

Paper 16 - Direct Tax Laws and International Taxation

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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) Where a person whose total income does not exceed ₹ 5 lakhs, required to furnish a return of income u/s 139, fails to do so within the due date, he shall pay fee of:
(a) ₹ 10,000
(b) ₹ 5,000
(c) ₹ 1,000
(d) ₹ 2,000.
- (ii) Intimation of summary assessment must be send within _____ from the end of financial year in which return of income is filed.
(a) 180 days
(b) 1 year
(c) 3 years
(d) 30 days.
- (iii) The due date of installment for upto 45% of advance tax liability of the assesses other than the assesseees in respect of an eligible business referred to in sec. 44AD or 44ADA is:
(a) On or before June 15
(b) On or before September 15
(c) On or before December 15
(d) On or before March 15.
- (iv) When an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer may proceed to recover from such assessee the amount specified in the certificate by one or more of the modes available. Which of the following is/ are correct?
(a) attachment and sale of the assessee's movable property
(b) attachment and sale of the assessee's immovable property
(c) appointing a receiver for the management of the assessee's movable and immovable properties
(d) All of the above.
- (v) The appellate authority, for the 2nd appeal made by the assessee or the Commissioner (or Principal Commissioner) of Income tax against the order of Commissioner (Appeals), will be:
(a) High Court
(b) Supreme Court
(c) Income Tax Appellate Tribunal (ITAT)
(d) CBDT.
- (vi) As per ICDS VII, the treatment of government grants related to the depreciable fixed asset will be:
(a) The grant shall be deducted from the actual cost of the asset or from the written down value of block of assets
(b) The grant shall be recognised as income of the period in which it is receivable

- (c) Grants shall be recognised as income over the periods necessary to match them with the related costs which they are intended to compensate
- (d) None of the above.
- (vii) When an assessee fails to furnish any information relating to a specified domestic transaction, the quantum of penalty as a percentage of value of the transaction would be —
- (a) 2%
- (b) 1%
- (c) 5%
- (d) 3%
- (viii) As per section 178(3), the _____ of a company has to intimate the tax authority before he parts with any of the assets of the company or the properties in his hands and has to set aside the amount if any intimated to him by the tax authorities.
- (a) Managing Director
- (b) Manager
- (c) Chartered Accountant
- (d) Liquidator
- (ix) A resident applicant, seeking advance ruling in relation to a transaction undertaken or proposed to be undertaken by him with a non-resident, may make an application stating the question on which the advance ruling is sought in Form No. _____.
- (a) 34C
- (b) 34D
- (c) 34DA
- (d) 34E
- (x) If an assessee discovers any omission or wrong statement (bonafide in nature) in the return filed, he may file the revised return —
- (a) before the end of the relevant assessment year
- (b) before completion of regular assessment
- (c) before the end of the relevant assessment year or before completion of regular assessment, whichever is earlier
- (d) before the end of the relevant assessment year or before completion of regular assessment, whichever is later.

Answer:

(i) (c) Where a person whose total income does not exceed ₹ 5 lakhs, required to furnish a return of income u/s 139, fails to do so within the due date, he shall pay fee of ₹ 1,000.

(ii) (b) Intimation of summary assessment as per sec. 143(1) must be send within 1 year from the end of financial year in which return of income is filed.

(iii) (b) The due date of installment for upto 45% of advance tax liability of the assessee other than the assessee in respect of an eligible business referred to in sec. 44AD or 44ADA is on or before September 15. The assessee of an eligible business referred to in sec. 44AD or 44ADA is liable to pay 100% of advance tax liability on or before March 15.

(iv) (d) When an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer may proceed to recover from such assessee the amount specified in the certificate by any one or more of the modes available, such as attachment and sale of the assessee's movable property, attachment and sale of the assessee's immovable property, arrest of the assessee and his detention in prison and appointing a receiver for the management of the assessee's movable and immovable properties.

(v) (c) The appellate authority, for the 2nd appeal made by the assessee or the Commissioner (or Principal Commissioner) of Income tax against the order of Commissioner (Appeals), will be Income Tax Appellate Tribunal (ITAT).

(vi) (a) As per ICDS VII, the treatment of government grants related to the depreciable fixed asset will be — the grant shall be deducted from the actual cost of the asset or from the written down value of block of assets.

(vii) (a) As per sec. 271AA, if any person in respect of an international transaction or specified domestic transaction fails to maintain or furnishes an incorrect information or document, the Assessing Officer or Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal to 2% of the value of each international transaction or specified domestic transaction entered into by such person.

(viii) (d) As per section 178(3), the liquidator of a company has to intimate the tax authority before he parts with any of the assets of the company or the properties in his hands and has to set aside the amount if any intimated to him by the tax authorities.

(ix) (b) A resident applicant, seeking advance ruling in relation to a transaction undertaken or proposed to be undertaken by him with a non-resident, may make an application stating the question on which the advance ruling is sought in Form No. 34D in quadruplicate.

(x) (c) If an assessee discovers any omission or wrong statement (bonafide in nature) in the return filed, he can revise his return u/s 139(5). In that case, assessee may file the revised return before the end of the relevant assessment year or before completion of regular assessment, whichever is earlier.

Section – B

(Answer any five questions out of seven questions given)

2.(a) Mr. Sen is a businessman. Tax audit u/s 44AB is applicable. Due date of submission of return of income for the assessment year 2019-20 is September 30, 2019. Return, is however uploaded on September 25, 2019. Intimation u/s 143(1) is received by email on October 8, 2020. Date of intimation and date of grant of refund is October 6, 2020. Refund is calculated as follows:

	₹
Tax on income assessed	2,92,430
Add: interest u/s 234C	18,000
Total	3,10,430
Less: Credit for prepaid tax -	
— TDS, TCS and tax paid in advance	4,70,000
— Self-assessment tax paid on August 18, 2019	9,000
Refund due	1,68,570

Determine the amount of interest payable by the Government u/s 244A. [8]

(b) A company wants to raise capital of ₹ 40,00,000 for a project wherefrom earnings before tax would be 30% of the capital employed. The company can raise debt finance @ 12% p.a.

The following three alternatives for raising capital are available for the company:

- (i) ₹ 40,00,000 by equity capital**
- (ii) ₹ 20,00,000 by equity capital and ₹ 20,00,000 by loans**
- (iii) ₹ 8,00,000 by equity capital and ₹ 32,00,000 by loans.**

Answer to MTP_Final_Syllabus 2016_Dec 2019_Set 2

Assume that the company would distribute the entire amount of profits as dividend. The tax rate is 30% and dividend distribution tax rate is 20%. (Ignore surcharge and cess)

Work out which one of the above three alternatives should the company opt to minimise its tax liability? [8]

Answer:

(a) Refund of ₹ 1,68,570 may be segregated as follows:

Option 1: ₹ 9,000 may be taken as refund of self-assessment tax and the balance of ₹ 1,59,570 may be taken as refund of TDS/ TCS/ Advance Tax.

Option 2: As no formula for segregation is provided, it may be assumed that entire amount of refund pertains to refund of TDS/ TCS/ Advance Tax.

In the two alternatives given above, interest u/s 244A will be calculated as follows:

	Option 1		Option 2
Nature of refund	Self-assessment Tax	TDS/ TCS/ Advance Tax	TDS/ TCS/ Advance Tax
Amount of refund (in ₹)	9,000	1,59,570	1,68,570
Amount of refund (in ₹) (rounded off for the purpose of calculation of interest)	9,000	1,59,500	1,68,500
Period for which interest is available	From 25.09.2019 to 06.10.2020	From 01.04.2019 to 06.10.2020 (Note: 1)	From 01.04.2019 to 06.10.2020 (Note: 1)
No. of months (a part of month is taken as full month)	13	19	19
Interest @ 0.5% per month (in ₹)	585	15,152.50	16,007.50

Amount of interest is higher in Option 2. Interest payable by the Government is ₹ 16,007.50.

Note:1 — if return of income is submitted on or before the due date of submission of return of income given u/s 139(1), interest is payable from the first day of the assessment year to the date on which the refund is granted.

(b) Computation of Tax Benefit in different Alternatives:

Particulars	Alternative – (i) (₹)	Alternative – (ii) (₹)	Alternative – (iii) (₹)
Equity Capital	40,00,000	20,00,000	8,00,000
12% loans	—	20,00,000	32,00,000
EBIT	12,00,000	12,00,000	12,00,000
Cost to Company:			
Interest on loan	—	2,40,000	3,84,000
Net Profit before tax and dividend	12,00,000	9,60,000	8,16,000
Tax Payable @ 30% (A)	3,60,000	2,88,000	2,44,800
Profit after tax	8,40,000	6,72,000	5,71,200
Dividend Distribution Tax @ 20% (B)	1,68,000	1,34,400	1,14,240
Profit after cost of capital	6,72,000	5,37,600	4,56,960

Answer to MTP_Final_Syllabus 2016_Dec 2019_Set 2

Total tax paid (A+B)	5,28,000	4,22,400	3,59,040
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The company should opt for alternative (iii) as the total amount of tax payable is minimum.

3. On April 1, 2018, X Ltd. commences the operation of a warehousing facility in Andhra Pradesh for storage of agricultural produce. The following information is available from the records of company—

Expenses incurred prior to April 1, 2018

	₹
Purchase of land for warehouse	50,00,000
Construction cost of warehouse	8,10,000
Purchase of know-how for warehouse	10,00,000
Salary to staff	68,000
These expenses are capitalized on March 31, 2018.	
Expenses incurred during 2018-19:	
Construction cost of warehouse	60,00,000
Purchase of old plant and machinery (from domestic market)	2,00,000
Purchase of old plant and machinery (from Germany)	4,00,000
Purchase of new plant and machinery	9,00,000
Purchase of goodwill	3,50,000

Profit and loss account for the year 2018-19:

	₹		₹
Depreciation of building (@ 5%)	3,40,000	Amount collected from persons using warehouse	78,00,000
Depreciation of machinery (@ 23.333%)	3,50,000		
Cost of know-how (amount written off)	10,00,000		
Other operating expenses	7,51,000		
Donation to a political party	10,000		
Net profit	53,49,000		
	78,00,000		78,00,000

Out of other operating expenses, a payment of ₹ 40,000 is made in cash. Other operating expenses are deductible under section 37. Find out the taxable income of X Ltd. for the assessment year 2019-20 on the assumption that X Ltd. has the following income from other sources –

- income from the business of commission agency: ₹ 10,14,000 (computed under the provisions of the Income-tax Act) and
- dividend from a foreign company: ₹ 65,000.

[16]

Answer:

Amount deductible under section 35AD

	₹
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Answer to MTP_Final_Syllabus 2016_Dec 2019_Set 2

Expenditure incurred prior to the commencement of operation (to the extent these are capitalized)	
Purchase of land (not qualified for deduction)	Nil
Construction cost of warehouse	8,10,000
Purchase of know-how	10,00,000
Salary to staff	68,000
Expenditure incurred during the previous year:	
Construction cost of warehouse	60,00,000
Purchase of machinery (₹ 2,00,000 + ₹ 4,00,000 + ₹ 9,00,000)	15,00,000
Total	93,78,000
Amount deductible under section 35AD	93,78,000

	₹
Computation of income from warehouse:	
Net profit as per profit and loss account	53,49,000
Add: Depreciation of building (not deductible as cost of building is eligible for deduction under section 35AD)	3,40,000
Add: Depreciation of machinery (not deductible as cost of machinery is qualified for deduction under section 35AD)	3,50,000
Add: Cost of know-how (not deductible as deduction is available under section 35AD)	10,00,000
Add: Amount paid in cash (operating expenses)	40,000
Add: Donation to political party	10,000
Less: Deduction under section 35AD	(-) 93,78,000
Loss from warehouse	(-) 22,89,000

Computation of income:

	₹	₹
Commission agency business	10,14,000	
Warehouse	(-) 22,89,000	
Business income (loss from operating warehouse, being a specified business under section 35AD cannot be set off against any other income except income from a specified business)		10,14,000
Income from other sources (dividend from foreign company)		65,000
Gross total income		10,79,000
Less: Deduction under section 80GGB (donation to a political party)		10,000
Net income		10,69,000

Notes—

1. Second hand imported machinery is taken as new machinery. The business of operating warehouse is formed by using new machinery of ₹ 13,00,000 and old machinery of ₹ 2,00,000. Value of old plant and machinery does not exceed 20 per cent of the total value of plant and machinery. Other conditions of section 35AD are satisfied. X Ltd. is, therefore, eligible for deduction under section 35AD.

2. Loss from operating warehouse (by virtue of section 73A) can be set off only against profit and gains, if any, of any other business specified under section 35AD. In this case, X Ltd. does not have any other specified business. Loss will be carried forward (without any time-limit) for being set off against income from operating warehouse or any other specified business under section 35AD.
3. Minimum alternate tax provisions will be applicable. Tax liability will be 31.2% of ₹ 10,69,000 or 19.24% of book profit (i.e. ₹ 53,49,000 + ₹ 10,14,000 + ₹ 65,000), whichever is more.

4.(a) List the persons who should apply for allotment of Permanent Account Number. [7]

(b) Fruits Ltd. wants to amalgamate with Veggie Ltd. on June 30, 2018. You are required to find out the tax implication in respect of the following losses/allowances of Fruits Ltd. in the assessments of Fruits Ltd. (i.e., amalgamating company) and Veggie Ltd. (i.e., amalgamated company).

Unabsorbed depreciation allowance of the previous year 1999-2000: ₹ 34,000; brought forward business loss of the previous year 2010-11: ₹ 10,20,000; unabsorbed scientific research expenditure : ₹ 12,000; bad debts: ₹ 20,000 ; capital gain arising on transfer of assets to Veggie Ltd. : ₹ 2,50,000 and brought forward capital loss ₹ 40,000. Also discuss whether Veggie Ltd. can claim deduction under section 80-IA or 80-IB in respect of industrial undertaking taken over from Fruits Ltd. [9]

Answer:

(a) The following persons should apply for allotment of permanent account number in Form No. 49A (in the case of foreign citizen: Form No. 49AA)

1. If income exceeds exemption limit or turnover exceeds ₹ 5,00,000 - Every person, if his total income assessable during the previous year exceeds the maximum amount which is not chargeable to tax or any person carrying on business or profession whose total sales, turnover or gross receipts are or is likely to exceed ₹ 5,00,000 in any previous year and who has not been allotted any permanent account number, is obliged to obtain permanent account number.

Application should be submitted before May 31st of the assessment year for which the income exceeds the maximum amount not chargeable to tax or before the end of the accounting year for which gross receipt/turnover exceeds ₹ 5,00,000.

2. Charitable trust - A person who is required to furnish return of income under section 139(4A) (i.e., charitable trust) is required to obtain permanent account number before the end of the accounting year.
3. Financial transaction in aggregate of ₹ 2,50,000 or more - Any resident person (not being an individual) who enters into a financial transaction of an amount aggregating to ₹ 2,50,000 or more during a financial year (as well as managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of such person or any person competent to act on behalf of such person) is required to obtain permanent account number with effect from April 1, 2018.
4. When payment is received after tax deduction - In the case of a person who is

entitled to receive any sum or income or amount, on which tax is deductible in any financial year, shall apply for allotment of permanent account number before the end of such financial year.

5. Person specified by the Central Government - The Central Government may specify such persons who shall apply to the Assessing Officer for allotment of permanent account number.

(b) The following Table highlights the tax implications in respect of various items given in the problem on the assumption that assets are transferred in a scheme of amalgamation which satisfies the provisions of section 2(1B).

Loss/allowances of Fruits Ltd. before amalgamation	Tax implication in the hands of	
	Veggie Ltd.	Fruits Ltd.
Unabsorbed depreciation of 1998-99: ₹ 34,000	If amalgamation satisfies the conditions of section 72A, it is deductible, otherwise it is not deductible	As Fruits Ltd. ceased to exist after amalgamation, it is not entitled for deduction.
Brought forward business loss of 2010-11 : ₹ 10,20,000	If amalgamation satisfies conditions of section 72A, it can be set-off and carried forward by Veggie Ltd.; otherwise such right is not available	Fruits Ltd. cannot carry it forward, as it has ceased to exist after amalgamation.
Unabsorbed scientific research expenses : ₹ 12,000	Allowed subject to conditions of section 35	It cannot be carried forward, as Fruits Ltd. has ceased to exist.
Bad debts : ₹ 20,000	Allowed	It is not allowed as deduction as Fruits Ltd. ceased to exist after amalgamation.
Capital gain : ₹ 2,50,000	It is not taxable in the hands of Veggie Ltd. If, however, assets acquired in the scheme of amalgamation are sold by Veggie Ltd., cost of acquisition for the purpose of computing capital gain would be cost to Fruits Ltd. (indirectly ₹ 2,50,000 will merge in capital gain arising at the time of sale of assets by Veggie Ltd.)	It is not taxable, as transfer of assets in a scheme of amalgamation to an Indian company does not amount to "transfer" for the purpose of charging tax on capital gains.
Brought forward capital loss: ₹ 40,000	It cannot be set-off and carried forward by Veggie Ltd.	It cannot be carried forward by Fruits Ltd., as it ceased to

		exist after amalgamation.
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Note: As benefit of deduction under section 80-IA or 80-IB is attached to the undertaking (and not to the assessee), deduction under these sections would be available to Veggie Ltd. even if the industrial undertakings are taken over from Fruits Ltd. However, this benefit is available only if amalgamation takes place prior to April 1, 2008.

- 5.(a) During the previous year relevant to the assessment year 2019-20, X exported tobacco to Japan and France where it was sold through non-resident assesseees — A, a Japanese company and B, a French concern. A and B were operating as X's agents and were to be paid commission on sales effected through them. X received the entire sale proceeds in India. X made credit entries in his books of account in respect of commission payable to A and B and remitted the same to them subsequently. State whether A and B are chargeable to tax in respect of commission on the basis of receipt of income (actual or constructive) in India and whether it can be said that they have received or are deemed to have received commission when their accounts were credited. Justify. [8]**

- (b) XYZ Ltd. has constructed 50 sheds in an industrial estate and leased these out to selected and qualified entrepreneurs, who would manufacture some of the ancillaries for the assessee-company. Besides, the assessee-company also provides several facilities to the ancillary units such as free technical advice for the setting up of units, training of workers for nominal charge, inspection and other services at cost and supply of raw material at cost including overheads. The lessee have agreed to permit the assessee-company's agents, security staff and workers to enter the premises at any time to view the condition thereof. Discuss whether the income earned by the assessee-company on letting out the sheds should be assessed as income from property or from business. [8]**

Answer:

- (a)** It cannot be said that making of entries in the books of X regarding the commission payable to the non-residents, i.e., A and B, amounts to receipt of income by them, as the amounts so credited in their favour are not at their disposal or under their control. Further, it is not possible to hold that A and B either received or could be deemed to have received the commission when their accounts with X were credited, since the credit balance only represents a debt, and a mere book entry in the debtors' own book does not constitute payment which would secure discharge from the debt. Therefore, A and B cannot be charged to tax on the basis of receipt of income (actual or constructive) in India during the relevant previous year.

The second aspect of the question is whether the commission amounts credited in the books of X can be treated as income accrued, arisen, or deemed to have accrued or arisen in India to non-resident assesseees, A and B under the deeming provisions of section 9(1)(i). These impugned payments cannot be hit by section 9(1)(i) because Explanation (a) to section 9(1)(i) provides that in the case of a business of which all the operations are not carried on in India, only such parts of the income of business will be deemed to accrue or arise in India as is reasonably attributable to the operations carried out in India. If all such operations are carried out in India, the entire income accruing therefrom shall be deemed to have accrued in India — CIT v. Toshoku Ltd. [1980] 4 Taxman 1 (SC).

- (b) The mere ownership of property does not determine the nature of the return from it. The user of the property is also a determining factor. In the given case, the intention of the assessee is not to earn income from property as such, but to secure a continuous supply of components to keep up its own production, the components being manufactured under its guidance and scrutiny. Thus, the dominant purpose of letting out of accommodation is to carry on its business more efficiently and smoothly. It can be said that the assessee is in occupation of the premises so let out for the purposes of its own concern, i.e., by hiring out the sheds with a view to manufacturing component parts to be used by the assessee itself in its own production and, therefore, income derived is not from the exercise of property rights but is income derived from carrying on its own business — CIT v. Hindustan Machine Tools Ltd. [1980] 121 ITR 798 (Kar.).

6.(a) What is Permanent Establishment in the context of Double Taxation Avoidance Agreement? Mention the items which are excluded from the list of Permanent Establishment. [4+5=9]

- (b) Delta Ltd., an Indian company, is a subsidiary company of Fox Inc., a company registered in the Netherlands. It purchases raw materials from Fox Inc. Purchase prices of raw material determined under CUP method (being the most appropriate method) for the previous year 2018-19 are ₹ 9,200, ₹ 10,500, ₹ 10,100 and ₹ 10,300 per unit. Delta Ltd., however, pays to Fox Inc. ₹ 1,04,50,000 (i.e., 950 units at the rate of ₹ 11,000 per unit). Net profit as per statement of profit and loss for the year ending 31st March, 2019 is ₹ 9,40,000. Determine arm's length price and net income of Delta Ltd. for the assessment year 2019-20. Delta Ltd. is not a "wholesale trader". [7]

Answer:

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

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

1. a place of management;
2. a branch;
3. an office;
4. a factory;
5. a workshop;
6. a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
7. a warehouse in relation to a person providing storage facilities for others;

8. a farm, plantation or other place where agricultural, pastoral, forestry or plantation activities are carried on;
9. premises used as a sales outlet or for receiving or soliciting orders;
10. an installation or structure, or plant or equipment, used for the exploration for or exploitation of natural resources;
11. a building site or construction, installation or assembly project, or supervisory activities in connection with such a site or project, where that site or project exists or those activities are carried on (whether separately or together with other sites, projects or activities) for more than specified months (generally 6 months).

Exclusion:

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

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

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

(b)

	₹
Arithmetic mean of price determined under the most appropriate methods [(₹ 9,200 + ₹ 10,500 + ₹ 10,100 + ₹ 10,300) ÷ 4] (1)	10,025
Price at which raw material is purchased from associate enterprise under international transaction (2)	11,000
Difference between arithmetic mean and transaction price [(2) - (1)] (3)	975
Tolerance tag (Delta Ltd. is not a wholesale trader)	3%
3% of transaction price [i.e., 3% of (2)]	330
Arm's length price (if purchase price of raw material is more than arithmetic mean and difference is more than 3% of purchase price, then arithmetic mean is taken as arm's length price; otherwise no adjustment would be required)	10,025

Answer to MTP_Final_Syllabus 2016_Dec 2019_Set 2

Computation of net income -	
Net profit as per statement of profit and loss	9,40,000
Add: Transfer pricing adjustment [950 x (purchase price : ₹ 11,000 - arm's length price : ₹ 10,025)]	9,26,250
Net income	18,66,250

7.(a) In case of determination of Arm's Length Price u/s 92C, how resale price method is used? Write down the steps which are involved in application of this method. [5+5=10]

(b) Amar, an individual, resident of India, receives the following payments after TDS during the previous year 2018-19:

(i) Professional fees on 17.08.2018 ₹ 2,40,000.

(ii) Professional fees on 04.03.2019 ₹ 1,60,000.

Both the above services were rendered in Pakistan on which TDS of ₹ 50,000 and ₹ 30,000 respectively have been deducted. He had incurred an expenditure of ₹ 2,40,000 for earning both these receipts / income. His income from other sources in India is ₹ 3,00,000 and he has made payment of ₹ 70,000 towards LIC. Compute the tax liability of Amar and also the relief u/s 91, if any, for A.Y.2019-20. [6]

Answer:

(a) Resale price method, by which,—

- i. the price at which property purchased or services obtained by the enterprise from an associated enterprise is resold or are provided to an unrelated enterprise, is identified;
- ii. such resale price is reduced by the amount of a normal gross profit margin accruing to the enterprise or to an unrelated enterprise from the purchase and resale of the same or similar property or from obtaining and providing the same or similar services, in a comparable uncontrolled transaction, or a number of such transactions;
- iii. the price so arrived at is further reduced by the expenses incurred by the enterprise in connection with the purchase of property or obtaining of services;
- iv. the price so arrived at is adjusted to take into account the functional and other differences, including differences in accounting practices, if any, between the international transaction or the specified domestic transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect the amount of gross profit margin in the open market;
- v. the adjusted price arrived at under (iv) is taken to be an arm's length price in respect of the purchase of the property or obtaining of the services by the enterprise from the associated enterprise.

The steps involved in the application of this method are:

- i. identify the international transaction of purchase of property or services;
- ii. identify the price at which such property or services are resold or provided to an unrelated party (resale price);
- iii. identify the normal gross profit margin in a comparable uncontrolled transaction whether internal or external. The normal gross profit margin is that margin which an enterprise would earn from purchase of the similar product from an unrelated party and the resale of the same to another unrelated party.
- iv. deduct the normal gross profit from the resale price.

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- v. deduct expenses incurred in connection with the purchase of goods;
- vi. adjust the resultant amount for the differences between the uncontrolled transaction and the international transaction. These differences could be functional and other differences including differences in accounting practices. Further these differences should be such as would materially affect the amount of gross profit margin in the open market;
- vii. the price arrived at is the arm's length price of the international transaction;

(b) Computation of total income and tax liability of Mr. Amar for the A.Y. 2019-20

Particulars	Amount (₹)	Amount (₹)
Income from profession from foreign	4,80,000	
Less: Expenses	2,40,000	2,40,000
Income from other sources in India		3,00,000
Gross Total Income		5,40,000
Less: Deduction u/s 80C		70,000
Total income		4,70,000
Tax on above		11,000
Add: Health & Education cess		440
Tax and cess payable		11,440
Average rate of tax $[\text{₹ } 11,440 / \text{₹ } 4,70,000 \times 100]$		2.43%
Relief u/s 91 $[2.43\% \text{ of ₹ } 2,40,000]$		5,832
Tax payable (Rounded off u/s 288B)		5,610

8. Write short note (any four):

[4×4=16]

- (a) Forfeiture of exemption of Trust.**
- (b) Return of Loss.**
- (c) Interest for failure to deduct and pay tax at source.**
- (d) Disclosure requirement of ICDS X.**
- (e) Tax Authorities as per Black Money and Imposition of Tax Act.**

Answer:

(a) Forfeiture of exemption of Trust: Nothing contained in section 11 [or section 12] shall operate in respect of —

- Income for private purposes: Any part of the income from the property held under a trust for private religious purposes, which does not ensure for the benefit of the public.
- Income for the benefit of particular religious community: in the case of a trust for charitable purposes or a charitable institution created or established after the commencement of this Act, any income thereof if the trust or institution is created or established for the benefit of any particular religious community or caste.
- Funds are not invested in securities/deposits as per sec.11(5). It is to be noted that holding shares in a public sector company would not disqualify the trust from claiming exemption.
- Income applied for the benefit of Interested person: in the case of a trust for charitable or religious purposes, any income thereof:

- if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust, any part of such income ensures, directly or indirectly for the benefit of interested person#
- if any part of such income or any property of the trust or the institution (whenever created or established) is during the previous year used or applied, directly or indirectly for the benefit of any interested person#.

Note: The above provision shall not apply to a trust or institution created or established before the commencement of this Act, to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any Interested person, if such use or application is by way of compliance with a mandatory term of the trust or a mandatory rule governing the institution.

(b) Return of Loss: An assessee, other than few, is not compulsorily required to furnish return of loss. However, the following losses cannot be carried forward if the return of loss is not submitted within the time allowed u/s 139(1) -

- A. Business loss (speculative or otherwise);
- B. Capital loss;
- C. Loss from the activity of owning and maintaining race horses
- D. Loss from business specified u/s 35AD

Notes:

- A. Loss declared in belated return cannot be carried forward. However, set-off of losses of current year is not prohibited while computing the total income, even if the return of loss is filed after the due date.
- B. Delay in filing the return of loss may be condoned in certain cases
- C. Unabsorbed depreciation u/s 32 and loss under the head "Income from house property" can be carried forward even if the loss return is filed after the due date u/s 139(1).
- D. Although the loss of the current year cannot be carried forward unless the return of loss is submitted before the due date but the loss of earlier years can be carried forward if the return of loss of that year was submitted within the due date.

(c) Interest for failure to deduct and pay tax at source:

Condition: Where a person, responsible for deducting tax at source, fails to -

- (1) deduct tax at source; or
- (2) deposit such tax after deducting the same.

Amount on which interest is to be charged: On the amount of such tax.

Rate of Interest:

Period	Rate of Interest
From the date on which such tax was deductible to the date on which such tax is deducted	Simple interest @ 1% per month or part thereof
From the date on which such tax was deducted to the date on which such tax is actually paid	Simple interest @ 1.50% per month or part thereof

Period: From the date on which such tax was deductible to the date on which such tax is actually paid.

Note: In case any person fails to deduct such tax on the sum paid or payable to a resident but is not deemed to be an assessee in default (as per first proviso to sec. 201(1)), the interest shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident.

(d) Disclosure requirement of ICDS X: Following disclosure shall be made in respect of each class of provision:

- (1) a brief description of the nature of the obligation;
- (2) the carrying amount at the beginning and end of the previous year;
- (3) additional provisions made during the previous year, including increases to existing provisions;
- (4) amounts used, that is incurred and charged against the provision, during the previous year;
- (5) unused amounts reversed during the previous year; and
- (6) the amount of any expected reimbursement, stating the amount of any asset that has been recognised for that expected reimbursement.

(e) Tax Authorities as per Black Money and Imposition of Tax Act: As per section 6 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 —

- The income-tax authorities shall be the tax authorities for the purposes of this Act.
- Every such authority shall exercise the powers and perform the functions of a tax authority under this Act in respect of any person within his jurisdiction.
- The jurisdiction of a tax authority under this Act shall be the same as he has under the Income-tax Act
- The tax authority having jurisdiction in relation to an assessee who has no income assessable to income-tax under the Income-tax Act shall be the tax authority having jurisdiction in respect of the area in which the assessee resides or carries on its business or has its principal place of business.