

PAPER 7: DIRECT TAX LAWS & INTERNATIONAL TAXATION

SECTION – A: STATUTORY UPDATE

The direct tax laws, as amended by the Finance Act, 2017, including significant notifications/circulars issued upto 31st October, 2017 are applicable for May, 2018 examination. The relevant assessment year for May, 2018 examination is A.Y.2018-19. The significant notifications/circulars issued upto 31.10.2017, relevant for May, 2018 examination but not covered in the August 2017 edition of the Study Material, are given hereunder.

PART – I : DIRECT TAX LAWS

CHAPTER 1: BASIC CONCEPTS

Clarification regarding attaining prescribed age of 60 years/80 years on 31st March itself, in case of senior/very senior citizens whose date of birth falls on 1st April [Circular No. 28/2016, dated 27.07.2016]

An individual who is resident in India and of the age of 60 years or more (senior citizen) and 80 years or more (very senior citizen) is eligible for a higher basic exemption limit of ₹ 3,00,000 and ₹ 5,00,000, respectively.

The contentious issue is regarding the attainment of the aforesaid qualifying ages for availing higher basic exemption limit in cases of the persons whose date of birth falls on 1st April of calendar year. In other words, the broader question under consideration is whether a person born on 1st April of a particular year can be said to have completed a particular age on 31st March, on the preceding day of his/her birthday, or on 1st April itself of that year.

The Supreme Court had an occasion to consider a similar issue in the case of *Prabhu Dayal Sesma vs. State of Rajasthan & another 1986, AIR, 1948* wherein it has dealt with on the general rules to be followed for calculating the age of the person. The Apex Court observed that while counting the age of the person, whole of the day should be reckoned and it starts from 12 o'clock in the midnight and he attains the specified age on the day preceding, the anniversary of his birthday. In the absence of any express provision, it is well settled that any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birthday.

The CBDT has, vide this Circular, clarified that a person born on 1st April would be considered to have attained a particular age on 31st March, the day preceding the anniversary of his birthday. In particular, the question of attainment of age of eligibility for being considered a senior/very senior citizen would be decided on the basis of above criteria.

Therefore, a resident individual whose 60th birthday falls on 1st April, 2018, would be treated as having attained the age of 60 years in the P.Y.2017-18, and would be eligible for higher basic exemption limit of ₹ 3 lakh in computing his tax liability for A.Y.2018-19. Likewise, a resident individual whose 80th birthday falls on 1st April, 2018, would be treated as having

attained the age of 80 years in the P.Y.2017-18, and would be eligible for higher basic exemption limit of ₹ 5 lakh in computing his tax liability for A.Y.2018-19.

CHAPTER 2: RESIDENCE AND SCOPE OF TOTAL INCOME

Clarification regarding liability to income-tax in India of a non-resident seafarer receiving remuneration in NRE (Non-Resident External) account maintained with an Indian Bank [Circular No.13/2017, dated 11.04.2017 and Circular No.17/2017, dated 26.04.2017]

Income by way of salary, received by non-resident seafarers, for services rendered outside India on-board foreign ships, is being subjected to tax in India for the reason that the salary has been received by the seafarer into the NRE bank account maintained in India by the seafarer. On receiving representations in this regard, the CBDT examined the matter and noted that section 5(2)(a) of the Income-tax Act, 1961 provides that only such income of a non-resident shall be subjected to tax in India that is either received or is deemed to be received in India.

Accordingly, the CBDT has, vide this circular, clarified that that salary accrued to a non-resident seafarer for services rendered outside India on a foreign going ship (with Indian flag or foreign flag) shall not be included in the total income merely because the said salary has been credited in the NRE account maintained with an Indian bank by the seafarer.

Notification of Eligible Investment funds in respect of which certain conditions specified under section 9A(3) would not apply [Notification No. 77/2017, dated 03.08.2017]

Section 9A provides for special taxation regime to facilitate location of fund managers of off-shore funds in India. Under this regime, in case of an eligible investment fund, the fund management activity carried out through an eligible fund manager acting on behalf of such fund shall not constitute business connection in India of the said fund, subject to fulfilment of certain conditions.

Eligible investment fund means a fund established or incorporated or registered outside India, which collects funds from its members for investing it for their benefit and fulfils, *inter alia*, the following conditions, namely -

- (e) the fund should have a minimum of twenty-five members who are, directly or indirectly, not connected persons;
- (f) any member of the fund along with connected persons shall not have any participation interest, directly or indirectly, in the fund exceeding ten per cent;
- (g) the aggregate participation interest, directly or indirectly, of ten or less members along with their connected persons in the fund, shall be less than fifty per cent.

The above conditions, however, would not apply in case of an investment fund set up by the Government or the Central Bank of a foreign State or a sovereign fund, or such other fund as the Central Government may subject to conditions, if any, by notification, specify in this behalf.

Accordingly, the Central Government has, vide this notification, specified that these conditions would not apply to an investment fund set up by a Category-I or Category-II Foreign Portfolio Investor registered under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014, made under the Securities and Exchange Board of India Act, 1992.

Clarification related to guidelines for establishing 'Place of Effective Management' (PoEM) in India [Circular No. 25/2017, dated 23.10.2017]

The concept of 'Place of Effective Management' (PoEM) for deciding residential status of a company, other than an Indian company, was introduced in the Income-tax Act, 1961 which has become effective from 1.4.2017, i.e., Assessment Year 2017-18 onwards.

The guiding principles for determination of PoEM of a company were issued on 24.01.2017 vide Circular No 06/2017. Further, vide Circular No 08/2017 dated 23.02.2017, it has been clarified that the PoEM provisions shall not apply to a company having turnover or gross receipts of Rs 50 crore or less in a financial year.

Thereafter, stakeholders had expressed concerns that as per the extant guidelines, PoEM may be triggered in cases of certain multinational companies with regional headquarter structure merely on the ground that certain employees having multi-country responsibility or oversight over the operations in other countries of the region are working from India, and consequently, their income from operations outside India may be taxed in India.

In this regard, it may be mentioned that Para 7 of the guidelines provides that the place of effective management in case of a company engaged in active business outside India (ABOI) shall be presumed to be outside India if the majority meetings of the board of directors (BoD) of the company are held outside India.

However, Para 7.1 of the guidelines provides that if on the basis of facts and circumstances, it is established that the Board of directors of the company are standing aside and not exercising their powers of management and such powers are being exercised by either the holding company or any other person(s) resident in India, then, the PoEM shall be considered to be in India.

It has also been provided that for this purpose, merely because the BoD follows general and objective principles of global policy of the group laid down by the parent entity which may be in the field of Pay roll functions, Accounting, Human resource (HR) functions, IT infrastructure and network platforms, Supply chain functions, Routine banking operational procedures, and not being specific to any entity or group of entities per se; would not constitute a case of BoD of companies standing aside.

In view of the above, it is clarified that so long as the Regional Headquarter operates for subsidiaries/ group companies in a region within the general and objective principles of global policy of the group laid down by the parent entity in the field of Pay roll functions, Accounting, HR functions, IT infrastructure and network platforms, Supply chain functions, Routine banking operational procedures, and not being specific to any entity or group of entities per se; it

would, in itself, not constitute a case of BoD of companies standing aside and such activities of Regional Headquarter in India alone will not be a basis for establishment of PoEM for such subsidiaries/ group companies.

It is further mentioned in the said Circular that the provisions of General Anti-Avoidance Rule contained in Chapter X-A of the Income-tax Act, 1961 may get triggered in such cases where the above clarification is found to be used for abusive/ aggressive tax planning.

CHAPTER 6: PROFITS AND GAINS OF BUSINESS OR PROFESSION

Lease rent from letting out buildings/developed space along with other amenities in an Industrial Park /SEZ - to be treated as business income [Circular No. 16/2017, dated 25.04.2017]

The issue whether income arising from letting out of premises/developed space along with other amenities in an Industrial Park/SEZ is to be charged under head 'Profits and Gains of Business' or under the head 'Income from House Property' has been subject matter of litigation in recent years. Assessee claim the letting out as business activity, the income arising from which to be charged to tax under the head 'Profits and Gains of Business', whereas the Assessing Officers hold it to be chargeable under the head 'Income from House Property'.

The CBDT has considered the matter. Income from the Industrial Parks/SEZ established under various schemes framed and notified under section 80-IA(4)(iii) is liable to be treated as income from business provided the conditions prescribed under the schemes are met.

In the case of *Velankani Information Systems Pvt Ltd* (NJRS Citation [2013-LL-0402-44]), the Karnataka High Court observed that any other interpretation would defeat the object of section 80-IA and Government schemes for development of Industrial Parks in the country. SLPs filed in this case by the Department have been dismissed by the Supreme Court.

In a subsequent judgment dated 30.04.2014 in ITA No. 76 & 78/2012 in the case of *CIT v. Information Technology Park Ltd.* (NJRS Citation [2014-LL-0430-141]), the Karnataka High Court has reaffirmed its earlier views. It has held that, since the assessee-company was engaged in the business of developing, operating and maintaining an Industrial Park and providing infrastructure facilities to different companies as its business, the lease rent received by the assessee from letting out buildings along with other amenities in a software technology park would be chargeable to tax under the head "Profits and gains of business or profession" and not under the head "Income from house property". The judgment has been accepted by the CBDT.

In view of the above, it is now a settled position that in the case of an undertaking which develops, develops and operates or maintains and operates an industrial park/SEZ notified in accordance with the scheme framed and notified by the Government, the income from letting out of premises/developed space along with other facilities in an industrial park/SEZ is to be charged to tax under the head 'Profits and Gains of Business'.

CHAPTER 7: CAPITAL GAINS

Long-term specified asset notified for the purpose of claiming exemption under section 54EC [Notification No. 47/2017, dated 08.06.2017 and Notification No. 79/2017, dated 08.08.2017]

Section 54EC provides exemption from chargeability of capital gain from the transfer of a long-term capital assets where the assessee has invested the whole or any part of the capital gain in a long-term specified asset. As per clause (ba) of *Explanation* to section 54EC “long term specified asset” means any bond redeemable after three years and issued on or after 01.04.07 by the National Highways Authority of India (NHAI) or by the Rural Electrification Corporation Limited (RECL) or any other bond notified by the Central Government in this behalf.

Accordingly, the Central Government has, vide these notifications, notified any bond redeemable after three years and issued by the **Power Finance Corporation Limited** on or after 15.06.17 or by the **Indian Railway Finance Corporation Limited** on or after 08.08.17 as ‘long-term specified asset’.

CHAPTER 8: INCOME FROM OTHER SOURCES

Clarification regarding trade advance not to be treated as deemed dividend under section 2(22)(e) – [Circular No. 19/2017, dated 12.06.2017]

Section 2(22)(e) provides that "dividend" includes any payment by a company in which public are not substantially interested, of any sum by way of **advance or loan** to a shareholder who is the beneficial owner of shares holding not less than 10% of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits.

The CBDT observed that some Courts in the recent past have held that trade advances in the nature of commercial transactions would not fall within the ambit of the provisions of section 2(22)(e) and such views have attained finality.

Some illustrations/examples of trade advances/commercial transactions held to be **not** covered under section 2(22)(e) are as follows:

- (i) Advances were made by a company to a sister concern and adjusted against the dues for job work done by the sister concern. It was held that amounts advanced for business transactions do not to fall within the definition of deemed dividend under section 2(22)(e) [*CIT vs. Creative Dyeing & Printing Pvt. Ltd. [NJRS] 2009-LL-0922-2, ITA No. 250 of 2009, Delhi High Court*].
- (ii) Advance was made by a company to its shareholder to install plant and machinery at the shareholder's premises to enable him to do job work for the company so that the company could fulfil an export order. It was held that as the assessee proved business

expediency, the advance was not covered by section 2(22)(e) [*CIT vs Amrik Singh, [NJRS] 2015-LL-0429-5, ITA No. 347 of 2013, P & H High Court*]

- (iii) A floating security deposit was given by a company to its sister concern against the use of electricity generators belonging to the sister concern. The company utilised gas available to it from GAIL to generate electricity and supplied it to the sister concern at concessional rates. It was held that the security deposit made by the company to its sister concern was a business transaction arising in the normal course of business between two concerns and the transaction did not attract section 2(22)(e) [*CIT, Agra vs Atul Engineering Udyog, [NJRS] 2014-LL-0926-121, ITA No. 223 of 2011, Allahabad High Court*]

In view of the above, the CBDT has, vide this circular, clarified that it is a settled position that trade advances, which are in the nature of commercial transactions, would not fall within the ambit of the word 'advance' in section 2(22)(e) and therefore, the same would not to be treated as deemed dividend.

CHAPTER 11: DEDUCTIONS FROM GROSS TOTAL INCOME

Admissibility of deduction under Chapter VI-A on the profits enhanced due to disallowance of expenditure related to business activity [Circular No.37/2016, Dated 02.11.2016]

Chapter VI-A of the Income-tax Act, 1961, provides for deductions in respect of certain incomes. In computing the profits and gains of a business activity, the Assessing Officer may make certain disallowances, such as disallowances pertaining to sections 32, 40(a)(ia), 40A(3), 43B etc., of the Act. At times, disallowance out of specific expenditure claimed may also be made. The effect of such disallowances is an increase in the profits.

The issue is whether such higher profits would also result in claim for a higher profit-linked deduction under Chapter VI-A.

The courts have generally held that if the expenditure disallowed is related to the business activity against which the Chapter VI-A deduction has been claimed, the deduction needs to be allowed on the enhanced profits. Some illustrative cases upholding this view are as follows:

- (i) If an expenditure incurred by assessee for the purpose of developing a housing project was not allowable on account of non-deduction of TDS under law, such disallowance would ultimately increase assessee's profits from business of developing housing project. The ultimate profits of assessee after adjusting disallowance under section 40(a)(ia) would qualify for deduction under section 80-IB.
- (ii) If deduction under section 40A(3) is not allowed, the same would have to be added to the profits of the undertaking on which the assessee would be entitled for deduction under section 80-IB.

In view of the aforesaid judgements, the CBDT has accepted the settled position that the disallowances made under sections 32, 40(a)(ia), 40A(3), 43B, etc. and other specific

disallowances, related to the business activity against which the Chapter VI-A deduction has been claimed, result in enhancement of the profits of the eligible business, and that deduction under Chapter VI-A is admissible on the profits so enhanced by the disallowance.

Transport, Power and Interest subsidies received by an Industrial Undertaking - Eligibility for deduction under sections 80-IB, 80-IC etc., [Circular No. 39/2016, dated 29.11.2016]

The issue of whether revenue receipts such as transport, power and interest subsidies received by an Industrial Undertaking/eligible business are part of profits and gains of business derived from its business activities within the meaning of sections 80-IB/80-IC of the Income-tax Act, 1961 and, thus, eligible for claim of corresponding deduction under Chapter VI-A of the Act has been a contentious one. Such receipts are often treated as 'Income from other sources' by the Assessing Officers.

The Hon'ble Supreme Court in its judgment dated 9.3.2016 in the case of *Meghalaya Steels Ltd* and other cases has held that the subsidies of transport, power and interest given by the Government to the Industrial Undertaking are receipts which have been reimbursed for elements of cost relating to manufacture/sale of the products. Thus, there is a direct nexus between profit and gains of the industrial undertaking/business and reimbursement of such business subsidies. Accordingly, such subsidies are part of profits and gains of business derived from the Industrial Undertaking and are not to be included under the head 'Income from other sources'. Therefore, deduction is admissible under section 80-1B/80-IC of the Act on such revenue receipts derived from the Industrial Undertaking.

In view of the above, the CBDT has clarified that revenue subsidies received from the Government towards reimbursement of cost of production/manufacture or for sale of the manufactured goods are part of profits and gains of business derived from the Industrial Undertaking/eligible business, and are thus, admissible for applicable deduction under Chapter VI-A of the Act.

CHAPTER 15: DEDUCTION, COLLECTION AND RECOVERY OF TAX

Deduction of tax at source on interest income accrued to minor child, where both the parents have deceased [Notification No. 05/2017, dated 29.05.2017]

Under Rule 31A(5) of the Income-tax Rules, 1962, the Director General of Income-tax (Systems) is authorized to specify the procedures, formats and standards for the purposes of furnishing and verification of, *inter alia*, the statements and shall be responsible for the day-to-day administration in relation to furnishing and verification of the statements in the manner so specified.

The Principal Director General of Income-tax (Systems) has, in exercise of the powers delegated by the CBDT under Rule 31A(5), specified that in case of minors where both the parents have deceased, TDS on the interest income accrued to the minor is required to be deducted and reported against PAN of the minor child unless a declaration is filed under Rule 37BA(2) that credit for tax deducted has to be given to another person.

Deduction of tax at source on interest on deposits made under Capital Gains Accounts Scheme, 1988 where depositor has deceased - Notification No. 08/2017, dated 13.09.2017

The Principal Director General of Income-tax (Systems) has, in exercise of the powers delegated by the CBDT under Rule 31A(5), vide this notification, specified that in case of deposits under the Capital Gains Accounts Scheme, 1988 where the depositor has deceased:

- (i) TDS on the interest income accrued for and upto the period of death of the depositor is required to be deducted and reported against PAN of the depositor, and
- (ii) TDS on the interest income accrued for the period after death of the depositor is required to be deducted and reported against PAN of the legal heir,

unless a declaration is filed under Rule 37BA(2) that credit for tax deducted has to be given to another person.

Guidelines for waiver of interest charged under section 201(1A) of the Income-tax Act, 1961 – [Circular No. 11/2017, dated 24.03.2017]

In exercise of the powers conferred under section 119(2)(a), the CBDT has directed that the Chief Commissioner of Income-tax and Director General of Income-tax may reduce or waive interest charged under section 201(1A)(i) in the classes of cases specified below for the period and to the extent the Chief Commissioner of Income-tax/Director General of Income-tax may deem fit. However, no reduction or waiver of such interest shall be ordered unless the principal demand under sections 200A, 201(1) or 234E, as the case may be, stands fully paid or satisfactory arrangements for payment of the principal demand under these sections have been made. The Chief Commissioner of Income-tax or Director General of Income-tax may also impose any other condition as deemed fit for the said reduction or waiver of interest.

The class of cases in which the reduction or waiver of interest under section 201(1A)(i) can be considered, are as follows:

- (i) Where during the course of proceedings for search and seizure under section 132, or otherwise, the books of account and other documents necessary for making deduction under Chapter XVIIIB of the Act were seized and the assessee was not able to, within the time specified, deduct tax at source from any sum credited to any account (whether called "suspense account" or by any other name) in his books of account.
- (ii) Where any sum paid or payable was not liable for deduction of tax at source in the case of a deductor on the basis of any order passed by the jurisdictional High Court, and as a result, he did not deduct tax at source in relation to such sum, and subsequently, in consequence of any retrospective amendment of law or a decision of the Supreme Court of India or a decision of a Larger Bench of the jurisdictional High Court (which was not challenged before the Supreme Court and has become final) in any proceedings, as the case may be, tax was held to be deductible or the tax deducted by the deductor during such financial year was found to be less than the tax deductible on such sums paid or payable.

- (iii) Where the default under section 201 relates to non-deduction or a lower deduction of tax under section 195 in respect of a payment made to a non-resident (including a foreign company) being a resident of a country or specified territory outside India with whom India has entered into an agreement referred to in section 90 or 90A of the Act, and where —
- (a) a dispute regarding the tax payable in India in respect of the said payment had been referred to the Competent Authority in India mentioned in Rule 44H of the Income-tax Rules, 1962 under the said agreement under section 90 or 90A of the Act;
 - (b) such reference had been received by the Competent Authority in India within a period of two years of the date on which the notice of demand determining the tax payable was received by the person in default under section 201;
 - (c) the dispute has been settled by way of a resolution arrived at under the Mutual Agreement Procedure (MAP) provided in the said agreement; and
 - (d) the person in default under section 201 has given his acceptance to the resolution and has withdrawn his appeal(s) pending on the issue, within the meaning of Rule 44H(4) of the Income-tax Rules, within a period of one month of the date on which the resolution is communicated to him.

Even if the interest under section 201(1A)(i) has already been paid by the deductor, the same can be considered for waiver, subject to the conditions above and a refund may be given to the deductor, if waiver is ordered.

The Chief Commissioner of Income-tax or Director General of Income-tax examining an application for waiver of interest under this order shall pass a speaking order after providing adequate opportunity of being heard to the applicant.

The CBDT reserves the power to examine any grievance arising out of an order passed or not passed by Chief Commissioner of Income-tax or Director General of Income-tax, as the case may be, and issue suitable directions to these authorities for proper implementation of this order. However, no review of or appeal against the orders passed on merits by such authorities would be entertained by the CBDT.

No requirement to deduct tax at source under section 194-I on remittance of Passenger Service Fees (PSF) by an Airline to an Airport Operator [Circular No. 21/2017, dated 12.06.2017]

Section 194-I requires deduction of tax at source at specified percentage on any income payable to a resident by way of rent. *Explanation* to this section defines the term “rent” as any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any (a) land; or (b) building; or (c) land appurtenant to a building; or (d) machinery; (e) plant; (f) equipment (g) furniture; or (h) fitting, whether or not any or all of them are owned by the payee.

On the issue of whether payment of PSF by an airline to an Airport Operator qualifies as rent to attract TDS under section 194-I, the Bombay High Court relied on the Apex Court ruling in *Japan Airlines and Singapore Airlines* case, wherein it was observed that the primary requirement for any payment to qualify as rent is that the payment must be for the use of land and building and mere incidental/minor/insignificant use of the same while providing other facilities and service would not make it a payment for use of land and buildings so as to attract section 194-I. Accordingly, the Bombay High Court declined to admit the ground relating to applicability of the provisions of section 194-I on PSF charges holding that no substantial question of law arises.

The CBDT, accepting the view of the Bombay High Court, has clarified that the provisions of section 194-I shall **not** be applicable on payment of PSF by an airline to Airport Operator.

Clarification regarding TDS on Goods and Services Tax (GST) component comprised in payments made to residents [Circular No. 23/2017 dated 19.07.2017]

The CBDT had, vide Circular No. 1/2014 dated 13.01.2014, clarified that wherever in terms of the agreement or contract between the payer and the payee, the service tax component comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source on the amount paid or payable without including such service tax component.

In order to harmonize the same treatment with the new system for taxation of services under the GST regime w.e.f. 01.07.2017, the CBDT has, vide this circular, clarified that wherever in terms of the agreement or contract between the payer and the payee, the component of 'GST on services' comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source on the amount paid or payable without including such 'GST on services' component.

GST shall include Integrated Goods and Services Tax, Central Goods and Services Tax, State Goods and Services Tax and Union Territory Goods and Services Tax.

Further, for the purposes of this Circular, any reference to "service tax" in an existing agreement or contract which was entered into prior to 01.07.2017 shall be treated as "GST on services" with respect to the period from 01.07.2017 onward till the expiry of such agreement or contract.

CHAPTER 17: ASSESSMENT PROCEDURE

Scope of qualifications for e-Return Intermediary extended to include Company Secretaries, Cost Accountants and Tax Return Preparer [Notification No 66/2016, dated 09.08.2016]

Section 139(1B) provides for an alternative method to furnish return of income. Vide Notification No 210/2007, dated 27.07.2007, an Electronic Furnishing of Return of Income Scheme, 2007 was notified for the said purpose. The scheme, *inter alia* provides that an eligible person may, at his option, furnish his return of income which he is required to furnish under various provisions of the Act, to an e-Return Intermediary who shall digitize the data of such return and transmit the same

electronically to a server designated for this purpose by the e-Return Administrator, on or before the due date.

Para 5 of the said Notification lays down the qualifications of an e-Return Intermediary. A firm of Chartered Accountants or Advocates, which has been allotted a Permanent Account Number, as well as a Chartered Accountant or an Advocate who has been allotted a Permanent Account Number, *inter alia*, qualified to be an e-Return intermediary.

Vide this Notification, a firm of Company Secretaries or Cost Accountants, if the firm has been allotted PAN as well as a Company Secretary or a Cost Accountant or Tax Return Preparer, who has been allotted a Permanent Account Number, would also qualify to be an e-Return intermediary.

Persons who are not required to quote Aadhar Number or Enrolment ID in application form for allotment of PAN and in return of income [Notification No. 37/2017 dated 11.05.2017]

Section 139AA requires every person who is eligible to obtain Aadhar Number to mandatorily quote Aadhar Number or Enrolment ID of Aadhar application form, on or after 1st July, 2017 in the application form for allotment of PAN and in the return of income. However, this provision shall not be applicable to such person or class or classes of persons or any State or part of any State as may be notified by the Central Government.

Accordingly, the Central Government has, vide this notification effective from 01.07.2017, notified that the provisions of section 139AA relating to quoting of Aadhar Number would not apply to an individual who does not possess the Aadhar number or Enrolment ID and is:

- (i) residing in the States of Assam, Jammu & Kashmir and Meghalaya;
- (ii) a non-resident as per Income-tax Act, 1961;
- (iii) of the age of 80 years or more at any time during the previous year;
- (iv) not a citizen of India.

CHAPTER 18: APPEALS AND REVISIONS

Notification No. SO 1696(E) [F.No.A.-50050/9/2016-Ad1C(CESTAT) Pt. I], dated 26.05.2017

Part XIV of Chapter VI to the Finance Act, 2017 contains amendments to certain Acts to provide for merger of tribunals and other authorities and conditions of service of chairpersons, members, etc. Section 184 of the Finance Act, 2017 lays down the qualifications, appointment, term and conditions of service, salary and allowances, etc., of Chairperson, Vice Chairperson and Members, etc., of the Tribunal, Appellate Tribunal and other Authorities.

Section 252A has been inserted in the Income-tax Act, 1961 to provide that the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the President, Vice-President and other Members of the Appellate

Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017 would be governed by the provisions of section 184 of that Finance Act, 2017.

However, the President, Vice-President and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act i.e., section 252 and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force.

Section 156 of the Finance Act, 2017 provides the provisions of Part XIV of Chapter VI of the Finance Act, 2017 shall come into force on such date as the Central Government may, by notification in the Official Gazette appoint. Accordingly, the Central Government has, vide this notification, appointed 26.05.2017 as the date on which the provisions of the Part XIV of Chapter VI of the Finance Act, 2017 shall come into force.

CHAPTER 23: MISCELLANEOUS PROVISIONS

Clarifications in respect of section 269ST [Circular No. 22/2017, Dated 03.07.2017]

With a view to promote digital economy and create a disincentive against cash economy, new section 269ST has been inserted in the Income-tax Act, 1961 vide Finance Act, 2017. The said section *inter-alia* prohibits receipt of an amount of two lakh rupees or more by a person, in the circumstances specified therein, through modes other than by way of an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account. Penal provisions have also been introduced by way of a new section 271DA, which provides that if a person receives any amount in contravention to the provisions of section 269ST, it shall be liable to pay penalty of a sum equal to the amount of such receipt.

Subsequently, representations were received from non-banking financial companies (NBFCs) and housing finance companies (HFCs) as to whether the provisions of section 269ST shall apply to one instalment of loan repayment or the whole amount of such repayment.

Accordingly, the CBDT has, vide this circular, clarified that in respect of receipt, in the nature of repayment of loan, by NBFCs or HFCs, the receipt of one instalment of loan repayment in respect of a loan shall constitute a 'single transaction' as specified in section 269ST(b) and all the instalments paid for a loan shall not be aggregated for the purposes of determining applicability of the provisions section 269ST.

PART – II : INTERNATIONAL TAXATION

CHAPTER 2: DOUBLE TAXATION RELIEF

Procedure for filing Statement of income from a country or specified territory outside India and Foreign Tax Credit [Notification No. 9/2017, dated 19.09.2017]

An assessee, being a resident shall be allowed a credit for the amount of any foreign tax paid by him in a country or specified territory outside India, by way of deduction or otherwise, in the year in which the income corresponding to such tax has been offered to tax or assessed to tax

in India, in the manner and to the extent as specified in Rule 128 of the Income-tax Rules, 1962.

As per rule 128(9), the statement in Form No. 67 referred to in Rule 128(8)(i) and the certificate or the statement referred to in rule 128(8)(ii) has to be furnished on or before the due date specified for furnishing the return of income under section 139(1), in the manner specified for furnishing such return of income.

Accordingly, the Principal Director General of Income-tax (Systems), has, in exercise of the powers delegated by the CBDT, vide this notification, laid down the following procedures in this regard:

- (i) **Online filing of Form 67:** All assesseees who are required to file return of income electronically under section 139(1) as per Rule 12(3), are required to prepare and submit Form 67 online along with the return of income, if credit for the amount of any foreign tax paid by the assessee in a country or specified territory outside India, by way of deduction or otherwise, in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India.
- (ii) **Preparation and Submission of Form 67:** Form 67 shall be available to all assesseees when they login into the e-filing portal using their valid credentials. A link for filing the Form has been provided under "e-File → Prepare and Submit Online Forms (Other than ITR)". Select Form 67 and assessment year from the drop down. The completed Form 67 can be submitted by clicking on "Submit" button. Digital Signature Certificate or Electronic Verification Code is mandatory to submit Form 67.
- (iii) **Submission of Form 67** shall precede filing of return of income.

CHAPTER 3: TRANSFER PRICING & OTHER ANTI-AVOIDANCE MEASURES

Rules for maintaining information and documents and furnishing report in respect of international group in line with BEPS Action Plan - Country-by-Country reporting and of Master File prescribed [Notification No. 92/2017, dated 31.10.2017]

Section 286 was inserted to implement the recommendations of 2015 Final Report on Action 13, titled "Transfer Pricing Documentation and Country-by-Country (CbC) Reporting", identified under the OECD Base Erosion and Profit Shifting (BEPS) Project, to provide for a specific reporting regime in respect of CbC reporting and also the master file in the Income-tax Act, 1961.

Section 286 provides that every constituent entity resident in India, shall, if it is constituent of an international group, the parent entity of which is not resident in India, notify the prescribed income-tax authority, on or before the prescribed date, in the form and manner, as may be prescribed,

- whether, it is the alternate reporting entity of the international group or
- the details of the parent entity or the alternate reporting entity of the international group and the country or territory of which the said entities are resident.

Every parent entity or the alternate reporting entity, resident in India, shall, for every reporting accounting year, furnish a report, in respect of the international group of which it is a constituent, on or before the due date specified under section 139(1), in the form and manner, as may be prescribed.

The proviso to section 92D requires a person, being a constituent entity of an international group, to also keep and maintain such information and document in respect of an international group as may be prescribed. Further, section 92D(4) requires such person to furnish such information and documents to the authority prescribed under section 286(1) in the prescribed manner on or before the prescribed date.

Accordingly, the CBDT has, vide this notification, prescribed the following rules for maintaining and furnishing CbC report and Master File by a constituent or parent entity of an International group:

I. Information and documents to be kept and maintained [Rule 10DA]	
Rule	Particulars
10DA(1)	<p><u>Persons required to keep and maintain the information and documents:</u> Every person, being a constituent entity of an international group shall -</p> <p>(i) if the consolidated group revenue of the international group, of which such person is a constituent entity, as reflected in the consolidated financial statement of the international group for the accounting year, exceeds ₹ 500 crore; and</p> <p>(ii) the aggregate value of international transactions -</p> <p>(A) during the accounting year, as per the books of accounts, exceeds ₹ 50 crore, or</p> <p>(B) in respect of purchase, sale, transfer, lease or use of intangible property during the accounting year, as per the books of accounts, exceeds ₹ 10 crore.</p> <p><i>Note – The rate of exchange for the calculation of the value in rupees of the consolidated group revenue in foreign currency shall be the telegraphic transfer buying rate (TTBR) of such currency on the last day of the accounting year. [Rule 10DA(8)]</i></p> <p>Part A of Form No. 3CEAA (Master File), however, shall be furnished by every person, being a constituent entity of an international group, whether or not the above conditions are satisfied [Rule 10DA(3)].</p> <p>Part B of Form No.3CEAA has to be furnished by a person, being a constituent entity of an international group, in those cases where the above conditions are satisfied.</p>
	<p><u>Information and documents required to be kept and maintained:</u> The constituent entity shall keep and maintain the following information and documents of the international group, namely:-</p> <p>(a) a list of all entities of the international group along with their addresses;</p>

	<p>(b) a chart depicting the legal status of the constituent entity and ownership structure of the entire international group;</p> <p>(c) a description of the business of international group during the accounting year including, -</p> <ul style="list-style-type: none"> (I) the nature of the business or businesses; (II) the important drivers of profits of such business or businesses; (III) a description of the supply chain for the five largest products or services of the international group in terms of revenue and any other products including services amounting to more than five per cent. of consolidated group revenue; (IV) a list and brief description of important service arrangements made among members of the international group, other than those for research and development services; (V) a description of the capabilities of the main service providers within the international group; (VI) details about the transfer pricing policies for allocating service costs and determining prices to be paid for intra-group services; (VII) a list and description of the major geographical markets for the products and services offered by the international group; (VIII) a description of the functions performed, assets employed and risks assumed by the constituent entities of the international group that contribute at least ten per cent. of the revenues or assets or profits of such group; and (IX) a description of the important business restructuring transactions, acquisitions and divestments; <p>(d) a description of the overall strategy of the international group for the development, ownership and exploitation of intangible property, including location of principal research and development facilities and their management;</p> <p>(e) a list of all entities of the international group engaged in development and management of intangible property along with their addresses;</p> <p>(f) a list of all the important intangible property or groups of intangible property owned by the international group along with the names and addresses of the group entities that legally own such intangible property;</p> <p>(g) a list and brief description of important agreements among members of the international group related to intangible property, including cost contribution arrangements, principal research service agreements and license agreements;</p> <p>(h) a detailed description of the transfer pricing policies of the international group related to research and development and intangible property;</p> <p>(i) a description of important transfers of interest in intangible property, if</p>
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	<p>any, among entities of the international group, including the name and address of the selling and buying entities and the compensation paid for such transfers;</p> <p>(j) a detailed description of the financing arrangements of the international group, including the names and addresses of the top ten unrelated lenders;</p> <p>(k) a list of group entities that provide central financing functions, including their place of operation and of effective management;</p> <p>(l) a detailed description of the transfer pricing policies of the international group related to financing arrangements among group entities;</p> <p>(m) a copy of the annual consolidated financial statement of the international group; and</p> <p>(n) a list and brief description of the existing unilateral advance pricing agreements and other tax rulings in respect of the international group for allocation of income among countries.</p>
10DA(2)	<p><u>Due date for furnishing report:</u></p> <p>The report of the information shall be furnished in Form No. 3CEAA and it shall be furnished on or before the due date for furnishing the return of income specified under section 139(1). For the accounting year 2016-17, such report may, however, be furnished at any time on or before the 31.3.2018.</p>
10DA(4)/(5)	<p><u>Furnishing of report in case of more than one constituent entity:</u></p> <p>Where there are more than one constituent entities resident in India of an international group, then the report or information, as the case may be, may be furnished by that constituent entity which has been designated by the international group to furnish the said report or information, as the case may be, and the same has been intimated by the designated constituent entity in Form 3CEAB.</p> <p>Such intimation shall be made at least 30 days before the due date of filing the report as specified in Rule 10DA(2).</p>
10DA(7)	<p><u>Period for which such information and document to be kept or maintained:</u></p> <p>The information and documents shall be kept and maintained for a period of eight years from the end of the relevant assessment year.</p>
II. Furnishing of Report in respect of an International Group [Rule 10DB]	
Rule	Provision
10DB(1)	<p><u>Intimation in prescribed from:</u></p> <p>For the purposes of section 286(1), every constituent entity resident in India, shall, if its parent entity is not resident in India, intimate the DGIT (Risk Assessment) in Form No. 3CEAC, the following, namely -</p> <p>(a) whether it is the alternate reporting entity of the international group; or</p>

	(b) the details of the parent entity or the alternate reporting entity, as the case may be, of the international group and the country or territory of which the said entities are residents.
10DB(2)	<p><u>Due date for the Intimation:</u> Every intimation shall be made at least two months prior to the due date for furnishing of report i.e., on or before the due date for furnishing return of income as specified under section 139(1).</p>
10DB(3)/ (4)/(5)	<p><u>Entities which are required to furnish report in Form No. 3CEAD:</u> Every parent entity or the alternate reporting entity, as the case may be, resident in India, shall, for every reporting accounting year, furnish the report to the DGIT (Risk Assessment) in Form No.3CEAD (Country by Country Reporting).</p> <p>A constituent entity of an international group, resident in India, other than the parent entity or the alternate reporting entity, has to furnish the report in Form No.3CEAD if the parent entity is resident of a country or territory with which India does not have an agreement providing for exchange of the report or there has been a systemic failure of the country or territory and the said failure has been intimated by the prescribed authority to such constituent entity.</p> <p>If there are more than one constituent entities resident in India of an international group, other than the parent entity or the alternate reporting entity, then the report in Form No.3CEAD may be furnished by that entity which has been designated by the international group to furnish the said report and the same has been intimated to the DGIT (Risk Assessment) in Form No.3CEAD.</p>
10DB(6)	<p><u>Non-applicability of provisions of section 286</u> The provisions of section 286 shall not apply in respect of an international group for an accounting year, if the total consolidated group revenue, as reflected in the consolidated financial statement for the accounting year preceding such accounting year does not exceed ₹ 5,500 crore.</p> <p>Note - Where the total consolidated group revenue of the international group, as reflected in the consolidated financial statement, is in foreign currency, the rate of exchange for the calculation of the value in rupees of such total consolidated group revenue shall be the telegraphic transfer buying rate (TTBR) of such currency on the last day of the accounting year preceding the accounting year. [Rule 10DB(7)]</p>

SECTION – B: QUESTIONS & ANSWERS**PART – I: DIRECT TAX LAWS****QUESTIONS**

1. Mr. Rajiv is a retail trader and his total income for the last few years ranged between ₹ 8 lakh to ₹ 10 lakh. He celebrated his 25th wedding anniversary on a large scale on 2nd December, 2017 by hosting a cruise party in the luxury cruise liner “Ocean Princess”, for which he had spent ₹ 30 lakh. The Assessing Officer, in the course of scrutiny assessment of Mr. Rajiv, asked him to explain the source of such expenditure. The explanation offered by Mr. Rajiv that the same was out of his savings for the last few years, was not found satisfactory by the Assessing Officer, since a couple of years ago, he had spent to tune of ₹ 60 lakh on the grand wedding celebrations of his daughter at Vijayaseshmahal in Chennai. You are required to examine the tax consequences.
2. Examine, in the context of provisions of the Income-tax Act, 1961, the taxability or otherwise of the income/receipt in each of the following cases for the A.Y. 2018-19:
 - (i) Income of ₹ 75,000 derived by a nursery from the sale of seedlings grown without carrying out all the basic operations on land.
 - (ii) Ms. Reema, born and brought up in the State of Sikkim, has a net profit of ₹ 4,28,000 from the business located in Sikkim and interest of ₹ 32,000 on the securities issued by the Central Government.
 - (iii) Amount of ₹ 10 lakh transferred to the NPS Account of Mr. Sriram, an employee of Gamma Ltd., under Atal Pension Yojana, from an approved superannuation fund.
 - (iv) Receipt by Smt. Vidya, widow of Mr. Sharma (who was an employee of M/s. Phi Ltd.), on 25.10.2017 of ₹ 7.40 lakhs, being amount standing to the credit of Mr. Sharma’s NPS Account, in respect of which deduction has been allowed under section 80CCD to Mr. Sharma in the earlier previous years. Such amount was received by her as a nominee on closure of the account.
 - (v) Amount of ₹ 1,20,000, being 10% of salary of Mr. Ganesh, contributed by his employer Alpha Ltd. to an approved superannuation fund.
3. A partnership firm consisting of three working partners A, B and C is engaged in the business of manufacturing and selling stationery.

Turnover of the business for the year ended 31st March, 2018 amounts to ₹ 190 lakh. Bad debts written off in the books are ₹ 80,000. Interest at 12% is provided to partner B on his capital of ₹ 10 lakh as authorized by the partnership deed.

The firm had business loss of ₹ 75,000 and unabsorbed depreciation of ₹ 1,20,000 carried forward from Assessment Year 2017-18. The firm did not pay tax under

presumptive tax system in assessment year 2017-18. The firm opts for presumptive taxation under section 44AD for Assessment Year 2018-19. Assume that whole of the amount of turnover has been received by way of account payee cheque during the P.Y. 2017-18.

- (i) Compute the income of the firm chargeable under the head “Profits and gains of business or profession.”
 - (ii) What would be the liability for interest under sections 234B and 234C, if the firm has not paid any advance tax? Assume that no TDS/TCS to its credit.
4. Delta Limited is engaged in growing and manufacturing rubber in India. It commenced its operations from 1st April, 2017. It acquired plant and machinery (second hand), factory building and furniture at a cost of ₹ 62 lakhs, ₹ 37 lakhs and ₹ 8 lakhs, respectively, in the P.Y. 2017-18 by way of ECS through bank account. Assuming that all the assets were put to use for more than 180 days during the P.Y. 2017-18, you are required to compute the written down value of each block as on 1st April, 2018.
5. Ms. Poorna purchased a residential house from her friend Ms. Leena at ₹ 20 lakhs in the city of Coimbatore on 17th December, 2017. The value determined by the Stamp Valuation Authority for stamp duty purpose amounted to ₹ 28 lakhs. Ms. Leena had purchased the house on 28th December, 2015 at a cost of ₹ 5 lakhs. Ms. Poorna sold the house for ₹ 30 lakhs on 26th February, 2018.

Determine the effect of the above transactions on the assessments of Ms. Poorna and Ms. Leena for the A.Y. 2018-19, assuming that value for stamp duty purpose in case of the second sale was not more than the sale consideration.

6. (a) Mr. Sridhar gifted amount of ₹ 8,00,000 to his brother’s wife, Ms. Lakshmi, which was used by her for the purchase of a house and simultaneously, on the same day, his brother Mr. Vishnu gifted shares owned by him in a foreign company worth ₹ 10,00,000 to Harsh, Mr. Sridhar’s minor son. Examine the impact of such transfers in the hands of Mr. Sridhar and Mr. Vishnu.
- (b) Mr. Kumar held 18% equity shares in PQR (P) Ltd. He gifted all the shares held by him in PQR (P) Ltd., to his wife Sowmya on 17.7.2017. The transfer was made without adequate consideration. On 18.9.2017, Sowmya obtained a loan of ₹ 2 lakh from PQR (P) Ltd., when the company's accumulated profit was ₹ 1,50,000. Examine the tax implications of the above transactions.
7. A private limited company (not being an eligible start up referred to in section 80-IAC) has share capital in the form of equity share capital. The shares were held up till 31st March, 2016 by four members Akash, Bala, Chris and Dinesh equally. The company made losses/profits for the past three assessment years as follows:

Assessment Year	Business Loss ₹	Unabsorbed Depreciation ₹	Total ₹
2014-15	Nil	16,00,000	16,00,000

2015-16	Nil	12,00,000	12,00,000
2016-17	10,00,000	7,00,000	17,00,000
Total	10,00,000	35,00,000	45,00,000

The above figures have been accepted by the tax department.

During the previous year ended 31.3.2017, Akash sold his shares to Ganesh and during the previous year ended 31.3.2018, Bala sold his shares to Rajesh. The profits for the P.Y. 2016-17 and P.Y.2017-18 are as follows:

31.3.2017 ₹ 20,00,000 (before charging depreciation of ₹ 8,00,000)

31.3.2018 ₹ 50,00,000 (before charging depreciation of ₹ 10,00,000)

Compute taxable income for A.Y.2018-19. Workings must form part of your answer.

8. With brief reasons, answer the following in terms of Chapter VI-A of the Income-tax Act, 1961:
- (i) Mr. Harish, a resident Indian, deposited ₹ 90,000 with Life Insurance Corporation for the maintenance of his sister who suffers from disability of 80%. She is wholly dependent on him. How much amount is deductible from Gross Total Income?
- (ii) Mr. Rajesh, a resident Indian, has gross total income of ₹ 5,40,000 for A.Y. 2018-19. He has given the following donations:
- National Children's Fund ₹ 50,000 - by cheque
 Indra Gandhi Memorial Trust ₹ 40,000 - by cheque
 Clean Ganga Fund ₹ 30,000 - by cash
 Swachh Bharat Kosh ₹ 60,000 - equally by cash and cheque.
- Compute the amount deductible under section 80G.
- (iii) Mr. Vishal, a resident, who is a computer hardware engineer, co-authored a book on advanced computer programming alongwith his friend. He received ₹ 7,00,000 as lump sum royalty in December, 2017. How much of royalty is deductible?
9. Epsilon Ltd. is engaged in the business of manufacturing fertilizers since 1st April 2009. Its statement of profit and loss shows a net profit of ₹ 350 lakhs for the year ended 31-03-2018, after debiting and crediting the following items:
- ◆ Depreciation provided in accounts as per straight line basis ₹ 50 lakhs.
Note: Normal depreciation allowable as per the Income-tax Rules, 1962 is ₹ 62 lakhs.
 - ◆ The company has made cash payments for purchases and expenditure as below:
 On 05-08-2017 ₹ 8 lakhs (Due to strike by bank staff)

On 17-08-2017 ₹ 5 lakhs (Due to cash demanded by the supplier)

Cash payments made to transport operator for hiring of lorry are as follows:

07-05-2017 ₹ 40,000; 08-01-2018 ₹ 35,000; 02-03-2018 ₹ 52,000.

- ◆ ₹ 8 lakhs contribution to a National Laboratory approved under section 35(2AA).
- ◆ GST of ₹ 2.10 lakhs, pertaining to P.Y.2017-18, was paid on 5-12-2018.
- ◆ The company has also purchased goods of ₹ 63 lakhs from M/s. Gamma Ltd. in which directors have substantial interest. The market value of the goods is ₹ 58 lakhs.
- ◆ The company has incurred legal expenses for the following:
 - Issue of bonus shares ₹ 5 lakhs
 - Issue of rights shares ₹ 4 lakhs
- ◆ Donation paid to a registered political party by way of cheque ₹ 17 lakhs

Compute the total income and tax liability of the company for the A.Y.2018-19 by integrating, analysing and applying the relevant provisions of the income-tax law and decided case laws. Give brief reasons for treatment of each item. Ignore MAT provisions.

Note – Turnover of Epsilon Ltd. for P.Y. 2015-16 is ₹ 52 crore.

10. M/s. Omega & Co., a partnership firm in India, is engaged in development of software and providing IT enabled services through two units, one of which is located in a notified Special Economic Zone (SEZ) in Noida (commenced operations from 01.04.2007). The particulars relating to previous year 2017-18 furnished by the assessee are as follows:

Total Turnover: SEZ unit ₹ 180 lakhs and the other unit ₹ 120 lakhs

Export Turnover: SEZ unit ₹ 120 lakhs and the other unit ₹ 80 lakhs

Profit: SEZ unit ₹ 60 lakhs and the other unit ₹ 30 lakhs.

Amount debited to Statement of Profit and Loss and credited to Special Economic Zone Re-Investment Reserve Account ₹16 lakhs.

Considering that the firm has no other income during the year, compute the tax payable by the firm for the A.Y.2018-19 by integrating, analysing and applying the relevant provisions of income-tax law.

11. Examine the correctness or otherwise of the claims made by the following charitable trusts, registered under section 12AA, while computing income for the P.Y.2017-18:

- (a) Kamala charitable trust, having its main object as medical relief, earned the following income during the P.Y.2017-18:

	Particulars	₹ in lakh
(i)	Dividend income	0.50

(ii)	Income from mutual funds specified under section 10(23D)	0.85
(iii)	Agricultural income	3.25

The trust claims exemption under section 10(1), 10(34) and 10(35) in respect of its agricultural income, dividend and income from mutual funds, respectively, without complying with the conditions laid down under section 11.

- (b) Gandhi charitable trust, having its main object as promoting education in rural areas, purchased computers and laptops for ₹ 15 lakh in March, 2017 for the purposes of the trust and claimed the same as application of income in the P.Y.2016-17. It also claims depreciation @ 40% on such computers and laptops for P.Y.2017-18, while computing income for the purpose of application for that year.
12. Examine whether the following acts can be considered as (i) Tax planning; or (ii) Tax management; or (iii) Tax evasion. Give brief reasons for your answer.
- (i) Miss Aparna deposits ₹ 1,50,000 in PPF account so as to reduce her total income from ₹ 6,40,000 to ₹ 4,90,000, so as to fall in the 5% total income slab.
- (ii) Theta Ltd. maintains register of tax deduction at source effected by it to enable timely compliance.
- (iii) A company installed an air-conditioner costing ₹ 60,000 at the residence of a director as per terms of his appointment but treats it as fitted in quality control section in the factory. This is with the objective of treating it as plant for the purpose of computing depreciation.
13. Sigma Consulting (P) Ltd., an Indian company established in the year 2005, reports total income of ₹ 15 lakh for the previous year ended 31st March, 2018. Tax deducted at source by different payers amounted to ₹ 1,35,600 and tax paid in foreign country on a doubly taxed income amounted to ₹ 22,000 for which the company is entitled to relief under section 90 as per the double taxation avoidance agreement.

During the year, the company paid advance tax as under:

Date of payment	Advance tax paid (₹)
14-06-2017	38,000
13-09-2017	73,000
14-12-2017	92,000
15-03-2018	77,000

The company filed its return of income for the A.Y. 2018-19 on 22nd October, 2018.

Compute interest, if any, payable by the company under sections 234A, 234B and 234C and fee payable under section 234F. Assume that transfer pricing provisions are not applicable.

Note – Turnover of Sigma Consulting (P) Ltd. for P.Y. 2015-16 is ₹ 55 crore.

14. M/s Cool Sip Limited entered into an agreement for the warehousing of its products with Topstore Warehousing and deducted tax at source as per provisions of section 194C out of warehousing charges paid during the year ended on 31.03.2018. The Assessing Officer, while completing the assessment for A.Y. 2017-18 of Cool Sip Limited in March 2018, treated the warehousing charges as rent as defined in section 194-I and asked the company to make payment of difference amount of TDS with interest. It was submitted by the company that the recipient had already paid tax on the entire amount of warehousing charges and therefore, now the difference amount of TDS cannot be recovered. However, it will make the payment of due interest on the difference amount of TDS. Examine critically in the context of provisions contained in Income-tax Act, 1961 as to the correctness of the submission of M/s. Cool Sip Ltd.
15. An Assessing Officer entered a hotel run by a person, in respect of whom he exercises jurisdiction, at 8.30 p.m. for the purpose of collecting information, which may be useful for the purposes of the Act. The hotel is kept open for business every day between 8 a.m. and 10 p.m. The hotelier claims that the Assessing Officer could not enter the hotel after sunset. The Assessing Officer wants to take away with him the books of account kept at the hotel.

Examine the validity of the claim made by the hotelier and the proposed action of the Assessing Officer with reference to the provisions of section 133B of the Income-tax Act, 1961.

16. (a) In an order of assessment for the A.Y. 2016-17, the assessee noticed a mistake for which application under section 154 was moved and the order was rectified. Subsequently, the assessee moved further application for rectification under section 154 which was rejected by the Assessing Officer on the ground that the order once rectified cannot be rectified again. Examine the correctness or otherwise of the contention of the Assessing Officer.
- (b) The return for A.Y.2018-19 was filed on time as per section 139(1) and proceedings were taken up for assessment under section 143(3). Later on, the assessee, noticed certain omissions and therefore filed a revised return on 18.4.2019. The Assessing Officer ignoring the revised return so filed framed the order on 27.4.2019. Is the action of Assessing Officer correct? Examine.
17. The assessment of Vindhya Ltd. was completed under section 143(3) with an addition of ₹ 21 lakhs to the returned income. Vindhya Ltd. preferred appeal before the Commissioner (Appeals) which is pending now.

In this backdrop, examine the following issues:

- (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?
18. Explain the circumstances under which the Assessing Officer can resort to provisional attachment of the property of the assessee. Also, state the period of time for which such attachment can take place.

When can the Assessing Officer revoke provisional assessment of property? Discuss.

19. The details given hereunder for the A.Y.2018-19 relate to two foreign nationals (who are non-residents in India) - Mr. William Jones, an English cricket player and his brother, Mr. Frederick Jones, a singer:

	Particulars	Mr. William Jones	Mr. Frederick Jones
(1)	Participation in cricket tournaments in India	₹ 45 lakhs	
(2)	Winnings from lotteries (net)	₹ 69,100	
(3)	Contribution of an article relating to the sport of cricket in a sports magazine in India	₹ 10,000	
(4)	Performance in a music show in India		₹ 3 lakhs

With reference to the provisions of the Income-tax Act, 1961, you are required to –

- (i) Compute their tax liability for the A.Y.2018-19.
- (ii) Examine whether the above income are subject to deduction of tax at source.
- (iii) Decide whether it is necessary for them to file their return of income for A.Y.2018-19.
20. ABC Inc., a US company has a subsidiary, XYZ Ltd. in India. ABC Inc. sells LEDs to XYZ Ltd. for resale in India. ABC Inc. also sells LEDs to PQR Ltd., another LED reseller in India. It sells 30,000 LEDs to XYZ Ltd. at ₹ 22,000 per unit. The price fixed for PQR Ltd. is ₹ 18,000 per unit. The warranty in case of sale of LEDs by XYZ Ltd. is handled by XYZ Ltd. However, for sale of LEDs by PQR Ltd., ABC Inc. is responsible for the warranty for 6 months. Both ABC Inc. and XYZ Ltd. offer extended warranty at a standard rate of ₹ 2,500 per annum. On these facts, examine how the assessment of XYZ Ltd. is going to be affected.
21. The following are the particulars of income earned by Miss Anuradha, a resident Indian aged 25, for the A.Y. 2018-19:

Particulars	(₹ In lacs)
Income from playing hockey matches in country A	15.00
Tax paid in country A	3.00

Income from playing hockey matches in India	23.00
Deposit in PPF	1.50
Medical Insurance Premium paid for her mother aged 75 years (paid through credit card), who is not dependent on her.	0.40

Compute her total income and tax liability for the A.Y.2018-19. There is no Double Taxation Avoidance Agreement between India and country A.

22. Mr. Vallish, a non-resident, made an application to the Authority for Advance Rulings on 9.9.2017 in relation to a transaction proposed to be undertaken by him. On 1.11.2017, he decides to withdraw the said application. Can he withdraw the application on 1.11.2017? Examine.
23. Explain how the income derived by a resident of a Contracting State in respect of professional services is taxable as per the UN Model Convention. In this context, discuss the scope of professional services.
24. Explain, with examples, the role of Protocol and Preamble in interpretation of tax treaty
25. What is the meaning of, and difference between, a hybrid mismatch and branch mismatch? Briefly mention the reasons why hybrid mismatch arrangements arise. Which Action Plan of BEPS gives recommendations in this regard?

SUGGESTED ANSWERS/HINTS

1. If any expenditure is incurred by an assessee in any financial year in respect of which he is not able to offer explanation about the source of such expenditure or the explanation offered by him is not satisfactory in the opinion of the Assessing Officer, then the amount of such unexplained expenditure may be deemed as income of the assessee for such financial year as per section 69C.

Therefore, in this case, since the Assessing Officer is not satisfied with the explanation offered by Mr. Rajiv, the expenditure of ₹ 30 lakh incurred by him in the financial year 2017-18 in hosting a grand cruise party may be deemed as his income for P.Y. 2017-18 as per section 69C.

Further, such unexplained expenditure which is deemed as the income of Mr. Rajiv shall not be allowed as deduction under any head of income.

Where the total income of Mr. Rajiv includes such unexplained expenditure of ₹ 30 lakh, which is deemed as his income under section 69C, such deemed income would be taxed at the rate of 60% as per section 115BBE plus surcharge@25% and cess@3%. The effective rate of tax would be 77.25%.

Further, no basic exemption or allowance or expenditure shall be allowed to him under any provision of the Income-tax Act, 1961 in computing such deemed income. No set-off of loss is permissible against such deemed income.

New section 271AAC has been inserted with effect from 1st April, 2017 in the Income-tax Act, 1961 to provide for levy of penalty@10% of tax payable under section 115BBE, in a case where income determined includes any income referred to in sections 68, 69, 69A to 69D for any previous year.

However, no such penalty would be levied on such income to the extent the same has been included by the assessee in return of income furnished under section 139 and tax in accordance with section 115BBE has been paid on or before the end of the relevant previous year.

2. (i) *Explanation 3* to section 2(1A) provides that the income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income, whether or not the basic operations were carried out on land. Accordingly, the income of ₹ 75,000 derived by a nursery from the sale of seedlings grown without carrying out all the basic operations on land shall be treated as agricultural income and exempt from tax under section 10(1).
- (ii) Section 10(26AAA) exempts the income which accrues or arises to a Sikkimese individual from any source in the State of Sikkim and the income by way of dividend or interest on securities. Therefore, the income of Ms. Reema from a business located in Sikkim and interest income on the securities issued by the Central Government shall not be subject to tax.
- (iii) Any payment from an approved superannuation fund made by way of transfer to the account of an employee under a notified pension scheme referred to in section 80CCD and notified by the Central Government is exempt under section 10(13). Since Atal Pension Yojana is a notified pension scheme under section 80CCD, the amount of ₹ 10 lakhs transferred from an approved superannuation fund to the NPS Account of Mr. Sriram, an employee of Gamma Ltd., is exempt under section 10(13).
- (iv) The proviso to section 80CCD(3) provides that the amount received by the nominee, *inter alia*, on closure of NPS account on the death of the assessee, shall not be deemed to be the income of the nominee. Accordingly, the amount of ₹ 7.40 lakhs standing to the credit of Mr. Sharma's NPS Account, received by the nominee Smt. Vidya, on closure of the account after death of her husband, would not be deemed to be her income.
- (v) The amount of any contribution by the employer to an approved superannuation fund in respect of an employee would be a taxable perquisite under section 17(2), to the extent it exceeds ₹1,50,000. In this case, since the contribution by the employer, Alpha Ltd., is only ₹ 1,20,000, no part of the said contribution would be taxable as perquisite under section 17(2) in the hands of the employee, Mr. Ganesh.

3. (i) Computation of income of the firm chargeable under the head “Profits and Gains of business or profession”

Particulars	₹
Presumptive income under section 44AD (6% of ₹ 190 lakh) [See Note 1]	11,40,000
Less: Brought forward business loss under section 72 [See Note 4]	<u>75,000</u>
Income of the firm chargeable under the head “Profits and Gains of business or profession”	<u>10,65,000</u>
Tax liability at @ 30.9%	3,29,085

Notes: -

- (1) A partnership firm falls within the definition of “eligible assessee” under section 44AD. The threshold limit of turnover for applicability of presumptive taxation scheme under section 44AD is ₹ 200 lakh. In this case, since the turnover of the business of the firm is ₹ 190 lakh, it falls within the definition of “eligible business” and therefore, the firm is eligible to opt for presumptive taxation scheme under section 44AD. 6% of the total turnover would be deemed to be the business income of the firm as whole of the amount of turnover has been received by way of account payee cheque during the P.Y. 2017-18.
 - (2) As per section 44AD(2), all deductions allowable under sections 30 to 38 shall be deemed to have been allowed in full and no further deduction shall be allowed.

Accordingly, no deduction shall be allowed for bad debts since the same is deductible under section 36(1)(vii). Likewise, unabsorbed depreciation is not deductible since the same is deductible under section 32(2).
 - (3) Interest on capital and working partner salary are also not deductible while computing the presumptive income of a partnership firm under section 44AD for the assessment year 2018-19.
 - (4) However, brought forward business loss of previous year 2016-17 can be set-off against current year business income as per section 72.
- (ii) Since the partnership firm has opted for computation of income on presumptive basis under section 44AD, it must pay the whole amount of advance tax in one installment on or before 15.03.2018. Further, any amount paid by way of advance tax on or before 31.3.2018 shall also be treated as advance tax paid during the financial year on or before 15th March 2018.
- Since the firm has not paid advance tax –
- (a) it has to pay interest under section 234C at 1% on ₹ 3,29,085.

(b) it has to pay interest under section 234B @1% per month or part of a month on ₹ 3,29,085 from 1st April, 2018 to the date of determination of total income under section 143(1) and where regular assessment is made, to the date of regular assessment.

4. As per section 32, depreciation to be allowed has to be computed at the prescribed percentage on the written down value of any block of assets.

As per section 43(6), in the case of assets acquired before the previous year, the written down value means the actual cost to the assessee less all depreciation "actually allowed" to him under the Income-tax Act, 1961.

As per Rule 7A of the Income-tax Rules, 1962, only 35% of income from business of growing and manufacturing of rubber in India is deemed to be income liable to tax. The balance 65% would be agricultural income, which is not chargeable to tax.

Explanation 7 to section 43(6) provides that in cases of composite income, for the purpose of computing written down value of assets acquired before the previous year, the total amount of depreciation shall be computed as if the entire composite income of the assessee is chargeable to tax under the head "Profits and gains of business or profession". The depreciation so computed shall be deemed to have been "actually allowed" to the assessee.

Therefore, even if only 35% of Delta Limited's income from sale of rubber grown and manufactured in India is taxable, full depreciation (and not 35%) should be taken as "actually allowed" for the purpose of computing WDV. Accordingly, the WDV of each block as on 1st April 2018 will be as follows:

Plant & Machinery = ₹ 62 lakhs – ₹ 9.30 lakhs (15% of ₹ 62 lakhs) = ₹ 52.70 lakhs.

Building (Factory) = ₹ 37 lakhs – ₹ 3.70 lacs (10% of ₹ 37 lakhs) = ₹ 33.30 lacs.

Furniture = ₹ 8 lakhs – ₹ 0.80 lakhs (10% of ₹ 8 lakhs) = ₹ 7.20 lakhs.

5. Tax treatment in the hands of the seller, Ms. Leena

Section 50C provides that where the consideration received or accruing as a result of transfer of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by an authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall be deemed to be the full value of the consideration received or accruing as a result of such transfer for computing capital gain.

In the instant case, Ms. Leena sold a residential house at Coimbatore to her friend Ms. Poorna for ₹ 20 lakhs, whereas the stamp duty value was ₹ 28 lakhs. Therefore, stamp duty value shall be deemed to be the full value of consideration for sale of the property. Therefore, short-term capital gain arising to Ms. Leena for A.Y. 2018-19 will be ₹ 23 lakhs (i.e. ₹ 28 lakhs - ₹ 5 lakhs). The capital gain is short-term since the period of holding of residential house is not more than 24 months.

Tax treatment in the hands of the buyer, Ms. Poorna

The taxability provisions under section 56(2)(x), includes within its scope, any immovable property, being land or building or both, received for inadequate consideration by, *inter alia*, an individual.

As per section 56(2)(x), where any immovable property is received for a consideration which is less than the stamp duty by an amount exceeding ₹ 50,000, the difference between the stamp duty value and the consideration shall be chargeable to tax in the hands of the recipient as the income from other sources. The provisions of section 56(2)(x) would be attracted in this case, since the difference exceeds ₹ 50,000. Therefore, ₹ 8 lakhs, being the difference between the stamp duty value of the property (i.e., ₹ 28 lakhs) and the actual consideration (i.e., ₹ 20 lakhs) would be taxable in the hands of Ms. Poorna, under the head 'Income from Other Sources'.

As per section 49(4), the cost of acquisition of such property for computing capital gains would be the value which has been taken into account for section 56(2)(x). Accordingly, ₹ 28 lacs would be taken as the cost of acquisition of the house. Therefore, on sale of the flat by Ms. Poorna, ₹ 2 lakhs (i.e. ₹ 30 lakhs – ₹ 28 lakhs) would be chargeable to tax as short-term capital gains in her hands for A.Y. 2018-19. Since this is a case covered by section 49(4) and not section 49(1), the period of holding of the previous owner, namely, Ms. Leena, will NOT be considered for determining whether the capital gain in short term or long term.

6. (a) In the given case, Mr. Sridhar is making a gift of ₹ 8,00,000 to his brother's wife for the purchase of a house by her and simultaneously, his brother, Mr. Vishnu, is making a gift of shares worth ₹ 10,00,000 owned by him in a foreign company to the minor son of Mr. Sridhar. These transfers are in the nature of cross transfers. Accordingly, the income from the assets transferred would be assessed in the hands of the deemed transferor because the transfers are so intimately connected to form part of a single transaction and each transfer constitutes consideration for the other by being mutual or otherwise.

The Supreme Court has, in *CIT vs. Keshavji Morarji (1967) 66 ITR 142*, held that if two transactions are inter-connected and are part of the same transaction in such a way that it can be said that the circuitous method was adopted as a device to evade tax, the implication of clubbing provisions would be attracted.

Accordingly, the income arising to his brother's wife Ms. Lakshmi from the house property would be included in the total income of his brother, Mr. Vishnu and the dividend income from shares transferred to Mr. Sridhar's minor son would be taxable in the hands of Mr. Sridhar. This is because both Mr. Sridhar and his brother are the indirect transferors of the income yielding assets to their minor child and spouse, respectively, with an intention to reduce their burden of taxation. However, dividend income earned from shares of the value of ₹ 8,00,000 alone will be clubbed in the hands of Mr. Sridhar, since cross transfer is only to the extent of

₹ 8,00,000. Balance dividend income (in respect of shares of the value of ₹ 2,00,000) will be included in the hands of Mr. Sridhar or his spouse, as the case may be, whose total income excluding such income is greater under section 64(1A).

However, since husband's brother and father's brother fall within the definition of "relative" under section 56(2)(x), hence, the sum of money and property, respectively, received from them would be exempt in the hands of the concerned transferee.

- (b) Under section 2(22)(e), any payment by a closely-held company by way of loan or advance to its shareholder, being a person who is the beneficial owner of shares, holding not less than 10% of the voting power, is deemed as dividend to the extent to which the company possesses accumulated profits.

Therefore, in order to attract the deeming provisions under section 2(22)(e), the recipient of loan should be a registered shareholder as well as the beneficial owner of shares.

Accordingly, in this case, ₹ 1,50,000 (i.e., loan to the extent of accumulated profits of PQR (P) Ltd.) would be deemed as dividend in the hands of Sowmya, who holds 18% equity shares in PQR (P) Ltd., under section 2(22)(e).

Thereafter, the clubbing provisions under section 64(1)(iv) would be attracted, as per which, income as arises, directly or indirectly, from asset transferred to spouse, otherwise than for adequate consideration, would be included in the hands of the transferor.

If the assets so transferred are shares in a company, the loan taken from the company is deemed as dividend income of the shareholder under section 2(22)(e) to the extent to which the company possesses accumulated profits. Thus, on account of this deeming provision, such loan is treated as income arising from the shares. It was so held by the Madras High Court in *CIT v. Vimalan (A.) (1975) 98 ITR 529*.

Accordingly, as per section 64(1)(iv), such income arising in the hands of the shareholder, Sowmya, by virtue of section 2(22)(e) (i.e., deemed dividend of ₹ 1,50,000) would be included in the total income of Mr. Kumar, who had transferred the said shares to Sowmya without consideration.

7. Akash, Bala, Chris and Dinesh are the four shareholders of a private limited company. The shareholding pattern of the company in the three financial years are given below:

As on 31 st day of March	Akash	Bala	Chris	Dinesh	Ganesh	Rajesh
	%	%	%	%	%	%
2016	25	25	25	25	-	-
2017	-	25	25	25	25	-
2018	-	-	25	25	25	25

Section 79 provides that, in case of a closely held company not being an eligible start up referred to in section 80-IAC, no loss incurred in the previous year shall be carried forward and set off against the income of the subsequent previous year unless the shares carrying at least 51% of the voting power of the company are beneficially held on the last day of the previous year in which the loss is sought to be set off, by the same shareholders, who beneficially held the shares carrying at least 51% of the voting power on the last day of the previous year in which the loss was incurred.

Since shareholders holding at least 51% of the voting power are the same on 31st March 2016 and 2017, the restriction imposed by section 79 is not applicable for set-off of losses of the P.Y. 2015-16 against income of the P.Y. 2016-17. Thus, the taxable income for the assessment year 2017-18 would be:

Particulars	₹
Business profit	20,00,000
Less: Current year's depreciation	8,00,000
	12,00,000
Less: Brought forward business loss [as per section 72(2)]	10,00,000
Unabsorbed depreciation [as per section 32(2)]	2,00,000
Taxable income for A.Y. 2017-18	Nil

Balance Unabsorbed depreciation relating to the earlier assessment years can be carried forward to the next assessment year i.e., A.Y.2018-19. There is no brought forward business loss and section 79 is not applicable in case of carry forward of unabsorbed depreciation. Section 32 governs the carry forward and set off of depreciation for which the shareholding pattern is not relevant at all. Consequently, the income for A.Y.2018-19 will be determined as under -

Particulars	₹	₹
Business income		50,00,000
Less: Current year's depreciation		10,00,000
		40,00,000
Less: Unabsorbed depreciation:-		
Assessment year 2014-15	14,00,000	
Assessment year 2015-16	12,00,000	
Assessment year 2016-17	7,00,000	33,00,000
Taxable Income for A.Y.2018-19		7,00,000

8. **Allowability of deduction under Chapter VIA**

	Deduction (₹)	Reasons
(i)	1,25,000	As per section 80DD, an assessee, being an individual or HUF,

		<p>who is resident in India during the previous year, has –</p> <ul style="list-style-type: none"> - incurred any expenditure for medical treatment (including nursing), training and rehabilitation of a dependent, or - paid or deposited any amount under a scheme framed by LIC or other insurer for the maintenance of a dependent, <p>would be eligible for deduction of ₹ 75,000, in case such dependent is a person with disability. In case such dependent is a person with severe disability, the deduction under this section would be ₹ 1,25,000.</p> <p>Mr. Harish would be eligible for deduction under section 80DD since he has deposited money with LIC for maintenance of his sister (a dependent for the purpose of section 80DD), who suffers from severe disability (80% or more disability) and is wholly dependent on him.</p> <p>A flat deduction of ₹ 1,25,000 would be available to him under section 80DD, irrespective of the amount deposited with LIC.</p>																									
(ii)	1,00,000	<p>Mr. Rajesh would be eligible for deduction under section 80G in respect of the donations made during the previous year as follows:</p> <table border="1"> <thead> <tr> <th>Donation to</th> <th>Amount of donation (₹)</th> <th>Mode of donation</th> <th>% eligible for deduction</th> <th>Amount of deduction (₹)</th> </tr> </thead> <tbody> <tr> <td>National Children's Fund</td> <td>50,000</td> <td>Cheque</td> <td>100%</td> <td>50,000</td> </tr> <tr> <td>Indira Gandhi Memorial Trust</td> <td>40,000</td> <td>Cheque</td> <td>50%</td> <td>20,000</td> </tr> <tr> <td>Clean Ganga Fund</td> <td>30,000</td> <td>Cash</td> <td>100%</td> <td>Nil (Cash donation in excess of ₹ 2,000 would <u>not</u> qualify for deduction)</td> </tr> <tr> <td>Swachh Bharat Kosh</td> <td>60,000</td> <td>₹ 30,000 by cheque & ₹ 30,000 by cash</td> <td>100%</td> <td>30,000 (Amount of ₹ 30,000 contributed by cheque qualifies for deduction.)</td> </tr> </tbody> </table>	Donation to	Amount of donation (₹)	Mode of donation	% eligible for deduction	Amount of deduction (₹)	National Children's Fund	50,000	Cheque	100%	50,000	Indira Gandhi Memorial Trust	40,000	Cheque	50%	20,000	Clean Ganga Fund	30,000	Cash	100%	Nil (Cash donation in excess of ₹ 2,000 would <u>not</u> qualify for deduction)	Swachh Bharat Kosh	60,000	₹ 30,000 by cheque & ₹ 30,000 by cash	100%	30,000 (Amount of ₹ 30,000 contributed by cheque qualifies for deduction.)
Donation to	Amount of donation (₹)	Mode of donation	% eligible for deduction	Amount of deduction (₹)																							
National Children's Fund	50,000	Cheque	100%	50,000																							
Indira Gandhi Memorial Trust	40,000	Cheque	50%	20,000																							
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						₹ 30,000 contributed by cash will not qualify for deduction u/s 80G)
(iii)	3,00,000	<p>The entire royalty would be first included in Mr. Vishal's income under the head "Income from other sources".</p> <p>Thereafter, Mr. Vishal is eligible for deduction from gross total income under section 80QQB, of the whole of the income derived by him on account of any lumpsum consideration in the form of royalty in respect of a book, being a work of literary or scientific nature, or ₹ 3,00,000, whichever is less.</p> <p>Book on Advanced computer programming would fall within the description of work of literary or scientific nature [<i>Dassault Systems K.K. In Re. (2010) 322 ITR 125 (AAR)</i>].</p> <p>In this case, the eligible deduction under section 80QQB would be the lower of ₹ 7,00,000, being the amount of lumpsum royalty received by Mr. Vishal or ₹ 3,00,000.</p> <p>The net effect is that out of ₹ 7,00,000 included in Vishal's income, he can claim deduction of ₹ 3,00,000 under section 80QQB. The balance of ₹ 4,00,000 would form part of his total income.</p>				

9. Computation of Total Income of Epsilon Ltd. for the A.Y.2018-19

Particulars	Amount (₹)	
Profits and Gains from Business and Profession		
Net profit as per profit and loss account		3,50,00,000
Add: Items debited but to be considered separately or to be disallowed		
Depreciation provided on straight line basis (Note 1)	50,00,000	
Disallowance under section 40A(3) for payment exceeding ₹ 10,000 made in cash for purchases and expenditure (Note 2)	5,00,000	
Disallowance under section 40A(3) for cash payment exceeding ₹ 35,000 in a day to transport operators for hiring of lorry (Note 3)	92,000	
Contribution to a National Laboratory (considered separately for weighted deduction) (Note 4)	8,00,000	
GST deposited on 5.12.2018 (Note 5)	2,10,000	

Disallowance under section 40A(2) for excess payment to related person (Note 6)	5,00,000	
Legal expenses for issue of bonus shares (Note 7)	-	
Legal expenses for issue of right shares (Note 7)	4,00,000	
Donation to a registered political party (Note 8)	<u>17,00,000</u>	<u>92,02,000</u>
		4,42,02,000
Less: Items credited but to be considered separately or to be allowed/ Expenditure to be allowed		
Depreciation allowable under the Income-tax Act, 1961 (Note 1)	62,00,000	
Weighted deduction @ 150% in respect of contribution of ₹ 8 lakhs to National Laboratory under section 35(2AA) (Note 4)	<u>12,00,000</u>	<u>74,00,000</u>
Gross Total Income		3,68,02,000
Less: Deduction under Chapter VI-A		
U/s 80GGB [Donation to registered political party] (Note 8)		<u>17,00,000</u>
Total Income		<u>3,51,02,000</u>

Computation of tax liability of Epsilon Ltd. for A.Y.2018-19

Particulars	₹
Tax@30% on total income of ₹ 3,51,02,000 [Since turnover of P.Y. 2015-16 > ₹ 50 crore]	1,05,30,600
Add: Surcharge@7% (since total income exceeds ₹ 1 crore but does not exceed ₹ 10 crores)	<u>7,37,142</u>
Tax payable including surcharge	1,12,67,742
Add: Education cess@2% and secondary and higher education cess@1%	<u>3,38,032</u>
Total tax payable	<u>1,16,05,774</u>
Tax payable (Rounded off)	1,16,05,770

Notes:

- Depreciation provided in the accounts on straight line basis (i.e., ₹ 50 lakhs) has to be added back and depreciation calculated as per Income-tax Rules, 1962 (i.e. ₹ 62 lakhs) is allowable as deduction under section 32.
- Cash payments exceeding ₹ 10,000 a day attracts disallowance under section 40A(3). However, Rule 6DD provides for certain exceptions, which includes, *inter alia*, payments which are required to be made on a day on which the banks were closed on account of strike. Therefore, cash payment of ₹ 8 lakhs made on the day of strike by bank staff would not attract disallowance under section 40A(3),

assuming that the payment was required to be made on that specific date. However, cash payment of ₹ 5 lakhs made on 17-8-2017 due to demand of supplier would attract disallowance under section 40A(3), since the same is not covered under any of the exceptions laid out in Rule 6DD.

- (3) In respect of cash payments to transport operators, a higher limit of ₹ 35,000 per day is permissible. Therefore, cash payment of ₹ 35,000 on 8-1-2018 would not attract disallowance under section 40A(3). However, cash payments of ₹ 40,000 and ₹ 52,000 on 7.5.2017 and 2.3.2018, respectively, would attract disallowance under section 40A(3) since the same exceeds ₹ 35,000 per day.
- (4) Contribution to a National Laboratory under section 35(2AA) qualifies for weighted deduction@150%. Hence, the contribution of ₹ 8 lakhs is first added back and thereafter, deduction of ₹ 12 lakhs (i.e., 150% of ₹ 8 lakhs) has been provided under section 35(2AA).
- (5) GST liability of ₹ 2.10 lakhs would attract disallowance under section 43B, since it was paid only on 5.12.2018 (i.e., after the due date of filing return of income of A.Y.2018-19). It would be allowed in the year of payment (i.e., P.Y.2018-19). Hence, it has to be added back for computing business income.
- (6) Gamma Ltd. is a related person under section 40A(2), since the directors of Epsilon Ltd. have substantial interest in Gamma Ltd. Therefore, excess payment of ₹ 5 lakh to Gamma Ltd. for purchase of goods would attract disallowance under section 40A(2).
- (7) There is no fresh inflow of funds or increase in capital employed on account of issue of bonus shares and there is only reallocation of the company's fund. Consequently, since there is no increase in the capital base of the company, legal expenses of ₹ 5 lakhs in connection with issue of bonus shares is a revenue expenditure and is hence, allowable as deduction. It has been so held by Apex Court in case of *CIT vs. General Insurance Corpn. (2006) 286 ITR 232*.

However, ₹ 4 lakhs, being legal expenses in relation to issue of rights shares results in expansion of the capital base of the company and is, hence, a capital expenditure. Therefore, the same is not allowable as deduction. It has been so held in *Brooke Bond India Ltd. v. CIT (1997) 225 ITR 798 (SC)*.

- (8) Donation paid to a political party is not an allowable expenditure under section 37 since it is not laid out wholly or exclusively for the purposes of business or profession. Hence, the same has to be added back while computing business income. However, donation made by a company to a political party is allowable deduction under section 80GGB from gross total income, subject to the condition that payment is made otherwise than by way of cash. Since the donation is made by cheque the same is allowed as deduction under section 80GGB.

10. Computation of total income and tax liability of M/s. Omega & Co., a partnership firm, as per the normal provisions of the Act for A.Y. 2018-19

Particulars		₹ (in lakhs)
Business income (before deduction under section 10AA) (₹ 60 lakhs + ₹ 30 lakhs)		90.00
Add: Amount debited to SEZ Re-investment Reserve		<u>16.00</u>
		106.00
Less: Deduction u/s 10AA = ₹ 60 lakhs × ₹ 120 lakhs/₹ 180 lakhs = 40 × 50% (being the 11 th year)	20.00	
Amount credited to SEZ Re-investment Reserve Account - whichever is less is deductible	<u>16.00</u>	<u>16.00</u>
Total Income		<u>90.00</u>
Tax on total income@30%		27.00
Add: Education cess@2% & SHEC @1%		<u>0.81</u>
Tax liability (as per normal provisions)		<u>27.81</u>

Computation of Adjusted total income and Alternate Minimum tax of M/s. Omega & Co., a partnership firm, as per the provisions of section 115JC for A.Y.2018-19

Particulars	₹ (in lakh)
Total income as per the normal provisions	90.00
Add: Deduction under section 10AA	<u>16.00</u>
Adjusted total income	<u>106.00</u>
Tax@18.5% of Adjusted Total Income	19.6100
Add: Surcharge @12% as the adjusted total income is > ₹ 1 crore	<u>2.3535</u>
	21.9632
Add: Education cess @2% & SHEC @1%	<u>0.6589</u>
Alternate Minimum Tax as per section 115JC	<u>22.6221</u>

Since the tax payable as per the normal provisions of the Act is more than the alternate minimum tax payable, the total income as per normal provisions shall be liable to tax and the tax payable for A.Y. 2018-19 shall be ₹ 27.81 lakhs.

11. (a) Section 11(7) provides that where a trust has been granted registration under section 12AA and the registration is in force for a previous year, then, such trust cannot claim any exemption under any provision of section 10 [other than exemption of agricultural income under section 10(1) and exemption available under section 10(23C)].

Therefore, a charitable trust cannot claim exemption under section 10(35) in respect of income from mutual funds and exemption under section 10(34) in respect of dividends, since it has voluntarily opted for the special dispensation under sections 11 to 13, and consequently has to be governed by the provisions of these sections. However, it can claim exemption under section 10(1) in respect of agricultural income, since section 11(7) provides an exception in respect of such income.

Therefore, the claim of Kamala charitable trust, as regards exemption under section 10(34) and section 10(35), is **not** correct.

- (b) Section 11(6) provides that income for the purposes of application shall be determined without allowing any deduction for depreciation or otherwise in respect of any asset, the cost of acquisition of which has been claimed as an application of income under section 11 in the same or any other previous year.

Accordingly, in this case, since the cost of computers and laptops (i.e., ₹ 15 lakh) has been claimed and allowed as application of income under section 11 while computing the income of the trust for the P.Y.2016-17, depreciation on computers and laptops will not be allowed for the purpose of determining income for the purposes of application in the P.Y.2017-18.

Therefore, the depreciation claim made by Gandhi charitable trust is **not** correct.

12. Tax Planning / Tax Management / Tax Evasion

	Answer	Reason
(i)	Tax planning	Depositing money in PPF and claiming deduction under section 80C is as per the provisions of law. Hence, it is a legitimate tax planning measure which enables her to reduce her tax liability by claiming a deduction permissible under the Income-tax Act, 1961.
(ii)	Tax management	Maintaining register of payments subject to TDS helps in complying with the obligations under the Income-tax Act, 1961. Hence, such maintenance would fall within the meaning of Tax Management.
(iii)	Tax evasion	An air conditioner fitted at the residence of a director as per the terms of his appointment would be a furniture qualifying for depreciation@10%, whereas an air conditioner fitted in a factory would be a plant qualifying for a higher depreciation@15%. The wrong treatment unjustifiably increases the amount of depreciation and consequently, reduces profit and consequent tax liability. Treatment of air-conditioner fitted at the residence of a director as a plant fitted at the factory would tantamount to furnishing of false particulars with an attempt to evade tax.

13. **Interest under section 234A:** Since the return of income has been furnished by Sigma Consulting (P) Ltd. on 22nd October, 2018 i.e., 22 days after the due date for filing return of income (30.9.2018), interest under section 234A will be payable for 1 month @ 1% on the amount of tax payable on the total income, as reduced by tax reliefs and prepaid taxes.

Particulars	₹
Tax on total income (₹ 15,00,000 x 30.9%) (Since turnover of P.Y. 2015-16 > ₹ 50 crore)	4,63,500
Less: Advance tax paid	2,80,000
Less: Tax deducted at source	1,35,600
Less: Relief of tax allowed under section 90	<u>22,000</u>
Tax payable on self assessment	<u>25,900</u>
Interest = ₹ 25,900 x 1% = ₹ 259	

Interest under section 234B : Where the advance tax paid by the assessee is less than 90% of the assessed tax, the assessee would be liable to pay interest under section 234B.

Computation of assessed tax	₹
Tax on total income (₹ 15,00,000 x 30.9%)	4,63,500
Less: Tax deducted at source	1,35,600
Less: Relief of tax allowed under section 90	<u>22,000</u>
Assessed tax	<u>3,05,900</u>
90% of assessed tax = ₹ 3,05,900 x 90% = ₹ 2,75,310	

Since the advance tax paid by Sigma Consulting (P) Ltd. (₹ 2,80,000) is more than 90% of the assessed tax (₹ 2,75,310), it is not liable to pay interest under section 234B.

Interest under section 234C

Particulars	₹
Tax on total income (₹ 15,00,000 x 30.9%)	4,63,500
Less: Tax deducted at source	1,35,600
Less: Relief of tax allowed under section 90	<u>22,000</u>
Tax due on returned income/Total advance tax payable	<u>3,05,900</u>

Calculation of interest payable under section 234C:

Date	Advance tax paid till date (₹)	Advance tax payable till date %	Minimum % of tax due on returned income to be paid till date to avoid interest u/s 234C (c)		Shortfall (₹)	Interest (₹)
			%	Amt (₹)		
15.6.2017	38,000	15%	12%	36,708	-	Nil (See Note below)
15.9.2017	1,11,000	45%	36%	1,10,124	-	Nil (See Note below)
15.12.2017	2,03,000	75%	75%	2,29,425	26,425	26,425 x 1% x 3 months = 793
15.3.2018	2,80,000	100%	100%	3,05,900	25,900	25,900 x 1% = 259
Interest payable under section 234C (Nil + Nil + ₹ 793 + ₹ 259)						₹ 1,052

Note: Since the advance tax paid by Sigma Consulting (P) Ltd. on 14th June, 2017 is more than 12% of the tax due on returned income (i.e., ₹ 3,05,900) and the advance tax paid on 13th September, 2017 is more than 36% of the tax due on returned income, it is not liable to pay any interest under section 234C in respect of these two quarters.

Fee under section 234F

₹ 5,000 is payable under section 234F by way of fee, since the return was filed after the due date but before 31.12.2018.

14. The first proviso to section 201 provides that the payer (including the principal officer of the company) who fails to deduct the whole or any part of the tax on the amount credited or payment made to a resident payee shall not be deemed to be an assessee-in-default in respect of such tax if such resident payee –

- (1) has furnished his return of income under section 139;
- (2) has taken into account such sum for computing income in such return of income; **and**
- (3) has paid the tax due on the income declared by him in such return of income,

and the payer furnishes a certificate to this effect from an accountant in such form as may be prescribed.

The date of deduction and payment of taxes by the payer shall be deemed to be the date on which return of income has been furnished by the resident payee.

However, where the payer fails to deduct the whole or any part of the tax on the amount credited or payment made to a resident and is not deemed to be an assessee-in-default

under section 201(1) as mentioned above, interest under section 201(1A)(i) i.e., @1% p.m. or part of month, shall be payable by the payer from the date on which such tax was deductible to the date of furnishing of return of income by such resident payee.

Therefore, M/s Cool Sip Limited shall not be required to pay the difference tax in case the above mentioned conditions are fulfilled. However, the company shall be liable to make payment of interest from the date on which such tax was deductible to the date of furnishing of return of income by Topstore Warehousing.

Therefore, the submission of the assessee company, in this case, is correct.

15. Section 133B(2) of the Income-tax Act, 1961 empowers an income-tax authority to enter any place of business during the hours at which such place is open for the conduct of business. The hotel is open from 8.00 a.m. to 10.00 p.m. for the conduct of business. The Assessing Officer entered the hotel at 8.30 p.m. which falls within the working hours. The claim made by the hotelier to the effect that the Assessing Officer could not enter the hotel after sunset is not in accordance with law.

Section 133B(3) provides that an income tax authority acting under this section shall, on no account, remove or cause to be removed from the place wherein he has entered, any books of account. In view of this clear prohibition in section 133B(3), the proposed action of the Assessing Officer to take away with him the books of account kept at the hotel is **not** valid in law.

16. (a) It has been held by the Apex Court in the case of *Hind Wire Industries Ltd. v. CIT (1995) 212 ITR 639* that the order once amended can also be rectified subsequently provided the mistake apparent from record is rectifiable under section 154. The Apex Court enlarged the scope of the words used in that section by stating that it does not necessarily mean the original order. It could be any order including the amended or rectified order. The action of the Assessing Officer is, therefore, incorrect.
- (b) The original return for A.Y.2018-19 was filed in time and the proceedings were already taken up for assessment under section 143(3). A revised return was filed by the assessee after the end of the relevant assessment year. The action of the Assessing Officer in making the assessment in disregard of the revised return filed on 18.4.2019 is correct because as per the provisions of section 139(5) the assessee can file the revised return only within the end of the relevant assessment year to which the return relates or before completion of the assessment, whichever is earlier.
17. (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. The doctrine of partial merger would apply in this case.

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 ₹ 21 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). Thus, the doctrine of partial merger holds good for section 154 also.

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 Commissioner shall not revise any order under section 264, where such order has been made the subject of an appeal to the Commissioner (Appeals). Thus, the concept of total merger would apply in the case of section 264.

Therefore, under section 264, the 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 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. Here again, the doctrine of partial merger would apply.

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.)*].

18. As per the provisions of section 281B, there can be provisional attachment of property to protect the interest of Revenue in certain cases i.e. -
- (i) The proceeding for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment should be pending.
 - (ii) Such attachment should be necessary for the purpose of protecting the interest of Revenue in the opinion of the Assessing Officer.
 - (iii) The previous approval of the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director has been obtained by the Assessing Officer.
 - (iv) The Assessing Officer, may, by an order in writing attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule.

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

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

19. (i) **Computation of tax liability of Mr. William Jones for the A.Y.2018-19**

Particulars	₹	₹
Income taxable under section 115BBA		
Income from participation in cricket tournaments in India	45,00,000	
Contribution of article in a magazine in India	10,000	
Income taxable under section 115BB		
Winnings from lotteries [₹ 69,100 / (100 - 30.9%)]	1,00,000	
Total Income	46,10,000	
Tax @ 20% under section 115BBA on ₹ 45,10,000		9,02,000
Tax@30% under section 115BB on income of ₹ 1,00,000 by way of winnings from lotteries		30,000
		9,32,000
Add: Education cess@2% and SHEC@1%		27,960
Total tax liability of Mr. William Jones		9,59,960

Mr. Frederick Jones is a non-resident entertainer, whose income of ₹ 3 lakh from a music show in India is taxable@20% under section 115BBA. Therefore, his tax liability is ₹ 61,800 (being 20% of ₹ 3 lakh plus education cess@2% and secondary and higher education cess@1%)

(ii) Yes, the above income are subject to deduction of tax at source.

Income referred to in section 115BBA is subject to deduction of tax at source@20% under section 194E.

Income referred to in section 115BB (i.e., winnings from lotteries) is subject to deduction of tax at source@30% under section 194B.

Since Mr. William Jones and Mr. Frederick Jones are non-residents, the amount of tax to be deducted calculated at the prescribed rates mentioned above, would be increased by education cess@2% and secondary and higher education cess@1%.

- (iii) Section 115BBA provides that if the total income of the non-resident sportsman or non-resident entertainer comprises of only income referred to in that section and tax deductible at source has been fully deducted, it shall not be necessary for him to file his return of income.

In this case, although Mr. William Jones is a non-resident sportsman, he has winnings from lotteries as well. Therefore, he cannot avail the benefit of exemption from filing of return of income as contained in section 115BBA. Hence, he has to file his return of income for A.Y.2018-19.

However, since Mr. Frederick Jones's income comprises of only income referred to in section 115BBA, in respect of which tax is deductible under section 194E, he need not file his return of income for A.Y.2018-19, if tax has been so deducted.

20. ABC Inc., the foreign company and XYZ Ltd., the Indian company are associated enterprises since ABC Inc. is the holding company of XYZ Ltd. ABC Inc. sells LEDs to XYZ Ltd. for resale in India. ABC Inc. also sells identical LEDs to PQR Ltd., which is not an associated enterprise. The price charged by ABC Inc. for a similar product transferred in comparable uncontrolled transaction is, therefore, identifiable. Therefore, Comparable Uncontrolled Price (CUP) method for determining arm's length price can be applied.

While applying CUP method, the price in comparable uncontrolled transaction needs to be adjusted to account for difference, if any, between the international transaction (i.e. transaction between ABC Inc. and XYZ Ltd.) and uncontrolled transaction (i.e. transaction between ABC Inc. and PQR Ltd.) and the price so adjusted shall be the arm's length price for the international transaction.

For sale of LEDs by PQR Ltd., ABC Inc. is responsible for warranty for 6 months. The price charged by ABC Inc. to PQR Ltd. includes the charge for warranty for 6 months. Hence, the arm's length price for LEDs being sold by ABC Inc. to XYZ Ltd. would be:

Particulars	No.	₹
Sale price charged by ABC Inc. to PQR Ltd.		18,000
Less: Cost of warranty included in the price charged to PQR Ltd. (₹ 2,500 x 6 /12)		<u>1,250</u>
Arm's length price		16,750
Actual price paid by XYZ Ltd. to ABC Inc.		<u>22,000</u>
Difference per unit		<u>5,250</u>
No. of units supplied by ABC Inc. to XYZ Ltd.	30,000	
Addition required to be made in the computation of total income of XYZ Ltd. (₹ 5,250 × 30,000)		15,75,00,000

No deduction under Chapter VI-A would be allowable in respect of the enhanced income of ₹ 15.75 crores.

Note: It is assumed that XYZ Ltd. has not entered into an advance pricing agreement or opted to be subject to Safe Harbour Rules.

21. Computation of total income and tax liability of Miss Anuradha for the A.Y. 2018-19

Particulars	₹	₹
Indian Income [Income from playing hockey matches in India]		23,00,000
Foreign Income [Income from playing hockey matches in country A]		<u>15,00,000</u>
Gross Total Income		38,00,000
Less: Deduction under Chapter VI-A		
<u>Deduction under section 80C</u>		
PPF deposit of ₹ 1,50,000 made during the previous year is within the overall limit of 1.5 lakh. Hence, fully allowable as deduction	1,50,000	
<u>Deduction under section 80D</u>		
Medical insurance premium of ₹ 40,000 paid for her mother aged 75 years. Since her mother is a senior citizen, the deduction is allowable to a maximum of ₹ 30,000 (assuming that her mother is also a resident in India), even though she is not dependent on her. Further, deduction is allowable where payment is made by any mode other than cash. Here payment is made by credit card hence, eligible for deduction.	<u>30,000</u>	<u>1,80,000</u>
Total Income		<u>36,20,000</u>
<u>Tax on Total Income</u>		
Income-tax	8,98,500	
Add: Education cess @ 2%	17,970	
Add: Secondary and higher education cess @ 1%	<u>8,985</u>	9,25,455
Average rate of tax in India (i.e. ₹ 9,25,455/₹ 36,20,000 × 100)	25.57%	
Average rate of tax in foreign country "A" (i.e. ₹ 3,00,000/₹15,00,000 ×100)	20.00%	
Rebate under section 91 on ₹ 15 lakh @ 20% (lower of average Indian-tax rate or average foreign tax rate)		<u>3,00,000</u>
Tax payable in India (₹ 9,25,455 – ₹ 3,00,000)		<u>6,25,455</u>

Note: Miss Anuradha shall be allowed deduction under section 91, since the following conditions are fulfilled:-

- (a) She is a resident in India during the relevant previous year.
 - (b) The income accrues or arises to her outside India 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 country A in her hands and she has paid tax on such income in the foreign country A.
 - (d) There is no agreement under section 90 for the relief or avoidance of double taxation between India and country A where the income has accrued or arisen.
22. Section 245Q(3) of the Income-tax Act, 1961 provides that an applicant, who has sought for an advance ruling, may withdraw the application within 30 days from the date of the application. Since more than 30 days have elapsed from the date of application by Mr. Vallish to the Authority for Advance Rulings, he cannot withdraw the application.

However, the Authority for Advance Rulings (AAR), in *M.K. Jain AAR No.644 of 2004*, has observed that though section 245Q(3) provides that an application may be withdrawn by the applicant within 30 days from the date of the application, this, however, does not preclude the AAR from permitting withdrawal of the application after the said period with its permission, if the circumstances of the case so justify.

23. Taxation of income derived by a resident of a Contracting State in respect of professional services is dealt with in Article 14 of the UN Model Convention

As per this article, income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:

- (a) If he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
- (b) If his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

Scope of professional services: The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the

independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

24. (i) **Protocol:** Protocol is like a supplement to the treaty. In many treaties, in order to put certain matters beyond doubt, there is a protocol annexed at the end of the treaty, which clarifies borderline issues. A protocol is an integral part of a tax treaty and has the same binding force as the main clauses therein.

Protocol to India France treaty contains the Most Favoured Nation Clause. Thus, protocol must be referred to before arriving at any final conclusion in respect of any tax treaty provision.

- (ii) **Preamble:** Preamble to a tax treaty could guide in interpretation of a tax treaty. In case of *Union of India v. Azadi Bachao Andolan (2003) 263 ITR 706 (SC)*, the Apex Court observed that 'the preamble to the Indo-Mauritius Double Tax Avoidance Convention recites that it is for the 'encouragement of mutual trade and investment' and this aspect of the matter cannot be lost sight of while interpreting the treaty'. These observations are very significant whereby the Apex Court has upheld 'economic considerations' as one of the objectives of a Tax Treaty.

25. A hybrid mismatch is an arrangement that exploits a difference in the tax treatment of an entity or an instrument under the laws of two or more tax jurisdictions to achieve double non-taxation.

Branch mismatches arise where the ordinary rules for allocating income and expenditure between the branch and head office result in a portion of the net income of the taxpayer escaping the charge to taxation in both the branch and residence jurisdiction. Unlike hybrid mismatches, which result from conflicts in the legal treatment of entities or instruments, branch mismatches are the result of differences in the way the branch and head office account for a payment made by or to the branch.

Hybrid mismatch arrangements arise due to -

- (i) Creation of two deductions for a single borrowal
- (ii) Generation of deductions without corresponding income inclusions
- (iii) Misuse of foreign tax credit
- (iv) Participation exemption regimes

Specific country laws that allow taxpayers to opt for the tax treatment of certain domestic and foreign entities may aid hybrid mismatches.

BEPS Action Plan 2 gives recommendations to neutralise the effects of hybrid mismatch arrangements, which include general changes to domestic law followed by a set of dedicated anti-hybrid rules. Treaty changes are also recommended. The 2017 report includes specific recommendations for improvements to domestic law intended to reduce the frequency of branch mismatches as well as targeted branch mismatch rules which adjust the tax consequences in either the residence or branch jurisdiction in order to neutralise the hybrid mismatch without disturbing any of the other tax, commercial or regulatory outcomes.