of book profit-90%	2,70,000
Balance ₹ 26,25,000 of book profit 60%	<u>15,75,000</u>
	<u>18,45,000</u>

Note: Salary allowed shall be ₹ 18,45,000 or ₹ 4,20,000 whichever is lower i.e ₹ 4,20,000.

4(a) State the due date of Return of income of charitable trust and political party.

8 Marks

4(b) R Ltd., merges with G Ltd., and Indian company under a scheme of amalgamation on 1.10.2012. The following non-depreciable assets were transferred by R Ltd. to G Ltd.

8 Marks

Sl/No.	Asset	Date of Acquisition by R Ltd	Cost to R Ltd	Value at which transferred to G Ltd.	Fair market value as on 1.4.1981
1	Share of X Ltd	15.4.1980	1,00,000	3,00,000	1,50,000
2	Urban land	14.5.1984	3,10,000	10,00,000	2,00,000
3	Gold	26.3.1995	4,00,000	3,50,000	1,50,000

After amalgamation, G Ltd. sold all the assets on 28.3.2017.

Sl/No.		Asset sales price
1	Shares of X Ltd.	19,00,000
2	Urban-land	29,00,000
3	Gold	15,00,000

Compute capital gains in the hands of G Ltd., for assessment year 2017-18.

Answer:4.a.

Return of income of charitable trust and institutions [Section 139(4A)]

Every person who is in receipt of the following income for which he is taxable, must file a return of income, if such income (computed before allowing any exemption under sections 11 and 12) exceeds the maximum amount not chargeable to tax:

- (a) income derived from property held under trust or other legal obligation wholly for or charitable purposes or religious purposes, or in part only for such purposes; or
- (b) income by way of voluntary contribution on behalf of such trust or institution.

The return of income must be furnished in Form No. ITR-7 and verified in the prescribed manner containing all the prescribed particulars. Such return of income must be furnished by the representative assessee within the time prescribed under seem 139(1) electronically under digital signature or otherwise.

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Due date of filing return of charitable trust: The due date of filing the return of income of charitable trust shall be 30th September of the assessment year as where the income of a charitable trust, before claiming exemption under section 11 to 12 exceeds the maximum amount chargeable to tax, its accounts are required to be audited. If it not wish to take exemption under sections 11 and 12 then the due date shall be 31st July of the assessment year.

Consequences of failure to furnish return: If the trust or charitable trust institute fails to furnish the return of income or fails to furnish the same within the time allowed then, the charitable trust shall be liable to pay a penalty under section 272A(2) shall be ₹ 100 for every day during which the failure continues.

Return of income of political party [Section 139(4B)]

The Chief Executive Officer of every political party, shall, if the total income political party (computed before allowing exemption under section 13A) exceeds maximum amount not chargeable to income-tax, furnish a return of such income return must be submitted in Form No. ITR 7 electronically and verified in the prescribed manner, setting forth such other particulars as may be prescribed may by the CBDT must be submitted within the time period prescribed under section 139(1).

Answer:4.b.

Before computing capital gain, we have to determine the cost of acquisition of the assets, period of holding and its indexation. These will be determined as under;

Assets	Cost of acquisition of G Ltd	Period of holding	Type of CG	Indexation cost
Shares of X Ltd	1,50,000	Since 15.4.1980	Long term	16,87,500
Urban Land	3,10,000	Since 14.5.1984	Long term	27,90,000
Gold	4,00,000	Since 26.3.1995	Long term	17,37,452

1. Cost of R Ltd or FMV as on 1.4.1981 whichever is lower
2. Cost of acquisition to R Ltd
3. Do

1. Indexation of shares $1,50,000 \times 1125/100 = ₹ 16,87,000$
2. Indexation of Urban Land $3,10,000 \times 1125/100 = ₹ 27,90,000$
3. Indexation of Gold $4,00,000 \times 1125/100 = ₹ 17,37,452$

Computation of long term capital gain:

	Shares of X Ltd	Urban Land	Gold
Consideration price	19,00,000	29,00,000	15,00,000
Less: Indexed cost of acquisition	16,87,500	27,90,000	17,37,452
LTCG/Loss	2,12,500	1,10,000	(2,37,452)

Note: It has It has been assumed that these shares were not sold through a recognised stock exchange. If these are sold through recognised stock exchange and were subject to securities transaction tax, long-term capital gain is exempt and hence long-term capital loss shall also be not allowed.

5(a) Can an assessee, engaged in the business of developing a housing project, be denied deduction under section 80-IB(10) on the ground that the ownership of land has not yet been transferred to the assessee and the approval to build the housing project has been taken in the name of the land owner, though the assessee assumes the entire risks and rewards of the project? Discuss with relevant case laws.

5(b) Does the Central Board of Direct Taxes (CBDT) have the power under section 119(2)(b) to condone the delay in filing return of income? Discuss with relevant case laws.

8 Marks

Answer:5.a.

CIT vs. Radhe Developers (2012) 341 ITR 403 (Guj.)

The assessee is a land developer and derives its income from the business of developing and building of housing project. To execute a housing project, the assessee entered into a development agreement with the owner of a land. On the same day, the land owner entered into an "agreement to sell" the said land to the assessee. The assessee claimed deduction under section 80-IB(10) contending that the income derived was by an undertaking developing and building a housing project approved by the local authority.

However, the Assessing Officer rejected the assessee's claim for deduction under section 80-1 B(10) on the ground that the assessee was not the owner of the land on which the housing project was developed and also the approval by the local authority to commence such housing project was not in the name of the assessee. The Department was of the view that the assessee had merely acted as an agent or contractor for the land owner for development of housing project and therefore, it would be taken as a works contractor and hence, would not be eligible for the deduction applying Explanation to section 80-16(10).

The assessee contended that the ownership of land is not a pre-requisite to claim deduction under section 80-IB(10). The assessee further argued that the execution of a housing project cannot be taken to be a works contract in this case since the assessee had the full authority to take all the decisions and had assumed the full risk of the failure or success of the housing project. The profit or loss derived from the project was of the assessee and the owner of the land would only receive a part of sale consideration in lieu of which he had granted development permission to the assessee. The land owner was not exposed to any risk in respect of the housing project. Therefore, Explanation to section 80-IB(10) is not applicable and deduction cannot be denied on that basis.

Considering the above, the Gujarat High Court held that, on perusal of the provisions of section 80-IB(10), it is clear that deduction of 100% of profit is provided to an undertaking deriving profit from the business of developing and building housing projects which is approved by the local authority before the specified date, subject to certain other conditions mentioned therein. The said provisions nowhere require that only those developers who themselves own the land would be entitled to deduction under section 80-IB(10). This condition cannot be read for the applicability of section 80-IB(10). The issue is whether the contract is a contract of work or a contract of sale. As the land owner entered into an agreement to sell the land to the assessee, it would constitute a contract for sale and not a works contract. The owner of the land had, in part performance of the agreement to sell, given the possession thereof to the assessee and the assessee had carried out the construction work for development of the housing project. Therefore, as per provisions of section 2(47) read with section 53A of the Transfer of Property Act, 1882, it can be construed that the land, for the purpose of the Income-tax Act, 1961, is deemed to have been transferred to the assessee, though the title of the land has not yet been transferred to the assessee. The ownership has been understood differently in different contexts. Hence, for the purpose of deduction under section 80-IB(10), the assessee had satisfied the condition of ownership, even if it was necessary. Therefore, the assessee shall be deemed to be the owner of the land.

Hence, in the present case, as per the provisions of section 80-IB(10), deduction shall be provided to the assessee engaged in the business of developing and building housing projects, in case it satisfies the conditions mentioned therein even if the ownership of the land has not yet been transferred to the assessee and the approval for such housing project is obtained in the name of the original land owner.

Answer:5.b.

Lodhi Property Company Ltd. vs. Under Secretary, (ITA-II), Department of Revenue (2010] 323 ITR 0441 (Del.)

The assessee filed his return of income which contains a claim for carry forward of losses a day after the due date. The delay of one day in filing the return of income was due to the fact that the

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assessee had not reached the Central Revenue Building on time because he was sent from one room to the other and by the time he reached the room where his return was to be accepted, it was already 6.00 p.m. and he was told that the return would not be accepted because the counter had been closed. These circumstances were recorded in the letter along with the return of income delivered to the office of the Deputy Commissioner of Income-tax on the very next day. Later on, the CBDT, by a non-speaking order, rejected the request of the assessee for condonation of delay in filing the return of income under section 119.

The issue under consideration is whether the CBDT has the power under section 119(2)(b) to condone the delay in filing return of income.

The High Court held that the Board has the power to condone the delay in case of a return which was filed late and where a claim for carry forward of losses was made. The delay was only one day and the assessee had shown sufficient reason for the delay of one day in filing the return of income. If the delay is not condoned, it would cause genuine hardship to the petitioner. Therefore, the Court held that the delay of one day in filing of the return was to be condoned.

Note - Section 119(2)(b) empowers the CBDT to authorise any income tax authority to admit an application or claim for any exemption, deduction, refund or any other relief under the Act after the expiry of the period specified under the Act, to avoid genuine hardship in any case or class of cases. The claim for carry forward of loss in case of a loss return is relatable to a claim arising under the category of any other relief available under the Act. Therefore, the CBDT has the power to condone delay in filing of such loss return due to genuine reasons.

6(a) VKS international Ltd, the Assessee, has sold goods on 12.01.2016 to L Ltd. located in a Notified Jurisdictional 9 (NJA), for ₹ 10.5 Crores. The sale price of identical goods sold to an unfamiliar customer in New York during the year was ₹ 11.5 Crores. While the second sale was on CIF basis, the sale to L Ltd was on F.O.B. basis. Ocean Freight and Insurance amount to ₹ 20 Lakhs India has a Double Taxation Avoidance Agreement with the USA. The Assessee has a policy of providing Males Support Services to the tune of ₹ 14 Lakhs to all customers except L Ltd. The ALP worked out as per Cost Plus Method for identical goods is ₹ 12.10 Crores.

You are required to compute the ALP for the Sales made to L Ltd, and the amount of consequent increase, if any, in profits of the Assessee-Company. **8 Marks**

6(b) Pankaj , a Resident Indian aged 29 years, earned a sum of ₹ 10 Lakhs during the previous year 2016-17 from playing golf matches in a country with which India does not have double taxation avoidance agreement. Tax of ₹ 20 lakhs was levied on such income in the source country. In India, he earned ₹ 15 Lakhs during the previous year 2016-17 from playing golf matches. He has deposited ₹ 1 lakh in public provident fund during the year. Compute his Income Tax Liability for the Assessment Year 2017-18.

8 Marks

Answer: 6.a

1. Computation of Arm's Length Price of Products sold to L Ltd by VKS International Ltd.

	₹ crore	₹ crore
Price in a Comparable Uncontrolled Transaction		11.5
Less: Adjustment for differences-		
A. Freight and Insurance Charges	(0.20)	
B. After-Sales Support services	(0.14)	(0.34)
Arm's Length Price Sales to L Ltd		11.16

2. Computation of Increase in Total Income of VKS International Ltd.

	₹ crore
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Arm's Length Price as above	11.16
Less: Price at which actually sold to L Ltd	10.50
Therefore, increase in Total Income of VKS International Ltd.	₹ 0.66

Note:

1. ALP given under Cost Plus Model is not considered because ALP determined under Comparable Uncontrolled Transaction I Method is considered as Most Appropriate Method in the given case.
2. U/s 92C, when more than one price is determined by the most appropriate method, the Arm's Length Price shall be taken to be based on the prescribed method. Since only one price is available in Most Appropriate Method, the same is considered here.
3. Second Proviso to Sec.92C(2) in relation to permissible variation of 3% is not applicable to transactions with person located in Notified Jurisdictional Area. As the Assessee's customer is in Notified Jurisdictional Area, the principle relating to permissible variation is not applicable.

Answer: 6.b.

Computation of Total Income and tax payable

	₹	₹
Profit and gains from business or profession		
a. Income from playing outside India	10,00,000	
b. Income from India	15,00,000	
Taxable profit and gains from business and profession		25,00,000
Gross Total Income		25,00,000
Less: Chapter VIA Deduction		
U/s 80C contribution to PPF (allowed upto a maximum of ₹ 1,50,000)		1,00,000
Total Income		24,00,000
Tax on Total Income $(1,25,000 + (24,00,000 - 10,00,000) \times 30\%)$		5,45,000
Add: Education cess @ 2%		10,900
Add: SHEC @ 1%		5,450
Total Tax payable		5,61,350
Average rate of Indian tax $(5,61,350 / 24,00,000)$	23.39%	
Average rate of Foreign tax $(2,00,000 / 10,00,000)$ least of the above	20%	
Less: Relief u/s 91 @ 20% of foreign income of ₹ 10,00,000 (least of the above)		2,00,000
Net tax payable (rounded off u/s 288B)		3,61,350

7(a) Mobeaux LLP of Poland and Vamsi Ltd of India are Associated Enterprises. Vamsi imports 1000 compressors Air Conditioners from Mobeaux at ₹ 7,500 per unit and these are sold to Winland Cooling Solutions Ltd at ₹ 11,000 per unit. Vamsi had also imported similar products from De-Heat Ltd and sold outside at a Gross profit 20% on Sales.

Mobeaux offered a Quantity Discount of ₹ 1,500 per unit. De-Heat could offer only ₹ 500 per unit as Quantity Discount. The Freight and Customs Duty paid for imports from Poland had cost Vamsi ₹ 1,200 apiece. In respect of purchase from De-Heat, Vamsi had to pay ₹ 200 only as Freight Charges.

Determine the Arm's Length Price and the amount of increase in Total Income of Vamsi Ltd. **8 Marks**

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7(b) Prabir is musician deriving income of ₹ 80,000 from concerts performed outside of India. Tax of ₹ 10,000 were deducted at source in the country where the concerts were performed. India does not have any double tax avoidance agreement with that country. His income in India amounted to ₹ 8,30,000. Computed tax liabilities of Prabir for the assessment year 2017-18 assuming he has deposited ₹1,20,000 in Public Provident Fund, ₹ 60,000 in LIC and Medical Insurance premium in respect of his father ₹ 20,000.

8 Marks

Answer:7.a.

1. Computation of Arm's Length Price of Products bought from Mobeaux, Poland by Vamsi Ltd

	₹	₹
Resale Price of Goods Purchased from Mobeaux		11,000
less: Adjustment for Differences -		
(a) Normal Gross Profit Margin at 20% of Sale Price [20% x ₹ 11,000]	2,200	
(b) Incremental Quantity Discount by Mobeaux [₹ 1,500 - ₹ 500]	1,000	
(c) Difference in Purchase related Expenses [₹ 1,200 - ₹ 200]	1,000	(4,200)
Arms Length Price		6,800

2. Computation of Increase in Total Income of Vamsi Ltd

	₹
Price at which actually bought from Mobeaux LLP of Poland	7,500
Less: Arms Length Price per unit under Resale Price Method	(6,800)
Decrease in Purchase Price per Unit	700
No. of Units purchased from Mobeaux	1000
Therefore, increase in Total Income of Vamsi (1,000 Units x ₹ 700)	₹ 7,00,000

Answer:7.b.

Computation of Tax Liability of Mr. Prabir

Particular	₹
Income from concerts performed outside India	80,000
Income earned in India	8,30,000
Gross Total Income	9,10,000
Less: Deductions under chapter VI-A	
Section 80C	1,50,000
Section 80D	30,000
Total Taxable Income	7,30,000
Tax on Total Income	71,000
Add: Education cess @ 3%	2,130
Total Tax	73,130
Less: Relief under section 91	8,014
Tax Payable	65,116

Note:

The relief under section 91 shall be as under:

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a. $73,130/7,30,000 \times 80,000 = ₹ 8,014$

b. $10,000/80,000 \times 80,000 = ₹ 8,014$

Therefore, relief under section 91 is ₹ 8,014

8. Short Notes (Answer any four questions out of five)

(4 x 4=16 Marks)

- A. Procedure of imposing penalty [Section 274].
- B. Compounding of offence.
- C. Authority of Advance Rulings".
- D. GAAR.
- E. Jurisdiction and Powers of settlement commission.

Answer: 8.a.

Procedure for imposing penalty [Section 274]

(1) Opportunity of being heard: No order imposing a penalty under this Chapter shall be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard.

(2) Penalty to be levied with prior approval of Joint Commissioner in certain cases: No order imposing a penalty under this Chapter shall be made:

- (a) by the Income-tax Officer, where the penalty exceeds ₹ 10,000;
- (b) by the Assistant Commissioner/Deputy Commissioner, where the penalty exceeds ₹ 20,000, except with the prior approval of the Joint Commissioner.

(3) Copy of penalty order to be sent to Assessing Officer: An income-tax authority on making an order under this Chapter imposing a penalty, unless he is himself the Assessing Officer, shall forthwith send a copy of such order to the Assessing Officer.

(4) Penalty on the basis of law on the date of default: The quantum of penalty is to be determined in accordance with the law prevailing on the date of default and not the date on which penalty is imposed.

- 1. If the penalty order is passed without giving any opportunity to the assessee of being heard, such order is void ab-initio as it is violative of principle of natural justice.
- 2. No approval is required for any amount of penalty imposed if it is imposed by Joint Commissioner or Commissioner (Appeal).

Answer: 8.b.

Compounding an offence [Section 279(2)]

The Principal Chief Commissioner or Chief Commissioner or a Principal Director-General or Director - General may either before or after the institution of proceedings compound any such offence. Generally, the following points [Letter F. No. 4/7/69-IT] (Inv.), dated 21.3.1969] are considered before deciding to compound an offence:

- (a) Compounding of an offence may be considered only in those cases in which the assessee comes forward with a written request for compounding offence.
- (b) Cases in which the prospects of a successful prosecution are good are not ordinarily compounded.
- (c) Bearing in mind the deterrent effect of a prosecution, it is considered whether the purpose will be more effectively served by making the assessee pay a deterrent composition fee or by obtaining a conviction.
- (d) In cases where subsequent to the launching of prosecution fresh evidence becomes available which may show that the case of the prosecution is weak and the assessee is agreeable to have the offence compounded, the practice is to compound the offence.

Answer: 8.c.

Authority for advance rulings [Section 245-O]

(1) Central Government to constitute an Authority for Advance Rulings [Section 245-O(1)]: The Central Government shall constitute an authority for giving advance rulings, to be known as "Authority for Advance Rulings".

(2) Constitution of the Authority for Advance Ruling [W.e.f. 1.10-2014]

(1) The Authority shall consist of a Chairman and such number of Vice-chairmen, revenue Members and law Members as the Central Government may, by notification, appoint.

(2) A person shall be qualified for appointment as—

- a) Chairman, who has been a Judge of the Supreme Court;
- b) Vice-chairman, who has been Judge of a High Court;
- c) a revenue Member from the Indian Revenue Service, who is a Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General;
- d) a law Member from the Indian Legal Service, who is, or is qualified to be an Additional Secretary to the Government of India.

(3) The terms and conditions of service and the salaries and allowances payable to the Members shall be such as may be prescribed.

(4) The Central Government shall provide to the Authority with such officers and employees, as may be necessary, for the efficient discharge of the functions of the Authority under this Act.

(5) The powers and functions of the Authority may be discharged by its Benches as may be constituted by the Chairman from amongst the Members thereof.

(6) A Bench shall consist of the Chairman or the Vice-chairman and one revenue Member and one law Member.

(7) The Authority shall be located in the National Capital Territory of Delhi and its Benches shall be located at such places as the Central Government may, by notification specify.

The constitution of the Authority is such that it functions as an independent quasi-judicial body and for the purpose of exercising its powers, it shall have all the powers of a civil court under the Code of Civil Procedure, 1908 as are referred to in section 131 of the Income-tax Act.

Answer: 8.d.

Tax Avoidance is an area of concern across the world. The rules are framed in different countries to minimize such avoidance of tax. Such rules in simple terms are known as "General Anti Avoidance Rules" or GAAR. Thus GAAR is a set of general rules enacted so as to check the tax avoidance. Indian Government has taken initiative to introduce GAAR or General Anti Avoidance Rules with a view to increase tax collections.

Anti Avoidance Rules are broadly divided into two categories namely "General" and "Specific". Thus, legislation dealing with "General" rules are termed as GAAR, whereas legislation dealing with "Specific" avoidance are termed as "SAAR". In India till recently SAAR was in vogue i.e. laws were amended to plug specific loopholes as and when they were noticed. However, now Indian tax authorities want to move towards GAAR but are facing severe opposition as tax payers fear that these will be misused by tax authorities by giving arbitrary and wide interpretations. It may be said that SAAR being more specific provide certainty to taxpayers where as GAAR being general in nature can be misused

and may be subject to arbitrary interpretation by tax authorities. GAAR is a concept which generally empowers the Revenue Authorities in a country to deny the tax benefits of transactions or arrangements which do not have any commercial substance or consideration other than achieving the tax benefit. Thus, different countries started making rules so that tax cannot be avoided by such transactions. Thus in brief, it can be said that GAAR usually consists of a set of broad rules which are based on general principles to check the potential avoidance of the tax in general, in a form which cannot be predicted and thus cannot be provided at the time when it is legislated. From 1 April 2017, the government will withdraw the capital gains benefits under the India-Mauritius tax treaty and implement GAAR. GAAR is a measure that will empower the tax department to closely scrutinize transactions designed to avoid tax. The government had originally proposed imposing the GAAR from April, 1, 2015 for those claiming tax benefits of over ₹ 3 crore. The rules are aimed at minimising tax avoidance for investments made by entities based in tax havens.

Answer: 8.e.

Jurisdiction and Powers of Settlement Commission [Section 245BA]

The Settlement Commission has formed various Benches and each Bench which consists of the Presiding Officer (Chairman/Vice Chairman and two other members) is presided over by the Chairman or Vice-Chairman and consists of two other members.

Subject to the other provisions of this Chapter, the jurisdiction, powers & authority of the Settlement Commission may be exercised by Benches thereof.

The Bench for which the Chairman is the Presiding Officer is the Principal Bench and other Benches are known as Additional Benches.

The Chairman may authorise the Vice-Chairman or other members appointed to one bench to discharge also the functions of the Vice-Chairman or, as the case may be, other member of another branch.

Ordinarily there are three members of a Bench which consists of the Presiding (Chairman/Vice-Chairman) and two other members, but when one of the persons constituting a Bench is unable to discharge his functions owing to absence, illness or any other cause or in the event of the occurrence of any vacancy either in the office of the Presiding Officer or in the office of one or the other Members of the Bench, the remaining two members may function as the Bench. In this case, if the Presiding Officer of the Bench is not one of the remaining two persons, the senior among the remaining persons shall act as the Presiding Officer of the Bench.

However, if at any stage of the hearing of any such case or matter, it appears to the Presiding Officer that the case or matter is of such a nature that it ought to be heard by a bench consisting of 3 members, the case or matter may be referred by the Presiding Officer of such bench to the Chairman for transfer to such bench as the chairman may deem fit.