MOCK TEST PAPER 1

FINAL (NEW) COURSE: GROUP – II

PAPER – 7: DIRECT TAX LAWS & INTERNATIONAL TAXATION

SOLUTIONS

Division A – Multiple Choice Questions

I.

MCQ No.	Sub-part	Most Appropriate Answer
1.	(i)	(d)
	(ii)	(d)
	(iii)	(c)
	(iv)	(c)
2.	(i)	(c)
	(ii)	(c)
	(iii)	(c)

MCQ No.	Most Appropriate Answer
3.	(d)
4.	(d)
5.	(c)
6.	(a)
7.	(b)
8.	(c)
9.	(d)
10	(d)
11.	(c)

Division B – Descriptive Choice Questions

1. Implication on conversion of company into LLP

Transfer of capital asset or intangible asset, *inter alia*, by an unlisted public company to a LLP or any transfer of share held by shareholder to LLP in a conversion of unlisted company into an LLP is not regarded as transfer under section 47 provided the conditions specified therein are satisfied.

Accordingly, transfer of capital asset by B Ltd., to M/s S LLP is not regarded as transfer since the conditions specified in section 47(xiiib) as stated in the question stand satisfied and fulfilled.

Computation of Total Income in the hands of M/s S LLP for the A.Y. 2020-21

	Particulars	Amount (Rs.)		
I	**Profits and gains of business and profession**			
	Net profit as per the profit and loss account		25,40,000	
	***Add:* Items debited but to be considered separately or to be disallowed**			
	(i) Salary to Bharat, a working partner (to be considered separately) [Rs. 55,000 x 12]	6,60,000		
	(ii) Salary paid to Mr. Aayush, an employee	-		
	[Under section 40A(3), disallowance is attracted in respect of expenditure for which cash payment exceeding Rs. 10,000 is made in a day to a person. Payment of Rs. 3,45,000 to Mr. Aayush,			

	an employee, is covered by exception under Rule 6DD since, TDS has been deducted, employee is temporarily posted in Mumbai and does not have a bank account in Mumbai. Since the same has been debited to profit and loss account, no adjustment is required]				
	(iii) Penalty for non-fulfilment of delivery conditions of a contract for sale [Penalty for non-fulfilment of delivery conditions of a contract for sale is not on account of infraction of law. Penalty for breach of contract is business or commercial loss and would be allowable expenditure under section 37. Since the same has been debited to profit and loss account, no adjustment is required]	-			
	(iv) Provision for wages payable to workers [The provision is based on fair estimate of wages and reasonable certainty of revision, and thus is allowable as deduction, as ICDS-X requires 'reasonable certainty for recognition of a provision, which is present in this case. As the provision has been debited to profit and loss account, no adjustment is required while computing business income]	-			
	(v) Depreciation as per books of account	5,40,000			
	(vi) Provision for gratuity [Provision of Rs. 6,50,000 for gratuity based on actuarial valuation is not allowable as deduction as per section 40A(7). However, actual gratuity of Rs. 4,00,000 paid is allowable as deduction. Hence, the difference is to be added back being of Rs. 2,50,000 (Rs. 6,50,000 – Rs. 4,00,000)]	2,50,000			
	(viii) Repair to plant and machinery given on lease [Lease rent from factory building along with plant and machinery and furniture is chargeable to tax under the head income from other sources, since the main business of the M/s S LLP is manufacturing of tyres and not letting out the properties. Therefore, repairs to such plant and machinery to be deducted from lease income taxable under the head "Income from Other Sources. Since the same has been debited to profit and loss account, it has to be added back]	59,000			
	(ix) Factory licence fee paid [Factory licence fee in respect of leased out factory building is to be deducted from lease income taxable under the head "Income from Other Sources". Since the same has been debited to profit and loss account, it has to be added back]	15,000			

(x) Legal fee to advocate for drafting and registering lease agreement [Legal fee to advocate for drafting and registering lease agreement to be deducted from lease income taxable under the head "Income from Other Sources". Since the same has been debited to profit and loss, it has to be added back]	26,000	15,50,000	
		40,90,000	
Add: **Amount taxable but not credited to profit and loss account**			
AI(4) Profit on sale of import entitlements [Profit on sale of import entitlements is chargeable to tax under the head "Profits and gains from business and profession" under section 28. Since the same has not been credited to profit and loss account, it has to be added]		1,50,000	
		42,40,000	
Less: **Items credited to profit and loss account, but not includible in business income / permissible expenditure and allowances**			
(i) Profit on sale of shares of M/s T Ltd. [Taxable under the head "Capital Gains". Since the same has been credited to profit and loss account, it has to be reduced from business income]	1,27,500		
AI(b)Voluntary Retirement Scheme expenditure [Rs. 20 lakh/5] [One fifth deduction is available in respect of payment for voluntary retirement scheme for five years. Where anunlisted company is succeeded by a LLP fulfilling the conditions laid down in section 47(xiiib), then, deduction in respect of voluntary retirement scheme is available to the LLP for the balance years from the year of succession. Hence, deduction of Rs. 4,00,000 is allowable in P.Y. 2019-20 to M/s S LLP being for 3rd year]	4,00,000		
AI(1) Interest paid during the year [Conversion of unpaid interest into loan shall not be construed as payment of interest for the purpose of section 43B. The amount of unpaid interest converted into a new loan will be allowable as deduction only in the year in which such converted loan is actually paid. Since Rs. 3 lakhs has been paid in the P.Y. 2019-20, the same is allowable as deduction]	3,00,000		
AI(2) Depreciation on motor car exclusively used for business purpose	15,000		

	[Depreciation on motor car bought and used exclusively for the purposes of business is allowable though not registered in the name of the LLP.[1]]			
	AI(3) Depreciation as per Income-tax Rules [Rs. 8,10,000 – Rs. 90,000]	7,20,000		
	[Depreciation on leased out asset to be deducted from lease income taxable under the head "Income from Other Sources. Since the same has been included in depreciation of Rs. 8,10,000, it has to be reduced from it]		15,62,500	
	Book Profit		26,77,500	
	***Less:* Remuneration to Mr. Bharat, a working partner [Subject to limit specified in section 40(b)]**			
	[On first Rs. 3,00,000 of book profit, 90% of book profit or Rs. 1,50,000, whichever is higher and on the balance of book profit, 60% of balance book profit] [Rs. 16,96,500 (Rs.2,70,000, being 90% of Rs. 3,00,000 + Rs.14,26,500, being 60% of Rs. 23,77,500) restricted to actual remuneration paid to Bharat.		6,60,000	
	Profits and gains from business and profession			20,17,500
II	**Capital Gains**			
	Sale consideration [150 x Rs. 2,750 per share]		4,12,500	
	Less: Cost of acquisition [150 x Rs. 2,500 per share] [Indexation benefit would not be available]		3,75,000	
	[Higher of			
	(i) Rs. 1,900, actual cost, being the cost of acquisition to B Ltd. as per section 49			
	(ii) Rs. 2,500, being the lower of			
	- Fair market value as on 31.1.2018 [Rs. 2,500 per share			
	- Full value of consideration [Rs. 2,750 per share]			
	Long term capital gains since shares held for more than 12 months [Period of holding of B Ltd. is also included]			37,500
III	**Income from Other Sources**			
	Lease rent [Rs. 50,000 x 12]		6,00,000	
	Less: Deduction under section 57			
	Repair of leased out plant and machinery		59,000	
	Factory licence fee in respect of leased out factory building		15,000	

[1] *Mysore Minerals Ltd. v. CIT (1999) 239 ITR 775 (SC).*

	Legal fee for drafting and registering lease agreement		26,000	
	Depreciation of assets given on lease		90,000	
				4,10,000
	Gross Total Income/ Total Income			**24,65,000**

2 (a) As per section 80AC, while computing the total income of an assessee of a previous year ***(P.Y.2019-20, in this case)*** relevant to any assessment year ***(A.Y.2020-21, in this case)***, any deduction is admissible, *inter alia,* under section 80-IA, such deduction shall not be allowed unless it furnishes a return of income for such assessment year on or before the 'due date' specified in section 139(1).

Since the turnover of the partnership firm has exceeded Rs.200 lacs in the previous year 2019-20, it would be subject to audit under section 44AB, in which case the 'due date' of filing its return of income for A.Y.2020-21 would be 30th September, 2020 as per section 139(1).

Computation of total income and tax liability of M/s. Sargam for A.Y.2020-21

I. Where the firm files its return of income on 30th September 2020:

Particulars	Rs.in lacs
Gross Total Income	300.00
Less: Deduction under section 80-IA	200.00
Total Income	**100.00**
Tax liability @ 30%	30.00
Add: Health and Education cess @ 4%	1.20
Regular income-tax payable	**31.20**

Computation of Alternate Minimum Tax payable [Section 115JC]

Particulars	Rs. in lacs
Total Income	100.00
Add: Deduction under section 80-IA	200.00
Adjusted Total Income	**300.00**
Alternate Minimum Tax (AMT) @ 18.5% on Rs. 300 lacs	55.50
Add: Surcharge @ 12% (Since adjusted total income >Rs.1 crore)	6.66
	62.16
Add: Health and Education cess @ 4%	2.49
Total tax payable (AMT)	**64.65**

Since the regular income-tax payable by the firm is less than the alternate minimum tax payable, the adjusted total income shall be deemed to be the total income of the firm for P.Y.2019-20 and it shall be liable to pay income-tax on such total income @ 18.5% **[Section 115JC(1)]**. Therefore, the tax payable for the A.Y.2020-21 would be Rs.64.65 lacs.

Tax credit for Alternate Minimum Tax [Section 115JD]

	Rs. in lacs
Total tax payable for A.Y.2020-21 (Alternate Minimum Tax)	64.65

Less: Regular income-tax payable	31.20
To be carried forward for set-off against regular income-tax payable (upto a maximum of fifteen assessment years).	33.45

II. Where the firm files its return of income on 10th December 2020:

Where the firm files its return on 10-12-2020, it would be a belated return under section 139(4). Consequently, as per section 80AC, deduction under section 80-IA would not be available. In such circumstances, the gross total income of Rs. 300 lacs would be the total income of the firm.

Particulars	Rs. in lacs
Income-tax @ 30% of Rs. 300 lacs	90.000
Add: Surcharge @ 12% (since total income exceeds Rs.100 lacs)	10.800
Income-tax (plus surcharge)	100.800
Add: Health and Education cess @ 4%	4.032
Total tax liability	**104.832**

Practical solution regarding obtaining clarifications

The practical solution regarding obtaining clarifications would be to file the return of income under section 139(1) on or before the 'due date', i.e., 30.9.2020, and claim deduction under section 80-IA. In such a case, the firm can claim deduction of Rs.200 lacs under section 80-IA. Thereafter, consequent to the clarifications obtained, if any change is required, it can file a revised return under section 139(5) within 31.3.2021 (i.e., within the end of A.Y.2020-21) which would replace the original return filed under section 139(1). A revised return filed under section 139(5) would replace the original return filed under section 139(1).

If the firm files the return of income under section 139(1) on or before 30.9.2020, its tax liability would stand reduced to Rs. 64.65 lacs, as against Rs. 104.832 lacs to be paid if return is furnished after due date. Further, it would also be eligible for tax credit for alternate minimum tax under section 115JD to the extent of Rs. 33.45 lacs. Therefore, the firm is advised to file its return of income on or before 30.9.2020.

(b) Computation of total income of Mr. Ravi for A.Y.2020-21

Particulars	Rs.	Rs.
Income from House Property [House situated in Country T]		
Gross Annual Value[2]	3,30,000	
Less: Municipal taxes paid in Country T	10,000	
Net Annual Value	3,20,000	
Less: Deduction under section 24 – 30% of NAV	96,000	
		2,24,000
Profits and Gains of Business or Profession		
Income from business carried on in India	4,40,000	
Royalty income from a book of art in Country S (after deducting expenses of Rs. 50,000)	7,30,000	11,70,000

[2]*Rental income has been taken as GAV in the absence of other information relating to fair rent, municipal value etc.*

Income from Other Sources		
Interest on savings bank with ICICI Bank	42,000	
Agricultural income in Country S [Not exempt]	94,000	
Dividend received from a company in Country T	2,65,000	4,01,000
Gross Total Income		**17,95,000**
***Less:* Deduction under Chapter VIA**		
Under section 80QQB – Royalty income of a resident from a work of art[3]		3,00,000
Under section 80TTA – Interest on savings bank account, subject to a maximum of Rs.10,000.		10,000
Total Income		**14,85,000**

Note – Since adjusted total income (i.e., Rs. 17,95,000) does not exceed Rs. 20 lakhs, AMT would not be attracted in this case.

Computation of tax liability of Mr. Ravi for A.Y.2020-21

Particulars	Rs.
Tax on total income [30% of Rs. 4,85,000 + Rs. 1,12,500]	2,58,000
Add: Health and education cess @4%	10,320
	2,68,320
Less: Rebate under section 91 **(See Working Note below)**	1,72,197
Tax Payable	**96,123**
Tax payable (rounded off)	96,120

Calculation of Rebate under section 91:		**Rs.**
Average rate of tax in India [i.e., Rs. 2,68,320 / Rs. 14,85,000 x 100]	**18.069%**	
Average rate of tax in Country S	**16%**	
Doubly taxed income pertaining to Country S[4]	**Rs.**	
Agricultural Income	94,000	
Royalty Income [Rs. 7,80,000 – Rs. 50,000 (Expenses) – Rs. 3,00,000 (deduction under section 80QQB)]	4,30,000	
	5,24,000	
Rebate under section 91 on Rs. 5,24,000 @16% [being the lower of average Indian tax rate (18.069%) and Country S tax rate (16%)]		83,840
Average rate of tax in Country T	**20%**	
Doubly taxed income pertaining to Country T		
Income from house property	2,24,000	
Dividend	2,65,000	
	4,89,000	

[3] It is assumed that the royalty earned outside India has been brought into India in convertible foreign exchange within a period of six months from the end of the previous year.

[4]Doubly taxed income includes only that part of income which is included in the assessees total income. The amount deducted under Chapter VIA is not doubly taxed and hence, no relief is allowable in respect of such amount – *CIT v. Dr. R.N. Jhanji (1990) 185 ITR 586 (Raj.).*

Rebate under section 91 on Rs. 4,89,000 @18.069% (being the lower of average Indian tax rate (18.069%) and Country T tax rate (20%)]		88,357
Total rebate under section 91 (Country S + Country T)		**1,72,197**

Note: Mr. Ravi shall be allowed deduction under section 91, since the following conditions are fulfilled:-

(a) He is a resident in India during the relevant previous year i.e., P.Y.2019-20.

(b) The income in question accrues or arises to him outside India in foreign countries S&T during that previous year and such income is not deemed to accrue or arise in India during the previous year.

(c) The income in question has been subjected to income-tax in the foreign countries "S" and "T" in his hands and it is presumed that he has paid tax on such income in those countries.

(d) There is no agreement under section 90 for the relief or avoidance of double taxation between India and Countries S and T where the income has accrued or arisen.

3. (a) As per section 115TD, the accreted income of "Serving the poor", a charitable trust, registered under section 12AA which is merged with M/s AP Ltd., an entity not entitled for registration under section 12AA, would be chargeable to tax at maximum marginal rate @ 34.944% [30% plus surcharge @12% plus cess@4%].

Computation of accreted income and tax liability in the hands of the trust arising as a result of merger with AP. Ltd. for A.Y. 2020-21

Particulars	Amount (Rs.)
Aggregate FMV of total assets as on 1.4.19, being the specified date (date of merger) **[See Working Note 1]**	1,21,00,000
Less: Total liability computed in accordance with the prescribed method of valuation**[See Working Note 2]**	96,00,000
Accreted Income	**25,00,000**
Tax Liability @ 34.944% of Rs. 25,00,000	**8,73,600**
Working Notes:	
(1) Aggregate fair market value of total assets on the date of merger	
- **Land, being an immovable property** [The fair market value of land would be higher of Rs. 17 lakhs i.e., price that the land would ordinarily fetch if sold in the open market and Rs. 15 lakhs, being stamp duty value as on the specified date]	17,00,000
- **Quoted equity shares in Ink Ltd. [75,000 x Rs. 80 per share]** [Rs. 80 per share, being the average of the lowest (Rs. 75) and highest price (Rs. 85) of such shares on the date of merger]	60,00,000
- **55,000 preference shares of N Ltd.** [The fair market value which it would fetch if sold in the open market on the date of merger i.e. FMV on 1.4.2019]	44,00,000
	1,21,00,000

(2) Total liability	
- Outside liabilities	90,00,000
- Corpus Fund of Rs. 15 lakhs [not includible]	-
- Provision for taxation Rs. 5 lakhs [not includible]	-
- Liabilities in respect of payment of various utility bills [since this liability is an ascertained liability]	6,00,000
	96,00,000

(b) Since Mr. Suresh is an individual resident of two Contracting States, namely, Country L and Country M, the UN Model Convention provides for a series of tie-breaker rules to determine single state of residence for him:

(i) **Permanent Home**: The first test is based on where he has a permanent home. Permanent home would mean a dwelling place available to him at all times continuously and not occasionally and includes place taken on rent for a prolonged period of time. Any place taken for a short duration of stay or for temporary purpose, may be for reasons such as short business travel, or a short holiday etc. is not regarded as a permanent home.

(ii) **Personal and economic relations**: If that test is inconclusive for the reason that he has permanent home available to him in both Contracting States, he will be considered a resident of the Contracting State where his personal and economic relations are closer, in other words, the place where lies his centre of vital interests. Thus, preference is given to family and social relations, occupation, place of business, place of administration of his properties, political, cultural and other activities of the individual.

(iii) **Habitual abode**: In the following distinct and different situations, preference is given to the Contracting State where he has an habitual abode:

- The case where he has a permanent home available to him in both Contracting States and it is not possible to determine in which one he has his centre of vital interests;
- The case where he has a permanent home available to him in neither Contracting State.

(iv) **National**: If he has habitual abode in both Contracting States or in neither of them, he shall be treated as a resident of the Contracting State of which he is a national.

(v) **Competent Authority**: If he is a national of both or neither of the Contracting States, the matter would be left to be considered by the competent authorities of the respective Contracting States.

4. (a) (i) As per section 192A, in a case where the accumulated balance due to an employee participating in a recognized provident fund is includible in his total income owing to the provisions of Rule 8 of Part A of the Fourth Schedule not being applicable, the trustees of the Employees Provident Fund Scheme, 1952 or any person authorised under the scheme to make payment of accumulated balance due to employees are required to deduct income-tax@10% at the time of payment of accumulated balance due to the employee. Tax deduction at source has to be made only if the amount of such payment or aggregate amount of such payment of the payee is Rs. 50,000 or more.

Rule 8 of Part A of the Fourth Schedule, *inter alia*, provides that only if an employee has rendered continuous service of five years or more with the employer, then accumulated balance in a recognized provident fund payable to an employee would be excluded from the total income of that employee.

In the present case, Mr. X has withdrawn an amount exceeding Rs. 50,000 on his resignation after rendering a continuous service of four years with M/s. JK Ltd. Therefore, tax has to be deducted at source@10% under section 192A on Rs. 80,000, being the amount withdrawn on his resignation without rendering continuous service of a period of five years with M/s. JK Ltd.

The net amount receivable by Mr. X is Rs. 72,000 [i.e., Rs. 80,000 – Rs. 8,000, being tax deducted at source].

(ii) TDS u/s 194C is attracted on any sum payable to a resident contractor for carrying out any work. Since MNO Ltd., the producer of natural gas sells as well as transports the gas to the purchaser, M/s. HP, a partnership firm, till the point of delivery, where the ownership of gas is simultaneously transferred, the manner of raising the sale bill (whether the transportation charges are embedded in the cost of gas or shown separately) does not alter the basic nature of such contract which remains essentially a 'contract for sale' and not a 'works contract' as envisaged in section 194C.

Therefore, in such circumstances, TDS provisions under section 194C are not applicable on the component of Gas Transportation Charges payable by M/s. HP to MNO Ltd.[5] Consequently, there is no liability to deduct tax at source under section 194C in this case.

(iii) Under section 194J, TDS is attracted in respect of, *inter alia*, fees for technical services. Technical services like managerial and consultancy services are in the nature of specialised services made available by the service provider to cater to the special needs of the customer-user as may be felt necessary. It is the above feature that distinguishes or identifies a service provider from a facility offered

However, the service provided by the NSE for which transaction charges are paid, does not satisfy the test of specialized, exclusive and individual requirement of the user or the consumer who may approach the service provider for such assistance or service. Therefore, the transaction charges paid to NSE by its members are not for technical services but are in the nature of payments made for facilities provided by the stock exchange. Such payments would, therefore, not attract the provisions of tax deduction at source under section 194J.[6]

Accordingly, payment of transaction charges of Rs. 10 lakhs by M/s. Sahil & Co., to NSE in respect of fully automated online trading facility would not be liable for tax deduction at source under section 194J.

(iv) The landing and parking charges which are fixed by the Airports Authority of India are not merely for the "use of the land". These charges are also for services and facilities offered in connection with the aircraft operation at the airport which include providing of air traffic services, ground safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport*[Japan Airlines Co. Ltd. v. CIT / CIT v. Singapore Airlines Ltd. (2015) 377 ITR 372 (SC)]*. Thus, tax is not

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[5]*CBDT Circular No. 9/2012 dated 17.10.2012*

[6]*It was so held by the Supreme Court in CIT v. Kotak Securities Ltd (2016) 383 ITR 1*

deductible under section 194I which provides deduction of tax for payment in the nature of rent.

Hence, tax is deductible @2% under section 194C by the airline company, FlySky Ltd., on payment of Rs. 5 lacs made towards landing and parking charges to the Airports Authority of India for the previous year 2019-20.

(b) Chapter VIII of the Finance Act, 2016, provides for an equalisation levy of 6% of the amount of consideration for specified services received or receivable by a non-resident not having permanent establishment (PE) in India, from a resident in India who carries out business or profession, or from a non-resident having PE in India.

"Specified services" means -

(i) Online advertisement;

(ii) Any provision for digital advertising space or any other facility or service for the purpose of online advertisement;

(iii) Any other service as may be notified by the Central Government.

However, equalization levy is not chargeable where the aggregate amount of consideration for specified service received or receivable in a previous year by the non-resident from a person resident in India and carrying on business or profession, or from a non-resident having a PE in India, does not exceed Rs. 1 lakh.

Further, equalization levy is not attracted where payment for specified service is not for the purposes of carrying out business or profession.

(i) In this case, equalisation levy @6% is chargeable on the amount of Rs. 3,75,000 received by M/s Star Inc., a non-resident not having a PE in India, from M/s S&J Co. Ltd., an Indian company for online advertisement of its products. Accordingly, M/s S&J Co. Ltd. is required to deduct equalisation levy of Rs.22,500 i.e., @6% of Rs.3.75 lakhs, being the amount paid towards online advertisement services provided by M/s Star Inc.

Non-deduction of equalisation levy would attract disallowance under section 40(a)(ib) of 100% of the amount paid to M/s. Star Inc. while computing business income of M/s. S&J Co. Ltd.

(ii) In this case, equalisation levy is **not** chargeable as the amount of consideration of Rs.85,000 for digital space for online advertisement paid to Mr. D does not exceed Rs. 1,00,000.

(iii) In this case, equalisation levy is **not** chargeable on the amount of Rs. 1,96,000 received by M/s MakeMoney Ltd., a non-resident not having a PE in India, from M/s S&J Co. Ltd., an Indian company, since the said payment was for providing a platform for sale of its used furniture items and not for the purposes of carrying on business or profession.

5. (a) (i) The powers under section 131(1A) deal with power of discovery and production of evidence. They do not confer the power of seizure of cash or any asset. The Director General, for the purposes of making an enquiry or investigation relating to any income concealed or likely to be concealed by any person or class of persons within his jurisdiction, shall be competent to exercise powers conferred under section 131(1), which confine to discovery and inspection, enforcing attendance, compelling the production of books of account and other documents and issuing commissions. Thus, the power of seizure of unaccounted cash is not one of the powers conferred on the Director General under section 131(1A).

However, under section 132(1), the Director General has the power to authorize any Additional Director or Additional Commissioner or Joint Director or Joint Commissioner etc. to seize money found as a result of search [Clause (iii) of section 132(1)], if he has reason to believe that any person is in possession of any money which represents wholly or partly income which has not been disclosed [Clause (c) of section 132(1)]. Therefore, the proper course open to the Director General is to exercise his power under section 132(1) and authorize the Officers concerned to enter the premises where the cash is kept by Mr. Sujay and seize such unaccounted cash.

(ii) The clarification regarding filing of return of income by the coffee growers being individuals covered by Rule 7B of the Income-tax Rules, 1962 is given in *Circular No.10/2006 dated 16.10.2006*. According to the Circular, an individual deriving income from growing, curing, roasting and grounding of coffee with or without mixing chicory, would not be required to file the return of income if the aggregate of 40% of his or her income from growing, curing, roasting and grounding of coffee with or without mixing chicory and income from all other sources liable to tax in accordance with the provisions of this Act, is equal to or less than the basic exemption limit prescribed in the First Schedule of the Finance Act of the relevant year.

In this case, Smt. Vimal has a total income of Rs. 5,00,000 from this business, which was her only source of income for P.Y.2019-20. 40% of her total income works out to Rs. 2,00,000, which is less than the basic exemption limit of Rs. 2,50,000 in respect of an individual assessee.

Therefore, Smt. Vimal is not required to file a return of income for the A.Y.2020-21 as per the provisions of section 139(1).

If Smt. Vimal had travelled to Australia during the P.Y.2019-20 and incurred Rs. 2.50 lakhs on such travel, she would be required to mandatorily file a return of income for A.Y.2020-21 on or before the due date specified u/s 139(1), even though her total income does not exceed the basic exemption limit.

(iii) The Appellate Tribunal may, on merit, pass an order of stay in any proceedings relating to an appeal. However, such period of stay cannot exceed 180 days from the date of such order. The Appellate Tribunal has to dispose off the appeal within this period of stay. Where the appeal has not been disposed off within this period and the delay in disposing the appeal is not attributable to the assessee, the Appellate Tribunal can further extend the period of stay originally allowed. Section 254(2A) provides that the aggregate of the period originally allowed and the period or periods so extended or allowed shall not, in any case, exceed 365 days, even if the delay in disposing of the appeal is not attributable to the assessee. If the appeal is not disposed of within such period or periods, the order of stay shall stand vacated after the expiry of such period or periods.

Accordingly, even if an appeal is not heard by the bench, say, due to the bench not functioning or due to the department seeking adjournment, the stay granted by the Appellate Tribunal shall stand vacated after the period of 365 days, inspite of the assessee having taken all steps to ensure speedy disposal of the appeal and having a good prima facie case.

In the present case, the period of 365 days has expired on 31.12.2019, after which date the order of stay stands vacated. Accordingly, the recovery of Rs. 21 lacs against the arrear demand of Rs. 25 lacs made by the Assessing Officer on 16.2.2020 is in order.

(b) (i) If an Indian company, being the borrower, incurs any expenditure by way of interest in respect of any debt issued by its non-resident associated enterprise (AE) and such interest exceeds Rs. 1 crore, then, the interest paid or payable by such Indian company in excess of 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA) or interest paid or payable to associated enterprise, whichever is lower, shall not be allowed as deduction as per section 94B.

Further, where the debt is issued by a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise and limitation of interest deduction would be applicable.

In the present case, since M/s Tweed Inc holds 40% of voting power i.e., more than 26% of voting power in both NP Ltd and M/s ST Inc, NP Ltd. and M/s ST Inc are deemed to be associated enterprises.

Since loan of Rs. 80 crores taken by NP Ltd., an Indian company from M/s TL Inc, is guaranteed by M/s ST Inc, an associated enterprise of NP Ltd., such debt shall be deemed to have been issued by an associated enterprise and interest payable to M/s TL Inc shall be considered for the purpose of limitation of interest deduction under section 94B.

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

Particulars		Rs.
Net profit		7,00,00,000
Add: Interest already debited (Rs. 80 crores x 10%)		8,00,00,000
Depreciation		4,00,00,000
Income tax		3,00,00,000
EBITDA		**22,00,00,000**
Interest paid or payable by NP Ltd.		8,00,00,000
Lower of the following would be disallowed		
- Total interest paid or payable in excess of 30% of EBITDA (Rs. 8,00,00,000 – Rs. 6,60,00,000)	Rs.1,40,00,000	
- Interest paid or payable to non-resident AE	Rs. 8,00,00,000	
Interest to be disallowed as deduction		**1,40,00,000**

(ii) Provision of scientific research services falls within the scope of international transaction under section 92B. Innovation & Co. and T Inc. are deemed to be associated enterprises as per section 92A(2), since T Inc. guarantees not less than 10% of the total borrowings of Innovation & Co. Since there is an international transaction between associated enterprises, transfer pricing provisions are attracted in this case.

6. (a) As per the provisions of section 281B, there can be provisional attachment of property to protect the interest of Revenue in certain cases i.e.-

(i) The proceeding for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment should be pending.

(ii) Such attachment should be necessary for the purpose of protecting the interest of Revenue in the opinion of the Assessing Officer.

(iii) The previous approval of the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director has been obtained by the Assessing Officer.

(iv) The Assessing Officer, may, by an order in writing attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule.

Such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of order made under section 281B(1). However, the period can be extended by the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director**,** as the case may be, for the reasons to be recorded in writing for a further period or periods as he thinks fit. The total period of extension in any case cannot exceed 2 years or 60 days after the date of order of assessment or reassessment, whichever is later.

The Assessing Officer shall, by order in writing, revoke provisional attachment of a property made under section 281B(1) in a case where the assessee furnishes a guarantee from a scheduled bank, for an amount not less than the fair market value of such provisionally attached property or for an amount which is sufficient to protect the interests of the revenue.

(b) The arrangement by PFX Ltd., a resident in Country P, of floating two wholly owned subsidiaries and splitting the investment in equity shares of the Indian company through such subsidiaries appears to be with the intention of obtaining tax benefit under the treaty between India and Country P, so that the individual subsidiaries do not hold more than 10% interest in the equity capital of the Indian company.

Further, there appears to be no commercial substance in creating two subsidiaries as they do not change the economic condition of investor PFX Ltd. in any manner (i.e. on business risks or cash flow), and reveals a tainted element of abuse of tax laws.

Since the tax benefit in the P.Y.2019-20 in aggregate is Rs. 5 crores (Rs. 2.5 crores x 2), which exceeds the specified threshold of Rs. 3 crores, the arrangement can be treated as an impermissible avoidance arrangement and GAAR can be invoked. Consequently, treaty benefit would be denied by ignoring the two subsidiaries, or by treating the two subsidiaries as one and the same company for tax computation purposes.

If the capital gains tax on such sale is calculated at Rs. 1.2 crores each, the tax benefit of Rs. 2.4 crores would be less than the specified threshold of Rs. 3 crores. Hence, GAAR cannot be invoked in such case

(c) Computation of total income of STYLE Inc., a notified FII, for A.Y.2020-21

Particulars	Rs.	Rs.
Interest on Rupee Denominated Bonds	8,50,000	
Dividend income of Rs. 6,20,000 [Exempt under section 10(34)]	Nil	
Interest on securities [No deduction is allowable in respect of expenses incurred in respect thereof]	17,32,000	25,82,000
Long-term capital gains on sale of bonds of J Ltd.		
Sale consideration	47,00,000	
Less: Cost of acquisition	32,00,000	
[Benefit of indexation is not allowable]		15,00,000

Short-term capital gains on sale of STT paid equity shares of E Ltd.		
Sale consideration	12,40,000	
Less: Cost of acquisition	7,80,000	4,60,000
Short-term capital gains on sale on unlisted equity shares of M Ltd.		
Sale consideration	8,40,000	
Less: Cost of acquisition	3,72,000	4,68,000
Total Income		**50,10,000**

Computation of tax liability of STYLE Inc. for A.Y.2020-21

Particulars	Rs.
Tax@5% on interest of Rs. 8,50,000 received from an Indian company on investment in rupee denominated bonds = 5% x Rs. 8,50,000	42,500
Tax@20% on interest on securities of Rs. 17,32,000 =20% x Rs. 17,32,000	3,46,400
Tax@10% on long-term capital gains on sale of bonds of J Ltd. = 10% x Rs. 15,00,000	1,50,000
Tax@15% on short-term capital gains on sale of listed equity shares of E Ltd., in respect of which STT has been paid = 15% of Rs. 4,60,000	69,000
Tax@30% on short-term capital gains on sale of unlisted equity shares of M Ltd. = 30% of Rs. 4,68,000	1,40,400
	7,48,300
Add: HEC@4%	29,932
Tax Liability	**7,78,232**
Tax Liability (rounded off)	**7,78,230**