CMA Students Newsletter(For Final Students)

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"Don't worry about anybody getting ahead of you, don't worry about triumph, don't worry about failure unless it comes through your own fault."

- F. Scott Fitzgerald

So leave no stone unturned and give your 100% to everything you do.

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Students/Readers are requested to do send your views/ queries/observations/request for academic inputs by e-mail to e.newsletter@icmai.in

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(1) On Direct Taxation - some special issues

(a) Deemed Dividend u/s 2(22)(e)

Deemed Dividend [Section 2(22)(e)]

Any payment by a company, not being a company in which the public are substantially interested, of any sum (whether **as representing a part of the assets of the company or otherwise**) **[**made after the 31st day of May, 1987, **by way of advance or loan to a shareholder**, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) **holding not less than ten per cent of the voting power**, or **to any concern in which such shareholder is a member or a partner and in which he has a substantial interest** (hereafter in this clause referred to as the said concern)**]** or any payment by any such company **on behalf, or for the individual benefit,** of any such shareholder, **to the extent** to which the company in either case possesses **accumulated profits**;

but **"dividend" does not include-**

(i) a distribution made in accordance with sub-clause (c) **[Liquidation]** or sub-clause (d) **[Reduction of Capital]** in respect of any share issued for full cash consideration, where the holder of the share is not entitled in the event of liquidation to participate in the surplus assets;

(ia) a distribution made in accordance with sub-clause (c) or sub-clause (d) in so far as such distribution is attributable to the capitalised profits of the company representing bonus shares allotted to its equity shareholders after the 31st day of March, 1964, **[**and before the 1st day of April, 1965**]**;

(ii) any advance or loan made to a shareholder **[**or the said concern**]** by a company **in the ordinary course of its business**, where the lending of money is a substantial part of the business of the company ;

(iii) any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as a dividend within the meaning of sub-clause (e), to the extent to which it is so set off;

(iv) any payment made by a company on purchase of its own shares from a shareholder **in accordance with the provisions of section 77A** of the Companies Act, 1956;

(v) any distribution of shares **pursuant to a demerger** by the resulting company to the shareholders of the demerged company (whether or not there is a reduction of capital in the demerged company).

Explanation1- The expression "accumulated profits", wherever it occurs in this clause, shall not include capital gains arising before the 1st day of April, 1946, or after the 31st day of March, 1948, and before the 1st day of April, 1956.

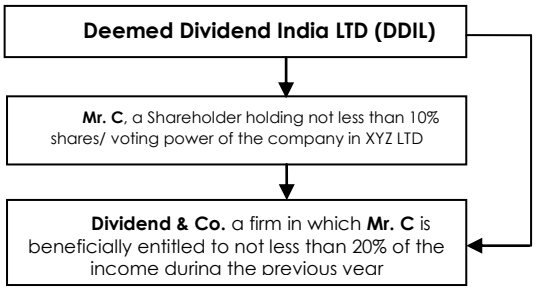
Explanation 2.-The expression "accumulated profits" in sub-clauses (a), (b), (d) and (e), shall include all profits of the company up to the date of distribution or payment referred to in those sub-clauses, and in sub-clause (c) shall include all profits of the company up to the date of liquidation, **[**but shall not, where the liquidation is consequent on the compulsory acquisition of its undertaking by the Government or a corporation owned or controlled by the Government under any law for the time being in force, include any profits of the company prior to three successive previous years immediately preceding the previous year in which such acquisition took place**]**.

Explanation 3.-For the purposes of this clause,-

(a) "concern" means a **Hindu undivided family**, or **a firm** or **an association of persons** or a **body of individuals** or **a company** ;

(b) a person shall be deemed to have a substantial interest in a concern, other than a company, if he is, **at any time during the previous year, beneficially entitled to not less than twenty per cent of the income** of such concern.

Example 1:



Dividend & Co. took loan from DDIL for ₹10 lakh during the previous year.

As per section 2(22)(e) of the Income Tax Act, 1961, the amount of ₹10 lakh is taxable as deemed dividend in the hand of Dividend & Co.

Example 2: DJ Ltd. is a company registered in India. The Balance Sheet of the company as on March 31, 2013 :

Liabilities	₹	Assets	₹
Equity Share Capital		Fixed assets	25,00,000
- Issued for cash	9,00,000	Other assets	4,00,000
- Issued as bonus shares in 1960 by capitalized profit	7,50,000		
General Reserve	3,00,000		
Investment Allowance Reserve	75,000		
Depreciation Res.	2,25,000		
Profit and loss A/c (including agriculture income ₹50,000)	4,00,000		
Current liabilities	2,50,000		
	29,00,000		**29,00,000**

As under the provision of section 2(22)(e), a payment/ distribution is treated as dividend only to the extent of accumulated profits, one has to first ascertain "accumulated profits" to apply the deeming fiction of section 2(22)(e). Accumulated profit, as on March 31, 2012, is calculated as under:

Particulars	₹
Capitalised profit- Not considered u/s 2(22)(e)	-
General reserve	3,00,000
Investment allowance reserve, etc.	75,000
Depreciation reserve (not taken into account)	-
P/L A/c (agricultural income, even if tax free, form part of accumulated profit	4,00,000
Total	7,75,000

Concept 1:
Suppose DJ Ltd. is a company in which the public are not substantially interested and X beneficially holds 10 per cent or more of equity share capital (suppose, he holds 15 per cent of share capital). If the company gives a bona fide loan of ₹9,00,000 to X on April 10, 2013 for 1.5 months at the rate of 11 per cent per annum, it will amount to dividend under section 2(22)(e) to the extent of accumulated profit (i.e., ₹7,75,000) in the hands of X even if :

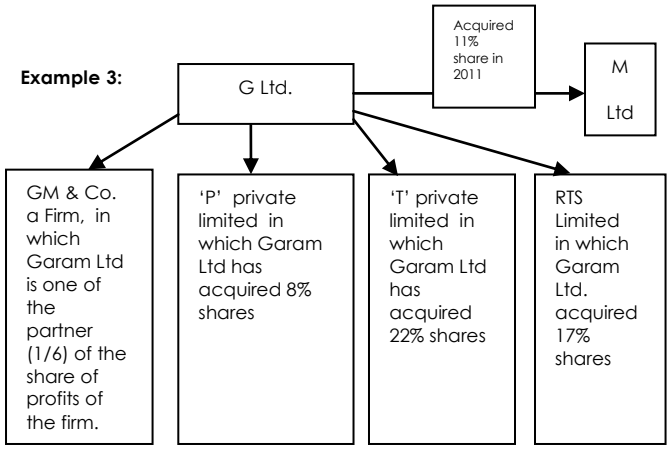
(i) X repays the loan with interest within 1.5 months; or

(ii) X holds just 15 per cent of share capital and claim that his proportionate share in the accumulated profits is ₹1,16,250 (i.e., 15 per cent of ₹7,75,000).

Concept 2:
It may be noted that on deemed dividend under section 2(22)(e), the company giving loan or advances is not chargeable to dividend tax but the recipient will have to include it in his "income from other sources".

Concept 3:
If the company advance loan to X in ordinary course of its business and lending is not a substantial part of the company's business, then ₹ 7,75,000 will not be treated as dividend under section 2(22)(e).

Example 3:



Masala Ltd. gives loan for ₹ 2,50,000 each to GM & Co., P Private Limited, T Private Limited & RTS Limited. Compute the tax liability under section 2(22)(e).

Solution:
Computation taxable income under section 2(22)(e)

(i) GM & Co. = Nil, at the time of loan Garam Ltd has not acquired substantial interest.
(ii) P Private Limited = Nil, at the time of loan Garam Ltd has not acquired substantial interest.
(iii) T Pvt. Limited = Nil, at the time of loan Garam Ltd has not acquired substantial interest.
(iv) RST Ltd = ₹ 2,50,000 taxable as deemed dividend, because both the condition has satisfied.

(b) Special Issues on Capital Gains related to "Transfer"

(i) Mr. Arup Roy, Karta of a Hindu Undivided Family, transferred a house property, which was in the name of the HUF, to Mr. Abhi Roy, a member of the HUF. Mr. Arup Roy considers this to be exempted from taxability under capital gains as per provisions of Section 47(i).
Section 47(i) says that any distribution of capital asset in kind by a Hindu Undivided Family on total or partial partition of the family is not treated as a transfer.

Here, in this case, capital asset i.e. the house property is transferred but there is no situation leading to total or partial partition of the HUF.
Hence, the contention of Mr. Arup Roy is not tenable as per law. This transaction shall constitute a transfer for the purpose of Capital Gains and the HUF shall be assessed and tax liability shall be determined on the basis of capital gains, if any, which may arise from this transaction.

(ii) X Ltd. is a 100% subsidiary of Y Ltd. which is also a 100% subsidiary of Z Ltd. Z Ltd. transferred one acre of land to X Ltd. and another one acre of land to Y Ltd.
X Ltd. constructed a factory on that land whereas, Y Ltd. treated the land as stock in trade. All the companies are Indian Companies.

According to Section 47((iv),any transfer of a capital asset by a company to its 100% subsidiary company which is an Indian company, will not be regarded as transfer and shall not attract taxability under capital gains. However, if the capital asset is transferred as stock in trade after February 29, 1988, then the aforesaid rule is not applicable and it will be treated as transfer.

In the above case, Z Ltd. transferred two separate lands, one to Y Ltd., which is its 100% subsidiary, and one to X Ltd. which is 100% subsidiary of Y Ltd.

The transfer of land to Y Ltd. though satisfied the conditions of 100% subsidiary company and Indian company will be regarded as transfer as Y Ltd. has recorded this land as stock in trade.

Further the exemption of this clause (iv) of section 47 will not apply when the company to which transfer is made, is a sub-subsidiary as definition under the Companies Act,1956 cannot be resorted to when this clause applies to wholly owned subsidiary company [Kaundi Investments Pvt. Ltd. vs. CIT (2002) 256 ITR 713 (Guj.)]. Hence, the transfer of land to X Ltd. (i.e. the sub-subsidiary of Z Ltd) will be treated as transfer in the hands of Z Ltd, as it is not a 100% subsidiary of Z Ltd. rather it is a 100% subsidiary of Y Ltd.

(iii) Sun Ltd. is a foreign company holding 10,000 equity shares of Moon Ltd. which is an Indian company. Sun Ltd is amalgamated with Star Ltd. which is also a foreign company. Under that scheme, Sun Ltd. transferred its shares of Moon Ltd. to Star Ltd. 30% of the shareholders of Sun Ltd. continued to remain shareholders of the Star Ltd, even after this amalgamation.
Section 47(via) provides that any transfer:

- in a scheme of amalgamation of shares held in an Indian company by the amalgamating

foreign company to the amalgamated foreign company

- ❖ if at least 25% of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated company and
- ❖ such transfer does not attract capital gains tax in the country, in which that foreign amalgamating company is incorporated will not be regarded as transfer.

In the given case, it is needed to check whether such transfer attracts capital gain tax in the country in which Sun Ltd. is incorporated as the condition i.e. at least 25% of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company is satisfied.

It should be noted that if such transaction attracts capital gain tax of the country in which Sun Ltd. is incorporated, the transaction shall also be regarded as transfer for the purpose of capital gains tax in India.

(iv) A Ltd. a foreign company has 3 industrial units – Unit X, Unit Y and Unit Z. In a scheme of demerger, Unit Z is transferred to B Ltd, an Indian company.
As per Section 47(vib), any transfer, in a scheme of demerger, of a capital asset by the demerged company to the resulting company where the resulting company is an Indian company will not be regarded as transfer for the purpose of imposing tax liability under capital gains.
Hence, in the given case as all the conditions are satisfied, such transaction will not be regarded as a transfer and hence shall not attract capital gains tax.

(v) In a scheme of amalgamation, the business of Goal Ltd. is transferred to Aim Ltd. Aim Ltd. is an Indian company. Amal holds 1,000 equity shares of Goal Ltd. He has been allotted 300 equity shares and 700 debentures of Aim Ltd. in lieu of 1,000 equity shares of Goal Ltd.

According to Section 47(vii), any transfer, by a shareholder, in a scheme of amalgamation, of shares held by him in the amalgamating company if the transfer is made in consideration of the allotment to him of any share or shares in the amalgamated company except where the shareholder itself is the amalgamating company and the amalgamated company is an Indian company, will not be regarded as transfer for the purpose of capital gains.

Here, Amal received 'shares' as well as 'debentures' as consideration. The Madras High Court, in the case of CIT vs. M.Ct.M. Corporation Pvt. Ltd. (1996) 221 ITR 524 (Mad.), has taken a view that where shares and debentures are allotted to the assessee on account of the amalgamation of two companies and the identity of the transferor company gets lost in the amalgamation, there is no transfer or extinguishment of any right in allotting shares and debentures in favour of the assessee under the provisions of Section 2(47), because the amalgamation is sanctioned by the High Court and the allotment of shares or debentures flows therefrom would be entitled to exemption u/s 47(vii).

Hence, the given transaction would not be regarded as transfer for the purpose of capital gains.

(vi) X Ltd. is a 100% subsidiary company of Z Ltd. A machinery had been transferred to X Ltd. on 31.05.2009 at a price of ₹1.5 Crore. As on 31.05.2009, the value of machinery stood at ₹1.3 Crore and the market value of the machinery was ₹1.4 Crore. On 31.12.2012, X Ltd. has gone into liquidation and all the capital assets (including the machinery) were transferred to Z Ltd.

In the given case, the transfer of machinery to X Ltd. by Z Ltd. would not be regarded as transfer u/s 47(iv). Hence, there would be no capital gain tax payable by Z Ltd. for the Assessment Year 2010-11.

For the Assessment Year 2013-14, as Z Ltd. ceases to hold the whole of the share capital of the subsidiary company before the expiry of a period of eight years from the date of the transfer of the capital asset, the exemption u/s 47(iv) is withdrawn u/s 47A.

However, the distribution of capital asset, in kind by a company to its shareholders on its liquidation, will not be treated as a transfer for the purpose of capital gains as per section 46(1).

Hence, during the Assessment Year 2013-14, the provision of section 47A will not be applicable and Z Ltd. will not be taxed for the capital gains which arose in the Assessment Year 2010-11.

(2) On Indirect Taxation

(a) Point of Taxation Rules under the context of Service Tax

We must thoroughly understand terms "Point of Taxation", "taxable event" and "value of taxable services" for the following reasons:

i. The amount of service tax is based on the Point of Taxation.

ii. Service tax is payable on the basis of provision of service instead of realization of value of taxable service except in the case of individuals/firms/limited liability partnership firms (LLP's) w.e.f. 1-4-201 2.

iii. If money is received in advance, ahead of completion or rendering of service, service tax is payable as soon as the advance is received.

The point of taxation defines the point in time when a service shall be deemed to have been provided. It has impact on determination of rate of tax, as normally the rate of tax shall apply as prevailing on the date when service shall be deemed to have been provided.

The Government of India has introduced the Point of Taxation Rules, 2011 to remove the disputes about applicability of the rate of tax and for ascertainment of the Point of Taxation. These rules have been explained with the help of examples are as follows:

Rule 1: These rules shall be called the Point of Taxation Rules, 2011

Rule 2: Definitions

Rule 2(a) "Act" means the Finance Act, 1 994;

Rule 2(b) "associated enterprises" shall have the meaning assigned to it in section 92A of the Income Tax Act, 1961;

Rule 2(ba) "change in effective rate of tax" shall include a change in the portion of value on which tax is payable in terms of a notification issued in the Official Gazette under the provisions of the Act, or rules made there under (w.e.f. 1.4.201 2).

Rule 2(c) "**continuous supply of service"** means any service which is provided, or to be provided continuously or on recurrent basis, under a contract, for a period **exceeding three** months with the obligation for payment periodically or from time to time or where the Central Govt. by notification in the Official Gazette, prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition.

Rule 2(d) "invoice" means the invoice referred to in rule 4A of the Service Tax Rules, 1994 and shall include any document as referred to in the said rule;

Rule 2(e) "point of taxation" means the point in time when a service shall be deemed to have been provided;

Rule 2(f) "taxable service" (omitted w.e.f. 1-7-201 2)

Rule 2A: Date of payment (w.e.f. 1-4-2012):

When change in effective rate of tax or new levy between date of book entry or credited to bank - Date of payment shall be the earlier of the dates on which the payment is entered in the books of accounts or is credited to the bank account of the person liable to pay tax.

Example 1: Payment was credited in the books of accounts on 7.6.2013 Payment was credited in the bank account on 10.6.2013. Compute the date of payment.

Date of change in effective rate of tax is on 8.6.2013

Answer: Date of payment is 7.6.2013

Example 2: Payment was credited in the books of accounts on 1.6.2013 Payment was credited in the bank account on 10.6.2013

Date of change in effective rate of tax is on 5.6.2013

Answer: Date of Payment Is 10.6.2013

Rule 3: Determination of point of taxation:

(a) Date of invoice or payment, whichever is earlier, if the invoice is issued within the prescribed period of 30 days from the date of completion of the provision of service (w.e.f. 1-4-201 2).

(b)Date of completion of the provision of service or payment, whichever is earlier if the invoice is not issued within the prescribed period as state in rule 4A of the Service Tax Rules, 1994.

W.e.f. 1-4-2012, in case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service.

Example 3:

In the case of construction services if the payments are linked to stage-by-stage completion of construction, the provision of service shall be deemed to be completed in part when each stage of construction is completed.

Wherever the provider of taxable service receives a payment up to ₹ 1,000 in excess of the amount indicated in the invoice, the point of taxation to the extent of such excess amount, at the option of the provider of taxable service, shall be the date of receipt of such amount.

Example 4:

M/s X Pvt. Ltd. provided services for ₹ 1,00,000 and service tax charged separately @12.36% vide invoice dated 1-4-2013. Payment received ₹ 1,13,260 on 1st July 2013. It means excess payment received is ₹ 900. Hence, no need to issue separate invoice for the same. Hence, the point of taxation for the invoice value is 1-4-2013, whereas for ₹ 900 the point of taxation is 1st July 2013.

Example 5:

The applicability of the rule will be clear from the following table:

M/s X Pvt. Ltd. is provider of service

Sl. No.	Date of completion of service	Date of invoice	Date on which payment recd.	Point of Taxation	Due date of payment (manual payment)	Remarks
1.	April 10, 2013	April 20, 2013	June 30, 2013	April 20, 2013	5th May 2013	Invoice issued in 30 days from the date of completion of service. Dt. of invoice or Dt. of payment whichever is earlier
2.	April 10, 2013	May 26, 2013	June 30, 2013	April 10, 2013	5th May 2013	Invoice not issued within 30 days and payment received after completion of service
3.	May 10, 2013	May 20, 2013	April 15, 2013	April 15, 2013	5th May 2013	Invoice issued in 30 days but payment received before invoice
4.	April 10, 2013	May 26, 2013	April 5, 2013 (part) and May 25, 2013 (remaining)	April 5, 2013 And April 10, 2013 for respective amounts	5th May 2013	Invoice not issued in 30 days. Part payment before completion, remaining later

Service Tax liability on receipt basis for Individuals and Partnership Firms including LLP's (w.e.f. 1-4-2012)

It is pertinent to note point of taxation in case of individuals and partnership firms whose aggregate value of taxable services provided from one or more premises is ₹ 50 lakhs or less in the previous financial year, the service provider shall have the option to pay tax on taxable services provided or to be provided by him up to a total of ₹ 50 lakhs in the current financial year, by the dates specified in the Rule 6 of Service Tax Rules, 1994, with respect to the relevant quarter, in which payment is received.

Example 6:

Dr. C, a medical practitioner, started profession in the year 2013-14 (₹ in lakhs) has chosen the option to pay service tax on receipt basis in the current year.

₹ in lakhs

Particulars	1st qtr.	2nd qtr.
Services provided	20	2
Services to be provided (i.e. advance)	35	NIL
TOTAL	55	2
S.T. @12.36% Note: small service provider exemption not availed	4.326	0.2472

Note:

Services provided or to be provided exceeds ₹ 50 lakhs in the 1st quarter itself. Entire value of ₹ 35 lakhs is taxable on receipt basis as per point of taxation rule 3.

Services provided in the 1st quarter for ₹ 20 lakhs will be taxable on receipt basis.

Service provided or to be provided in the 2nd quarter fully taxable as per Point of Taxation Rule 3.

Example 7:

Mr. C, Practicing Cost Accountant started profession in the year 2013-14 (rupees in lakhs) has chosen the option to pay service tax on receipt basis in the current year.

₹ in lakhs

Particulars	1st qtr.	2nd qtr.
Services provided	55	2
Services to be provided (i.e. advance)	NIL	NIL
TOTAL	55	2
S.T. @12.36%	6.798	0.2472

Note 1:

i) Small service provider exemption not availed

ii) Since, ₹ 50 lakhs exceeds in the 1st quarter, services provided over and above ₹ 50 lakhs is taxable as per point of taxation rule 3.
Service tax is payable on ₹ 5 lakhs on provisional basis and balance ₹ 50 lakhs will be taxable on receipt basis.
From 2nd quarter onwards services are taxable based on point of taxation rule 3

Example 8:

Mr. C, Practicing C.A. started profession in the year 2013-14 (₹ in lakhs) has been chosen the option to pay service tax on receipt basis in the current year.

₹ in lakhs

Particulars	1st qtr.	2nd qtr.
Services provided	NIL	2
Services to be provided (i.e. advance)	55	NIL
TOTAL	55	2
S.T. @12.36%	6.798	0.2472

Note:

i) Small service provider exemption not availed
ii) Since, in the 1st quarter services to be provided for which advance received exceeds ₹ 50 lakhs, then the entire value on receipt basis taxable, and subsequently service provider is liable to pay service tax as per Point of Taxation Rule 3.

Rule 4: Determination of point of taxation in case of change in effective rate of tax:

Notwithstanding anything contained in rule 3, the point of taxation in cases where there is a change in effective rate of tax in respect of a service, shall be determined in the following manner, namely:-

(a) in case a taxable service has been provided before the change in effective rate —

(i) where the invoice for the same has been issued and the payment received after the change in effective rate, the point of taxation shall be date of payment or issuing of invoice, whichever is earlier; or

(ii) where the invoice has also been issued prior to change in effective rate but the payment is received after the change in effective rate, the point of taxation shall be the date of issuing of invoice; or

(iii) where the payment is also received before the change in effective rate, but the invoice for the same has been issued after the change in effective rate, the point of taxation shall be the date of payment;

Example 9:

(a) The applicability of the rule will be clear from the illustrations in the following table:

Sl. No	Date of provision of service	Date of Invoice	Date on which payment received	Point of taxation
(i)	Before change	After change	After change	Date of payment or invoice, whichever is earlier
(ii)	Before change	Before change	After change	Date of invoice
(iii)	Before change	After change	Before change	Date of payment

(b) In case a taxable service has been provided after the change in effective rate,-

(i) where the payment for the invoice is also made after the change in effective rate but the invoice has been issued prior to the change in effective rate, the point of taxation shall be the date of payment; or

(ii) where the invoice has been issued and the payment for the invoice received before the change in effective rate, the point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier; or

(iii) where the invoice has also been raised after the change in effective rate but the payment has been received before the change in effective rate, the point of taxation shall be date of issuing of invoice.

Example 10:

The applicability of the rule will be clear from the illustrations in the following table:

Sl. No.	Date of provision of service	Date of Invoice	Date on which payment received	Point of taxation
(i)	After change	Before change	After change	Date of payment
(ii)	After change	Before change	Before change	Date of payment or invoice, whichever is earlier
(iii)	After change	After change	Before change	Date of invoice

Explanation: For the purposes of this rule, "change in effective rate of tax" shall include a change in the portion of value on which tax is payable in terms of a notification issued under the provisions of Finance Act, 1994 or rules made thereunder.

Alternative: there are three voters namely date of provision of service, date of invoice and date of payment received and two candidates' namely new rate of tax and old rate of tax. Hence, majority wins.

Example 11:

Sl. No.	Date of provision of service	Date of Invoice	Date on which payment received	Effective rate of S.T.
(i)	Before change	After change	After change	New Rate
(ii)	Before change	Before change	After change	Old Rate
(iii)	Before change	After change	Before change	Old Rate
(iv)	After change	Before change	After change	New Rate
(v)	After change	Before change	Before change	Old Rate
(vi)	After change	After change	Before change	New Rate

Rule 5: Payment of tax in cases of new services:

Where a service, not being a service covered by rule 6, is taxed for the first time, then,—

(a) no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;

Example 12:

Food King Pvt. Ltd., provider of restaurant services having facility of air conditioning and license to serve alcoholic beverages in relation to serving of food or beverage. These services are taxable w.e.f. 1-5-2011. Payment received and invoice raised prior to 1-5-2011 are not taxable.

b) no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within 14 days of the date when the service is taxed for the first time (w.e.f. 1-4-2012).

Example 13:

Queen Pvt. Ltd., provider of taxable services. These services are taxable w.e.f. 1-5-2013. Payment was received from a customer for ₹ 5,00,000 on 20-4-2013. The invoice has been issued on 4-5-2013 (i.e. within 14 days of the date when the service is taxed for the first time). Hence, service provider not liable to pay service tax on the entire value of ₹ 5,00,000.

Rule 6: Determination of point of taxation in case of continuous supply of service (Omitted w.e.f. 1-4-2012)

Rule 7: Determination of point of taxation in case of specified services or persons (w.e.f. 1-4-2012)

The Point of Taxation in respect of the persons required to pay tax as recipients of service under the rules made in this regard in respect of services notified under section 68(2) of the Finance Act, 1994 shall be the date on which payment is made; provided that, where the payment is made within a period of six months of the date of invoice.

In case the recipient of services failed to make the payment within a period of 6 months of the date of invoice, the point of taxation shall be determined as if this rule does not exist. It means if the recipient of service is not making the payment within 6 months, the point of taxation shall shift from the date of making payment to the condition specified under rule 3 of these rules.

In case of "associated enterprises", where the person providing the service is located outside India, the point of taxation shall be the date of credit in the books of account of the person receiving the service or date of making the payment whichever is earlier.

Rule 8: Determination of point of taxation in case of copyrights, etc.

In respect of royalties and payments pertaining to copyrights, trademarks, designs or patents, where the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and the payment for the benefit of such service is made subsequently. In this case, point of taxation will be each time when the payment received or the date when the invoice is issued by the provider of service, whichever is earlier.

Rule 8A: Determination of point of taxation in case of copyrights, etc. (w.e.f 1-4-2012):

For determination of POT in other cases whereby in the cases where date of invoice or date of payment is not available, the C.E.O. (Central Excise Officer) can conduct best judgment assessment to determine the point of taxation.

Rule 9: Transitional Provisions:

Nothing contained in these rules shall be applicable
(i) where the provision of service is completed; or
(ii) where invoices are issued
prior to the date on which these rules come into force.

(b) Computation of Service Tax Liability on Hotel & catering services

Example 14 - DX Hotel provides the following services as under:
(1) Renting of hotel rooms along with supply of food: ₹ 40 lakhs;
(2) Serving of food in air conditioned restaurant: ₹ 35 lakhs;
(3) Renting of Hotel rooms: ₹ 25 lakhs;
(4) Serving of food in the open-air restaurant (i.e. not having any air condition facility): ₹ 8 lakhs;
(5) A convention room in a hotel was rented to LP Ltd. for conducting meeting together with serving of food during lunch to the members attending the meeting: ₹ 25 lakhs. Compute value of taxable service and service tax thereon if all charges are exclusive of service tax. Ignore small Service Providers' exemption.

Solution:
The relevant computations are as follows (₹ in lakhs):

Renting of Hotel rooms along with supply of goods : ₹40 lakhs Less: Abatement @ 30% (40 x 30%=12 lakhs) [i.e. 40 - 12 = 28]	28.00
Serving of food in air conditioned restaurant [Value of service : ₹35 lakhs x 40% (being the service portion as per Rule 2 C of the Service Tax Rules)]	14.00

Renting of Hotel room : ₹25 lakhs Less: Abatement @ 40% (refer renting of immovable property) [i.e. 25 - 10= 15]	15.00
Serving of food in a restaurant without air condition facility	Exempted
Renting of convention room along with service of food : ₹25lakhs Less: Abatement @ 30%	17.50
Value of Taxable Service	**74.5**
Service Tax @ 12.36% (including applicable Cess)	**9.21**

Example 15:

EAT Pvt. Ltd. has provided following outdoor catering services. Compute the value of taxable service and service tax payable thereon if all charges are exclusive of service tax. Ignore Small Service Providers' exemption:

(i) Providing food to the students under mid day meals scheme sponsored by Government: ₹28 lakhs

(ii) Provides catering services along with supply of food and drinks in marriage functions: ₹120 lakhs

Fair market value of goods supplied by receiver: ₹48 lakhs

No amount was charged for the goods supplied.

(iii) Provides catering service to TMT Pvt. Ltd. where food & drinks are not supplied: ₹45 lakhs

Solution:

The relevant computations are as follows (₹ in lakhs):

Particulars	Amount (₹ lakhs)
Provision of food under Mid Day meal Scheme	Exempted
Provision of catering service along with supply of food & drinks Gross amount charged : 120 lakhs Add: FMV of goods supplied : 48 lakhs Less: Amount charged for goods supplied Nil Total amount charged : 168 lakhs Value of service (₹ 168 lakhs x 60%)	100.80
Provision of catering services to PQR Pvt. Ltd. where foods and drinks are not supplied	45.00
Value of Taxable service	145.80
Service tax Payable@12.36%	18.02

Example 16:

Satya Hotels Pvt. Ltd has given the following information for the period October 2012 to March, 2013. Compute value of taxable services and tax thereon:

(1) Reception room and vehicle parking space were let out to a film-producer to carry out shooting of a film for 3 months. The charges received for this ₹15 lacs.

(2) Conference hall was let out to a Trust for a week for organizing a music competition for ₹ 3,50,000.

(3) The hotel was booked by a customer for 3 days for a marriage function. The room booking charges were received in advance (excluding service tax) in the period of ₹8,00,000. The electricity charges separately billed ₹2,00,000, hire charges including catering charges (including food) for 3 days billed amounting to ₹17,00,000 over and above after deducting the advance.

(4) During the year, the conference hall was let out to M Ltd. The charges received were as under :

Hall rent ₹ 16 Lacs, computer & projector systems charges ₹1,20,000, electricity charges ₹1,80,000. Hall rent includes charges for snacks and cold drinks ₹60,000.

(5) The hotel garden was let out to a political party for 2 days for a meeting. Charges received ₹ 5,00,000. The hotel charges 10% service charges which are later distributed as tips to employees.

All the above charges are excluding service tax.

Solution:

Computation of value of taxable service including tax thereon (ignoring small service provider exemption) -

[Service Charges form part of gross amount charged: 10% services charges are assumed to have been charged in addition to aforesaid sums and since they are a consideration for provision of service, they are liable to included in gross amount charged.]

	Particulars	₹
1.	Reception room and vehicle parking space were let out for a film shooting for 3 months - It is renting of immovable property service - Since it is not meant for residential or lodging purposes, hence, no abatement allowed - Taxable [15 lakhs + 10% Service	16,50,000
2.	Conference hall was let out to a Trust for a week for a music competition -Taxable; it is renting of immovable property [350,000 + 10% service charges]	3,85,000

3.	Bundled service of provision food including renting of premises is eligible for abatement under Notification No. 26/2012-ST @ 30%. Total amount = 8,00,000 + 2,00,000 + 17,00,000 = ₹ 27,00,000 + 10% service charges = ₹ 29,70,000. Taxable Value @ 70% of ₹ 29,70,000 will be -	20,79,000
4.	Bundled service of provision food/beverages including renting of premises is eligible for abatement under Notification No. 26/2012-ST @ 30%. Total amount = 16,00,000 + 1,20,000 + 1,80,000 = ₹ 19,00,000 + 10% service charges =₹ 20,90,000. Taxable Value @ 70% of ₹ 20,90,000 will be-	14,63,000
5.	Hotel garden was let out to a political party - It is renting of immovable property. Taxable [5,00,000 + 10% service charges]	5,50,000
	Taxable Value	**61,27,000**
	Service Tax @ 12.36%	**7,57,297**

(3) Corporate Laws and Compliance

Example 17:

The articles of association of XYZ Computers Ltd. provide for a maximum of 15 directors. But the company has only 10 directors and 2 of them representing foreign collaborator, alternate directors have been appointed. Board meeting held on 1st August, 2012 was attended by 4 directors including 2 alternate directors.

Examine with reference to the relevant provisions of the Companies Act, 1956 whether quorum was present at the Board meeting held on 1st August, 2012. Will your answer be different, if the articles provide for a quorum of 6 directors?

Soln: As per section 287(2), the quorum for a Board meeting shall be higher of:

(a) 1/3rd of total strength (any fraction contained in that 1/3rd shall be rounded off as 1); or
(b) 2 directors.

Total strength means the total strength of the Board of directors of a company, as reduced by the number of directors whose places are vacant at that time.

However, the articles of a company may provide for a larger quorum than specified under section 287 [Amrit Kaur Puri vs Kapurthala Flour Oil & General Mills Co. Pvt. Ltd., (1984) 56 Comp Cas 194].

In the given case, total strength is 10. Quorum for the Board meeting held on 1st August, 2012 shall be 1/3rd of 10 directors, i.e., 3.33, taken as 4 directors. Since the directors are present in the Board meeting (alternate director shall also be included while computing quorum), the quorum is present.

However, if the articles provide for a quorum of 6 directors, the required quorum is 6, and not 4. In such a case, the quorum is not present in the Board meeting held on 1st August, 2012.

Example 18:

The Board of Directors of Abha Ltd. has agreed in principle to grant loan worth ₹38 lakhs to Adi Ltd. on the basis of the following information:

Advise Abha Ltd. about the requirements to be complied with under the Companies Act, 1956 for the proposed inter-corporate loan to Adi Ltd.

(i) Authorised share capital ₹1,00,00,000

(ii)Issued,subscribed and paid up capital ₹50,00,000

(iii) Free Reserves ₹10,00,000

Soln: Inter-corporate loans, investments etc. are governed by the provisions of section 372A. First determine whether a special resolution is required for making fresh investments. This can be determined as follows:

Paid up capital of the company (A)	₹ 50,00,000
Free reserves (B)	₹10,00,000
Aggregate of paid-up capital and free reserves (C)	₹60,00,000
60% of aggregate of paid-up capital and free reserves (D)	₹36,00,000
Higher of (B) or (D), i.e., the ceiling limit for inter-corporate loans, investments etc. without requiring a special resolution	₹36,00,000
Proposed loan to Adi Ltd.	₹38,00,000

Since the proposed loan exceeds the ceiling given under section 372A, a special resolution is required. The company shall adopt the following procedure for making loan to Adi Ltd.:

(a) Unanimous approval of the Board shall be obtained by passing a resolution at a Board meeting.

(b) A special resolution shall be passed in the general meeting.

- The notice of special resolution shall state the specific limits, particulars of the company to which loan is proposed to be given, specific source of funding and other relevant details.
- The company shall file a copy of special resolution with the registrar within 30 days of passing the special resolution.

(c) The company shall obtain the prior approval of the Public Financial Institution, if any, from whom it has taken a term loan.

(d) The company can make such investments only if no default in respect of Public deposits is subsisting.

(e) The rate of interest on loan must not be less than the prevailing bank rate.

(f) The prescribed particulars shall be entered in the register maintained under section 372A(5).

(4) On AS-22

As per Accounting Standard 22, the income-tax expenses should be treated just like any other expenses on accrual basis irrespective of the timing of payment of tax. Tax expenses for the period to be recognized consist of current tax and deferred tax.

Current Tax – Current tax is the amount of income-tax determined to be payable (recoverable) in respect of the taxable income (tax loss) for a period.

Deferred Tax – Deferred tax is the tax effect of timing difference. Difference between the tax expenses (which is calculated on accrual basis) and current tax liability to be paid for particular period as per Income-tax Act is called deferred tax (assets/ liability). That is why the Tax Expenses = Current Tax + Deferred Tax.
The difference between tax expenses and current tax arises only on account of timing difference and thus creating deferred tax asset/ liability.

Measurement of current and deferred tax.

Current Tax - Current tax should be measured at the amount expected to be paid to (recovered from) taxation authorities using applicable tax rates and tax laws.

Deferred Tax - Deferred tax should be measured using the rates and tax laws that have been enacted or substantially enacted by the balance sheet date.

Difference in Accounting Profit and Tax Profit - As we know that profit as shown in accounts differ with the profit (taxable) calculated as per Income-tax Act. The reasons of difference between two profits are of two types.

Timing Difference: These differences originate in one period and capable of reversal in one or more subsequent periods. Examples-

- Difference due to rate of depreciation
- Difference due to method of depreciation
- Expenses debited in the statement of profit & loss for accounting purpose but allowed for tax purpose in subsequent year. Like section 43B of Income-tax Act, 1961.

Permanent Difference: These differences originate in one period and do not reverse subsequently in. other words the difference always remains and is of permanent in nature. For example, expenses debited in the statement of profit and loss for accounting purpose but it is not allowed for tax purpose at all in any year or income credited in profit and loss account while calculating the accounting profit is exempted from tax.

Deferred tax is tax effect of timing difference:

a. Accounting income is in excess of tax income.	Tax on accounting income is more whereas tax payable is less as per Income-tax law for the period	Create deferred tax liability by crediting to deferred tax and debit to profit and loss account.
b. Accounting income is less than tax income.	Tax on accounting income is less whereas tax payable is more as per Income-tax law.	Create deferred tax asset by debiting deferred tax.
c. There is income as per income-tax but loss as per accounts.	Tax on accounting loss is nil but there is liability to pay tax.	Create deferred tax assets by debiting deferred tax (subject to recoverability/ adjustments from future income).
d. Accounting profit but loss as per income-tax law. However MAT is payable.	Tax on accounting profit but tax as per tax law Nil. Carry forward of loss allowed.	Create deferred tax liability for the difference.

Example 19:

B Ltd has acquired a new Plant and Machinery for ₹5 Crore and charges depreciation at 20.57% (say) on the asset under WDV Method for accounting purposes. It is expected that at the end of its useful life of 10 years, the machinery will realized ₹50 lakhs. Assume that the Income Tax Rules permits depreciation at 25% on Reducing balance Method for the asset.

Apart from the above, there is no other difference between Accounting Income and Taxable Income. Compute the DTA/ DTL over the useful life of the asset. The Tax rate is 35% and is same for both Business Income and Capital Gain or Loss.

Solution:

Computation of Deferred Tax Asset/ Liability

In the 1st Year

Step 1: Calculation depreciation as per Companies Act rates. [this is shown in the 1st year - column (2)]

Step 2: Calculate depreciation as per Income Tax Act rates [this is shown in the 1st year- column (3)]

Step 3: Timing Difference arises due to difference in the amount of depreciation under two different statutes

[this is shown in column (4)]

Step 4: Calculate DTA or DTL = Amount of timing difference [as per step 3,column 4] x Income Tax Rate

Since as per Income Tax, the depreciation is charged more than as compared to the amount of depreciation as per Companies Act, there will arise a future tax liability in Companies Act. This is leading to 'Deferred Tax Liability'. [this is shown in the first four years]

The reverse will happen, i.e. it will lead to 'Deferred Tax Asset' if the Depreciation as per Companies Act is more than Depreciation as per Income Tax Act. [this is shown from the 5th to the 10th year]

Step 5: At the end of the 1st to 4th years, there is an accumulated balance of Deferred Tax Liability as follows:

At the end of 1st year	7.75
At the end of 2nd year	11.97
At the end of 3rd year	13.87
At the end of 4th year	14.29

Note: From 2nd year onwards, for ease of calculation, we have considered [100 % -20.57 % =] 79.43% for calculating

depreciation as per Companies Act. Similarly, for calculating depreciation as per Income Tax Act, we have considered [100% - 25% =] 75%.

The amount of 'Deferred Tax Liability' shall have to shown in the Balance Sheet (under Revised Schedule VI):

Under the head " Non-current Liabilities".

Now, let us check the calculations for all the years:

Years	Depreciation as per Companies Act	Depreciation as per Income Tax Act	Timing Difference	Originating DTA/(DTL)	Reversing (DTA)/ DTL	Accumulated DTA/(DTL)
(1)	(2)	(3)	(4)	(5)	(6)	
1	500 x 20.57% = 102.85	500 x 25% = 125	(22.15)	(22.15) x 35% = (7.75)		(7.75)
2	102.85 x 79.43% = 81.69	125 x 75% = 93.75	(12.06)	(12.06) x 35% = (4.22)		(11.97)
3	81.69 x 79.43% = 64.89	93.75 x 75% = 70.31	(5.42)	(5.42) x 35% = (1.90)		(13.87)
4	64.89 x 79.43% =51.54	70.31x75% = 52.73	(1.19)	(1.19) x 35% = (0.42)		(14.29)
5	51.54 x 79.43% = 40.94	52.73 x 75% = 39.55	1.39		1.39 x 35% = 0.49	(13.80)
6	40.94 x 79.43% = 32.52	39.55 x 75% = 29.66	2.86		2.86 x 35% =1.00	(12.80)
7	32.52 x 79.43% = 25.83	29.66 x 75% = 22.25	3.58		3.58 x 35% = 1.25	(11.55)
8	25.83 x 79.43% = 20.51	22.25 x 75% =16.69	3.82		3.82 x 35% = 1.34	(10.21)
9	20.51 x 79.43% =16.29	16.69 x 75% = 12.51	3.78		3.78 x 35% = 1.32	(8.89)
10	16.29 x 79.43% =12.94	12.51x75% =9.39	3.55		3.55x3 5% =1.24	(7.65)
Total	450.00	471.84				
WDV on date of sale	500.00 (-) 450.00 = 50.00 lakhs	500.00 (-) 471.84 = 28.16 lakhs				
Sale Value	50.00 lakhs	50.00 lakhs				
Capital Gains	Nil	21.84 lakhs	21.84 lakhs		21.84 x 35% =7.64	

It may be noted that from 5th year onwards, there is a Deferred Tax Asset. This amount of Deferred Tax Asset shall now be adjusted against the accumulated balance of Deferred Tax Liability.

From the 5th year upto the 10th year, the following journal entry/adjustment entry shall have to be recorded in the books:

Entry No.1 (corresponding figures shown for the years 5-10)

Years	5	6	7	8	9	10
Deferred Tax Asset A/c Dr	0.49	1.00	1.25	1.34	1.32	1.24
To Profit & Loss A/c (Being deferred tax asset credited)	0.49	1.00	1.25	1.34	1.32	1.24

Entry No.2 (corresponding figures shown for the years 5-10)

Years	5	6	7	8	9	10
Deferred Tax Liability A/c Dr	0.49	1.00	1.25	1.34	1.32	1.24
To Deferred Tax Asset A/c (Being deferred tax asset adjusted against accumulated balance of DTL)	0.49	1.00	1.25	1.34	1.32	1.24

The balance of DTL to be shown in the Balance Sheet is as under:

At the end of 5th year	13.80
At the end of 6th year	12.80
At the end of 7th year	11.55
At the end of 8th year	10.21
At the end of 9th year	8.89
At the end of 10th year	7.65

Example 20:

Capital expenditure on scientific research equipment costing Rs.5 crores. As per Income tax u/s 35, @ 100% deduction is claimed in the year of purchase. The asset has a life of 5 years. Rate of Depreciation as per Companies Act is 18.91% (say). Tax @ 35%. Let us ascertain the DTA/DTL:

Solution:

Years	Depreciation as per Companies Act	Depreciation as per Income Tax Act	Timing Difference	Originating DTA/(DTL)	Reversing (DTA)/DTL	Accumulated DTA/(DTL)
(1)	(2)	(3)	(4)	(5)	(6)	
1	500 x 18.91% = 94.55	500 x 100% = 500	(405.45)	(405.45) x 35% = (141.91)		(141.91)
2	94.55 x 81.09% =76.67	--	--		76.67 x 35% = 26.83	(115.08)
3	76.67 x 81.09% =62.17				62.17 x 35% = 21.76	(93.32)
4	62.17 x 81.09% =50.41				50.41 x 35% = 17.64	(75.68)
5	50.41 x 81.09% =40.88				40.88 x 35% = 14.31	(61.37)
Total	324.68	500.00				

Explanation:

(1) It may be noted that since deduction is claimed @ 100% u/s 35, it becomes a charge against profits for the year.

(2) Since the rate of depreciation is less as per Companies Act, in this case, there is a deferred tax liability arises in the 1st year only.

(3) In the subsequent years, there arises deferred tax asset, which is adjusted, due to timing difference, against the accumulated balance of Deferred Tax Liability from the 2nd year onwards.

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Students/Readers are requested to do send your views/ queries/observations/request for academic inputs by e-mail to e.newsletter@icmai.in

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