

**FINAL EXAMINATION  
GROUP - III  
(SYLLABUS 2016)**

**SUGGESTED ANSWERS TO QUESTIONS  
DECEMBER - 2017**

**Paper-16 : DIRECT TAX LAWS AND INTERNATIONAL TAXATION**

Time Allowed : 3 Hours

Full Marks : 100

Wherever required, the candidate may make suitable assumptions and state them clearly in the answers.

Working notes should form part of the relevant answers.

All questions relate to Assessment Year 2017 – 18 and the provisions referred are those of the Income-tax Act, 1961.

Answer Question No. 1 which is compulsory and any five from question Nos. 2 to 8.

**Section – A**

1. Choose the most appropriate alternative and give justification in brief/brief working for your answer: 2x10=20
- (i) BG(P) Ltd. received royalty ₹ 10 lakhs in respect of a patent developed and registered in India. The income-tax payable on the royalty shall be at
- (A) 10%  
(B) 15%  
(C) 20%  
(D) 30%
- (ii) In the case of assessee who is covered under section 44AD the amount of tax payable by way of advance tax shall be paid on or before
- (A) 15th day of March.  
(B) 31st day of March.  
(C) 31st day of December.  
(D) the date of filing the return of income.
- (iii) When a motor car is acquired for ₹ 12 lakhs by Mr. Johnson on 01.11.2016 by availing bank loan of ₹ 10 lakhs for such acquisition, the car dealer selling the motor car must collect tax at source of
- (A) Nil  
(B) ₹ 10,000 @ 1% exceeding ₹ 2 lakhs.  
(C) ₹ 12,000 @ 1% on the entire sale price.  
(D) ₹ 24,000 @2% on the entire sale consideration.
- (iv) When Mr. Arun (age 50) has business loss of ₹ 15 lakhs and unexplained cash credit of ₹ 20 lakhs, the total tax liability including cess would be
- (A) ₹ 4,37,750  
(B) ₹ 6,18,000  
(C) ₹ 25,750  
(D) ₹ 1,54,500
- (v) In December, 2016 Excel Ltd. and Exceed Ltd. got amalgamated to form Excellence Ltd. The expenditure for the purpose of amalgamation was ₹ 10 lakhs. The amount of amalgamation expenditure deductible for the assessment year 2017-18 would be
- (A) ₹ 10 lakhs  
(B) ₹ 2 lakhs (one-fifth)  
(C) ₹ 1 lakh (one-tenth)  
(D) ₹ 5 lakhs (one-half)

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- (vi) Venus Traders engaged in turmeric trade with a turnover exceeding ₹200 lakhs dispatched its goods through Indian Railways. The amount of freight payable as on 31.03.2017 was ₹ 1,40,000. It wants to claim the freight as expenditure. To satisfy such claim, it has to pay the freight to Indian Railways
- (A) before due date specified in Section 139(1).  
(B) before the end of the previous year.  
(C) before the end of the assessment year.  
(D) and there is no time restriction.
- (vii) A capital asset being shares in a private company held for more than \_\_\_\_\_ months shall be a long term capital asset.
- (A) 12  
(B) 24  
(C) 36  
(D) 6
- (viii) When wife Laxmi being legal heir of Udayakumar received ₹ 10 lakhs from National Pension System Trust referred to in Section 80CCD, the amount of receipt chargeable to tax is
- (A) ₹ 10 lakhs  
(B) ₹ 4 Lakhs @ 40%  
(C) Nil  
(D) ₹ 7,50,000 @ 75%
- (ix) In the case of non-government employee the monetary limit for exemption in respect of leave salary at the time of retirement is
- (A) ₹ 5 lakhs  
(B) ₹ 50,000  
(C) ₹ 3 lakhs  
(D) ₹ 1.50 lakhs
- (x) Penalty for failure to furnish statement of financial transaction is
- (A) ₹ 5,000  
(B) ₹ 10,000  
(C) ₹ 200 for every day of delay  
(D) ₹ 100 for every day of delay

### Answer:

1. (i) (A) 10%  
**Justification for the answer:** As per section 115BBF income by way of royalty in respect of a patent developed and registered in India shall be chargeable to tax at the rate of 10%.
- (ii) (A) 15<sup>th</sup> day of March  
**Justification for the answer:** In the case of persons admitting income under section 44AD, the entire amount of tax by way of advance tax must be paid before 15<sup>th</sup> day of March of the previous year as per section 211(1)(b).
- (iii) (C) ₹12,000 @ 1% on the entire sale price  
**Justification for the answer:** As per section 206C(1F) every person being a seller who receives any amount as consideration for sale of motor vehicle exceeding ₹ 10 lakhs shall collect from the buyer 1% of the sale consideration as income-tax at the time of receipt of Such amount.
- (iv) (B) ₹6,18,000  
**Justification for the answer:** When an income is taxable at 30% under Section 115BBE such income shall not be reduced by way of set off of losses against any other income or head of income. This is provided in section 115BBE(2) of the Act.
- (v) (B) ₹ 2 lakhs (one-fifth)  
**Justification for the answer:** As per section 35DD expenditure incurred in the case of

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amalgamation is eligible for amortization over a period of 5 years in equal installments beginning with the previous year in which the amalgamation takes place.

- (vi) (A) before due date specified in section 139(1)  
**Justification for the answer:** Section 43B has amended by Finance Act, 2016 provides for deduction of any sum payable to Indian Railways for the use of railway assets only if it is paid before the due date for furnishing the return specified in section 139(1).
- (vii) (B) 24  
**Justification for the answer:** As per the third proviso to section 2(42A), shares in a private Company shall be treated as long-term Capital asset if it is held for more than 24 months.  
*[The period of holding has been reduced from 36 months to 24 months from the AY 2017-18 onwards.]*
- (viii) (C) NIL  
**Justification for the answer:** As per proviso to section 80CCD(3) amount received by the nominee legal heir on the death of the assessee shall not be deemed to be the income of the nominee.
- (ix) (C) ₹ 3 lakhs  
**Justification for the answer:** As per section 10(10AA) leave salary received by a nongovernment employee is eligible for monetary limit of exemption of ₹ 3 lakhs.
- (x) (D) ₹ 100 for every day of delay  
**Justification for the answer:** As per section 271FA for delay of every day in statement of financial transaction, the penalty leviable is ₹100 for every day.

### **Section – B**

2. (a) Ganga Ltd., is a company in which 70% of the shares are held by Himalaya Ltd. Ganga Ltd., declared a dividend amounting to ₹ 40 lacs to its shareholders for the financial year 2015-16, in its Annual General Meeting held on 19th May, 2016. Dividend distribution tax was paid by Ganga Ltd. on 21st May, 2016. Himalaya Ltd. declared an interim dividend amounting to ₹ 60 lacs on 15th June, 2016.

Compute the amount of tax on dividend payable by Himalaya Ltd. Detailed note on the provisions involved is essential. 6

- (b) Sanvitha & Co., is a partnership firm trading in fertilisers, consisting of two partners S and V, who both have individual incomes from all the other sources (except remuneration and interest from this firm) in excess of ₹ 10 lakhs.

For the year ended 31.03.2017, the turnover of the assessee is likely to be ₹ 90 lakhs.

The partnership deed provides for payment of remuneration to S, the working partner at ₹ 6 lakhs per annum and ₹ 1.2 lakhs per annum to V, non-working partner. S and V are amenable to drafting these terms differently, as per your advice.

Partners' capitals are ₹ 10 lakhs each and the deed authorises payment of simple interest at 15%.

Assuming that books of account are maintained, the profits before considering remuneration and interest on capital is ₹ 12.4 lakhs.

In the light of above, state

- (i) Whether it will be advisable to opt for presumptive taxation u/s 44AD, if the firm

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and the partners are desirous of reducing their overall tax liability (tax of firm and the partners), or should the firm go for maintenance of accounts and audit u/s 44AB. 8

(ii) Will your answer be different, if the assessee were an LLP? 2

**Answer:**

2. (a) Dividend distribution tax payable by Himalaya Ltd.

As per section 115-0, dividend distribution tax at the rate of 17.304% (i.e., 15% plus surcharge @12%, education Cess @2% and Secondary and higher education cess@1%) is leviable on dividend declared, distributed or paid by a domestic company. As per section 115-0(1A), a holding company receiving dividend from its domestic subsidiary company can reduce the same from dividend declared, distributed or paid by it.

The dividend from its domestic Subsidiary Company should be received in the same financial year in which the holding Company declares, distributes or pays the dividend. Further, the dividend shall not be considered for reduction more than once.

The conditions to be fulfilled for this purpose are as follows:

- (1) The domestic subsidiary Company should have paid the dividend distribution tax which is payable on such dividend;
- (2) The recipient holding company should be a domestic company;

For this purpose, a holding Company is a company which holds more than 50% of the nominal value of equity shares of another company.

Section 115-0 (1B) provides that for the purposes of determining the tax on distributed profits payable in accordance with Section 115-0, any amount by way of dividends referred to in section 115-0(1), as reduced by the amount referred to in section 115-0(1A) referred to as net distributed profits, shall be increased to such amount as would, after reduction of the tax on such increased amount at the rate specified in section 115-0(1), be equal to the net distributed profits.

On the basis of the aforesaid provisions, dividend distribution tax payable by Himalaya Limited shall be computed as follows:

Particulars	₹
Dividend distributed by Himalaya Ltd.	60.0
Less: Dividend received from subsidiary Ganga Ltd. (70% of ₹ 40 lacs)	28.00
Net dividend	32.00
Add. Increase for the purpose of grossing up of dividend $32 \times 100/85 =$ 37.65 minus 32.00	5.65
Gross dividend 37.65 %	37.65
DDT at 17.304% on above 6.52 1.	6.52

(b) (i) Firm: Whether presumptive taxation u/s 44AD is to be opted

Where books are maintained

Where the shows profits below 8% of the turnover, he/it should maintain books of account and get the accounts audited u/s 44AB.

In case of a firm, such profits are after deduction of interest and remuneration to partners; in other words, same cannot be deducted from the 8% amount so calculated.

Where the books are maintained and the accounts are audited as per section 44AB, the firm will be allowed deduction of the interest and remuneration, as per section 40(b). To the extent such payments are allowed in the hands of the firm, the same will be included in the individual hands of the partners.

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Partners are already having total income in excess of ₹ 10 lakhs and hence any interest on capital and remuneration received from the firm will get taxed at 30.9%.

Particulars	₹
Income of the firm before interest and remuneration to partners	12,40,000
Less: interest on capital at 12%	2,40,000
Book profits of the firm as per section 40 (b)	10,00,000
Less: Remuneration to S Lower of (90% of 3 lakhs and balance 60% of ₹ 7 lakhs) 6.9 lakhs; Subject to Ceiling ₹ 6 lakhs as per partnership deed. Note: Remuneration to non-working partners not allowable.	6,00,000
Total income of the firm	4,00,000

Tax rate is 30.9% for firm (₹ 1,23,600) as well as the incomes from firm apportioned to partners (since the income of partners before considering any receipt from firm already exceeds ₹ 10 lakhs). Hence income which will get taxed at 30.9% are 4 L+ 6 (Remuneration of S) and 2.4 L (interest on capitals) 12.4L at 30.9% ₹ 3,83,160/-.

When the firm opts for presumptive taxation

As per section 44AD, profits of the firm will be 8% of 90 lakhs	7,20,000
This alone will get taxed at 30.9% Tax payable will be ₹	2,22,480
Partnership deed should not contain any clause about payment of remuneration or interest to partners.	
By opting for presumptive tax u/s 44AD, tax saving will be (3,83,180-2,22,480)	1,60,680

(ii) Where the assessee is a LLP

For a LLP, there is no option to get assessed as per section 44AD.

Hence, it is bound to maintain books of account and get its accounts audited u/s 44AB.

3. (a) Mr. Manekshaw a resident sold a residential property for ₹ 90 lakhs to Mr. Sunderlal on 17.08.2016. The stamp duty valuation on the date of sale was ₹ 105 lakhs. Earlier in February, 2016 an agreement was entered into by the parties and Mr. Sunderlal gave ₹ 5 lakhs as advance by means of electronic transfer. The stamp duty valuation at the time of agreement was ₹ 95 lakhs. Mr. Manekshaw paid ₹ 1 lakh as commission to broker, Mr. Vaidya. The property was acquired by Mr. Manekshaw in December, 2000 for ₹ 20 lakhs.

In July, 2016 Mr. Manekshaw sold a vacant site to Mr. Dayal for ₹ 30 lakhs. The stamp duty valuation of the site at the time of sale was ₹ 27 lakhs. The site was acquired in April, 2013 for ₹ 7 lakhs.

Mr. Manekshaw acquired a residential building in June, 2016 for ₹ 120 lakhs by availing a bank loan. Stamp duty and registration fee paid for the property amounts to ₹ 6 lakhs. He repaid the bank loan out of the sale proceeds of both the assets referred earlier. The new residential building was let out for a monthly rent of ₹ 1 lakh from 01.07.2016. Interest for the year 2016-17 in respect of the property amounts to ₹ 6 lakhs.

Compute the total income of Mr. Manekshaw for the Assessment Year 2017-18.

Cost inflation index F.Y. 2000-01 = 406; F.Y.2013-14 = 939; F.Y. 2016-17 = 1125

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- (b) ABC Ltd. was amalgamated with XYZ Ltd. on 01.04.2016. All the conditions of Section 2(1B) were satisfied and amalgamation is within the meaning of Section 72A of Income-tax Act. ABC Ltd. has the following carried forward losses as assessed till the Assessment Year 2016-17.

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Particulars	₹ (in lakhs)
<b>Speculative loss</b>	<b>4</b>
<b>Unabsorbed depreciation</b>	<b>18</b>
<b>Unabsorbed expenditure of capital nature on scientific research</b>	<b>2</b>
<b>Business loss (Non speculative)</b>	<b>120</b>

XYZ Ltd. has computed a profit of ₹ 140 lakhs for the financial year 2016-17 before setting off eligible losses of ABC Ltd. but after providing depreciation at 15% per annum on ₹150 lakhs, being the consideration at which plant and machinery were transferred to XYZ Ltd. The written down value as per income tax record of ABC Ltd. as on 31st March, 2015 was ₹ 100 lakhs. Above profit of XYZ Ltd. includes speculative profit of ₹ 10 lakhs. Compute the total income of XYZ Ltd. for Assessment Year 2017-18.

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**Answer:**

3. (a)

Computation of Total income of Mr. Manekshaw for the Assessment Year 2017 – 18

Particulars	₹	₹	₹
<b>Income from property</b>			
Rental income		9,00,000	
Less: Deduction U/s.24 (0.30%)	2,70,000		
Interest on moneys borrowed	<u>6,00,000</u>		
		8,70,000	
Chargeable income from property			30,000
<b>Capital gains</b>			
Residential. Property: Deemed sale consideration	95,00,000		
The stamp duty value of the property on the date of agreement to be adopted as the advance in pursuance of the sale agreement was received by means of bank draft / cheque / electronic transfer etc.			
Less: Brokerage	<u>1,00,000</u>		
Net sale proceeds	94,00,000		
Less: indexed cost of acquisition			
2000,000 X 1125 / 406	<u>55,41,872</u>		
Long term capital gain		38,58,128	
Vacant site: Sale consideration	30,00,000		
Less: Indexed Cost of acquisition			
700,000 X 1125 / 939	<u>8,38,658</u>		
Long term capital gain		21,61,342	
		60,19,470	
Less: <b>Exemption U/s.54</b>			
In respect of new residential building acquired by availing bank loan within one year preceding the date of transfer of the			

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residential house. The cost of acquisition is ₹ 120 lakhs but deduction is limited to the long term capital gain from sale of residential building being ₹ 38,58,128	38,58,128		
<b>Exemption U/s.54F</b>			
The vacant site was sold in July 2016. At the time of transfer, the assessee had 2 residential buildings. The section requires that the assessee should not own more than one RHP (other than the new RHP acquired) at the time of transfer of the capital asset, not being RHP. The One acquired in June 2016 and the other one sold in August 2016 i.e. on 17.08.2016. As the assessee at the time of sale of vacant site owned more than one residential building, he is not eligible for exemption under Section 54F.	Nil		
		<u>38,58,128</u>	
Long term Capital gain			21,61,342
Gross Total income			21,91,342
Less: Deduction U/s. 80 C			
In respect of stamp duty and registration fee for acquisition of new residential building in June 2016 ₹ 6 lakhs. But limited to ₹150,000. However as the total income excluding capital gain is only ₹ 30,000 the quantum of deduction is limited to ₹ 30,000			30,000
Total income			2161,342
Rounded off			21,61,340

(b)

### Computation of total income of XYZ Ltd. For the Assessment Year 2017 – 18

Particulars	₹(In lakhs )	
Profits and gains of business or profession		140.00
Business loss before setting off brought forward losses		
Add: Excess depreciation claimed in the scheme of amalgamation of ABC Ltd with XYZ Ltd		
Value at which assets were transferred by ABC Ltd	150.00	
WDV in the books of accounts of ABC Ltd as on 1-4-2016 (100 - 15 for the year ended 31-3-2016)	85.00	
Excess amount accounted	65.00	
Excess depreciation claimed in computing taxable income of XYZ Ltd (₹ 65 lakhs 15%) - Ref: Explanation 2 to section 43(6) - Note-1		9.75

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Less: Set-off of brought forward business losses of ABC Ltd - Note 3 & 4	120.00	
Less: Set-off of unabsorbed depreciation under Section 32 read with section 72A - Note 2 & 4	18.00	
Less: Set -off of unabsorbed capital expenditure under section 2.00 35(1)(iv) depreciation under section 32 read with section 35(4)-Note 5	2.00	140.00
Total income		9.75

### Notes:

- (1) In case of amalgamation of Companies, the unabsorbed losses and unabsorbed depreciation of amalgamating company shall be deemed to be loss or unabsorbed depreciation of amalgamated company for the previous year in which the amalgamation was effected. Such business loss shall be carried forward and set off by the amalgamated Company for a period of 8 years and unabsorbed depreciation shall be carried forward and set off by the amalgamated company over indefinite period.
- (2) As per section 72A(7), the accumulated loss for carry forwards, does not include speculative loss. So in view of above speculative loss of ₹ 4 lakhs of ABC Ltd cannot be carried forward by XYZ Ltd.
- (3) Section 72(2) provides that where any allowance or part there off unabsorbed under section 32(2) that is unabsorbed depreciation or section 35(4) that is unabsorbed scientific research capital expenditure is to be carried forward, effect has to be finally given to brought forward business losses under section 72.
- (4) Section 35(4) provides that the provision of section 32(2) relating to unabsorbed depreciation shall apply in relation to deduction allowable under section 35(1)...in respect of capital expenditure on scientific research related to the business carried on by assessee. Therefore unabsorbed capital expenditure on i. scientific research can be set off and carried forward in the same manner as unabsorbed depreciation.
- (5) The restriction contained in section 73 is-only regarding set-off of loss computed in respect of Speculative business. Such a loss can be set off only against profits of another speculative business and not non-speculative business. However there is no restriction under income tax act regarding set-off of normal business losses against profits of speculative business. Consequently, there is no loss or allowances to be carried forward by XYZ Ltd to Financial Year 2016-17.

4. (a) Ms. Pallavi is partner in a firm with 30% share. Her capital contribution representing her own funds in the firm on 01.04.2015 was ₹ 5 lakhs. She received a gift of ₹ 10 lakhs from her husband on 01.07.2015 and invested ₹ 7 lakhs as her capital contribution in the firm. She withdrew the entire interest on capital and working partner salary and share of profit for the year ended 31.03.2016. Her capital on 01.04.2016 was ₹ 12 lakhs in the firm. She received a gift of ₹ 4 lakhs from her father-in-law on 01.05.2016 and invested the same into the firm.

For the year ended 31.03.2017, her income from the firm are as under:

Interest on capital at 12% on ₹ 16 lakhs for 11 months ₹ 1,76,000.

Interest on capital at 12% on ₹ 12 lakhs for 1 month = ₹ 12,000.

Share of profit from the firm ₹ 90,000.

State how Ms. Pallavi's income from the firm would be taxed for the Assessment Year

- (b) Sony Textiles (P) Ltd., Surat earned a profit of ₹ 20 lakhs after debit/credit of the following items to its statement of profit and loss for the year ended 31.03.2017:

	Particulars	₹
<b>Items debited to statement of profit and loss:</b>		
(i)	Provision for the loss of subsidiary	2,00,000
(ii)	Provision for doubtful debts	1,50,000
(iii)	Provision for income-tax	3,00,000
(iv)	Provision for Gratuity (based on actuarial valuation ₹ 5 lakhs)	7,00,000
(v)	Depreciation	5,60,000
(vi)	Interest to financial institution (unpaid till filing of return on 01.12.2017)	2,50,000
(vii)	Penalty for infraction of law	60,000
<b>Items credited to statement of profit and loss:</b>		
(i)	Royalty in respect of patent (chargeable to tax under section 115BBF)	6,00,000
(ii)	Share income as partner in a firm	1,20,000
(iii)	Dividend from subsidiary company	75,000
(iv)	Long term capital gains on sale of vacant land	4,00,000

**Other information:**

- (i) Depreciation includes ₹ 1,60,000 on account of revaluation of fixed assets.
- (ii) Depreciation as per Income-tax Rules is ₹ 2,80,000.
- (iii) Income tax liability on income computed as per regular provisions for the Assessment Year 2017-18 is ₹ 1,22,070 excluding tax on royalty chargeable to tax under section 115BBF.

Compute minimum alternate tax under section 115JB of the Income-tax Act, 1961 for Assessment Year 2017-18 and tax credit eligible for carry forward by the company under section 115JAA.

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**Answer:**

**4. (a)**

**Taxability in the hands of Ms. Pallavi for the A.Y. 2017-18**

As per section 64(1)(iv) income from assets transferred directly or indirectly to the spouse by the individual is chargeable to tax in the hands of the individual. However, this will not apply Where the transfer is for adequate Consideration or in Connection with an agreement to live apart.
As per section 64(1)(vi) income from assets transferred directly or indirectly to son's wife is chargeable to tax in the hands of the transferor. This will not apply where such transfer is for adequate Consideration.
In this case, as per Explanation 3 income arising to Ms. Pallavi being wife 1 daughter in law is chargeable to tax in the hands of husband 1 father in law who gave gift. However, the computation would be in the proportion in which the capital on 1st Day of April of the previous year consisting of her own contribution and the funds given by husband 1 father in law.
The capital as on 01.04.2016 represents her own capital of ₹ 5 lakhs and gift amount of ₹ 7 lakhs given by the husband. The interest on capital of ₹ 1,88,000 will be apportioned in 5:7 ratio
The proportion attributable to own her capital being ₹1,88,000 × 5 / 12 = ₹78,333 is chargeable to tax in her hands.
The proportion of capital representing the amount of gift given by husband is liable for clubbing under section 64(1)(iv) and the amount being ₹ 1,88,000 × 7/12 = ₹1,09,667.
The amount of gift given by father in law on 01.05.2016 and invested in the firm will not be liable for clubbing for the income arising there from for the financial year 2016-17.

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The share income being exempt under Section 10(2A) has no significance in this regard.

(b)

### Computation of Book Profit of Sony Textiles P Ltd., as per section 115 JB

Particulars	₹	₹
Net profit		20,00,000
Add:		
Provision for loss of subsidiary		2,00,000
Provision for doubtful debts		1,50,000
Provision for income tax		3,00,000
Provision for gratuity to the extent it is more than the actuarial valuation is added back		2,00,000
Depreciation including depreciation on revaluation		5,60,000
interest unpaid to financial institution covered by section 43B not impacted by Sec. 115JB		Nil
Penalty for infraction of law covered by Explanation to section 37 is also not impacted by section 115JB		Nil
		34,10,000
Less:		
Depreciation excluding amount on account of revaluation	4,00,000	
Depreciation as per income-tax rules has no impact in Computing book profit U/s. 115JB	Nil	
Share income from firm exempt u/s. 10(2A) to be excluded while computing book profit	1,20,000	
Dividend, from Indian Company exempt U/s. 10(34) to be excluded while Computing book profit	75,000	
Long term capital gain on sale of vacant land Credited to Statement of profit and loss not to be excluded while Computing book profit	Nil	
Royalty in respect of patent chargeable to tax under section 115BBF to be excluded while computing book profit	6,00,000	
Book Profit u/s. 115 JB		11,95,000
		22,15,000
Tax on book profit of ₹ 22,15000 @ 18.5% plus 3% cess i.e. @19.055% =		4,22,070
Rounded off		4,22,070
Total tax liability		
Less:		
Tax liability on regular computation (1,22,070+10.3% of 6,00,000)		1,83,870
Tax credit under section 115JJAA		2,38,200

5. (a) Mr. Kamal (Age 55), a resident individual derived following incomes during the year 2016-17:

- (i) Income from profession (computed) ₹ 5,50,000.
- (ii) Rent from property located in foreign country 'X' ₹ 30,000 per month. Municipal tax paid in that country ₹ 30,000. Tax paid in foreign country in equivalent Indian currency is ₹ 33,000.
- (iii) Royalty on books from foreign country 'Y' (converted into Indian currency) ₹ 10 lakhs. It is eligible for Chapter VI-A deduction under applicable provision. Tax paid in respect of royalty at 20%. Expenditures incurred for earning royalty ₹ 2 lakhs.
- (iv) Interest from savings bank account ₹ 15,000.

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**Note:** There is no DTAA between India and country 'X' /country 'Y'. Compute the total tax liability of Mr. Kamal for the Assessment Year 2017-18. 8

- (b) Enumerate the consequences that would ensue if the Assessing Officer makes adjustment to arm's length price in international transactions of the assessee resulting in increase in total income of the assessee. What are the remedies available to an assessee to dispute such adjustment made? 4
- (c) When is transaction treated as an international transaction as per Section 92CB? 4

**Answer:**

5. (a)

Computation of Total income of Mr. Kamal for the Asst. Year 2017-18

Particular	₹	₹
income from house property:		
Gross annual value	3,60,000	
Less: Municipal tax	30,000	
Net Annual value	3,30,000	
Less: Deduction u/s. 24a 30%	99,000	
		231,000
income from Business or Profession		
income from profession	5,50,000	
Royalty from books earned from country X		
₹ 10 lakhs less expenditure incurred ₹ 2 lakhs	8,00,000	
		13,50,000
income from Other sources:		
Savings bank account interest		15,000
Gross Total income		15,96,000
Less: Deduction under Chapter VI-A		
Under section 80GB up to a maximum of ₹	3,00,000	
Under section 80TTA in respect of SB interest	10,000	
		3,10,000
Total income		12,86,000
Tax thereon	2,10,800	
Add: Cess @ 3%	6,324	
Total Tax liability		2,17,124
Relief U.S. 91		
Average rate of tax in India		
₹ 217,124 / 12,86,000 × 100 = 16.88%		
Average rate in Country X		
₹ 33,000 / 2,31,000 × 100 = 14.29%		
Average rate in country Y		
₹ 2,00,000 / 10,00,000 × 100 = 20%		
Relief in respect of property income (C) 14.29% of ₹ 231,000	33,010	
In respect of royalty income (G) 16.88% (₹ 8 lakhs minus ₹ 3 lakhs) i.e. ₹ 5 lakhs =	84,400	
		1,17,410
Tax payable		99,714
Rounded off (Section 288B)		99,710

- (b) Consequences of adjustments made to ALP  
 In case the Assessing Officer makes adjustment to arm's length price in an international transaction which results in increase in taxable income of the assessee, the following consequences shall follow:-

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- (1) No deduction under section 10AA or Chapter VI-A shall be allowed from the income so increased.
- (2) No corresponding adjustment would be made to the total income of the other associated enterprise (in respect of payment made by the assessee from which tax has been deducted or is deductible at Source) on account of increase in the total income of the assessee on the basis of the arm's length price so recomputed.

Remedies available to the assessee

The remedies available to the assessee to dispute such an adjustment are:-

- (1) In case the assessee is an eligible assessee under section 144C, he can file his objections to the variation made in the income within 30 days of the receipt of draft order by him to the Dispute Resolution Panel and Assessing Officer. Appeal against the order of the Assessing Officer in pursuance of the directions of the Dispute Resolution Panel can be made to the income-tax Appellate Tribunal.
- (2) In any other case, he can file an appeal under section 246A to the Commissioner (Appeals) against the order of the Assessing Officer within 30 days of the date of service of notice of demand.
- (3) The assessee can opt to file an application for revision of order of the Assessing Officer under section 264 within one year from the date on which the order sought to be revised is communicated, provided the time limit for appeal to the Commissioner (Appeals) or the income-tax Appellate Tribunal has expired or the assessee has waived the right of such an appeal. The eligibility Conditions Stipulated in section 264 should be fulfilled.

(c) International transaction

As per section 92B, an international transaction is one which satisfies the following Criteria -

- (i) A transaction between two or more associated enterprises, either or both of whom are non residents;
- (ii) It is in the nature of purchase, sale or lease of tangible or intangible property, or provision of services, lending/borrowing money or any other transaction having a bearing on the profits, income, losses or assets of such enterprises;
- (iii) It includes a transaction in the nature of a mutual agreement, or arrangement between two or more associated enterprises for the allocation or apportionment of, or any contribution to, any cost or expense incurred (or to be incurred) in connection with a benefit, service or facility provided (to be provided) to any one or more of such enterprises.

**6. (a) Discuss how the following items which have been debited to the Statement of Profit & Loss of Vaibhav Polymers Ltd., will be dealt with, in computing its business income:**

- (i) ₹ 20 lakhs paid to ten workmen on account of voluntary retirement of the said employees;**
- (ii) ₹ 2 lakhs paid towards advertisement in a souvenir published by a political party, by way of account payee cheque;**
- (iii) One of the units of the company was closed and retrenchment compensation of ₹ 12 lakhs was paid to the employees in that unit;**
- (iv) Loss incurred by way of trading in commodity derivative transactions in recognized stock exchange relating to its agro division ₹ 2,20,000. 8**

**(b) Discuss the validity of following statements:**

**2x4=8**

- (i) Mr. A has long term capital gain of ₹ 7 lakhs from sale of listed shares for the year 2016-17. He has no other income chargeable to tax. As the long term capital gain is exempt under section 10(38), he need not file his return of income for the Assessment Year 2017-18.**
- (ii) A belated return under section 139(4) cannot be furnished after the end of the relevant assessment year.**

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(iii) A belated return filed under section 139(4) cannot be revised.

(iv) Where the return is filed without payment of self-assessment tax it would be deemed as defective return.

**Answer:**

6. (a) Treatment of given items while computing business income of company

(i) ₹ 16,00,000 has to be added back.

Section 35DDA provides for amortization of expenditure incurred under voluntary retirement scheme over a period of five years in equal installments. The company is, therefore, entitled to deduction of ₹ 4,00,000, being one-fifth of the total sum of ₹ 20,00,000 paid to 10 workmen in connection with their voluntary retirement for the relevant assessment year.

(ii) This amount has to be disallowed.

Section 37(2B) prohibits allowance of any expenditure incurred by an assessee on advertisement in any souvenir, brochure, tract, pamphlet or the like published by a political party. As such, advertisement charges paid in respect of souvenir published by a political party is not allowable as deduction from business profits of the company, and hence has to be added back while computing business income.

(iii) Retrenchment compensation paid to employees at the time of closure of one of the units of the business is allowable as deduction as per the decision of the Allahabad High Court in CIT V. JK Cotton Spinning & Weaving Co. Ltd. (2005) 145 taxman 591.

Since the same has been debited to the Profit and Loss A/c, no further adjustment is required.

(iv) Loss of ₹ 2,00,000 incurred by way of trading in commodity derivatives in recognized stock exchange is not a speculative transaction in view of proviso to section 43(5). Since the same is incurred in relation to the business of agro textiles, the same is allowable as deduction while computing income from business.

Since the same has been debited to the Profit and loss A/c, no further adjustment is required.

(b) Validity of the given statements

(i)	Invalid, As per Sixth proviso to section 139(1) if the total income of the assessee exceeds the basic exemption limit before giving effect to exemption under section 10(38), it is mandatory for him to file the return of income. The total income in this case is NL but if section 10(38) is not applied, it exceeds the basic exemption limit and hence the return of income has to be furnished on mandatory basis.
(ii)	Valid The Finance Act, 2016 has reduced the time limit for filing belated return under section 139(4). Thus, a belated return cannot be filed after the end of the relevant assessment year,
(iii)	Invalid. Section 139(5) now provides for revision of a return of income filed within the time stipulated u/s 139(1), as well as a belated return filed u/s 139(4).
(iv)	Invalid Previously if a return is furnished without payment of self assessment tax, such return Would be treated as defective return. The Finance Act, 2016 has inserted clause (aa) in the Explanation to section 139(9) whereby a return which is otherwise valid Would not be treated as defective merely because self

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assessment tax was not paid on or before the date of furnishing the return.

7. (a) In "A Pvt. Ltd.", a closely-held company, following are some of the shareholders holding equity shares entitled to dividend and voting power:

Mr. Janak (individual)	12%
Janak (HUF)	5%
Thilagam & Co. (LLP)	30%
B Pvt. Ltd.	25%

On 12.01.2017, the company declared dividend of ₹ 50 lakhs net, after paying dividend distribution tax u/s 115-O.

During the year, Mr. Janak obtained a loan of ₹ 7 lakhs on 13.04.2016, which was repaid on 30.03.2017. As on 13.04.2016, the credit balance in Profit and Loss account of the company was ₹ 5 lakhs.

Janak (HUF) has received dividend of ₹ 8 lakhs from equity-oriented approved mutual funds.

For investing in the company's shares, Thilagam & Co. (LLP) has borrowed some funds on which interest of ₹ 2 lakhs was paid during the year ended 31.03.2017, tax being duly deducted at source and paid to the credit of the Central Govt.

Determine the income-tax liability in respect of each of the shareholders, in respect of the aforesaid receipts. 8

- (b) Raghunath (P) Ltd. is engaged in multiple business activities. It has brought forward business loss of Assessment Year 2010-11 of ₹ 15 lakhs and unabsorbed depreciation of ₹ 20 lakhs. The company has 10 shareholders each having 10% of the equity share capital of the company.

Four shareholders transferred the shares to their relatives in October, 2016.

One shareholder died in February, 2017 and yet another shareholder gifted his shares to his son in August, 2017.

The company for the previous year 2016-17 earned Net Profit of ₹ 10 lakhs (computed) as per regular provisions before set off of brought forward loss and depreciation given above. Its book profit under section 115JB for the Assessment Year 2017-18 is ₹ 25 lakhs (computed).

- (i) How much of accumulated loss and unabsorbed depreciation, the company could carry forward to the subsequent assessment years?
- (ii) Assume, the company converted into LLP in April, 2017. In the light of such conversion consider the amount of accumulated loss and depreciation which it can carry forward. Will there be any reduction of benefit on violation of any condition? 8

**Answer:**

7. (a) From the assessment year 2017-18, as per section 115BBDA, where a share holder, being an individual, HUF or a firm, being residents, receive dividends from Indian companies on which DDT has been paid u/s 115-0) in excess of ₹ 10 lakhs, exemption u/s 10(38) will be only upto ₹ 10 lakhs and excess amount will be charged to tax at 10% plus 3% education cess.

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In this regard, the term "dividend" will have the meaning assigned in section 2(22). However deemed dividend u/s 2(22)(e) is excluded.

For computing the tax liability u/s 115BBDA, no deduction will be allowed from the dividend income. Thus interest on borrowings for making the investment in shares will not be considered while computing the tax liability u/s 115BBDA.

Deemed dividend u/s 2(22)(e)

Janak (individual) holds more than 10% of the holdings in equity shares of the closely held company and hence loan to him is covered by section 2(22)(e).

Though the loan amount is ₹ 7 lakhs, the deemed dividend is restricted to ₹ 5 lakhs, since the credit balance in P&L a/c is ₹ 5 lakhs only, as on the date of loan,

Tax liability of Janak (individual)	₹ Lakhs
Dividend received (normal) 12% of 50 lakhs	6
Deemed dividend u/s 2(22)(e) to be included in income from other sources	
Not included for Section 115BBDA	
Since normal dividend received is less than ₹ 10 lakhs, tax liability u/s 115BBDA is nil	
Tax liability of Janak (HUF)	
Dividend received (normal) at 5% of 50 lakhs	2.5
Dividend received from equity oriented mutual fund is not covered by section 115BBDA	Nil
Dividend received being less than ₹ 10 lakhs, section 115BBDA will not apply	
Tax liability of Thilagam & Co. (LLP)	
Dividend received (normal) 30% of 50 lakhs	15
Less: Exempt u/s 10(34)	10
Amount taxable u/s 115BBDA at 10.3% interest on borrowings is not deductible for Section 115BBDA	5
Tax liability u/s 115BBDA at 10.3%	51,500

Tax liability of B Pvt. Ltd.

For the R of section 115BBDA, corporate shareholders are not covered.

Hence the dividend received will not be hit by section 115BBDA, regardless of the quantum of dividend received.

(b)

<p>(i) Carry forward accumulated loss and depreciation:</p> <p>In the case of a Company in which public are not Substantially interested, the unabsorbed business loss can be carried forward and set off provided there is no change in pattern to the extent of 51%.</p> <p>Change in shareholding pattern as enumerated hereunder:</p> <table style="width: 100%; border: none;"> <tr> <td style="padding: 2px 0;">4 Shareholder transferred shares on Oct, 2016</td> <td style="text-align: right; padding: 2px 0;">40%</td> </tr> <tr> <td style="padding: 2px 0;">1 Shareholder died on Feb,2017</td> <td style="text-align: right; padding: 2px 0;">10%</td> </tr> <tr> <td></td> <td style="text-align: right; padding: 2px 0;">50%</td> </tr> </table> <p>In this case, during the previous year relevant to the assessment year 2017-18, out of 100%, 40% of the shareholders have transferred their shares. The balance 10% of the shareholders got changed because of the reasons such as death of shareholder. Change in shareholding due to gift of shares to son has taken place in the subsequent year only. (August, 2017)</p> <p>Therefore, the entire brought forward business loss and depreciation after set off against the profits of the previous year 2016-17 is eligible for carry forward.</p>	4 Shareholder transferred shares on Oct, 2016	40%	1 Shareholder died on Feb,2017	10%		50%
4 Shareholder transferred shares on Oct, 2016	40%					
1 Shareholder died on Feb,2017	10%					
	50%					

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The unabsorbed business loss would be set off against the income of ₹10 lakhs and the balance of unabsorbed business loss of ₹5 lakhs and unabsorbed depreciation of ₹ 20 lakhs would be eligible for carry forward.

The business loss of the assessment year 2010-11 is eligible for carry forward up to the assessment year 2017-18 and the depreciation is eligible for carry forward infinitum. In fact, since the business loss is eligible for only 8 year carry forward, it is set off first and the depreciation is retained for set off as it has no time limitation.

(ii) Conversion into LLP (Section 72A(6A))

When a Company is converted into LLP the unabsorbed depreciation and accumulated loss of the private Company or unlisted public company shall be deemed to be the depreciation and loss respectively of the Successor LLP. However, the Company and the successor LLP have to satisfy the conditions of section 47 (xiiib) in Order to have tax neutral succession besides carry forward benefit.

The accumulated loss is eligible for a fresh carry forward of 8 assessment years from the year of conversion. The unabsorbed depreciation can be carried forward for an indefinite period.

The conditions laid out section 47 (xiiib) are to be complied by the successor LLP. if there is breach of condition the set off of loss and depreciation availed by successor LLP shall become chargeable to tax as income of the year in which the Conditions are not complied with.

**8. Write Short notes (any four):**

**4x4=16**

- (a) Regular assessment
- (b) Protective assessment
- (c) Best judgement assessment
- (d) Liability of members after partition of HUF
- (e) Powers of Commissioner (Appeals)

**Answer:**

**8. (a) Regular Assessment:**

The term "regular assessment" is defined in section 2(40) to mean assessment made under section 143(3) or section 144.

When the Assessing Officer makes an order under section 143(3) after serving notice under section 143(2), it is called as regular assessment.

Where there is failure on the part of the assessee to furnish the return of income called for or for furnishing the details sought for or similar faults listed in the section, the best judgment assessment made u/s 144 is also a regular assessment.

The time limit for regular assessment is 21 months from the end of the assessment year in which the income was first assessable.

**(b) Protective Assessment**

When there is an ambiguity or doubt as regards a person in whose hands the income is chargeable to tax, the Revenue would make assessment on both the persons.

This is made as a matter of caution to protect the interest of the Revenue. After the clearance of ambiguity, one assessment would get cancelled. It is not defined in the Act but it is in vogue.

There is no time limit specifically provided for completing or cancelling the protective assessment. When the regular assessment of any other assessment is made by way of protective assessment, the time limit contained therein will apply.

Protective assessment can be made, but penalty cannot be levied on protective basis.

**(c) Best Judgment Assessment:**

When the assessee fails to make a return under section 139(1) or under section 139(4) or in response to notice under section 142(1) the Assessing Officer may make an assessment to the best of his judgment.

This would be based on the materials available on record.

An opportunity of being heard however has to be given to the assessee before making such assessment.

The time limit for best judgment assessment is given in section 153(1) viz. 21 months from the end of the assessment year in which the income was first assessable.

**(d) Liability of members after partition of HUF**

In case total partition took place during the previous year, the total income of the joint family in respect of the period up to the date of partition shall be assessed as if so far no partition had taken place.

Each member or group of members shall, in addition to any tax for which he or it may be separately liable and not withstanding anything contained in section 10(2), be jointly and Severally liable for the tax on the income So assessed and in case total partition took place after the expiry of the previous year, the total income of the previous year of the joint family shall be assessed as if no partition had taken place. Each member shall be jointly and severally liable for the tax on the income so assessed.

In case partial partition had taken place after 31.12.1978, the HUF shall continue to be liable to be assessed under this Act as if no such partial partition had taken place and each member shall be jointly and severally liable for any tax, penalty, interest, fine or other Sum payable under this Act.

**(e) Powers of Commissioner (Appeals)**

The powers of CIT are co-terminus with that of the Assessing Officer and he can do everything which an AO can do or he has omitted to do.

While deciding an appeal, the CIT (A) may either confirm, reduce, enhance or annul the assessment.

While deciding appeal against levy of penalty the CT(A) may either confirm such order or cancel such order or vary it SO as to either enhance Or reduce the penalty.

If the original assessment itself its invalid the CT(A) cannot make enhancement in such case since he cannot validate and originally invalid assessment.