PAPER 7: DIRECT TAX LAWS & INTERNATIONAL TAXATION

SECTION – A: STATUTORY UPDATE

The direct tax laws, as amended by the Finance Act, 2018, including significant notifications/ circulars issued upto 31st October, 2018 are applicable for May, 2019 examination. The relevant assessment year for May, 2019 examination is A.Y.2019-20. The significant notifications/circulars issued upto 31st October, 2018, relevant for May, 2019 examination but not covered in the September, 2018 edition of the Study Material, are given hereunder.

PART – I : DIRECT TAX LAWS

Chapter 3: Income which do not form part of Total Income

Computation of admissible deduction u/s 10AA of the Income-tax Act, 1961 [Circular No. 4/2018, Dated 14-8-2018]

As per the provisions of section 10AA(7), the profits derived from export of articles or things or services (including computer software) shall be the amount which bears to the profits of the business of the undertaking, being the Unit, the same proportion as the export turnover in respect of such articles or things or services bears to the total turnover of the business carried on by the undertaking.

Further as per clause (i) to *Explanation 1* to section 10AA, "export turnover" means the consideration in respect of export by the undertaking, being the Unit of articles or things or services received in, or brought into, India by the assessee, but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things outside India or expenses, if any, incurred in foreign exchange in rendering of services (including computer software) outside India.

The issue of whether freight, telecommunication charges and insurance expenses are to be excluded from both "export turnover"' and "total turnover' while working out deduction admissible under section 10AA on the ground that they are attributable to delivery of articles or things outside India has been highly contentious. Similarly, the issue whether charges for rendering services outside India are to be excluded both from "export turnover" and "total turnover" while computing deduction admissible under section 10AA on the ground that such charges are relatable towards expenses incurred in convertible foreign exchange in rendering services outside India has also been highly contentious.

The controversy has been finally settled by the Hon'ble Supreme Court vide its judgment dated 24.4.2018 in the case of Commissioner of Income Tax, Central-III Vs. M/s HCL Technologies Ltd. (CA No. 8489-8490 of 2013, NJRS Citation 2018-LL-0424-40), in relation to section 10A.

The issue had been examined by CBDT and it is clarified, in line with the above decision of the Supreme Court, that freight, telecommunication charges and insurance expenses are to be excluded both from "export turnover" and "total turnover', while working out deduction admissible under section 10AA to the extent they are attributable to the delivery of articles or things outside India.

Similarly, expenses incurred in foreign exchange for rendering services outside India are to be excluded from both "export turnover" and "total turnover" while computing deduction admissible under section 10AA.

Note: *Though this CBDT Circular is issued in relation to erstwhile section 10A, the same is also relevant in the context of section 10AA. Accordingly, the reference to section 10A in the Circular and the relevant sub-section and Explanation number thereto have been modified and given with reference to section 10AA and the corresponding sub-sections, Explanation number and clause of Explanation.*

Chapter 6: Profits and gains of business or profession

Determining fair market value of inventory on the date of conversion into capital asset [Notification No. 42/2018, dated 30-08-2018]

Section 28(via) has been inserted by the Finance Act, 2018 to provide that fair market value of the inventory on the date of its conversion or treatment as capital asset, determined in the prescribed manner, would be chargeable to tax as business income.

Accordingly, the CBDT, has vide this notification, inserted Rule 11UAB to prescribe the manner of determination of fair market value (FMV) of the inventory on the date of conversion.

*[**Note:** For detailed reading of 11UAB of the Income-tax Rules, 1962, students may visit https://www.incometaxindia.gov.in/Pages/default.aspx]*

Chapter 7: Capital Gains

Notification of transactions in equity shares in respect of which the condition of chargeability to STT at the time of acquisition for claiming concessional tax treatment under section 112A shall not apply [Notification No. 60/2018, dated 01-10-2018]

The Finance Act, 2018 has withdrawn exemption under section 10(38) and has inserted new section 112A in the Income-tax Act, 1961, to provide that long-term capital gains arising from transfer of a capital asset, being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust, shall be taxed at 10% of such capital gains exceeding one lakh rupees. The said section, *inter alia*, provides that the provisions of the section shall apply to the capital gains arising from a transfer of long-term capital asset, being an equity share in a company, only if securities transaction tax (STT) has been paid on acquisition and transfer of such capital asset.

However, to provide for the applicability of the concessional tax regime under section 112A to genuine cases where the STT could not have been paid, it has also been provided in section 112A(4) that the Central Government may specify, by notification, the nature of acquisitions in respect of which the requirement of payment of STT shall not apply in the case of acquisition of equity share in a company.

In view of the above, the Central Government has, vide notification No. 60/2018, dated 1st October, 2018, notified that the condition of chargeability of STT shall not apply to the acquisition of equity shares entered into

- before 1st October, 2004 or
- on or after 1st October, 2004 which are not chargeable to STT, other than the following transactions.

In effect, only in respect of the following transactions mentioned in column (2), the requirement of paying STT at the time of acquisition for availing the benefit of concessional rate of tax under section 112A would apply. In may be noted that the exceptions are listed in column (3) against the transaction. The requirement of payment of STT at the time of acquisition for availing benefit of concessional tax rate under section 112A will not apply to acquisition transactions mentioned in column (3).

<table>
<tr><th>(1)</th><th>(2)</th><th colspan="2">(3)</th></tr>
<tr><td></td><td>Transaction</td><td colspan="2">Non-applicability of condition of chargeability of STT</td></tr>
<tr><td rowspan="5">(a)</td><td rowspan="5">Where acquisition of existing listed equity share in a company whose equity shares are not frequently traded in a recognised stock exchange of India is made through a preferential issue</td><td colspan="2">Where acquisition of listed equity share in a company –</td></tr>
<tr><td>(i)</td><td>has been approved by the Supreme Court, High Court, National Company Law Tribunal, Securities and Exchange Board of India or Reserve Bank of India in this behalf;</td></tr>
<tr><td>(ii)</td><td>is by any non-resident in accordance with foreign direct investment guidelines issued by the Government of India;</td></tr>
<tr><td>(iii)</td><td>is by an investment fund referred to in clause (a) of Explanation 1 to section 115UB or a venture capital fund referred to in section 10(23FB) or a Qualified Institutional Buyer;</td></tr>
<tr><td>(iv)</td><td>is through preferential issue to which the provisions of chapter VII of the Securities and Exchange Board of India (Issue of</td></tr>
</table>

			Capital and Disclosure Requirements) Regulations, 2009 does not apply.
(b)	Where transaction for acquisition of existing listed equity share in a company is not entered through a recognised stock exchange in India	Following acquisitions of listed equity share in a company made in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956:	
		(i)	acquisition through an issue of share by a company other than through preferential the issue referred to in (a);
		(ii)	acquisition by scheduled banks, reconstruction or securitisation companies or public financial institutions during their ordinary course of business;
		(iii)	acquisition by the Supreme Court, High Courts, National Company Law Tribunal, Securities and Exchange Board of India or Reserve Bank of India in this behalf;
		(iv)	acquisition under employee stock option scheme or employee stock purchase scheme framed under the Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines,1999;
		(v)	acquisition by any non-resident in accordance with foreign direct investment guidelines of the Government of India;
		(vi)	acquisition in accordance with Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011;
		(vii)	acquisition from the Government;
		(viii)	acquisition by an investment fund referred to in clause (a) to Explanation 1 to section 115UB or a venture capital fund referred to in section 10(23FB) or a Qualified Institutional Buyer;
		(ix)	acquisition by mode of transfer referred to in section 47 (e.g., transfer of capital asset under a gift, an irrevocable trust, transfer of capital asset between holding company and its subsidiary, transfer pursuant to

			amalgamation, demerger, etc.) or section 50B (slump sale) or section 45(3) (Introduction of capital asset as capital contribution in firm/ AOPs/ BOIs) or section 45(4) (Distribution of capital assets on dissolution of firm/ AOPs/ BOIs) of the Income-tax Act, if the previous owner or the transferor, as the case may be, of such shares has not acquired them by any mode referred to in (a), (b) or (c) listed in column (2) [other than the exceptions listed in column (3)]
(c)	acquisition of equity share of a company during the period beginning from the date on which the company is delisted from a recognised stock exchange and ending on the date immediately preceding the date on which the company is again listed on a recognised stock exchange in accordance with the Securities Contracts (Regulation) Act, 1956 read with Securities and Exchange Board of India Act,1992 and the rules made thereunder;		

Chapter 8: Income from Other Sources

Exception notified for the purposes of clause (ii) of the proviso to section 56(2)(viib) [Notification No. 24/2018, dated 24-05-2018]

Where a company, other than a company in which public are substantially interested, issues shares at a premium to a person being a resident, section 56(2)(viib) brings to tax in the hands of such company, the difference between the aggregate consideration received for such shares as exceeds the fair market value of the shares under the head "Income from Other Sources".

However, such provision would not be attracted where the consideration for issue of such shares is received by a company from a class or classes of persons as may be notified by the Central Government in this behalf.

Earlier the Central Government had, vide Notification No. 45/2016, dated 14.6.2016, notified classes of persons, i.e., a person defined under section 2(31) of the Income-tax Act, 1961, being a resident, who makes payment of an amount exceeding the face value of shares of the "startup" company, as consideration for issue of such shares.

In supersession of the above mentioned Notification, the Central Government has, vide this notification, notified that the provisions of section 56(2)(viib) shall not apply to consideration received by a company, being an eligible start-up for the purposes of deduction under section 80-IAC, for issue of shares that exceeds the face value of such shares, if the consideration has been received for issue of shares from an investor in accordance with the approval granted by the Inter-Ministerial Board of Certification under para 4(3)(i) of the notification number G.S.R. 364(E), dated 11th April, 2018 issued by the Department of Industrial Policy and Promotion.

Accordingly, vide this notification, the eligibility criteria for non-applicability of section 56(2)(viib) have been specified in relation to the recipient company rather than the class or classes of persons making payment for issue of shares to the company.

This notification shall be deemed to have come into effect from 11.04.2018.

Note – *Accordingly, students are advised to ignore para 1 in page 8.10 of Module 1 of the Study Material and instead read this notification.*

Further, for the meaning of the term "startup" and conditions specified in notification number G.S.R. 364(E), dated 11th April, 2018 issued by the Department of Industrial Policy and Promotion, students may refer page no. 8.10 of Module 1 of the Study material.

Chapter 15: Deduction, Collection and Recovery of Tax

No tax is required to be deducted at source on interest payable on "Power Finance Corporation Limited 54EC Capital Gains Bond" and "Indian Railway Finance Corporation Limited 54EC Capital Gains Bond" - Notification No. 27 & 28/2018, dated 18-06-2018

Section 193 (Interest on securities) provides that the person responsible for paying to a resident any income by way of interest on securities shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax @ 10%, being the rates in force on the amount of the interest payable.

As per clause (iib) of the proviso to section 193, no tax is required to be deducted at source from any interest payable on such debentures, issued by any institution or authority, or any public sector company, or any co-operative society (including a co-operative land mortgage bank or a co-operative land development bank), as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Accordingly, the Central Government has, vide this notification, specified -

(i) "Power Finance Corporation Limited 54EC Capital Gains Bond" issued by Power Finance Corporation Limited {PFCL} and

(ii) "Indian Railway Finance Corporation Limited 54EC Capital Gains Bond" issued by Indian Railway Finance Corporation Limited {IRFCL}

The benefit of this exemption would, however, be admissible in the case of transfer of such bonds by endorsement or delivery, only if the transferee informs PFCL/IRFCL by registered post within a period of sixty days of such transfer.

Chapter 18: Appeals and Revision

Revision of monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court - Circular No. 3/2018, Dated 11-7-2018 and F. No. 279/Misc. 142/2007-ITJ (Pt), Dated 20-8-2018

Circular No. 21/2015 dated 10.12.2015 specified monetary limits and other conditions for filing departmental appeals (in Income-tax matters) before Income Tax Appellate Tribunal, High Courts and SLPs/ appeals before Supreme Court.

In supersession of the above Circular, it has been decided by the CBDT that departmental appeals may be filed on merits before Income Tax Appellate Tribunal and High Courts and SLPs/ appeals before Supreme Court keeping in view the monetary limits and conditions specified below.

Henceforth, appeals/ SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder:

S. No.	Appeals/ SLPs in Income-tax matters	Monetary Limit (₹)
1.	Before Appellate Tribunal	20,00,000
2.	Before High Court	50,00,000
3.	Before Supreme Court	1,00,00,000

It is clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided on merits of the case.

For further details regarding the meaning of 'tax effect' in different situations and methodology to be followed in such cases, the detailed circular may be referred.

Cases where adverse judgments should be contested on merits even if tax effect is less than the specified monetary limits

Adverse judgments relating to the issues enumerated hereunder should be **contested on merits** notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 thereof or there is no tax effect:

(a) Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or

(b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or

(c) Where Revenue Audit objection in the case has been accepted by the Department, or

(d) Where addition relates to undisclosed foreign income/undisclosed foreign assets (including financial assets)/undisclosed foreign bank account.

(e) Where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI/ED/DRI/SFIO/Directorate General of GST Intelligence (DGGI).

(f) Cases where prosecution has been filed by the Department and is pending in the Court.

PART - II: INTERNATIONAL TAXATION

Chapter 1: Non-resident Taxation

Notification of exceptions, modifications and adaptations under Section 115JH for applicability of the provisions of the Income-tax Act on a foreign company said to be resident in India on account of PoEM [Notification No. 29/2018, dated 22-06-2018]

With effect from 1.4.2017, Chapter XII-BC consisting of Section 115JH has been inserted by the Finance Act, 2016 to provide that where a foreign company is said to be resident in India in any previous year on account of Place of Effective Management (PoEM) and such foreign company has not been resident in India in any of the previous years preceding the said previous year, then, notwithstanding anything contained in this Act and subject to the conditions as may be notified by the Central Government in this behalf, the provisions of this Act relating to the computation of total income, treatment of unabsorbed depreciation, set off or carry forward and set off of losses, collection and recovery and special provisions relating to avoidance of tax shall apply with such exceptions, modifications and adaptations as may be specified in that notification for the said previous year.

Accordingly, the Central Government has, vide this Notification, specified the exceptions, modifications and adaptions subject to which, the provisions of the Act relating to computation of income, treatment of unabsorbed depreciation, set-off or carry forward and set off of losses, special provision relating to avoidance of tax and the collection and recovery of taxes shall apply in a case where a foreign company is said to be resident in India in any previous year on account of its POEM being in India and the such foreign company has not been resident in India before the said previous year.

Particulars	Provisions
Determination of opening WDV	**<u>If the foreign company is assessed to tax in the foreign jurisdiction</u>** Where depreciation is taken into account for the purpose of computation of its taxable income, the WDV of the depreciable asset as per the tax record in the foreign country on the 1st day of the previous year shall be adopted as the opening WDV for the said previous year.

	Where WDV is not available as per tax records, the WDV shall be calculated assuming that the asset was installed, utilised and the depreciation was actually allowed as per the provisions of the laws of that foreign jurisdiction. The WDV so arrived at as on the 1st day of the previous year shall be adopted to be the opening WDV for the said previous year. **If the foreign company is not assessed to tax in the foreign jurisdiction** WDV of the depreciable asset as appearing in the books of account as on the 1st day of the previous year maintained in accordance with the laws of that foreign jurisdiction shall be adopted as the opening WDV for the said previous year.
Brought forward loss and unabsorbed depreciation	**If the foreign company is assessed to tax in the foreign jurisdiction** Brought forward loss and unabsorbed depreciation as per the tax record shall be determined year wise on the 1st day of the said previous year. **If the foreign company is not assessed to tax in the foreign jurisdiction** Brought forward loss and unabsorbed depreciation as per the books of account prepared in accordance with the laws of that country shall be determined year wise on the 1st day of the said previous year. **Other provisions** Such brought forward loss and unabsorbed depreciation shall be deemed as loss and unabsorbed depreciation brought forward as on the 1st day of the said previous year and shall be allowed to be set off and carried forward in accordance with the provisions of the Act for the remaining period calculated from the year in which they occurred for the first time taking that year as the first year. However, the losses and unabsorbed depreciation of the foreign company shall be allowed to be set off only against such income of the foreign company which has become chargeable to tax in India on account of its being resident in India due to application of POEM. In cases the brought forward loss and unabsorbed depreciation originally adopted in India are revised or modified in the foreign jurisdiction due to any action of the tax or legal authority, the amount of the loss and unabsorbed depreciation shall be revised or modified for the purposes of set off and carry forward in India.
Accounting year of foreign company does not end on 31st March	The foreign company is required to prepare profit and loss account and balance sheet for the period starting from the date on which the accounting year immediately following said accounting year begins, upto 31st March of the year immediately preceding the period beginning with 1st April and ending on 31st March during which the foreign company has become resident.

	Examples: **Example 1:** If the accounting year of the foreign company is a calendar year and the company becomes resident in India during P.Y. 2018-19 for the first time due to its POEM in India, then, the company is required to prepare profit and loss account and balance sheet for the period 1st January, 2018 to 31st March, 2018. **Example 2:** If the accounting year of the foreign company is from 1st July to 30th June and the company becomes resident in India during P.Y. 2018-19 for the first time due to its POEM in India, then, the company is required to prepare profit and loss account and balance sheet for the period 1st July, 2017 to 31st March, 2018. The foreign company is also be required to prepare profit and loss account and balance sheet for succeeding periods of twelve months, beginning from 1st April and ending on 31st March, till the year the foreign company remains resident in India on account of its POEM. **For the purpose of carry forward of loss and unabsorbed depreciation** If the above period is less than 6 months, the period shall be included in that accounting year. Continuing in the example 1, since the period 1st January, 2018 to 31st March, 2018 is less than 6 months, it is to be included in the accounting year immediately preceding the accounting year in which the foreign company is held to be resident in India and the profit and loss and balance sheet of the 15 months from 1 January, 2017 to 31st March, 2018 is to be prepared. If the above period equal to or more than 6 months, that period shall be treated as a separate accounting year. Continuing in the example 2, since the period is more than 6 months, it is to be treated as a separate accounting year. The loss and unabsorbed depreciation as per tax record or books of account, as the case may be, of the foreign company shall, be allocated on proportionate basis.
Applicability of provisions of Chapter XVII-B (TDS provisions)	Where more than one provision of Chapter XVII-B of the Act applies to the foreign company as resident as well as foreign company, the provision applicable to the foreign company alone shall apply. Compliance to those provisions of Chapter XVII-B of the Act as are applicable to the foreign company prior to its becoming Indian resident shall be considered sufficient compliance to the provisions of said Chapter. The provisions of section 195(2) relating to application to Assessing Officer to determine the appropriate proportion of sum chargeable to tax shall apply in such manner so as to include payment to the foreign company.

Availability of deduction under section 90 or 91 (Foreign tax credit)	The foreign company shall be entitled to relief or deduction of taxes paid in accordance with the provisions of section 90 or section 91 of the Act. Where income on which foreign tax has been paid or deducted, is offered to tax in more than one year, credit of foreign tax shall be allowed across those years in the same proportion in which the income is offered to tax or assessed to tax in India in respect of the income to which it relates and shall be in accordance with the provisions of rule 128 of the Income-tax Rules, 1962.
Non applicability of the notification	The above exceptions, modifications and adaptations shall not apply in respect of such income of the foreign company which otherwise would have been chargeable to tax in India, even if the foreign company had not become Indian resident.
Applicability of the notification where foreign company becomes resident in the subsequent previous year also	In a case where the foreign company is said to be resident in India during a previous year, immediately succeeding a previous year during which it is said to be resident in India; the exceptions, modifications and adaptations shall apply to the said previous year subject to the condition that the WDV, the brought forward loss and the unabsorbed depreciation to be adopted on the 1st day of the previous year shall be those which have been arrived at on the last day of the preceding previous year in accordance with the provisions of this notification.
No effect on other transactions	Any transaction of the foreign company with any other person or entity under the Act shall not be altered only on the ground that the foreign company has become Indian resident.
Applicability of other provisions relating to foreign company	The foreign company shall continue to be treated as a foreign company even if it is said to be resident in India and all the provisions of the Act shall apply accordingly. Consequently, the provisions specifically applicable to,— (i) a foreign company, shall continue to apply to it; (ii) non-resident persons, shall not apply to it; and (iii) the provisions specifically applicable to resident, shall apply to it.
Applicability of tax rate on foreign company	In case of conflict between the provision applicable to the foreign company as resident and the provision applicable to it as foreign company, the later shall generally prevail. Therefore, the rate of tax in case of foreign company i.e., 40% shall remain the same, i.e., rate of income-tax applicable to the foreign company even though residential status of the foreign company changes from non-resident to resident on the basis of POEM.
Applicability of notification	This notification shall be deemed to have come into force from the 1st day of April, 2017.
Meaning of foreign jurisdiction	The place of incorporation of the foreign company.

Applicability of rule 115 of the Income-tax Rules, 1962.	The rate of exchange for conversion into rupees of value expressed in foreign currency, wherever applicable, shall be in accordance with provision of rule 115 of the Income-tax Rules, 1962.

Exemption to interest income on specified off-shore Rupee Denominated Bonds [Press Release, dated 17-09-2018]

Interest payable by an Indian company or a business trust to a non-resident, including a foreign company, in respect of rupee denominated bond issued outside India before 1.7.2020 is liable for concessional rate of tax of 5%. Consequently, section 194LC provides for the deduction of tax at a lower rate of 5% on the said interest payment.

Consequent to review of the state of economy on 14.9.2018 by the Prime Minister, the Finance Minister has announced a multi-pronged strategy to contain the Current Account Deficit (CAD) and augment the foreign exchange inflow. In this background, low cost foreign borrowings through off-shore rupee denominated bond have been further incentivised to increase the foreign exchange inflow.

Accordingly, it has been decided that interest payable by an Indian company or a business trust to a non-resident, including a foreign company, in respect of rupee denominated bond issued outside India during the period from 17.9.2018 to 31.3.2019 shall be exempt from tax, and consequently, no tax shall be deducted on the payment of interest in respect of the said bond under section 194LC.

SECTION – B: QUESTIONS AND ANSWERS

OBJECTIVE TYPE QUESTIONS

From the options (a), (b), (c) and (d) given in each question, choose the most appropriate option.

(i) A Pvt. Ltd. is a closely held Indian company. It is a subsidiary of a foreign company Y Inc. which had already issued 5,00,000 shares to its shareholders. During P.Y. 2017-18, it incurred a loss of ₹ 10 crores which couldn't be set off and hence, was carried forward. Further, there was also unabsorbed depreciation of ₹ 1 crore. During P.Y. 2018-19, Y Inc. amalgamated with Z Inc. and persons holding 2,45,000 shares of Y Inc. became the shareholders of Z Inc. Determine whether the brought forward loss of ₹ 10 crores and unabsorbed depreciation of ₹ 1 crore can be set off by A Pvt. Ltd. during P.Y. 2018-19.

(a) Loss cannot be set off but the unabsorbed depreciation can be set off.

(b) Loss can be set off but the unabsorbed depreciation cannot be set off.

(c) Both loss and unabsorbed depreciation can be set off.

(d) Both loss and unabsorbed depreciation cannot be set off

(ii) Mr. Shiv was travelling from Delhi to Jodhpur on 05.07.2018 carrying FDRs of ₹ 20 Lakhs. The said FDRs were seized by the police authorities and subsequently, requisitioned by the income-tax authorities u/s 132A. The requisition was made on 20.07.2018. Now, the Assessing Officer has issued notices to Shiv u/s 153A for A.Y. 2009-10 to A.Y. 2018-19. Whether the said notices issued by the Assessing Officer u/s 153A are valid?

(a) Invalid. Notices can be issued u/s 153A in the present case by the Assessing Officer only for A.Y. 2013-14 to A.Y. 2018-19, since FDRs do not constitute an asset for the purpose of section 153A.

(b) Invalid. Notices can be issued u/s 153A in the present case by the Assessing Officer for A.Y. 2013-14 to A.Y. 2019-20.

(c) Notices are valid for A.Y. 2013-14 to A.Y. 2018-19. However, for A.Y. 2009-10 to A.Y. 2012-13, notices can be issued u/s 153A only if the Assessing Officer has any evidence which reveals that income, represented in form of asset is greater than or equal to ₹ 50 lakhs.

(d) Notices are valid for A.Y. 2009-10 to A.Y. 2018-19 as notices in case of requisition can be issued for 10 assessment years immediately preceding the A.Y. relevant to the P.Y. in which requisition is made.

(iii) XYZ is a charitable trust registered u/s 12AA w.e.f 01.04.2010. During the P.Y. 2017-18, it received a specific corpus donation for construction of building which was claimed as exempt u/s 11 during the said previous year. Now, during the P.Y. 2018-19, it desires to claim depreciation on such building as application of its income. Comment upon the validity of the said claim of depreciation.

(a) Depreciation can be claimed as the acquisition of building was not claimed as application of income u/s 11(1)(a).

(b) Depreciation cannot be claimed as the specific corpus donation was already claimed as exempt during P.Y. 2017-18.

(c) Depreciation can be claimed as it is a statutory deduction and no restriction regarding the same has been provided in section 11.

(d) It is upon the discretion of XYZ to either claim specific corpus donation for construction of building as exempt in the year of receipt or claim depreciation on building as application of income during various years.

(iv) A is a resident individual aged 45 years. Find out his tax liability for A.Y. 2019-20 on the basis of the following particulars:

Business income	5,00,000
Dividend from different domestic companies (dividend distribution tax has been paid by these companies)	

-	G Ltd.	40,00,000
-	H Ltd.	10,000
-	I Ltd.	11,90,000
Expenditure for earning dividend income		2,60,000

(a) ₹ 4,49,800

(b) ₹ 6,09,180

(c) ₹ 4,22,760

(d) ₹ 13,000

(v) The tax liability of Mr. Sunil for the financial year 2018-19 came to ₹ 1,54,000. He has paid advance tax of ₹ 1,38,000 and there was a TDS credit of ₹ 44,000 in his account. He filed his return of income on 30th July, 2019 claiming the refund due. His assessment was completed under section 143(1) and he was granted the refund on 15th February, 2020. Subsequently, his case was selected for scrutiny and his income was assessed under section 143(3). As per the assessment order dated 25th August, 2020, his income was recomputed after making certain additions and his revised tax liability was computed at ₹ 1,76,000. Whether he will be liable to pay any interest on the excess refund granted to him? If yes, then for what period?

(a) Sunil will be liable to pay interest on the excess refund of ₹ 22,000 at the rate of ½ percent for a period of 7 months.

(b) Sunil will not be liable to pay any interest on the excess refund granted to him.

(c) Sunil will be liable to pay interest on the excess refund of ₹ 22,000 at the rate of 1 percent for a period of 6 months.

(d) Sunil will be liable to pay interest on the total refund of ₹ 28,000 at the rate of ½ percent for a period of 7 months.

(vi) P Ltd. is a domestic company which filed its return of income for A.Y. 2019-20 declaring a total income of ₹ 1,15,00,000. The assessment in its case was opened by the Assessing Officer by issuing notice u/s 143(2). The Assessing Officer doubted the genuineness of loans taken by the company and added an amount of ₹ 5,00,000 to the total income u/s 68 as cash credits. What shall be the effective rate at which the said income of ₹ 5,00,000 shall be taxable in the hands of P Ltd.?

(a) 77.25 %

(b) 66.768 %

(c) 78 %

(d) 33.384 %

(vii) Mr. A who is the tax consultant of X Pvt. Ltd. is computing the income from business of the company for A.Y. 2018-19 for determining the tax liability. X Pvt. Ltd. is not liable for tax audit u/s 44AB during the said year. While computing the business income under the normal provisions of the Income-tax Act, 1961, Mr. A has duly considered the provisions of the Income Computation and Disclosure Standards ("ICDS") wherever applicable. However, Mr. A is confused regarding the applicability of ICDS while computing book profits for determining the MAT liability of the company u/s 115JB. Advise Mr. A regarding the same.

(a) Provisions of ICDS will not apply while computing "book profits" for the purposes of MAT as ICDS are applicable only for computation of income under the regular provisions of the Income-tax Act, 1961.

(b) Provisions of ICDS will apply while computing "book profits" for the purposes of MAT as ICDS are applicable for computing income under the "Profits and gains of business or profession", whether computed under the normal provisions or on the basis of book profits under MAT provisions.

(c) Provisions of ICDS will not apply while computing "book profits" for the purposes of MAT as ICDS are not applicable in the case of an assessee not liable for tax audit.

(d) Provisions of ICDS will apply while computing "book profits" for the purposes of MAT as no exception regarding the same has been carved out in the notification with respect to ICDS.

(viii) Mr. X purchases 1,000 unlisted equity shares of ₹ 10 each in A Ltd. on 10.05.2018 @ ₹ 60. On 20.10.2018, he transfers 800 equity shares @₹ 30 per share and remaining 200 shares are transferred on 20.12.2018 @₹ 20 per share. A Ltd. declares 50 percent dividend (record date: 03.08.2018). Also, during the previous year 2018-19, X has also earned long term capital gain of ₹ 96,000 on sale of a capital asset. Compute the amount of short term capital loss on sale of shares in question that can be set off from the long term capital gain of ₹ 96,000.

(a) ₹ 28,000

(b) ₹ 32,000

(c) ₹ 27,000

(d) ₹ 8,000

(ix) Mr. Gagan, aged 67 years and resident, is a retired person earning a monthly pension of ₹ 12,000 from his employer. He purchased a piece of land in Delhi in December, 2010 and sold the same in April, 2018. Taxable LTCG amounted to ₹ 2,80,000. Apart from pension income and gain on sale of land, he is not having any other income. What will be his tax liability (rounded off) for the year 2018-19?

(a) ₹ 25,790

(b) ₹ 6,450

(c) ₹ 4,370

(d) ₹ 17,470

(x) ABC India Pvt. Ltd and XYZ India Pvt. Ltd are related parties, as defined under section 40A(2)(b), who have entered into a transaction for purchase of goods for ₹ 25 lacs on 2nd April, 2018. The Arm Length Price for such goods is ₹ 15 lacs. Aggregate value of such transactions in the previous year 2018-19 is ₹ 22.5 crores. Can the transaction be considered as a specified domestic transaction to attract transfer pricing provisions?

(a) Yes, as the aggregate transaction value exceeds ₹ 20 crores

(b) Yes, as parties are related parties.

(c) No, transfer pricing provisions are not applicable in this case

(d) Yes, since parties are related parties and the aggregate transaction value exceeds ₹ 20 crores

DESCRIPTIVE QUESTIONS

1. Mr. Prem commenced operations of the businesses of setting up a warehousing facility for storage of food grains, sugar and edible oil on 1.4.2018.

	Particulars	Food grains	Sugar	Edible Oil
		₹ in lakhs		
(1)	Profits from business (computed) before allowing deduction under section 35AD/section 32	125	60	30
(2)	Capital expenditure on land and building purchased exclusively for the business (January 2018 - March 2018) and capitalized in the books of account as on 1st April, 2018	120	90	75
(3)	Cost of land included in (2) above	75	60	45
(4)	Capital expenditure incurred during P.Y.2018-19 on extension/reconstruction of building purchased and used exclusively for the business	30	20	10

Compute Mr. Prem's total income and tax liability for the A.Y.2019-20, assuming that Mr. Prem does not have any income other than income from the above businesses.

2. Compute the long-term capital gains/loss on transfer of listed equity shares (STT paid both at the time of acquisition and transfer of shares) for the A.Y.2019-20, in the four independent cases given below:

	Name of Co.	No. of shares	Date of acquisition	Cost of acquisition (per share)	Date of transfer	Sale price (per share)	FMV as on 31.1.2018 (per share)
Mr. Ganesh	A Ltd.	1,000	28.12.2016	₹ 1,000	1.5.2018	₹ 2,500	₹ 2,000
Mr. Rajesh	B Ltd.	2,000	30.11.2016	₹ 3,000	1.6.2018	₹ 5,000	₹ 6,500
Mr. Sridhar	C Ltd.	3,000	1.1.2017	₹ 2,000	1.7.2018	₹ 3,000	₹ 1,500
Mr. Vaibhav	D Ltd.	4,000	15.1.2017	₹ 4,000	1.8.2018	₹ 2,500	₹ 6,000

3. Mr. Dheeraj has commenced the business of manufacture of paper on 1.4.2018. He employed 180 new employees during the P.Y.2018-19, the details of whom are as follows -

	No. of employees	Date of employment	Regular/ Contractual	Total monthly emoluments per employee (₹)
(i)	51	1.4.2018	Regular	23,000
(ii)	46	1.6.2018	Regular	26,000
(iii)	48	1.8.2018	Contractual	27,000
(iv)	35	1.10.2018	Regular	24,000

The regular employees participate in recognized provident fund while the contractual employees do not. The emoluments are paid by use of ECS through a bank account.

(i) Compute the deduction, if any, available to Mr. Dheeraj for A.Y.2019-20, if the profits and gains derived from manufacture of paper that year is ₹ 74 lakh and his total turnover is ₹ 2.56 crore.

(ii) Would your answer change if Mr. Dheeraj has commenced the business of manufacturing of leather products (and not paper) on 1.4.2018 and the above particulars related to such business?

4. Mega Tea Ltd. is a tea company engaged in cultivating and processing tea in its factory for marketing. The company distributed dividend of ₹ 25 lakhs to its shareholders. The Assessing Officer was of the view that the entire dividend is subject to dividend distribution tax. The company, however, contended that the tax on dividend declared by it in this case is nothing but a tax on agricultural income; and the legislative competence for taxing agricultural income lies with the State Government and not the Central Government. On appeal, the Appellate Authority held that since the company is carrying

on cultivation of tea, which is an agricultural process as also the processing of tea in the factory, which is an industrial process, 40% of dividend distributed by the company is to be taxed under Section 115-O. Discuss the correctness or otherwise of the contention of the Appellate Authority.

5. Rhombus (P) Limited is engaged in manufacture and sale of ceramic tiles. The net profit of the company as per its profit and loss account for the year ended 31st March, 2019 is ₹ 210 lakh after debiting or crediting the following items:

   (i) One-time license fee of ₹ 32 lakh paid to ABC Ltd (an Indian company) for obtaining franchise on 1st June, 2018.

   (ii) ₹ 32,000 paid to Beta & Co., a goods transport operator, in cash on 31st January, 2019 for carrying company's products to the warehouse.

   (iii) Rent of ₹ 50,000 p.m. received from letting out a part of its office premises. Municipal tax in respect of the said part of the building is ₹ 8,000 remains unpaid due to court litigation.

   (iv) ₹ 1 lakh, being contribution to a scientific research association approved and notified under section 35(1)(ii).

   (v) ₹ 2 lakh, being loss due to destruction of a machinery caused by a fire due to short circuit. The Insurance Company did not admit the claim of the company.

   (vi) ₹ 5 lakh paid to a contractor for repair work at the company's factory. No tax was deducted on such payment.

   (vii) Dividend of ₹ 10,000 from Gama Limited on 1,000 equity shares of ₹ 10 each purchased at ₹ 100 per share on 10th October, 2018. The rate of dividend declared is 100%, the record date being 10th December, 2018. The shares were sold on 1st March, 2019 at ₹ 80 per share.

   (viii) Depreciation on tangible fixed assets as per books of account ₹ 2.20 lakh.

   Additional Information:

   (i) Depreciation on tangible fixed assets as per Income-tax Rules ₹ 2.60 lakh.

   (ii) The company has obtained a loan of ₹ 2 lakh from Theta Private Limited in which it holds 16% voting rights. The accumulated profits held by Theta Private Limited on the date of loan were ₹ 0.50 lakh.

   Compute total income of Rhombus (P) Ltd. for the Assessment Year 2019-20 indicating reasons for treatment of each item. Ignore the provisions relating to minimum alternate tax.

6. Edu All Charitable Trust registered under section 12AA, following cash system of accounting, furnishes you the following information for P.Y. 2018-19:

   (i) Gross receipts from hospital ₹ 200 lakhs.

(ii) Gross receipts from medical college ₹ 95 lakhs (offering recognized degree courses).

(iii) Corpus donations by way of cheque ₹ 42 lakhs and by way of cash ₹ 6 lakhs.

(iv) Anonymous donations by cash ₹ 12 lakhs.

(v) Administrative expenses for hospital ₹ 75 lakhs.

(vi) Fees not realized from patients ₹ 18,00,000 as on 31st March, 2019.

(vii) Depreciation on assets of the trust ₹ 37,50,000. The entire cost of assets ₹ 250 lakhs claimed as application in the earlier years.

(viii) Acquired a building for ₹ 80 lakhs on 01.06.2018 for expansion of hospital (cost of land included therein ₹ 50 lakhs). Stamp duty value of the land and building on the date of registration of sale deed ₹ 210 lakhs.

(ix) The trust gave corpus donation of ₹ 19 lakhs to Help Aid Trust having objects of charitable nature registered under section 12AA but not similar to the objects of the donor trust.

You are required to compute the total income of the trust and its income-tax liability in such a manner that it can avail the optimal benefit within the four corners of the Income-Tax Act, 1961.

Note: *The trust does not want to seek accumulation of income by virtue of section 11(2) of the Act.*

7. Auto Ltd., a manufacturer of automobiles, sells premium cars (each of value between ₹12 lakh to ₹25 lakh) and small cars (each of value between ₹5 lakh to ₹ 9 lakh) to its dealers across the country. Discuss whether the manufacturers are liable to collect tax at source under section 206C.

   Also, discuss the liability, if any, of dealers to collect tax at source on sale of these cars to the retail customers, if no part of the consideration is received in cash? Would your answer change, if part of the consideration is received in cash?

8. The assessment of Lambda Ltd. was completed under section 143(3) with an addition of ₹ 22 lakhs to the returned income. The assessee-company preferred an appeal before the Commissioner (Appeals) which is pending now.

   In this backdrop, answer the following:

   (i) Based on fresh information that there was escapement of income for the same assessment year, can the Assessing Officer initiate reassessment proceedings when the appeal is pending before Commissioner (Appeals)?

   (ii) Can the Assessing Officer pass an order under section 154 for rectification of mistake in respect of issues not being subject matter of appeal?

(iii) Can the assessee-company seek revision under section 264 in respect of matters other than those preferred in appeal?

(iv) Can the Commissioner make a revision under section 263 both in respect of matters covered in appeal and other matters?

9. Examine the correctness or otherwise of the following statements with reference to the provisions of the Income-tax Act, 1961:

(i) The Commissioner (Appeals) cannot admit an appeal filed beyond 30 days from the date of receipt of order by an assessee.

(ii) The Appellate Tribunal is empowered to grant indefinite stay for the demand disputed in appeals before it.

10. Mr. Vallish had approached the Settlement Commission for waiver of interest under sections 234A to 234C of the Income-tax Act, 1961. The Settlement Commission partially waived the interest but refused to grant interest on refund on the grounds that section 244A does not provide for payment of interest in such cases. Further, the Settlement Commission contended that its power to waive interest does not enable it to provide for payment of interest under section 244A. Discuss the correctness of the Settlement Commission's action in denying to grant interest on refund.

11. (i) Xylo Inc., a US company, received income by way of fees for technical services of ₹2 crore from Alpha Ltd., an Indian company, in pursuance of an agreement between Alpha Ltd. and Xylo Inc. entered into in the year 2012, which is approved by the Central Government. Expenses incurred for earning such income is ₹ 8 lakhs. Examine the taxability of the above sum in the hands of Xylo Inc as per the provisions of the Income-tax Act, 1961 and the requirement, if any, to file return of income, assuming that Xylo Inc does not have a permanent establishment in India

(ii) If Xylo Inc. has a permanent establishment in India and the contract/agreement with Alpha Ltd. for rendering technical services is effectively connected with such PE in India, examine the taxability based on the following details provided –

	Particulars	Amount
(1)	Fees for technical services received from Alpha Ltd.	₹ 2 crore
(2)	Expenses incurred for earning such income	₹ 8 lakhs
(3)	Fees for technical services received from other Indian companies in pursuance of approved agreement entered into between the years 2005 to 2010	₹ 4 crore
(4)	Expenses incurred for earning such income	₹ 15 lakhs
(5)	Expenditure not wholly and exclusively incurred for the business of such PE [not included in (2) & (4) above]	₹ 6 lakhs

(6)	Amounts paid by the PE to Head Office (not being in the nature of reimbursement of actual expenses)	₹ 12 lakhs

What are the other requirements, if any, under the Income-tax Act, 1961 in this case?

12. Mr. Hari, an individual resident in India aged 59 years, furnishes you the following particulars of income earned in India, Foreign Countries "P" and "Q" for the previous year 2018-19. Compute the total income and tax payable by Mr. Hari in India for A.Y. 2019-20 assuming that India has not entered into double taxation avoidance agreement with countries P & Q.

Particulars	₹
Indian Income:	
Income from business carried on in Calcutta	4,40,000
Interest on savings bank with HDFC Bank	42,000
Income earned in Foreign Country "P" [Rate of tax – 16%]:	
Agricultural income in Country "P"	94,000
Royalty income from a book on art from Country "P" (Gross)	7,80,000
Expenses incurred for earning royalty	50,000
Income earned in Foreign Country "Q" [Rate of tax – 20%]:	
Dividend received from a company incorporated in Country "Q"	2,65,000
Rent from a house situated in Country "Q" (gross)	3,30,000
Municipal tax paid in respect of the above house (not allowed as deduction in Country "Q")	10,000

13. (i) Research & Co. is engaged in providing scientific research services to several non-resident clients. Such services are also provided to B Inc., which guarantees 15% of the total loans of Research & Co. Examine whether transfer pricing provisions are attracted in respect of this transaction.

(ii) Without prejudice to the answer to (i) above, assuming that transfer pricing provisions are attracted in this case and that the Assessing Officer had made a primary adjustment of ₹ 225 lakhs to transfer price in the P.Y.2016-17 vide order dated 1.4.2018 and the same was accepted by Research & Co., what are the consequent requirements as per the Income-tax Act, 1961 and the implications of non-compliance with the said requirements? Assume that the transaction is denominated in Indian Rupees and no amount has been repatriated upto 31.3.2019. The one year marginal cost of fund lending rate of State Bank of India as on 1.4.2018 is 8.15%.

14. Narmada Ltd., an Indian Company has borrowed ₹ 80 crores on 01-04-2018 from M/s. Thames Inc, a Company incorporated in London, at an interest rate of 10% p.a. The said loan is repayable over a period of 5 years. Further, loan is guaranteed by M/s Tyne Inc. incorporated in UK. M/s. Tweed Inc, a non-resident, holds shares carrying 40% of voting power both in M/s Narmada Ltd. and M/s Tyne Inc.

    Net profit of M/s. Narmada Ltd. for P.Y. 2018-19 was ₹ 7 crores after debiting the above interest, depreciation of ₹ 4 crores and income-tax of ₹ 3 crores. Calculate the amount of interest to be disallowed under the head "Profits and gains of business or profession" in the computation of M/s Narmada Ltd., giving appropriate reasons.

15. Explain the meaning of ""significant economic presence". Does "significant economic presence" constitute "business connection" for attracting deemed accrual provisions under section 9(1)? Examine, in line with which action plan of BEPS, has this provision been introduced in the Income-tax Act, 1961.

16. What is the difference between OECD Model Convention, 2017 and UN Model Convention, 2017 relating to right of Source State to tax business profits of an enterprise? Explain.

MOST APPROPRIATE OPTION

(i) (a)

(ii) (c)

(iii) (a)

(iv) (a)

(v) (a)

(vi) (c)

(vii) (a)

(viii) (a)

(ix) (d)

(x) (c)

SUGGESTED ANSWERS/HINTS

1. Computation of total income of Mr. Prem for A.Y.2019-20

Particulars	₹ (in lakhs)	
Profits and gains of business or profession		
Profits and gains from the specified business of setting up a warehousing facility for storage of food grains and sugar ***[See Working Note below]***		60.00

Profit from business of setting up of warehouse for storage of edible oil (before providing for depreciation under section 32)	30.00	
Less: Depreciation under section 32		
10% of ₹ 40 lakh, being (₹ 75 lakh – ₹ 45 lakh + ₹ 10 lakh)	4.00	26.00
Total Income		**86.00**

Computation of tax liability for A.Y.2019-20

Particulars	₹ in lakhs
Tax liability under the normal provisions of the Income-tax Act, 1961 [30% of ₹ 76 lakhs (₹ 86 lakhs – ₹ 10 lakhs) + ₹ 1,12,500]	23.93
Add: Surcharge @10% (Since total income > ₹ 50 lakhs but does not exceed ₹ 1 crore)	2.39
	26.32
Add: Health and education cess @4%	1.05
Total tax liability	**27.37**

Adjusted Total Income	₹ in lakhs	
Total Income		86.00
Add: Deduction under section 35AD **[See Working Note below]**	125.00	
Less: Depreciation under section 32 [10% of ₹ 125 lakh]	12.50	112.50
Adjusted Total Income		**198.50**
AMT @18.5%		36.72
Add: Surcharge@15% (Since adjusted total income > ₹ 1 crore)		5.51
		42.23
Add: Health and Education cess @4%		1.69
Tax liability under section 115JC		**43.92**
Since the regular income-tax payable is less than the AMT payable, the adjusted total income of ₹ 198.50 lakhs shall be deemed to be the total income of Mr. Prem and tax is payable @18.5% thereof *plus* surcharge@15% (since adjusted total income exceeds ₹ 1 crore) *plus* cess@4%. Therefore, the tax liability is ₹ 43.92 lakhs.		
AMT Credit to be carried forward under section 115JD		
Tax liability under section 115JC		43.92
Less: Tax liability under the regular provisions of the Income-tax Act, 1961		27.37
		16.55

Working Note:

Computation of income from specified business under section 35AD

	Particulars	Food Grains	Sugar	Total
		₹ (in lakhs)		
(A)	Profits from the specified business of setting up a warehousing facility (before providing deduction under section 35AD)	125.00	60.00	185.00
	***Less*: Deduction under section 35AD**			
(B)	Capital expenditure incurred prior to 1.4.2018 (i.e., prior to commencement of business) and capitalized in the books of account as on 1.4.2018 (excluding the expenditure incurred on acquisition of land) = ₹ 45 lakh (₹ 120 lakh – ₹ 75 lakh) and ₹ 30 lakh (₹ 90 lakh – ₹ 60 lakh)	45.00	30.00	75.00
(C)	Capital expenditure incurred during the P.Y.2018-19	30.00	20.00	50.00
(D)	**Total capital expenditure (B + C)**	**75.00**	**50.00**	**125.00**
(E)	**Deduction under section 35AD**			
	100% of capital expenditure	75.00	50.00	125.00
(F)	Profits from specified business of setting up and operating a warehousing facility for storage of food gains and sugar (A-E)	50.00	10.00	60.00

Notes:

(i) Deduction of 100% of the capital expenditure is available under section 35AD for A.Y.2019-20 in respect of specified business of setting up and operating a warehousing facility for storage of food grains and sugar.

(ii) Since setting up and operating a warehousing facility for storage of edible oil is not a specified business, Mr. Prem is not eligible for deduction under section 35AD in respect of capital expenditure incurred for such business. Mr. Prem can, however, claim depreciation@10% under section 32 in respect of the capital expenditure incurred on buildings. It is presumed that the buildings were put to use for more than 180 days during the P.Y.2018-19.

2. For the purpose of computation of long-term capital gains chargeable to tax under section 112A, the cost of acquisition in relation to the long-term capital asset, being an equity share in a company or a unit of an equity oriented mutual fund or a unit of a business trust acquired before 1st February, 2018 shall be the higher of

(i) cost of acquisition of such asset; and

(ii) lower of

(a) the fair market value of such asset; and

(b) the full value of consideration received or accruing as a result of the transfer of the capital asset.

In short, the cost of acquisition for the long-term capital asset acquired on or before 31.01.2018 will be the actual cost.

However, if the actual cost is less than the fair market value of such asset as on 31.01.2018, the fair market value will be deemed to be the cost of acquisition.

Further, if the full value of consideration on transfer is less than the fair market value, then such full value of consideration or the actual cost, whichever is higher, will be deemed to be the cost of acquisition.

In the four independent cases given in the question, the shares are long-term capital asset, since they are held for a period of more than 12 months preceding the date of its transfer. Accordingly, long-term capital gain/loss on transfer of STT paid listed equity shares would be determined as follows:

Person	Particulars	LTCG/LTCL (in ₹)
Mr. Ganesh	In this case, the cost of acquisition of equity share of A Ltd. would be ₹ 2,000, being higher of actual cost i.e., ₹ 1,000 and ₹ 2,000 (being the lower of FMV of ₹ 2,000 as on 31.1.2018 and actual sale consideration of ₹ 2,500). Thus, the long-term capital gain would be (₹ 2,500 – ₹ 2,000) x 1,000 shares.	5,00,000
Mr. Rajesh	In this case, the cost of acquisition of equity shares of B Ltd. would be ₹ 5,000, being higher of actual cost i.e., ₹ 3,000 and ₹ 5,000 (being the lower of FMV of ₹ 6,500 as on 31.1.2018 and actual sale consideration of ₹ 5,000). In other words, actual cost of acquisition (i.e., ₹ 3,000) is less than the FMV of ₹ 6,500 as on 31.1.2018. However, the sale value of ₹ 5,000 is also less than the FMV of ₹ 6,500 as on 31.1.2018. Accordingly, the sale value of ₹ 5,000 will be taken as the cost of acquisition. The long-term capital gains would be Nil (₹ 5,000 – ₹ 5,000) x 2,000 shares.	Nil
Mr. Sridhar	In this case, the cost of acquisition of equity shares of C Ltd. would be ₹ 2,000, being higher of actual cost i.e., ₹ 2,000 and ₹ 1,500 (being the lower of FMV of ₹ 1,500 as	30,00,000

	on 31.1.2018 and actual sale consideration of ₹ 3,000). In other words, the FMV of equity shares of C Ltd. on 31.1.2018 (i.e., ₹ 1,500) is less than ₹ 2,000, being the actual cost of acquisition of equity shares, and therefore, the actual cost of ₹ 2,000 would be taken as cost of acquisition. Accordingly, the long-term capital gains would be (₹ 3,000 – ₹ 2,000) x 3,000	
Mr. Vaibhav	In this case, the cost of acquisition of equity shares of D Ltd. would be ₹ 4,000, being higher of actual cost i.e., ₹ 4,000 and ₹ 2,500 (being the lower of FMV of ₹ 6,000 as on 31.1.2018 and actual sale consideration of ₹ 2,500). In other words, the actual cost of acquisition of equity shares D Ltd. (i.e., ₹ 4,000) is less than the FMV of ₹ 6,000 as on 31.1.2018. However, the sale value of ₹ 2,500 is also less than the FMV of ₹ 6,000 as on 31.1.2018 and also the cost of acquisition. Accordingly, the actual cost of ₹ 4,000 will be taken as the cost of acquisition. The long-term capital loss would be ₹ 6,00,000 (₹ 2,500 – ₹ 4,000) x 4,000 shares.	(60,00,000)

3. (i) <u>Case 1: Where Mr. Dheeraj has commenced the business of manufacture of paper on 1.4.2018</u>

Mr. Dheeraj is eligible for deduction under section 80JJAA since he is subject to tax audit under section 44AB for A.Y.2019-20, as his total turnover from business exceeds ₹ 1 crore and he has employed "additional employees" during the P.Y.2018-19. Also, emoluments are paid by use of ECS through a bank account. Since this is the first year of his new business, emoluments paid or payable to employees employed during this year shall be deemed to be the additional employee cost.

Deemed additional employee cost = ₹ 23,000 × 12 × 51 **[See Working Note below]** = ₹ 1,40,76,000

Deduction under section 80JJAA = 30% of ₹ 1,40,76,000 = ₹ 42,22,800.

Working Note:

Number of additional employees

Particulars	No. of employees	
Total number of employees employed during the year		180
Less: Contractual employees employed on 1.8.2018,	48	

since they do not participate in recognized provident fund and their total monthly emoluments exceed ₹ 25,000		
Regular employees employed on 1.6.2018, since their total monthly emoluments exceed ₹ 25,000	46	
Regular employees employed on 1.10.2018 since they have been employed for less than 240 days in the P.Y.2018-19.	35	129
Number of "additional employees"		**51**

Notes –

1. *Since contractual employees do not participate in recognized provident fund, they do not qualify as additional employees. In any case, their total monthly emoluments exceed ₹ 25,000, and hence do not qualify as additional employees. Further, 46 regular employees employed on 1.6.2018 also do not qualify as additional employees since their monthly emoluments exceed ₹ 25,000. Also, 35 regular employees employed on 1.10.2018 do not qualify as additional employees for the P.Y.2018-19, since they are employed for less than 240 days in that year.*

   Therefore, only 51 employees employed on 1.4.2018 qualify as additional employees, and the total emoluments paid or payable to them during the P.Y.2018-19 is deemed to be the additional employee cost.

2. *As regards the 35 regular employees employed on 1.10.2018, they would be treated as "additional employee" for the P.Y. 2019-20, if they continue to be employed in that year for a minimum period of 240 days. Accordingly, 30% of additional employee cost in respect of such employees would be allowable as deduction under section 80JJAA in the hands of Mr. Dheeraj for the A.Y. 2020-21.*

(ii) Case 2: Where Mr. Dheeraj has commenced the business of manufacture of leather products on 1.4.2018

Yes, the answer would change, since in the case of an assessee engaged in the business of manufacture of leather products, the requirement of minimum period of employment of 240 days in the previous year to qualify as an additional employee for the purpose of deduction under section 80JJAA has been relaxed due to the seasonal nature of business of manufacture of apparel. The minimum period of employment required in case of this industry, to qualify as an additional employee for the purpose of deduction under section 80JJAA, is 150 days. Therefore, the 35 regular employees employed on 1.10.2018 would also qualify as "additional employees" and the deemed additional employee cost pertaining to these employees would also be eligible for deduction under section 80JJAA.

Deemed Additional Employee Cost = ₹ 1,40,76,000 (as calculated in (i) above) + ₹ 50,40,000 (35 employees × ₹ 24,000 × 6 months) = ₹ 1,91,16,000

Deduction under section 80JJAA = 30% × ₹ 1,91,16,000 = ₹ 57,34,800

4. The issue under consideration is whether dividend distribution tax under section 115-O can be levied on dividend income of a tea company, and if so, whether in whole or in part, to be restricted to 40%, being the proportion of business income of a tea company. This issue came up before the Supreme Court in *Union of India v. Tata Tea and Others [2017] 398 ITR 260 (SC).*

The Supreme Court observed that as per Entry 82 of List I, the Union Parliament has the competence to tax "income other than agricultural income". Section 115-O pertains to additional tax at the stage of distribution of dividend by a domestic company which is covered by Entry 82 in List I. When dividend is declared to be distributed and paid to a company's shareholders, it is not impressed with character of the source of its income. The Court relied on *Mrs. Bacha F Guzdar v. CIT AIR 1955 SC 74* which looked into the nature of the dividend income in the hands of the shareholders. Dividend is derived from the investment made in the company's shares and the foundation rests on the contractual relations between the company and the shareholder.

Dividend is not 'revenue derived from land' and therefore, cannot be termed as agricultural income in the hands of a shareholder. Hence, despite the company being involved in agricultural activities, in the shareholder's hands, the income is only dividend and not agricultural income.

The Calcutta High Court had upheld the vires of section 115-O but put a qualification that additional tax levied under section 115-O shall be only to the extent of 40% which is the taxable income of the tea company. The Supreme Court overturned this cap placed by the Calcutta High Court. Section 115-O is within the competence of the Parliament and hence, no limits can be placed on the same.

Accordingly, applying the rationale of the Supreme Court ruling to the facts of this case, the contention of the Appellate Authority that only 40% of dividend distributed by the company is to be taxed under section 115-O is **not** correct. The entire dividend distributed would be subject to dividend distribution tax under section 115-O.

5. Computation of total income of Rhombus(P) Ltd. for the A.Y. 2019-20

Particulars	₹	₹
Income from House Property (Note 1)		
Gross Annual Value (GAV) (Rental income has been taken as GAV in the absence of other information) [₹ 50,000 x 12]	6,00,000	
Less: Municipal taxes (not deductible since it has not been paid)	Nil	
Net Annual Value (NAV)	6,00,000	

Less: Deduction under section 24 (30% of NAV)			1,80,000	4,20,000
Profits and gains of business or profession				
Net profit as per profit and loss account			2,10,00,000	
Add:	Licence fee for obtaining franchise **(Note 2)**		32,00,000	
	Municipal taxes in respect of let-out part of office premises **(Note 1)**		8,000	
	Contribution to approved and notified scientific research association (treated separately) **(Note 4)**		1,00,000	
	Loss due to destruction of machinery by fire **(Note 5)**		2,00,000	
	Amount paid to contractor without deduction of tax at source [₹ 5 lakhs x 30%] **(Note 6)**		1,50,000	
	Short-term capital loss on sale of shares of Gama Ltd. **(Note 7)**		20,000	
	Depreciation on tangible fixed assets **(Note 8)**		2,20,000	
			2,48,98,000	
Less:	Depreciation under section 32 **(Note 8)**			
	Tangible fixed assets **(Note 8)**	2,60,000		
	Intangible asset (Franchise) 25% of ₹ 32,00,000 **(Note 2)**	8,00,000	10,60,000	
	Weighted deduction under section 35(1)(ii) **(Note 4)**			
	₹ 1,00,000 x 150% (Contribution of scientific research association)		1,50,000	
	Rental income to be taxed under "Income from house property" **(Note 1)**		6,00,000	
	Dividend credited to profit and loss account to be excluded **(Note 7)**		10,000	
				2,30,78,000
Capital Gains (Note 7)				
Short-term capital loss (₹ 20 x 1000 shares)			20,000	
Less:	Dividend exempt under section 10(34)		10,000	
Short-term capital loss to be carried forward to A.Y. 2020-21			10,000	
Income from Other Sources (Note 9)				
Deemed dividend under section 2(22)(e) subject to DDT in the hands of Theta (P) Ltd.				-
Total Income				**2,34,98,000**

Notes:

(1) Rental income from letting out a part of the office premises is taxable under "Income from house property". Therefore, it has to be deducted while calculating business income, since the income has been credited to profit and loss account. Likewise, municipal taxes due in respect of such property, debited to profit and loss account has to be added back to compute business income.

(2) Franchise is an intangible asset eligible for depreciation @ 25%. Since one-time licence fees of ₹ 32 lakh paid for obtaining franchise has been debited to profit and loss account, the same has to be added back. Depreciation @ 25% has to be provided in respect of the intangible asset since it has been used for more than 180 days during the year.

(3) ₹ 32,000 paid to Beta & Co., a goods transport operator in cash is deductible while computing business income, as the limit for disallowance under section 40A(3) would be attracted in case of payment to a transport contractor only when it exceeds ₹ 35,000. Since it is already debited to profit and loss account, no further adjustment is required.

(4) Contribution to a scientific research association approved and notified under section 35(1)(ii) is eligible for a weighted deduction of 150%. Therefore, the contribution of ₹ 1,00,000 debited to profit and loss account has been added back and ₹ 1,50,000 (being 150% of ₹ 1,00,000) has been deducted while computing business income.

(5) Loss of ₹ 2 lakh due to destruction of machinery caused by fire is not deductible since it is capital in nature.

(6) Payment to contractor without deduction of tax at source would attract disallowance at 30% of the expenditure under section 40(a)(ia).

(7) As per section 94(7), where any person buys any shares within 3 months prior to the record date and sells such shares within 3 months after such date and the dividend received on such shares is exempt, then, the loss arising out of such purchase and sale of shares shall be ignored to the extent of dividend income.

	₹
Loss on sale of shares (₹ 100 - ₹ 80) x 1000 shares	20,000
Less: Dividend exempt under section 10(34)	10,000
Short-term capital loss	10,000

Since short term capital loss can be set-off only against income under the head "Capital Gains", the short-term capital loss of ₹ 10,000 has to be carried forward to the next year. Dividend of ₹ 10,000 credited to profit and loss account has to be deducted and short-term capital loss of ₹ 20,000 debited to profit and loss account has to be added back.

(8) Depreciation as per Income-tax Rules, 1962, is deductible while calculating business income. Therefore, ₹ 2.60 lakh depreciation on tangible fixed assets and ₹ 8 lakh on intangible assets is deducted. The amount of ₹ 2.20 lakh depreciation debited to profit and loss account as per books of account has been added back.

(9) As per section 2(22)(e), any payment by a company in which the public are not substantially interested by way of loan to a shareholder, who is the beneficial owner of shares holding not less than 10% of voting power, is deemed as dividend to the extent to which to company possesses accumulated profits. Accordingly, in this case, ₹ 50,000 would be deemed as dividend under section 2(22)(e) and subject to dividend distribution tax @30% (plus surcharge @12% and health and education cess @4%) in the hands of Theta (P) Ltd. Hence, such dividend is exempt in the hands of Rhombus (P) Ltd. under section 10(34).

6. Computation of total income of Edu All Charitable Trust for the A.Y.2019-20

Particulars	₹	₹
Gross receipts from Hospital		2,00,00,000
Gross receipts from Medical College [exempt, since less than ₹1 crore]		-
		2,00,00,000
Add: Anonymous donations [to the extent not chargeable to tax@30% under section 115BBC(1)(i)] **[See Note 1 & 2]**		3,00,000
		2,03,00,000
Less: 15% of income eligible for being set apart without any condition[1]		30,45,000
		1,72,55,000
Less: Amount applied for charitable purposes		
- **On revenue account** – Administrative expenses	75,00,000	
- **On capital account** – Land & Building [Section 56(2)(x) is not attracted in respect of value of property received by a trust or institution registered u/s 12AA]	80,00,000	

[1] As per the Supreme Court ruling in *CIT v. Programme for Community Organisation (2001) 116 Taxman 608,* 15% of gross receipts would be eligible for accumulation under section 11(1)(a). However, as per the plain reading of section 11(1)(a), only 15% of income would be eligible for accumulation under section 11(1)(a).

- Corpus donation to Help Aid Trust registered u/s 12AA – not allowable even if it is out of current year income of the trust	-	1,55,00,000
Total income [other than anonymous donation taxable@30% under section 115BBC(1)(i)]		**17,55,000**
Add: Anonymous donation taxable @30% u/s 115BBC(1)(i) **[See Note 1]**		9,00,000
Total Income of the trust (including anonymous donation taxable@30%)		**26,55,000**

Computation of tax liability of the trust for the A.Y. 2019-20

Particulars	₹	₹
Tax on total income of ₹ 17,55,000 [Excluding anonymous donations]		
Upto ₹ 2,50,000	Nil	
₹ 2,50,001 – ₹ 5,00,000 [₹2,50,000 x 5%]	12,500	
₹ 5,00,001 – ₹ 10,00,000 [₹5,00,000 x 20%]	1,00,000	
> ₹ 10,00,000 [₹7,55,000 x 30%]	2,26,500	
	3,39,000	
Tax on anonymous donations taxable@30% [₹ 9,00,000 x 30%]	2,70,000	6,09,000
Add: Health and education cess @4%		24,360
Total tax liability		**6,33,360**

Notes:

(1) Anonymous donations taxable @30%

	₹	₹
Anonymous Donations received (lakhs)		12.00
5% of total donations received, i.e. 5% of 60 lakhs	3.00	
Monetary limit	1.00	
Higher of the above		3.00
Anonymous donations taxable@30%		9.00

(2) The provisions of section 13(7) have been interpreted in a manner that it excludes only anonymous donations subject to tax@30% under section 115BBC(1)(i). All taxable income of the trust [excluding anonymous donations taxable@30% u/s 115BBC(1)(i)] falls under section 115BBC(1)(ii), and are subject to tax at normal rates and eligible for benefit of unconditional accumulation u/s 11(1). Anonymous donation of ₹ 3,00,000 taxable at normal rates also falls under section 115BBC(1)(ii) and hence, like other taxable income of the trust falling within the

scope of this clause, the same would also be eligible for the benefit of unconditional accumulation under section 11(1). The above solution has been worked out on the basis of this interpretation of section 13(7). Accordingly, in the above solution, the benefit of unconditional accumulation upto 15% under section 11(1) has been given in respect of anonymous donation of ₹ 3,00,000 subject to tax at normal rates.

However, an alternative view is also possible on the basis of the plain reading of section 13(7), as per which anonymous donation referred to in section 115BBC has to be excluded from the purview of exemption under sections 11 and 12. As per this view, even the anonymous donations of ₹ 3,00,000 subject to tax at normal rates would not be eligible for unconditional accumulation of upto 15%.

(3) Corpus donations, whether received by way of cheque or cash, are not includible in the total income of the trust by virtue of section 11(1)(d).

(4) Since corpus donations and anonymous donations are indicated separately and the question does not mention that the same are included in gross receipts, the solution has been worked out on the assumption that corpus donations and anonymous donations are not included in the figure of gross receipts of ₹ 200 lakhs from hospital.

(5) Since the trust follows cash system of accounting, fees not realized from patients would not form part of gross receipts. Therefore, there is no need of applying the provisions of *Explanation 1* to section 11(1) to exclude such income.

(6) Where the cost of assets is claimed as application, no deduction for depreciation on such assets would be allowed in determining income for the purposes of application. Therefore, since cost of assets of the trust has been claimed as application of income, no depreciation would be allowed on these assets while determining income for the purposes of application.

7. Section 206C(1F) provides for collection of tax at source@1% by the seller from the buyer, at the time of receipt of consideration for sale of motor vehicle, the value of which exceeds ₹ 10 lakhs. CBDT Circular No.22/2016 dated 8.6.2016 clarifies that section 206C(1F) covers all transactions of retail sales and accordingly, it will not apply to sale of motor vehicles by manufacturers to dealers. Hence, car manufacturers are not liable to collect tax at source under section 206C(1F).

In respect of sale of premium cars (each of value ranging between ₹ 12 lakhs to ₹25 lakhs) by dealers to retail customers, tax has to be collected at source@1% under section 206C(1F), even if no part of the consideration is received in cash.

As regards small cars (each of value ranging between ₹ 5 lakhs and ₹ 9 lakhs), no tax has to be collected at source whether the consideration is received by way of cash or otherwise. Accordingly, the answer would not undergo a change if part of consideration is received in cash.

8. (i) As per the third proviso to section 147, the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

Therefore, even when an appeal is pending before Commissioner (Appeals), the Assessing Officer can initiate reassessment proceedings in respect of income chargeable to tax which has escaped assessment, provided such income is not the subject matter of the appeal before the Commissioner (Appeals) i.e., such income which has escaped assessment does not form part of the additions of ₹22 lakhs to the returned income, which is the subject matter of appeal.

(ii) As per section 154(1A), the Assessing Officer can pass an order under 154(1) to rectify a mistake apparent from the record, provided the rectification is in relation to a matter, other than the matter which has been considered and decided in the appeal before Commissioner (Appeals).

Since the issue under consideration in this case relates to rectification of a mistake in respect of a matter which is not the subject matter of appeal, the Assessing Officer can pass an order under section 154 for rectification of the same provided the same is a mistake apparent from the record.

(iii) As per section 264(4), the Principal Commissioner or Commissioner shall not revise any order under section 264, where such order has been made the subject of an appeal to the Commissioner (Appeals).

Therefore, under section 264, the Principal Commissioner or Commissioner cannot revise an order which is pending before the Commissioner (Appeals), even if the revision pertains to a matter, other than the matter(s) covered in the appeal.

(iv) As per section 263, the Commissioner has the power to revise an order prejudicial to the interests of revenue, even if the order is the subject matter of appeal before Commissioner (Appeals). However, the power of the Commissioner under section 263 shall extend to only such matters as had not been considered and decided in such appeal.

In a case where the appeal is pending but not yet decided, the Commissioner cannot exercise his revisionary jurisdiction in respect of those issues which are the subject matter of appeal *[CWT v. Sampathmal Chordia (2002) 256 ITR 440 (Mad.)].*

9. (i) The statement is ***not*** correct.

As per section 249(3) of the Income-tax Act, 1961, the Commissioner (Appeals) may admit an appeal after the expiry of the period of 30 days specified in section 249(2), if he is satisfied that the appellant had sufficient cause for not presenting the appeal within the prescribed time.

(ii) The statement is ***not*** correct.

Section 254(2A) provides that the Appellate Tribunal, where it is possible, may hear and decide an appeal within a period of four years from the end of the financial year in which such appeal is filed.

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 of the appeal within this period of stay.

Where the appeal has not been disposed of 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. However, the aggregate of period originally allowed and the period so extended should not exceed 365 days even if the delay in disposing of the appeal is not attributable to the assessee. The Appellate Tribunal is required to dispose off the appeal within this extended period. 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.

10. This issue came up before the Supreme Court in *K. Lakshmansa and Co. v. Commissioner of Income-tax and Anr [2017] 399 ITR 657.* The Supreme Court observed that the right to claim refund is automatic once the statutory provisions have been complied with. The statutory obligation to refund, being non-discretionary, carries with it the right to interest. Section 244A is clear and plain – it grants a substantive right of interest and is not procedural.

Under section 244A, it is enough if the refund becomes due under the Income-tax Act, 1961, in which case, the assessee shall, subject to the provisions of that section, be entitled to receive simple interest. The expression "due" only means that a refund becomes due pursuant to an order under the Act which either reduces or waives tax or interest. It does not matter that the interest being waived is discretionary in nature; the moment that discretion is exercised and refund becomes due consequently, a concomitant right to claim interest springs into being in favour of the assessee.

The Supreme Court, thus, did not agree with the Karnataka High Court opinion that when discretionary power has been exercised, no concomitant right to claim interest on refund arises in favour of the assessee. Overruling the High Court Decision, the Supreme Court held that the assessee has a right to interest on refund under section 244A.

Applying the rationale of the Supreme Court ruling to the case on hand, the action of the Settlement Commission in refusing to grant interest on refund is **not** correct.

11. (i) Where Xylo Inc., a US company, does not have a PE in India

In this case, Xylo Inc. would be eligible for a concessional rate of tax@10% of ₹ 2 crore under section 115A on the fees for technical services received from Alpha Ltd., an Indian company, since the same is in pursuance of an agreement entered

into after 31.3.1976, which has been approved by the Central Government. No deduction, however, would be allowed in respect of expenditure of ₹ 8 lakhs incurred to earn such income. Also, Xylo Inc. has to file its return of income in India under section 139 and there is no exemption in this regard.

(ii) Where Xylo Inc., a US company, has a PE in India and rendering technical services is effectively connected with the PE in India.

Since Xylo Inc. carries on business through a PE in India, in pursuance of an agreement with Alpha Ltd. or other Indian companies entered into after 31.3.2003, and the income by way of fees for technical services is effectively connected with the PE in India as per section 44DA, such income shall be computed under the head "Profits and gains of business or profession" in accordance with the provisions of the Income-tax Act, 1961.

Accordingly, expenses of ₹ 23 lakhs (₹ 8 lakhs + ₹ 15 lakhs) incurred for earning fees for technical services of ₹ 6 crore (₹ 2 crore + ₹ 4 crore) is allowable as deduction therefrom. However, expenditure of ₹ 6 lakhs which is not incurred wholly and exclusively for the business of the PE and the amount of ₹ 12 lakhs paid by the PE to the Head Office is **not** allowable as deduction.

Xylo Inc. is required to maintain books of account under section 44AA and get the same audited under section 44AB and furnish report along with the return of income under section 139.

12. Computation of total income of Mr. Hari for A.Y.2019-20

Particulars	₹	₹
Income from House Property [House situated in Country Q]		
Gross Annual Value[2]	3,30,000	
Less: Municipal taxes paid in Country Q	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
Income from Other Sources		
Interest on savings bank with HDFC Bank	42,000	
Agricultural income in Country P [Not exempt]	94,000	

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

Dividend received from a company in Country Q	2,65,000	
Royalty income from a book of art in Country P (after deducting expenses of ₹ 50,000)	7,30,000	11,31,000
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 ₹10,000.		10,000
Total Income		**14,85,000**

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

Computation of tax liability of Mr. Hari for A.Y.2019-20

Particulars	₹
Tax on total income [30% of ₹ 4,85,000 + ₹ 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:		₹
Average rate of tax in India [i.e., ₹ 2,68,320 / ₹ 14,85,000 x 100]	**18.069%**	
Average rate of tax in country P	**16%**	
Doubly taxed income pertaining to country P[4]	**₹**	
Agricultural Income	94,000	
Royalty Income [₹ 7,80,000 – ₹ 50,000 (Expenses) – ₹ 3,00,000 (deduction under section 80QQB)]	4,30,000	
	5,24,000	

[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 ₹ 5,24,000 @16% [being the lower of average Indian tax rate (18.069%) and foreign tax rate (16%)]		83,840
Average rate of tax in country Q	**20%**	
Doubly taxed income pertaining to country Q		
Income from house property	2,24,000	
Dividend	2,65,000	
	4,89,000	
Rebate under section 91 on ₹ 4,89,000 @18.069% (being the lower of average Indian tax rate (18.069%) and foreign tax rate (20%)]		88,357
Total rebate under section 91 (Country A + Country B)		**1,72,197**

Note: Mr. Hari 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.2018-19.

(b) The income in question accrues or arises to him outside India in foreign countries P & Q 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 "P" and "Q" 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 P and Q where the income has accrued or arisen.

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

(ii) Where the Assessing Officer has made a primary adjustment of ₹ 225 lakhs to the transfer price and the same has been accepted by Research & Co., secondary adjustment has to be made in the books of account. The excess money determined based on the primary adjustment has to be repatriated to India within 90 days from the date of order, failing which the same would be deemed as an advance and interest would be attracted at the one year marginal cost of fund lending rate of State Bank of India as on 1.4.2018 + 3.25%, since the international transaction has been denominated in Indian Rupees. In this case, since the excess money has not been

repatriated within 90 days, the same would be deemed to be an advance made by Research & Co. to B Inc. and interest would be attracted@11.40% (8.15% + 3.25%).

14. 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 ₹ 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 Narmada Ltd and M/s Tyne Inc, Narmada Ltd. and M/s Tyne Inc are deemed to be associated enterprises.

Since loan of ₹ 80 crores taken by Narmada Ltd., an Indian company from M/s Thames Inc, is guaranteed by M/s Tyne Inc, an associated enterprise of Narmada Ltd., such debt shall be deemed to have been issued by an associated enterprise and interest payable to M/s Thames 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 M/s.Narmada Ltd.

Particulars		₹
Net profit		7,00,00,000
Add: Interest already debited (₹ 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 Narmada Ltd.		8,00,00,000
Lower of the following would be disallowed		
- Total interest paid or payable in excess of 30% of EBITDA (₹ 8,00,00,000 – ₹ 6,60,00,000)	₹ 1,40,00,000	
- Interest paid or payable to non-resident AE	₹ 8,00,00,000	
Interest to be disallowed as deduction		**1,40,00,000**

15. As per *Explanation 2A* to section 9(1)(i), "significant economic presence" of a non-resident in India shall constitute "business connection" for attracting deemed accrual provisions in India.

"Significant Economic Presence" means-

(a) transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds the prescribed amount; or

(b) systematic and continuous soliciting of business activities or engaging in interaction with such prescribed number of users in India through digital means.

Further, the above transactions or activities shall constitute significant economic presence in India, whether or not,—

(i) the agreement for such transactions or activities is entered in India;

(ii) the non-resident has a residence or place of business in India; or

(iii) the non-resident renders services in India:

However, where a business connection is established by reason of significant economic presence in India, only so much of income as is attributable to the transactions or activities referred to in (a) or (b) above shall be deemed to accrue or arise in India.

This provision has been inserted in the Income-tax Act, 1961 in line with "BEPS Action Plan 1 Addressing the challenges of the digital economy" to take care of new business models such as digitized businesses, which do not require physical presence of itself or any agent in India. Such businesses can now be covered within the scope of section 9(1)(i).

16. Business profits of an enterprise can only be taxed by the Residence State. Right of Source State to tax business profits of an enterprise only arises if it carries on business through a Permanent Establishment (PE) situated in that State.

As per the approach under the OECD Model Convention, once a PE is proven, the Source State can tax only such profits as are attributable to the PE. The UN Model Convention amplifies this attribution principle by a **limited** Force of Attraction rule (FOA).

The FOA rule implies that when a foreign enterprise sets up a PE in State of Source, it brings itself within the fiscal jurisdiction of that State (State of Source) to such a degree that profits that the enterprise derives from Source State of Source, whether through the PE or not, can be taxed by it (State of Source State).

As per Article 7 of the UN Model Convention, if the enterprise carries on business in the other Contracting State through a PE, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to:

(a) that PE;

(b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that PE; or

(c) other business activities carried on in that other State of the same or similar kind as those effected through that PE.