

**Paper 16 - Direct Tax Laws and International Taxation**

## Paper 16 - Direct Tax Laws and International Taxation

Full Marks: 100

Time allowed: 3 hours

The figures in the margin on the right side indicate full marks.  
Working notes should form part of the answer.

### Section - A

1. Choose the correct alternative and also provide your justification: [10×2=20]
- (i) Any person, responsible for paying income by way of interest by an infrastructure debt fund referred to in sec. 10(47) to a non-resident or a foreign company, is responsible to deduct tax at source @:
- (a) 20% (+ Surcharge + HEC)
  - (b) 30% (+ Surcharge + HEC)
  - (c) 5% (+ Surcharge + HEC)
  - (d) 40% (+ Surcharge + HEC).
- (ii) Time limit for completion of best judgment assessment as per Sec. 153(1) is \_\_\_\_\_ months from the end of relevant assessment year.
- (a) 12 months
  - (b) 30 months
  - (c) 6 months
  - (d) 18 months.
- (iii) Where a person, who is required to pay advance tax, fails to pay advance tax at all or 90% of assessed tax as advance tax, is liable to pay interest @ \_\_\_\_\_ % per month or part thereof.
- (a) 10
  - (b) 5
  - (c) 2
  - (d) 1.
- (iv) 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:
- (a) Unilateral Advance Pricing Agreement
  - (b) Bilateral Advance Pricing Agreement
  - (c) Multilateral Advance Pricing Agreement
  - (d) None of the above.
- (v) As per sec. 115R, the additional income-tax payable on income distributed by a specified Mutual Fund, out of its income derived from transactions made on a recognised stock exchange located in any IFSC and the consideration is paid or payable in convertible foreign exchange @:
- (a) Nil
  - (b) 10%
  - (c) 25%
  - (d) 30%.

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- (vi) A person is required to furnish a return of income u/s 139(1) for assessment year 2019-20 has furnished his return on 29.12.2019 and his total income is Rs. 4.5 lakhs , then he shall require to pay fee of:
- (a) Nil
  - (b) Rs. 1,000
  - (c) Rs. 5,000
  - (d) Rs. 10,000.
- (vii) A settlement application shall be presented in Form No. \_\_\_\_\_ by the applicant in person or by his agent, for settlement of cases in Settlement Commission.
- (a) 34B
  - (b) 34C
  - (c) 34D
  - (d) 34DA.
- (viii) In case of buy back of shares, any income by way of capital gain in hands of shareholder is:
- (a) Taxable for additional tax @ 20% (+SC + Cess)
  - (b) Taxable for additional tax @ 10% (+SC + Cess)
  - (c) Exempt
  - (d) Taxable @ 20%.
- (ix) Which of the following is not a cost formulae recognised by ICDS II for valuation of inventories?
- (a) Specific Identification Method
  - (b) First-in-First-Out Method
  - (c) Weighted Average Method
  - (d) Simple Average Method.
- (x) Scrutiny Assessment u/s 143(3) is done by the Assessing Officer or the prescribed income-tax authority to ensure that:
- (a) the assessee has not understated his income
  - (b) the assessee has not declared excessive loss
  - (c) the assessee has not under paid the tax
  - (d) All of the above.

**Answer:**

- (i) (c) Any person, responsible for paying income by way of interest by an infrastructure debt fund referred to in sec. 10(47) to a non-resident or a foreign company, is responsible to deduct tax at source @ 5% (+ Surcharge + HEC) at the time of payment or crediting the payee, whichever is earlier.
- (ii) (a) Time limit for completion of best judgment assessment by the Assessing Officer as per Sec. 153(1) is 12 months from the end of relevant assessment year.
- (iii) (d) Where a person, who is required to pay advance tax, fails to pay advance tax at all or 90% of assessed tax as advance tax, is liable to pay interest @ 1% per month or part thereof for every month or part of a month commencing from 1st day of April of the relevant assessment year and ending on the date of determination of tax u/s 143(1) or on regular assessment.

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- (iv) (b) 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 Bilateral Advance Pricing Agreement to resolve real or potential transfer pricing issues.
- (v) (a) This is an exceptional case where no additional income-tax is payable in respect of income distributed by a specified Mutual Fund, out of its income derived from transactions made on a recognised stock exchange located in any IFSC and where the consideration for such transaction is paid or payable in convertible foreign exchange.
- (vi) (b) Where a person is required to furnish a return of income u/s 139(1) for assessment year 2019-20 has furnished his return on 29.12.2019 and his total income does not exceed Rs. 5 lakhs, then he shall require to pay fee of Rs. 1,000, irrespective of his date of filing of return of income after due date.
- (vii) (a) Any assessee at any stage of a Case may make an application for settlement of cases in Settlement Commission in Form No. 34B (in quintuplicate) by in person or by agent to the Secretary at the headquarters of the Commission at New Delhi or of the Bench within whose jurisdiction his case falls or to any officer authorised in this behalf by the Secretary, or shall be sent by registered post addressed to the Secretary, or to such officer.
- (viii) (c) In case of buy back of shares, any income by way of capital gain in hands of shareholder is exempt u/s 10(34A). However, company (listed or unlisted) itself is liable to pay additional tax @ 20% (+SC + Cess) u/s 115QA.
- (ix) (d) ICDS II recognizes 3 cost formulae viz. (i) Specific Identification Method; (ii) First-in-First-Out Method (FIFO); (iii) Weighted Average Method.
- (x) (d) Scrutiny Assessment u/s 143(3) is done by the Assessing Officer or the prescribed income-tax authority to ensure that the assessee has not - understated his income; or declared excessive loss; or under paid the tax.

### Section – B

**(Answer any five questions out of seven questions given)**

**2.(a) State the conditions which are required to be fulfilled for withholding of refund to be allowed in certain cases as per sec. 241A. [4]**

**(b) Mona Ltd. needs a component in an assembly operation. It is contemplating the proposal to either make or buy the aforesaid component.**

- 1. If the company decides to make the product itself, then it would need to buy a second hand machine for Rs. 8 lakhs which would be used for 5 years. Manufacturing costs in each of the five years would be Rs. 12 lakhs, Rs. 14 lakhs, Rs. 16 lakhs, Rs. 20 lakhs and Rs. 25 lakhs respectively. The relevant depreciation rate is 15 per cent. The machine will be sold for Rs. 1,20,000 at the beginning of the sixth year.**

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2. If the company decides to buy the component from a supplier the component would cost Rs. 18 lakhs, Rs. 20 lakhs, Rs. 22 lakhs, Rs. 28 lakhs and Rs. 32 lakhs respectively in each of the five year.

The relevant discounting rate and tax rate are 14 per cent and 32.445% per cent respectively. Additional depreciation is not available. Should Mona Ltd. make the component or buy it from outside? [12]

**Answer:**

(a) If the following conditions are fulfilled, the Assessing Officer, may, for reasons to be recorded in writing and with the previous approval of the Principal Commissioner or Commissioner, withhold the refund due to the assessee u/s 143(1) up to the date on which the assessment u/s 143(3) is made:

1. Refund of any amount becomes due to the assessee u/s 143(1);
2. The Assessing Officer is of the opinion, having regard to the fact that a notice has been issued u/s 143(2) [i.e., notice for scrutiny assessment u/s 143(3)] in respect of such return; and
3. The Assessing Officer is of the opinion that the grant of the refund is likely to adversely affect the revenue.

(b) Alternative 1 - Make the component

Year	Depreciation Rs.	WDV Rs.
1	1,20,000	6,80,000
2	1,02,000	5,78,000
3	86,700	4,91,300
4	73,695	4,17,605
5	62,641	3,54,964

Computation of short-term capital loss

	Rs.
Sales consideration	1,20,000
Less: Cost of acquisition	3,54,964
Short-term capital loss	(-) 2,34,964

Year	Manufacturing cost Rs.	Depreciation Rs.	Tax saving Rs.	Cash outflow from operations (COFO) Rs.
1	12,00,000	1,20,000	4,28,274	7,71,726
2	14,00,000	1,02,000	4,87,324	9,12,676
3	16,00,000	86,700	5,47,250	10,52,750
4	20,00,000	73,695	6,72,810	13,27,190
5	25,00,000	62,641	8,31,449	16,68,551

Discounted cash flow analysis of make proposal

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	Year	PVF/A	Cash outflow Rs.	PV Rs.
Investment	0	1	8,00,000	8,00,000
Cash outflow	1	0.877	7,71,726	6,76,804
Cash outflow	2	0.769	9,12,676	7,01,848
Cash outflow	3	0.675	10,52,750	7,10,606
Cash outflow	4	0.592	13,27,190	7,85,696
Cash outflow	5	0.519	16,68,551	8,65,978
Sale of machine	6	0.519	1,20,000	<u>(-)62,280</u>
				44,78,652

Alternative 2 - Buy the component

Year	Purchase cost	Tax saving	Cash outflow from operations (COFO)
	Rs.	Rs.	Rs.
1	18,00,000	5,84,010	12,15,990
2	20,00,000	6,48,900	13,51,100
3	22,00,000	7,13,790	14,86,210
4	28,00,000	9,08,460	18,91,540
5	32,00,000	10,38,240	21,61,760

Discounted cash flow analysis of buy proposal

	Year	PVF/A	Cash outflow Rs.	PV Rs.
Cash outflow	1	0.877	12,15,990	10,66,423
Cash outflow	2	0.769	13,51,100	10,38,996
Cash outflow	3	0.675	14,86,210	10,03,192
Cash outflow	4	0.592	18,91,540	11,19,792
Cash outflow	5	0.519	21,61,760	<u>11,21,953</u>
				53,50,356

Decision - The above analysis shows that there are considerable savings in making the component, amounting to Rs. 8,71,704 (i.e., Rs. 53,50,356 - Rs. 44,78,652). Hence, it is beneficial to manufacture the component. Moreover, Mona Ltd. will have a short-term capital loss of Rs. 2,34,964 after the end of the fifth year. Assuming that, it has an equal amount of short-term capital gain also this will result in tax savings of Rs. 76,234 at the current corporate tax rate (i.e., Rs. 2,34,964 x 32.445%).

### 3. Discuss the tax treatment of the following items:

- (i) **Mr. X, a salaried employee has received medical allowance of Rs. 14,000 which is fully used for meeting medical expenses.**
- (ii) **A company provides free conveyance to its employees for the journey between office and residence.**
- (iii) **A firm (having two equal partners) gets a loan of Rs. 40,000 from a private limited trading company whose general reserve is more than its share capital of Rs. 20 lakhs. Rajat, one of the partners of the firm, holds 10 per cent equity share capital in the company.**

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- (iv) A prize of Rs. 16,000 received by Amit from a TV contest. The total income of Amit does not exceed Rs. 2,00,000.
- (v) Electricity bills of the year 2019-20 paid on December 1, 2020 by a manufacturing company.
- (vi) Money received from LIC on the maturity of a Keyman insurance policy by a company.
- (vii) Share of profit received from a firm.
- (viii) A farmer transfers rural agricultural land in India at a price higher than its cost of acquisition. [16]

**Answer:**

- (i) Medical allowance is always chargeable to tax (there is no exception).
- (ii) It is not taxable. Conveyance facility for covering the distance between the office and residence is not taken as perquisite chargeable to tax.
- (iii) Rajat has a substantial interest in the firm. He holds 10 per cent equity share capital of the private company. The company gives a loan of Rs. 40,000 to the firm out of accumulated profit. The loan will be treated as deemed dividend. Nothing will be taxable in hands of recipient. However, the private limited company will be liable for dividend tax @34.944% under section 115-O.
- (iv) It is taxable @ 30% (plus 4% of 30% as health and education cess).
- (v) It is deductible for the previous year 2019-20. Section 43B is not applicable.
- (vi) Money received from LIC on Keyman insurance policy is taxable as business income.
- (vii) Share of profit received from a firm is exempt.
- (viii) Agricultural land in India in a rural area is not a "capital asset". Gain on its transfer is not chargeable to tax.

**4.(a) State the cases where Income-tax Authority has the power to survey. In this connection, also state the restrictions imposed on Income-tax Authority while conducting survey.**

**[6+4=10]**

**(b) Smile Ltd. is a wholly-owned subsidiary company of Happy Ltd., an Indian company. Smile Ltd. owns Plant-A and Plant-B (depreciation rate 40%, depreciated value of the block Rs. 3,00,000 on 1st April, 2019). Plant-B was purchased and put to use on 10th November, 2017 (cost being Rs. 70,000). Plant-B is transferred by Smile Ltd. to Happy Ltd. on 14th December, 2019 for Rs. 20,000. It is put to use by Happy Ltd. on the same day. Happy Ltd. owns Plant-C on 1st April, 2019 (depreciation rate 40%, depreciated value Rs. 60,000). Find the amount of depreciation in the hands of Happy Ltd. for the assessment year 2020-21.** **[6]**

**Answer:**

**(a)** Power of Income Tax Authority: While conducting survey, income tax authority may exercise following power –

1. Enter in such place of business;

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2. Require any proprietor, trustee, employee or any other person who may at that time and place be attending or helping in, the carrying on of such business or profession or such activity for charitable purpose -
  - (i) To afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place; [Inspector is also considered as income-tax authority for this purpose].
  - (ii) To afford him the necessary facility to check or verify the cash, stock or other valuable article or thing which may be found therein; and
  - (iii) To furnish such information as he may require as to any matter this may be useful for, or relevant to, any proceeding under this Act.
3. Place marks of identification on the books of account or other documents inspected by him and make extracts or copies therefrom; [Inspector is also considered as income-tax authority for this purpose]
4. Impound and retain in his custody any books of account or other documents inspected by him;
5. Make an inventory of any cash, stock or other valuable article or thing checked or verified by him;
6. Record the statement of any person, which may be useful for, or relevant to, any proceeding under this Act.

**(b)** Depreciation in the hands of Happy Ltd. for the assessment year 2020-21:

Particulars	Amount
Depreciated value of Plant C on 1st April, 2019	60,000
Add: Actual Cost of Plant B acquired from Smile Ltd (Note)	33,600
WDV as on 1st April, 2019	93,600
Depreciation on transferred asset [Rs. 33,600* 1/2 * 40%]	6,720
Other Asset @ 40% of Rs. 60,000	24,000
Total Depreciation	30,720

Note: Actual Cost of Plant B in the hands of Happy Ltd.

Particulars	Amount
Actual Cost of Plant B in the hands of Smile Ltd on Nov 10, 2017	70,000
Less: Depreciation for P.Y 2017-18 (1/2 of 40% of Rs. 70,000)	14,000
Balance on April 1, 2018	56,000
Less: Depreciation for the P.Y.2018-19	22,400
Balance on April 1, 2019	33,600

**5.(a) X was running a business. He died intestate on September 30, 2019, leaving behind his wife D and two minor sons, viz., B and K. D is running the business for and on behalf of herself and the minor children. X owned several house properties. Discuss how the rental income and the business income of the financial year March 31, 2020 will be assessed and in whose hands. [8]**

**(b) In course of assessment, the Assessing Officer made addition to assessee's income u/s 41(1) in respect of cessation / remission of trading liability of various transporters who**



transported the minerals for the assessee stating that the assessee had failed to produce these transporters/trade creditors before the authority, despite the summons issued to them. Justify. [8]

**Answer:**

- (a) If an assessee dies during the previous year, the income of the period beginning from the commencement of the previous year and ending with the date of death is taxable in the hands of the legal representative as if the assessee had not died [sec. 159]. Therefore, the business profits and the rental income accruing from April 1, 2019 to September 30, 2019 will be assessable in the hands of the legal representatives. D represents the estate and hence is liable to be assessed as the legal representative of X.

In respect of the period from October 1, 2019 to March 31, 2020, two types of income arise, viz., business profits and rental income.

As far as rental income is concerned, it will be assessed as income of D, B and K according to their shares.

According to provisions of Hindu Succession Act, when a male Hindu dies intestate, his estate will devolve on the heirs mentioned in the Schedule by succession and not by survivorship. Hence, the widow and minor children become co-owners, and section 26 will apply since the respective shares are definite and ascertainable. The rental income will be divided into three parts. However, income of B and K will be clubbed with income of D by virtue of section 64(1A).

As far as business profit is concerned, the Andhra Pradesh High Court in *Deccan Wine and General Stores v. CIT* [1977] 106 ITR 111 has held on similar facts that it is to be assessed in the status of body of individuals.

- (b) In course of assessment, the Assessing Officer made addition to assessee's income u/s 41(1) in respect of cessation / remission of trading liability of various transporters who transported the minerals for the assessee stating that the assessee had failed to produce these transporters/trade creditors before the authority, despite the summons issued to them. On further appeal, the Tribunal completely set aside the additions made by the revenue. On further appeal, High Court held that in legal parlance, merely because the creditor could not be traced on the date when the verification was made, same is not a ground to conclude that there was cessation of the liability.

Cessation of the liability has to be cessation in law, of the debt to be paid by the assessee to the creditor. The debt is recoverable even if the creditor has expired, by the legal heirs of the deceased creditor. Under the circumstances, in the present case, it can hardly be said that the liability had ceased. If the liability had not ceased or the benefit was not taken by the assessee in respect of such trade liability, the conditions precedent were not satisfied for invoking sec. 41(1).

Tribunal has clearly recorded the evidence and findings of facts in favour of the respondent-assessee that the assessee has produced the documentary evidence in the form of ledger accounts and proof of payments made through bank channel and PAN numbers also.

Burden of the Revenue to summon such creditors or transporters for establishing that the liability has ceased could not be shifted upon the respondent-assessee.

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There is no perversity in the same so as to give rise to any substantial question of law arising in the present case, requiring consideration u/s 260A. [Pr. CIT - vs.- Ramgopal Minerals (2017)(Kar)]

**6.(a) Shri Anuj, an ordinarily resident in India, provides following details of his income for the previous year relevant to the A.Y. 2020-21:**

- Income from India Rs. 3,40,000
- Income from Country Z Rs. 2,00,000
- Investment in PPF Rs. 10,000

Further, it is to be noted that:

1) India has avoidance of double taxation agreement with Country Z. According to said agreement, income is taxable in the country in which it is earned and not in other country. However, in the other country such income can be included for the purpose of computation of tax rate.

2) Foreign income has been taxed in Country Z @ 20%.

Compute Indian tax payable.

[8]

**(b) What do you mean by International Transaction as per sec. 92B? Give an example. [8]**

**Answer:**

**(a) Computation of total income and tax liability of Shri Anuj for the A.Y. 2020-21**

Particulars	Amount (Rs.)
Income from India	3,40,000
Income from Country Z	2,00,000
Gross Total Income	5,40,000
Less: Deduction u/s 80C [Investment in PPF]	10,000
Total income	5,30,000
Tax on above	18,500
Add: Health & Education cess	740
Tax and cess payable	19,240
Less: Relief u/s 90 [Rs. 2,00,000 x 3.63%]	7,260
Tax payable in India (Rounded off u/s 288B)	11,980

Note: Average rate of Indian tax = Rs.19,240 / Rs. 5,30,000 x 100 = 3.63%.

**(b) International transaction means a transaction between two or more associated enterprises, either or both of whom are non-residents, in the nature of**

- (i) purchase, sale or lease of tangible or intangible property, or
- (ii) provision of services, or
- (iii) lending or borrowing money, or
- (iv) any other transaction having a bearing on the profits, income, losses or assets of such enterprises; &

shall include a mutual agreement or arrangement between two or more associated enterprises

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- a. for the allocation or apportionment of, or
- b. any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises [Sec. 92B(1)]

A transaction entered into by an enterprise with a person other than an associated enterprise shall, be deemed to be an international transaction entered into between two associated enterprises,

- (i) if there exists a prior agreement in relation to the relevant transaction between such other person and the associated enterprise; or
- (ii) the terms of the relevant transaction are determined in substance between such other person and the associated enterprise

where the enterprise or the associated enterprise or both of them are non-residents irrespective of whether such other person is a non-resident or not [Sec. 92B(2)]

Example: C Co., an Indian company, and A Co., a foreign company, are associated enterprise. Z Plc., a foreign company, (not an associated enterprise of C Co.) and A Co. enters into an agreement for determining the terms of transactions between C Co. and Z Plc. The transaction as may be entered between C Co. and Z Plc., which is governed by such an agreement existing between A Co. and Z Plc. shall be deemed to be a transaction between two associated enterprises.

**7.(a) Compute arm's length price from following information:**

Particulars	Related Party	Unrelated Party
<b>Price paid (inclusive of taxes)</b>	<b>INR 25,000</b>	<b>INR 23,500</b>
<b>Delivery terms</b>	<b>CIF</b>	<b>FOB</b>
<b>Quantity</b>	<b>100 pcs</b>	<b>110 pcs</b>
<b>Availability of Input Tax Credit</b>	<b>No</b>	<b>Yes</b>
<b>Quantity</b>	<b>100 pcs</b>	<b>110 pcs</b>
<b>Freight cost</b>	<b>-</b>	<b>INR 1,200</b>
<b>Insurance cost</b>	<b>-</b>	<b>INR 700</b>
<b>Input Tax Credit</b>	<b>-</b>	<b>INR 2,000</b>

[8]

- (b) What is the Berry Ratio in the context of arm's length price? What are the factors to be considered for selecting most appropriate method for calculation of arm's length price?**

[2+6=8]

**Answer:**

**(a) Computation of arm's length price**

Particulars	Amount
Price paid to unrelated party (inclusive of taxes)	INR 23,500
Adjustments of differences -	
Delivery terms – Freight cost	INR 1,200
Delivery terms – Insurance cost	INR 700

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Quantity	-
Input tax credit available	(INR 2000)
Arm's Length Price	INR 23,400

**(b) Berry Ratio** - Berry ratio is the ratio of gross profit to operating expenses. It measures the return on operating expenses. As the functions performed by the tax-payers are often reflected in the operating expenses, this ratio determines the relationship of the income earned in relation to the functions performed. This ratio helps in overcoming the difficulties in applying the RPM, which does not explain the creation of gross profit. This ratio is used in conducting an arm's length analysis of service-oriented industry such as limited risk distributor, advertising, marketing and engineering services. The Berry ratio may be used to test whether service providers have earned enough mark-up on their operating expenses. In essence, the Berry ratio implicitly assumes that there is a relationship between the level of operating expenses and the level of gross profits earned by routine distributors and service providers.

In selecting the most appropriate method, the following factors shall be taken into account:

1. the nature and class of the international transaction or specified domestic transaction;
2. the class or classes of associated enterprises entering into the transaction and the functions performed by them taking into account assets employed or to be employed and risks assumed by such enterprises;
3. the availability, coverage and reliability of data necessary for application of the method;
4. the degree of comparability existing between the international transaction or specified domestic transaction and the uncontrolled transaction and between the enterprises entering into such transactions;
5. the extent to which reliable and accurate adjustments can be made to account for differences, if any, between the international transaction or specified domestic transaction and the comparable uncontrolled transaction or between the enterprises entering into such transactions;
6. the nature, extent and reliability of assumptions required to be made in application of a method.

**8. Write short note (any four):**

**[4×4=16]**

- (a) Scope and disclosure requirement of ICDS IX.**
- (b) Appointment of Income-tax Authorities.**
- (c) Tax implication on slump sale.**
- (d) Powers of Settlement Commission.**
- (e) Disclosure of Information in respect of Assessee [Sec. 138]**

**Answer:**

**(a)** ICDS IX deals with treatment of borrowing costs. However, the Standard does not deal with the actual or imputed cost of owners' equity and preference share capital.

Scope: Borrowing costs are interest and other costs incurred by a person in connection with the borrowing of funds and include:

1. commitment charges on borrowings;

2. amortised amount of discounts or premiums relating to borrowings;
3. amortised amount of ancillary costs incurred in connection with the arrangement of borrowings;
4. finance charges in respect of assets acquired under finance leases or under other similar arrangements.

Disclosure requirement: The following disclosure shall be made in respect of borrowing costs, namely:—

1. the accounting policy adopted for borrowing costs; and
2. the amount of borrowing costs capitalised during the previous year.

**(b)** As per sec. 117:

- (1) The Central Government may appoint such persons as it thinks fit to be income-tax authorities.
- (2) The Central Government may authorise the Board, or a Principal Director General or Director-General, a Principal Chief Commissioner or Chief Commissioner or a Principal Director or Director or a Principal Commissioner or Commissioner to appoint income-tax authorities below the rank of an Assistant Commissioner or Deputy Commissioner.
- (3) An income-tax authority authorised in this behalf by the Board may appoint such executive or ministerial staff as may be necessary to assist it in the execution of its functions.

All these appointments can be made subject to the rules and orders of the Central Government.

**(c)** Slump sale means transfer of undertaking(s) for a lump sum consideration without assigning values to the individual assets of such undertaking(s).

Undertaking shall include any part of an undertaking or a unit or division of an undertaking or a business activity taken as a whole but does not include individual assets or liabilities or any combination thereof not constituting a business activity.

- Computation of capital gain:  
Consideration = Full value  
Cost of Acquisition or Improvement = Net worth of the undertaking  
Indexation Benefit = Not available
- Nature of gain = If undertaking is owned and held by the assessee for not more than 36 months, then capital gain shall be deemed to be short-term capital gain otherwise long-term capital gain. It makes no difference that few of the assets of the undertaking are newly acquired (i.e. for less than 36 months).
- Effect of revaluation: If any change has been made in the value of assets on account of revaluation of assets etc. then such change in value shall be ignored.
- Treatment of stock: In case of slump sale, no profit under the head 'Profits & gains of business or profession' shall arise even if the stock of the said undertaking is transferred along with other assets.
- Carry-forward of losses: In case of slump sale, benefit of unabsorbed losses and depreciation of the undertaking transferred shall be available to the transferor company and not to the transferee company.

**(d) Powers of Settlement Commission:**

- To order Provisional Attachment to protect Revenue: Where, during the pendency of any proceeding, the Settlement Commission is of the opinion that for the purpose of protecting the interests of the revenue it is necessary to do so, it may, by order, attach provisionally (in the manner provided in the Second Schedule) any property belonging to the applicant.

Every provisional attachment shall cease to have effect after the expiry of a period of 6 months from the date of such order. However, the Commission may, for reasons to be recorded in writing, extend the period by such further period(s) as it thinks fit.

- To provide Inspection, etc., of Reports: No person shall be entitled to inspect or obtain copies of, any reports given by any income-tax authority to the Commission. However, on an application, the Commission may furnish copies thereof to any such person on payment of the prescribed fee.
- To grant Immunity from Prosecution and Penalty: The Settlement Commission may grant immunity (subject to such conditions as it may think fit to impose for the reasons to be recorded in writing) from –
  - (1) Prosecution for any offence under this Act or under the Wealth Tax Act; and
  - (2) Imposition of any penalty (wholly or partly) under this Act,  
– with respect to the case covered by it.

Such immunity can be granted by the Commission, if the assessee -

- (1) has co-operated with the Settlement Commission in the proceedings before it;
- (2) has made a full and true disclosure of his income; and
- (3) has made a full and true disclosure of the manner in which such income has been derived.

- Other Power:
  - (1) In addition to the powers conferred on the Settlement Commission under this Chapter, it shall have all the powers, which are vested in an income-tax authority under this Act.
  - (2) The Commission shall have exclusive jurisdiction from the date on which the application was made. Where an application is rejected or not allowed to be further proceeded or declared invalid, the Commission shall have such exclusive jurisdiction upto the date on which application is rejected, etc.
  - (3) The Commission shall have power to regulate its own procedure and the procedure of Benches thereof in all matters or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

**(e) Disclosure of Information in respect of Assessee [Sec. 138]:**

- To the authority of other law: The Board or any authorized income-tax authority may furnish necessary information received or obtained by them to the officer, authority or body under any law (hereinafter referred as other authority) for enabling other authority to perform his duty. Such other authority shall be the officer, authority or body under any law -
  - (1) relating to the imposition of any tax, duty or cess, or to dealings in foreign exchange as defined in sec. 2(n) of the Foreign Exchange Management Act, 1999; or
  - (2) as the Central Government may, if in its opinion it is necessary so to do in the public interest, specify by notification in the Official Gazette.

- To any other person: Where a person makes an application to the authority (being Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner) for any information relating to any assessee received or obtained by any income-tax authority in the performance of his functions under this Act, then the such authority may (if he is satisfied that it is in the public interest so to do) furnish such information. His decision in this behalf shall be final and shall not be called in question in any court.
- Restriction on disclosure of information: The Central Government may (having regard to the practices and usages customary or any other relevant factors) direct that no information or document shall be furnished or produced by a public servant in respect of such matters relating to such class of assesseees or except to such authorities as may be specified in the order.