PAPER 7: DIRECT TAX LAWS & INTERNATIONAL TAXATION

SECTION – A: STATUTORY UPDATE

The direct tax laws, as amended by the Finance Act, 2018, including significant notifications/ circulars issued upto 30th April, 2019 are applicable for November, 2019 examination. The relevant assessment year for November, 2019 examination is A.Y.2019-20. The significant notifications/circulars issued upto 30th April, 2019, relevant for November, 2019 examination but not covered in the September, 2018 edition of the Study Material, are given hereunder.

PART – I : DIRECT TAX LAWS

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

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

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

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

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

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

The issue had been examined by CBDT and it is clarified, in line with the above decision of the Supreme Court, that freight, telecommunication charges and insurance expenses are to be excluded both from "export turnover" and "total turnover', while working out deduction

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admissible under section 10AA to the extent they are attributable to the delivery of articles or things outside India.

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

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

Chapter 4: Salaries

Notified limit for exemption in respect of gratuity increased, in case of employees not covered under the Payment of Gratuity Act, 1972 [Notification No. 16 /2019, dated 08.03.2019]

As per section 10(10)(iii), in case of an employee not covered under the Payment of Gratuity Act, 1972, any gratuity received by an employee on his retirement or his becoming incapacitated prior to such retirement or on termination of his employment or any gratuity received by his widow, children or dependents on his death is exempt from tax to the extent of least of the following limits:

(i) One-half month's salary for each year of completed service

(ii) Actual gratuity received

(iii) Specified limit (i.e., limit notified by the Central Government)

The Central Government, having regard to the maximum amount of any gratuity payable to employees, has specified ₹ 20 lakh as the limit for the purposes of section 10(10)(iii) in relation to the employees who retire or become incapacitated prior to such retirement or die on or after 29th March, 2018 or whose employment is terminated on or after the said date. In effect, the Central Government has, vide this notification, increased the specified limit from ₹ 10 lakhs to ₹ 20 lakh with effect from 29.03.2018.

Chapter 6: Profits and gains of business or profession

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

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

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

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

Chapter 7: Capital Gains

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

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

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

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

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

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

(1)	(2)	(3)	
	Transaction	**Non-applicability of condition of chargeability of STT**	
(a)	Where acquisition of existing listed equity share in a company whose equity	Where acquisition of listed equity share in a company–	
		(i)	has been approved by the Supreme Court,

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	shares are not frequently traded in a recognised stock exchange of India is made through a preferential issue		High Court, National Company Law Tribunal, Securities and Exchange Board of India or Reserve Bank of India in this behalf;
		(ii)	is by any non-resident in accordance with foreign direct investment guidelines issued by the Government of India;
		(iii)	is by an investment fund referred to in clause (a) of Explanation 1 to section 115UB or a venture capital fund referred to in section 10(23FB) or a Qualified Institutional Buyer;
		(iv)	is through preferential issue to which the provisions of chapter VII of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 does not apply.
(b)	Where transaction for acquisition of existing listed equity share in a company is not entered through a recognised stock exchange in India	Following acquisitions of listed equity share in a company made in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956:	
		(i)	acquisition through an issue of share by a company other than through preferential the issue referred to in (a);
		(ii)	acquisition by scheduled banks, reconstruction or securitisation companies or public financial institutions during their ordinary course of business;
		(iii)	acquisition by the Supreme Court, High Courts, National Company Law Tribunal, Securities and Exchange Board of India or Reserve Bank of India in this behalf;
		(iv)	acquisition under employee stock option scheme or employee stock purchase scheme framed under the Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines,1999;
		(v)	acquisition by any non-resident in accordance with foreign direct investment guidelines of the Government of India;
		(vi)	acquisition in accordance with Securities

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			and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011;
		(vii)	acquisition from the Government;
		(viii)	acquisition by an investment fund referred to in clause (a) to Explanation 1 to section 115UB or a venture capital fund referred to in section 10(23FB) or a Qualified Institutional Buyer;
		(ix)	acquisition by mode of transfer referred to in section 47 (e.g., transfer of capital asset under a gift, an irrevocable trust, transfer of capital asset between holding company and its subsidiary, transfer pursuant to amalgamation, demerger, etc.) or section 50B (slump sale) or section 45(3) (Introduction of capital asset as capital contribution in firm/ AOPs/ BOIs) or section 45(4) (Distribution of capital assets on dissolution of firm/ AOPs/ BOIs) of the Income-tax Act, if the previous owner or the transferor, as the case may be, of such shares has not acquired them by any mode referred to in (a), (b) or (c) listed in column (2) [other than the exceptions listed in column (3)]
(c)	acquisition of equity share of a company during the period beginning from the date on which the company is delisted from a recognised stock exchange and ending on the date immediately preceding the date on which the company is again listed on a recognised stock exchange in accordance with the Securities Contracts (Regulation) Act, 1956 read with Securities and Exchange Board of India Act,1992 and the rules made thereunder;		

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Chapter 8: Income from Other Sources

Notification of company for the purposes of exemption under clause (ii) of the proviso to section 56(2)(viib) [Notification No. 13/2019, dated 5-03-2019]

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

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

Earlier, the Central Government had, vide *Notification No. 45/2016, dated 14.6.2016*, notified classes of persons. In supersession of the above mentioned Notification, the Central Government has, vide this notification, notified that the provisions of section 56(2)(viib) shall not apply to consideration received by a company for issue of shares that exceeds the face value of such shares, if the said consideration received from a person, being a resident, by a company which fulfills the conditions specified by the Ministry of Commerce and Industry in the Department for Promotion of Industry and Internal Trade and files the declaration referred to in the said notification. In effect, vide this notification, the Central Government has notified the conditions to be fulfilled by a company which issues shares rather than the class or classes of persons to whom such shares are issued.

The Ministry of Commerce and Industry in the Department for Promotion of Industry and Internal Trade has, vide Notification No. G.S.R. 127(E) dated 19.2.2019, specified in para 4 thereunder, that a startup shall be eligible for exemption under clause (ii) of the proviso to section 56(2)(viib), if it fulfills the following conditions:

(i) It has been recognized by the Department for Promotion of Industry and Internal Trade as start up as per this notification or any earlier notification on the subject.

(ii) Aggregate amount of paid up capital and share premium of the startup after issue or proposed issue of shares, if any, does not exceed, twenty five crore rupees.

However, in computing the aggregate amount of paid up share capital, the amount of paid up share capital and share premium of twenty five crore rupees in respect of shares issued to any of the following persons shall not be included:

(a) a non-resident

(b) a venture capital company or a venture capital fund

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Further, consideration received by such startup for shares issued or proposed to be issued to a specified company shall also be exempt and shall not be included in computing the aggregate amount of paid up share capital and share premium of twenty five crore rupees. For this purpose, a specified company means a company whose shares are frequently traded within the meaning of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and whose net worth on the last date of financial year preceding the year in which shares are issued exceeds one hundred crore rupees or turnover for the financial year preceding the year in which shares are issued exceeds two hundred fifty crore rupees.

(iii) It has not invested in any of the following assets –

- (a) building or land appurtenant thereto, being a residential house, other than that used by the Startup for the purposes of renting or held by it as stock-in-trade, in the ordinary course of business;
- (b) land or building, or both, not being a residential house, other than that occupied by the Startup for its business or used by it for purposes of renting or held by it as stock-in trade, in the ordinary course of business;
- (c) loans and advances, other than loans or advances extended in the ordinary course of business by the Startup where the lending of money is substantial part of its business;
- (d) capital contribution made to any other entity;
- (e) shares and securities;
- (f) a motor vehicle, aircraft, yacht or any other mode of transport, the actual cost of which exceeds ten lakh rupees, other than that held by the Startup for the purpose of plying, hiring, leasing or as stock-in-trade, in the ordinary course of business;
- (g) jewellery other than that held by the Startup as stock-in-trade in the ordinary course of business;
- (h) any other asset, whether in the nature of capital asset or otherwise, of the nature specified in section 56(2)(vii)(d)(iv) to (ix) i.e., archaeological collections, drawings, paintings, sculptures, any work of art or bullion.

However, the Startup should not invest in any of the assets mentioned above for the period of seven years from the end of the latest financial year in which shares are issued at premium;

Meaning of Startup:

A company would be considered as Startup if the following conditions are satisfied:

(i) **Period** – It would be considered as a Startup upto a period of ten years from the date of incorporation/ registration, if it is incorporated as a private limited company (as defined in the Companies Act, 2013) in India.

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(ii) **Turnover limit** - Turnover of the company for any of the financial years since incorporation/registration has not exceeded one hundred crore rupees.

(iii) **Object and Purposes** - The company is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.

However, a private limited company shall not be considered a "Startup", if it formed by splitting up or reconstruction of an existing business.

This notification shall be deemed to have come into effect from 19.02.2019.

***Note –** Accordingly, students are advised to ignore Notifications No. 45/2016 dated 14.6.2016 and the related paras in page 8.10 of Module 1 of the Study Material and instead, read this notification.*

Chapter 15: Deduction, Collection and Recovery of Tax

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

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

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

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

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

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

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

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No tax to be deducted at source under section 194A, in case of Senior Citizens if the aggregate amount of interest does not exceed ₹ 50,000 [Notification No. 6/2018, dated 6-12-2018]

Section 194A requires deduction of tax at source on interest other than interest on securities. However, section 194A(3) provides for exemption from this requirement where such interest credited or paid or likely to be credited or paid during the Financial Year does not exceed ₹10,000 and the payer is a banking company, co-operative society engaged in banking business or post office. In case of a senior citizen (being a resident), however, a higher threshold of ₹50,000 has been specified for non-deduction of tax at source in such cases.

Accordingly, as per the third proviso to section 194A(3), no tax is required to be deducted at source in the case of senior citizens where the amount of interest or the aggregate of the amount of interest credited or paid during the financial year by a banking company, co-operative society engaged in banking business or post office does not exceed ₹ 50,000. However, it has come to the notice of the CBDT, that, some tax deductors/banks are making tax deductions even when the amount of interest does not exceed ₹ 50,000.

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

Accordingly, the Principal Director General of Income-tax (Systems) has, in exercise of the powers delegated by the CBDT under Rule 31A(5), clarified that no tax deduction at source under section 194A shall be made in the case of senior citizens where the amount of such income or the aggregate of the amounts of such income credited or paid during the financial year does not exceed ₹ 50,000.

Housing and Urban Development Corporation Ltd. (HUDCO), New Delhi notified for the purpose of section 194A(3)((iii)(f) [Notification No. 26/2019, dated 20.03.2019]

Section 194A(3)((iii)(f) provides that no tax is required to be deducted on interest income paid or credited to such other institution, association or body or class of institutions, associations, or bodies which is notified by the Central Government. Accordingly, the Central Government has, vide this notification, notified the Housing and Urban Development Corporation Ltd.(HUDCO), New Delhi for the purpose of the said section.

Consequent to such notification, no tax need to be deducted at source from interest other than interest on securities credited or paid to HUDCO.

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Chapter 17: Assessment Procedure

Time limit for making an application for allotment of PAN in respect of certain persons [Notification No. 82/2018, dated 19-11-2018]

Section 139A(1) lists out the persons, who have not allotted PAN, to apply to the Assessing Officer for allotment of PAN within such time, as may be prescribed. The time limit for making such application is prescribed in Rule 114(3).

The Finance Act, 2018 has expanded the list of persons covered under section 139A(1) to include the persons mentioned in (iv) & (v) in column (2) of the table below, who have not been allotted a PAN, to apply to the Assessing Officer for allotment of PAN. Accordingly, Rule 114(3) has been amended *vide* this notification to provide the time limit (indicated in column (3) of the table below) for such persons to apply to the Assessing Officer for allotment of PAN.

The table below contains the list of persons mentioned in section 139A(1), who have not been allotted PAN, to apply for PAN and the time limit for making such application in each such case.

(1)	(2)	(3)
	Persons required to apply for PAN	**Time limit for making such application**
(i)	Every person, if his total income or the total income of any other person in respect of which he is assessable under the Act during any previous year exceeds the maximum amount which is not chargeable to income-tax	on or before 31st May of the assessment year for which such income is assessable
(ii)	Every person carrying on any business or profession whose total sales, turnover or gross receipts are or is likely to exceed ₹ 5 lakhs in any previous year	before the end of that financial year (previous year).
(iii)	Every person who is required to furnish a return of income under section 139(4A)	before the end of the financial year (previous year).
(iv)	Every person being a resident, other than an individual, which enters into a financial transaction of an amount aggregating to ₹ 2,50,000 or more in a financial year	on or before 31st May of the immediately following financial year
(v)	Every person who is a managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of any person referred in (iv) above or any person competent to act on behalf of such person referred in (iv) above	on or before 31st May of the immediately following financial year in which the person referred in (iv) enters into financial transaction specified therein.

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Quoting of Aadhaar Number mandatory in returns filed on or after 1.4.2019 [Circular No. 6/2019 dated 31.03.2019]

As per section 139AA(1)(ii), with effect from 01.07.2017, every person who is eligible to obtain Aadhaar number has to quote Aadhaar number in the return of income.

The Apex Court in a series of judgments has upheld the validity of section 139AA. Consequently, with effect from 01.04.2019, the CBDT clarified that it is mandatory to quote Aadhaar number while filing the return of income unless specifically exempted as per any notification issued under section 139AA(3). Thus, returns being filed either electronically or manually on or after 1.4.2019 cannot be filed without quoting the Aadhaar number.

Time limit for intimation of Aadhar Number to Prescribed Authority [Notification No. 31/2019, dated 31.03.2019]

Section 139AA(2) provides that every person who has been allotted Permanent Account Number (PAN) as on 1st July, 2017, and who is eligible to obtain Aadhar Number, shall intimate his Aadhar Number to prescribed authority on or before a date as may be notified by the Central Government.

Accordingly, the Central Government has, vide this notification, notified that every person who has been allotted permanent account number as on 1st July, 2017, and who is eligible to obtain Aadhaar number, shall intimate his Aadhaar number to the Principal DGIT (Systems) or Principal Director of Income-tax (Systems) by 30th September, 2019.

This notification would, however, not be applicable to those persons or such class of persons or any State or part of any State who/which are/is specifically excluded under section 139AA(3).

Chapter 18: Appeals and Revision

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

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

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

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

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

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2.	Before High Court	50,00,000
3.	Before Supreme Court	1,00,00,000

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

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

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

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

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

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

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

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

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

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

Chapter 22: Liability in Special Cases

Clarification regarding liability and status of Official Assignees under the Income-tax Act, 1961 [Circular No. 4/2019, dated 28-01-2019]

Under provisions of the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920, where an order of Insolvency is passed against a debtor by the concerned Court, property of the debtor gets vested with the Court appointed Official Assignee. The Official Assignee then realizes property of the insolvent and allocates it amongst the creditors of the insolvent. Consequentially, Official Assignee has the responsibility to handle income-tax matters of the estate assigned to him.

In this regard, a clarification has been sought regarding applicability of section 160(1)(iii) which applies on a 'Representative Assessee' in the case of an Official Assignee. Further, clarity regarding status of the Official Assignee's i.e. their fallibility in the appropriate category of 'persons', as defined in section 2(31), has also been sought.

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As per provisions of section 160(1)(iii), a 'Representative Assessee' amongst other situations specified therein, becomes liable in respect of any income which the Assignee receives or is entitled to receive while managing the property for benefit of any person. As per the two insolvency Acts, Official Assignee manages the property of the debtor for the benefit of the creditors. Further, the Insolvency Act, 1909, in unambiguous terms, provides that an insolvent ceases to have an ownership interest in the estate once an order of adjudication is made under section 17 of the Insolvency Act.

Thus, it is clarified by the CBDT that since Official Assignee does not receive the income or manage the property on behalf of the debtor, they cannot be considered as a 'Representative Assessee' of the debtor under the Act while computing the tax-liability arising from the estate of the debtor.

As property of the insolvent is vested with the Official Assignee as per specific provisions of the Act/Law regulating functioning of the Official Assignee's, they have to be treated as a 'juristic entity' for purposes of the Income-tax Act. Hence, it is clarified by the CBDT that for purpose of discharge of tax-liability under the Act, the status of Official Assignees is that of an 'artificial juridical person' as prescribed in section 2(31)(vii), not being one of the 'persons' falling in section 2(31)(i) to (vi).

Therefore, Official Assignee is required to file income-tax return electronically in the ITR Form applicable to 'artificial juridical person' separately for each of the estate of the insolvent and the income shall be taxed as per the rates applicable in a particular year to an 'artificial juridical person'.

In view of the above position, Official Assignees would have to obtain a separate PAN for each of the estate of the insolvent.

PART - II: INTERNATIONAL TAXATION

Chapter 1: Non-resident Taxation

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

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

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

Particulars	Provisions
Determination of opening WDV	**If the foreign company is assessed to tax in the foreign jurisdiction** **Where depreciation is required to be taken into account for the purpose of computation of its taxable income**, the WDV of the depreciable asset as per the tax record in the foreign country on the 1st day of the previous year shall be adopted as the opening WDV for the said previous year. **Where WDV is not available as per tax records,** the WDV shall be calculated assuming that the asset was installed, utilised and the depreciation was actually allowed as per the provisions of the laws of that foreign jurisdiction. The WDV so arrived at as on the 1st day of the previous year shall be adopted to be the opening WDV for the said previous year. **If the foreign company is not assessed to tax in the foreign jurisdiction** WDV of the depreciable asset as appearing in the books of account as on the 1st day of the previous year maintained in accordance with the laws of that foreign jurisdiction shall be adopted as the opening WDV for the said previous year.
Brought forward loss and unabsorbed depreciation	**If the foreign company is assessed to tax in the foreign jurisdiction** Brought forward loss and unabsorbed depreciation as per the tax record shall be determined year wise on the 1st day of the said previous year. **If the foreign company is not assessed to tax in the foreign jurisdiction** Brought forward loss and unabsorbed depreciation as per the books of account prepared in accordance with the laws of that country shall be determined year wise on the 1st day of the said previous year.

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	Other provisions Such brought forward loss and unabsorbed depreciation shall be deemed as loss and unabsorbed depreciation brought forward as on the 1st day of the said previous year and shall be allowed to be set off and carried forward in accordance with the provisions of the Act for the remaining period calculated from the year in which they occurred for the first time taking that year as the first year. However, the losses and unabsorbed depreciation of the foreign company shall be allowed to be set off only against such income of the foreign company which has become chargeable to tax in India on account of it becoming resident in India due to application of POEM. In cases where the brought forward loss and unabsorbed depreciation originally adopted in India are revised or modified in the foreign jurisdiction due to any action of the tax or legal authority, the amount of the loss and unabsorbed depreciation shall be revised or modified for the purposes of set off and carry forward in India.
Period of profit and loss account and balance sheet in cases where accounting year of foreign company does not end on 31st March	The foreign company is required to prepare profit and loss account and balance sheet for the period starting from the date on which the accounting year immediately following said accounting year begins, upto 31st March of the year immediately preceding the period beginning with 1st April and ending on 31st March during which the foreign company has become resident. The foreign company is also required to prepare profit and loss account and balance sheet for succeeding periods of twelve months, beginning from 1st April and ending on 31st March, till the year the foreign company remains resident in India on account of its POEM. **Examples:** **Example 1:** If the accounting year of the foreign company is a calendar year and the company becomes resident in India during P.Y. 2018-19 for the first time due to its POEM being in India, then, the company is required to prepare profit and loss account and balance sheet for the period 1st January, 2018 to 31st March, 2018. It is also required to prepare profit and loss account and balance sheet for the period 1st April, 2018 to 31st March, 2019. For the purpose of carry forward of loss and unabsorbed depreciation in this case, since the period 1st January, 2018 to

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	31st March, 2018 is less than 6 months, it is to be included in the accounting year immediately preceding the accounting year in which the foreign company is held to be resident in India for the first time. Accordingly, the profit and loss and balance sheet of the 15 month period from 1 January, 2017 to 31st March, 2018 is to be prepared. **Example 2:** If the accounting year of the foreign company is from 1st July to 30th June and the company becomes resident in India during P.Y. 2018-19 for the first time due to its POEM being in India, then, the company is required to prepare profit and loss account and balance sheet for the period 1st July, 2017 to 31st March, 2018. It is also required to prepare profit and loss account and balance sheet for the period 1st April, 2018 to 31st March, 2019. For the purpose of carry forward of loss and unabsorbed depreciation in this case, since the period is more than 6 months, it is to be treated as a separate accounting year. The loss and unabsorbed depreciation as per tax record or books of account, as the case may be, of the foreign company shall, be allocated on proportionate basis.
Applicability of provisions of Chapter XVII-B (TDS provisions)	Where more than one provision of Chapter XVII-B of the Act applies to the foreign company as resident as well as foreign company, the provision applicable to the foreign company alone shall apply. Compliance to those provisions of Chapter XVII-B of the Act as are applicable to the foreign company prior to its becoming Indian resident shall be considered sufficient compliance to the provisions of said Chapter. The provisions of section 195(2) relating to application to Assessing Officer to determine the appropriate proportion of sum chargeable to tax shall apply in such manner so as to include payment to the foreign company.
Availability of deduction under section 90 or 91 (Foreign tax credit)	The foreign company shall be entitled to relief or deduction of taxes paid in accordance with the provisions of section 90 or section 91 of the Act. Where income on which foreign tax has been paid or deducted, is offered to tax in more than one year, credit of foreign tax shall be allowed across those years in the same proportion in which the income is offered to tax or assessed to tax in India in respect of the income to which it relates and shall be in accordance with the provisions of

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

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

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

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

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

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

Conditions under section 115JG(1) in respect of conversion of Indian branch of foreign bank into Indian subsidiary company and specification of holding period of a capital asset which becomes the property of the Indian subsidiary company in consequence of such conversion notified [Notification No. 85 & 86/2018, dated 6-12-2018]

Chapter XII-BB comprises of section 115JG which contains "Special provisions relating to conversion of Indian branch of a foreign bank into a subsidiary Indian company". Section 115JG *inter-alia* provides that, in case the conversion of an Indian Branch of foreign bank into a subsidiary Indian company in accordance with the scheme framed by Reserve Bank of India and fulfilling the conditions notified by the Central Government, the capital gains arising from such conversion shall not be chargeable to tax and the provisions of the Income-tax Act, 1961 relating to unabsorbed depreciation, set off or carry forward and set off of losses, tax credit in respect of tax paid on deemed income relating to certain company and the computation of income in case of foreign company and Indian subsidiary company would apply with such modification, exception and adaptation as may be specified in the notification.

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Accordingly, the Central Government has, *vide* notification no. 85/2018, specified the conditions to be fulfilled –

(1) For Capital Gains exemption:

Where a foreign company is engaged in the business of banking through its Indian branch and converts such Indian branch into its Indian subsidiary company in accordance with the scheme framed by RBI, the capital gains arising from such conversion would not be chargeable to tax, if -

(a) the Indian branch amalgamates with the Indian subsidiary company in accordance with the scheme of amalgamation approved by the shareholders of the foreign company and the Indian subsidiary company and sanctioned by the RBI[1]

(b) all the assets and liabilities of the Indian branch immediately before conversion would become the assets and liabilities of the Indian subsidiary company;

(c) the asset and liabilities of the Indian branch are transferred to the Indian subsidiary company at values appearing in the books of account of the Indian branch immediately before its conversion.

__Note__ - Any change in the value of assets consequent to their revaluation would not be considered while determining the value of the assets.

(d) the foreign bank or its nominee shall hold the whole of the share capital of the Indian subsidiary company during the period beginning from the date of conversion and ending on the last day of the previous year in which the conversion took place and continue to hold the shares of Indian subsidiary company carrying not less than 51% of the voting power for a period of five years immediately succeeding the said previous year;

(e) the foreign company does not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the Indian subsidiary company.

(2) Application of the provisions of the Income-tax Act, 1961 with modifications/exceptions

The provisions of the Income-tax Act, 1961 relating to unabsorbed depreciation, set off or carry forward and set off of losses, tax credit in respect of tax paid on deemed income relating to certain companies and the computation of income in case of foreign company and Indian subsidiary company shall apply with following modifications, exceptions and adaptation –

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[1] under paragraph 20(h) of the Framework for setting up of wholly owned subsidiaries by foreign banks in India issued by the Reserve Bank of India *vide* Press release number 2013-2014/936 dated 6th day of November, 2013

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	Purpose	Modification/exception/adaptation
(a)	Allowance of depreciation under section 32	The aggregate deduction, in respect of depreciation on buildings, machinery, plant or furniture, being tangible assets, or know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets, allowable to the Indian branch and the Indian subsidiary company shall not exceed in any previous year the deduction calculated at the prescribed rates as if the conversion had not taken place. Such deduction would be apportioned between the Indian branch and the Indian subsidiary company in the ratio of the number of days for which the assets were used by them;
(b)	Set-off and c/f of loss and depreciation	The **accumulated loss** and the **unabsorbed depreciation** of the Indian branch would be deemed to be the loss or allowance for depreciation of the Indian subsidiary company for the previous year in which conversion was effected; and provisions of the Income-tax Act, 1961, relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly.
(c)	Determination of actual cost u/s 43(1)	The actual cost of the block of assets in the case of the Indian subsidiary company shall be the written down value of the block of assets as in the case of the Indian branch on the **date of its conversion** into the Indian subsidiary company The actual cost of any capital asset on which deduction has been allowed or is allowable under section 35AD, shall be treated as 'nil' in the case of the Indian subsidiary company if the capital asset became the property of the Indian subsidiary company as a result of conversion of the Indian branch
(d)	Cost of acquisition of other capital assets	Where the capital asset other than those referred to in (c) above became the property of the Indian subsidiary company as a result of conversion of the Indian branch, the cost of acquisition of the asset for the purposes of computation of capital gains shall be deemed to be the cost for which the Indian branch acquired it or, as the case may be, the cost for which **previous owner** has acquired it.
(e)	Tax credit	The **tax credit** of the Indian branch shall be deemed to be the tax credit of the Indian subsidiary company for the purpose of the previous year in which conversion was effected; and the provisions of section 115JAA of the Income-tax Act, 1961 shall apply accordingly.
(f)	Amortisation of VRS Expenditure	The provisions of 35DDA of the Act shall be, as far as may be, apply to the Indian subsidiary company, as they would have applied to the Indian branch, if the conversion had not taken place

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(g)	Deemed credit balance in provision for bad and doubtful debts	The credit balance in the provision for bad and doubtful debts account made under section 36(1)(viia) of the Indian branch on the date of conversion shall be deemed to be the credit balance of the Indian subsidiary company and the provisions of section 36 of the Income-tax Act, 1961, shall apply accordingly
(h)	Non-applicability of section 56(2)(x)	The provisions of section 56(2)(x) shall not apply to the transaction of receipt of shares in the Indian subsidiary company by the foreign company or its nominee in consequence of the conversion of the Indian branch into the Indian subsidiary company.

Meaning of certain terms (given in bold in the above table):

Term	Meaning
Accumulated loss	So much of the loss of the Indian branch before its conversion into Indian subsidiary company under the head "Profits and gains of business or profession" (not being a loss sustained in a speculation business) which such Indian branch would have been entitled to carry forward and set off under the provisions of section 72, if the conversion had not taken place.
Unabsorbed depreciation	So much of the allowance for depreciation of the Indian branch before its conversion into Indian subsidiary company, which remains to be allowed and which would have been allowed to the Indian branch under the provisions of the Act, if the conversion had not taken place.
Previous owner	In relation to any capital asset owned by the Indian subsidiary company means the last previous owner of the capital asset who acquired it by a mode of acquisition other than those referred in section 49(1)(i)/(ii)/(iii)/(iv) or section 115JG(1).
Tax credit	So much of the tax credit of the Indian branch before conversion into Indian subsidiary company which such Indian branch would have been entitled to carry forward and set off under the provisions of section 115JAA of the Act, if the conversion had not taken place.
Date of conversion	The date, which the Reserve Bank of India appoints for the vesting of undertaking of the Indian branch in Indian subsidiary company[2]

[2] under paragraph 20(i) of the Framework for setting up of wholly owned subsidiaries by foreign banks in India issued by the Reserve Bank of India vide press release number 2013-2014/936 dated 6th day of November, 2013.

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Further, the CBDT has, vide Notification No. 86/2018, inserted sub-rule (4) in rule 8AA providing for method of determination of period of holding of capital assets in certain cases. This sub-rule provides that, in the case of a capital asset which became the property of the Indian subsidiary company in consequence to conversion of a branch of a foreign company referred to in section 115JG(1), the period for which the asset was held by the said branch of the foreign company and by the previous owner, if any, who has acquired the capital asset by a mode of acquisition referred to in clause (i)/(ii)/(iii)/(iv) of section 49(1) or section 115JG(1) shall be included.

Chapter 3: Transfer Pricing & Other Anti-avoidance Measures

Time limit for furnishing of report by constituent entity of an international group, resident in India specified [Notification No. 88/2018 dated 18-12-2018, Circular No. 9/2018 dated 26-12-2018 and Circular No. 7/2019 dated 08-04-2019]

I. Requirement of furnishing of report by constituent entity of an international group, resident in India [Section 286(4)]

As per section 286(4), a constituent entity of an international group, resident in India, other than the parent company or the alternate reporting entity, is required to furnish a report in respect of the international group for a reporting accounting year **within the prescribed period**, if the parent entity is resident of a country or territory–

(i) where the parent entity is not obligated to file the report of the nature referred to in section 286(2).

(ii) with which India does not have an agreement providing for exchange of the report of the nature referred to in section 286(2)

(iii) 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.

II. Time limit for furnishing of report by constituent entity [Notification No. 88/2018 dated 18-12-2018 -Rule 10DB(4)]

The CBDT has, accordingly, amended Rule 10DB(4) vide Notification no. 88/2018 to provide that the constituent entity is required to furnish the report under section 286(4) within twelve months from the end of the reporting accounting year. However, in case the parent entity of the constituent entity is resident of a country or territory, where, there has been a systemic failure of the country or territory and the said failure has been intimated to such constituent entity, the period for submission of the report would be six months from the end of the month in which said systemic failure has been intimated.

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III. Relaxation in time limit for report to be furnished under section 286(4) in respect of reporting accounting years ending upto 28.2.2018 [Circular No. 9/2018 dated 26-12-2018]

Representations from the stakeholders were received by the CBDT in the matter, wherein it has been stated, *inter alia*, that the constituent entity of an international group, which is resident in India, having parent entity resident in jurisdictions with which India does not have an agreement providing for exchange of the report of the nature referred to in section 286(2) and where the reporting accounting year is calendar year based, i.e., ending on December 31 of the year, would need to furnish the report under section 286(4) in India by 31.12.2018. It has also been represented that read with the amendment to section 286 and the substituted rule 10DB(4), the constituent entity in such case for reporting accounting year ending on 31.3.2017 would have been required to furnish the CbCR by 31.3.2018 which is not plausible.

In order to remove the genuine hardship caused as above in furnishing of the report under section 286(4) read with Rule 10DB(4) and as a one-time measure, the CBDT has, in exercise of powers conferred under section 119 extended the period for furnishing of said report by the constituent entities referred to in (i) and (ii) of I. above in respect of reporting accounting years ending upto 28.2.2018 to 31.3.2019.

IV Relaxation in time limit for constituent entities, whose parent entities are resident in USA [Circular No. 7/2019 dated 08-04-2019]

The agreement for providing for exchange of the report of the nature referred to in section 286(2) has been entered into by India and the USA on March 27, 2019. However, the agreement and the exchange mechanism would come into effect only after both the countries notify each other about the completion of all internal procedures for exchange which is underway.

Since filing of the report by the constituent entity referred to in section 286(4) [(i) and (ii) of I. above] in India gets triggered on completion of twelve months from the last date of the reporting accounting year and Circular 9/2018 has extended the period for furnishing of the report till March 31, 2019 in respect of reporting accounting years ending upto February 28, 2018, due to non-notification of the agreement and resultantly non-activation of the exchange mechanism between India and the USA, said report has to be filed by such constituent entities, whose parent entities are resident in USA and whose reporting accounting years ended after February 28,2018.

In view of the above, in order to remove the genuine hardship faced by the constituent entities referred to in (i) and (ii) of I. above, whose parent entities are resident in USA, in furnishing of the report under section 286(4) read with rule 10DB(4), the CBDT has extended the period for furnishing of said report by such constituent entities, in respect of reporting accounting years ending upto April 29, 2018, to April 30, 2019.

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SECTION – B: QUESTIONS AND ANSWERS

OBJECTIVE TYPE QUESTIONS

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

(i) X Ltd. is engaged in the business of letting out of properties. As per the memorandum of association of X Ltd., letting out of properties is its main objective. The total income of X Ltd. comprises only of rental income from the business of letting out of properties. Y Ltd. is engaged in the construction and sale of properties, which is also its main objective as per its memorandum of association. Incidentally, it lets out some properties which are held as stock-in-trade and earns rental income therefrom. Which of the following statements are correct?

(a) Rental income from letting out of properties by X Ltd. and Y Ltd. is taxable under the head "Income from house property"

(b) Rental income from letting out of properties by X Ltd. and Y Ltd. is taxable under the head "Profits and gains of business or profession"

(c) Rental income from letting out of properties by X Ltd. is taxable under the head "Income from house property" and by Y Ltd is taxable under the head "Profits and gains of business or profession"

(d) Rental income from letting out of properties by Y Ltd. is taxable under the head "Income from house property" and X Ltd is taxable under the head "Profits and gains of business or profession"

(ii) PQ Ltd. is a company having two units – Unit P carries on specified business of setting up and operating warehousing facility for storage of agricultural produce and Unit Q carries on specified business of setting up and operating warehousing facility for storage of edible oil. Unit P commenced operations on 1.4.2017 and claimed deduction of ₹ 120 lakhs incurred in April, 2017 on purchase of two buildings for ₹ 70 lakhs and ₹ 50 lakhs (for operating warehousing facility for storage of agricultural produce) under section 35AD for A.Y.2018-19. However, in March, 2019, Unit P transferred its building costing ₹ 70 lakhs to Unit Q. What are the tax implications of such transfer in the hands of PQ Ltd.?

(i) ₹ 70 lakhs would be deemed as business income in the hands of PQ Ltd. for A.Y.2019-20

(ii) ₹ 63 lakhs would be deemed as business income in the hands of PQ Ltd. for A.Y.2019-20

(iii) Actual cost of building for computing depreciation for P.Y.2018-19 would be ₹ 70 lakhs

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(iv) Actual cost of building for computing depreciation for P.Y.2018-19 would be ₹ 63 lakhs

Which of the above statements are correct?

(a) (i) and (iii) above

(b) (i) and (iv) above

(c) (ii) and (iii) above

(d) (ii) and (iv) above.

(iii) XYZ Ltd. engaged in the business of manufacture of steel, claimed deduction under section 80-IB on the profits and gains of business which included transport subsidy, interest subsidy and power subsidy received from the Government and duty drawback receipts. XYZ Ltd. contended that all the above receipts are profits derived from the business of the industrial undertaking and are hence, eligible for deduction under section 80-IB. Is the contention of XYZ Ltd. correct?

(a) Yes; transport subsidy, interest subsidy, power subsidy and duty drawback are profits derived from the business of the industrial undertaking and hence, eligible for deduction under section 80-IB.

(b) No; none of the above receipts can be treated as profits "derived" from the business of the industrial undertaking and hence, deduction under section 80-IB cannot be claimed in respect of any such receipt.

(c) No; transport subsidy, interest subsidy and power subsidy received from Government are profits derived from the business of the industrial undertaking and hence, eligible for deduction under section 80-IB. However, duty drawbacks belong to the category of ancillary profits and hence, deduction under section 80-IB cannot be claimed in respect of such receipt.

(d) No; transport subsidy, interest subsidy and power subsidy received from Government are ancillary profits and hence, deduction under section 80-IB cannot be claimed in respect of such receipts. However, duty drawbacks are profits derived from the business of the industrial undertaking and hence, deduction under section 80-IB can be claimed in respect of such receipt.

(iv) A REIT has distributed ₹ 2 crore to its unitholders, which comprises of -

(i) Rental income from real estate property directly held by it ₹ 80 lakhs

(ii) Interest income from special purpose vehicle ₹ 50 lakhs

(iii) Dividend income from special purpose vehicle ₹ 40 lakhs

(iv) Capital gains on disposal of assets ₹ 30 lakhs

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In this case, the special purpose vehicle is an Indian company, in which REIT holds 100% of shares. Which of the following statements relating to taxability of the above income are correct?

(1) All the above income are taxable in the hands of REIT. The said income are exempt in the hands of unit holders.

(2) Only income referred to in (i) and (ii) are taxable in the hands of REIT. Income referred to in (iii) and (iv) are taxable in the hands of unit holders.

(3) Only income referred to in (i) and (ii) are taxable in the hands of REIT. Income referred to in (iv) is taxable in the hands of unit holders. Income referred to in (iii) is exempt both in the hands of REIT and unitholders.

(4) Only income referred to in (iv) is taxable in the hands of REIT. Income referred to in (i) and (ii) is taxable in the hands of unit holders. Income referred to in (iii) is exempt both in the hands of REIT and unitholders.

(5) Tax is deductible by REIT from income referred to in (i) and (ii).

(6) Tax is deductible by REIT from income referred to in (iii) and (iv).

(7) Tax is deductible by REIT only from income referred to in (iv)

(8) No tax is deductible by REIT since the entire income is taxable in its hands.

The correct option is –

(a) (1) and (8) above

(b) (2) and (6) above

(c) (3) and (7) above

(d) (4) and (5) above

(v) During the P.Y.2018-19, HelpAid Charitable Trust registered under section 12AA received donations of ₹ 80 lakhs, out of which ₹ 10 lakhs were corpus donations and ₹ 20 lakhs were anonymous donations. The trust applied ₹ 40 lakhs towards its objects during the P.Y.2018-19. The tax liability of the trust for A.Y.2019-20 is -

(a) ₹ 6,24,000

(b) ₹ 5,92,800

(c) ₹ 5,30,920

(d) ₹ 5,97,220

(vi) In the course of search operations under section 132 in May, 2019, Mr. Hari makes a declaration under section 132(4) on the earning of income in respect of P.Y.2018-19 not disclosed in the books of account. Mr. Hari explains the manner in which income was derived and pays the tax, together with interest in respect of such income. However, he

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does not disclose such income in his return of income filed on 31.7.2019. Is penalty leviable in this case, and if so what is the quantum of penalty?

(a) No penalty is leviable since Mr. Hari has made a declaration under section 132(4)

(b) Penalty@10% is leviable

(c) Penalty@30% is leviable

(d) Penalty@60% is leviable.

(vii) A Ltd. filed its return of income for A.Y.2019-20 on 30th September, 2019. The return is selected for regular assessment under section 143(3). The time limit for service of notice under section 143(2) in this case is -

(a) 31.3.2020

(b) 30.6.2020

(c) 30.9.2020

(d) 31.3.2021

(viii) Shipcargo Inc., a company based in Netherlands operating its ships to and fro Cochin port, collected freight of ₹ 85 lakhs, demurrage of ₹ 5 lakhs and handling charges of ₹ 2 lakhs in respect of goods shipped at Cochin port. It incurred expenses of ₹ 35 lakhs during the year for operating its fleet. In respect of goods shipped at Rotterdam, Netherlands, it received ₹ 50 lakhs in India. Its tax liability (rounded off) for the A.Y.2019-20 is -

(a) ₹ 4,21,200

(b) ₹ 4,43,040

(c) ₹ 3,12,000

(d) ₹ 1,77,840

(ix) Mr. Ganesh, a citizen of India, is employed in the Indian embassy in the USA. He is a non-resident for A.Y.2019-20. He received salary and allowances in the USA from the Government of India for the year ended 31.3.2019 for services rendered by him in the USA. In addition, he was allowed perquisites by the Government. Which of the following statements are correct?

(a) Salary, allowances and perquisites received outside India are not taxable in the hands of Mr. Ganesh, since he is a non-resident.

(b) Salary, allowances and perquisites received outside India by Mr. Ganesh is taxable in India since they are deemed to accrue or arise in India.

(c) Salary received by Mr. Ganesh is taxable in India but allowances and perquisites are exempt.

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(d) Salary received by Mr. Ganesh is exempt but allowances and perquisites are taxable.

(x) Mr. Rajesh, a resident Indian, is an employee of M/s. ABC Ltd., Bangalore. In addition to the salary income from M/s. ABC Ltd., he also earns interest from fixed deposits. M/s. PQR Inc., a foreign company not having permanent establishment in India, rendered online advertisement services to Mr. Rajesh, for which Mr. Rajesh made a payment of ₹ 2 lakhs in the F.Y.2018-19. Which of the statements is correct?

(a) The transaction is subject to equalisation levy since payment exceeding ₹ 1 lakh has been made for online advertisement services by a resident to a non-resident not having permanent establishment in India.

(b) Equalisation levy@6% has to be deducted from the consideration of ₹ 2 lakhs payable to M/s. PQR Inc.

(c) Both (a) and (b)

(d) The transaction is not subject to equalisation levy

DESCRIPTIVE QUESTIONS

1. PQR Ltd. is a company in which the whole of its share capital was held by LMN Ltd. Both PQR Ltd. and LMN Ltd. are Indian companies. PQR Ltd. had made investment in shares of Berkley Ltd. in 1992 for ₹ 7,00,000 which it sold to LMN Ltd. on April 1, 2010 for a consideration of ₹ 42,00,000.

   The fair market value of these shares of Berkley Ltd., as on April 1, 2001 is ₹ 32,00,000. LMN Ltd. disinvested 7% of the shares held by it in PQR Ltd., in November 2018 by sale to public. It sold the shares in Berkley Ltd. acquired by it from PQR Ltd. in February, 2019 for a sum of ₹ 95,00,000.

   Examine the capital gains tax effect of these transactions in the hands of PQR Ltd. and LMN Ltd. in the relevant assessment years, presuming that the shares of Berkley Ltd. are unlisted shares.

   The cost inflation index for the F.Y.2010-11 is 167 and F.Y.2018-19 is 280.

2. Ms. Janani reports to you that her gross receipt from interior decoration profession carried on by her during the year ended 31-03-2019 is ₹ 47,80,000. Her net income as per income and expenditure account is ₹ 25,00,000 before adjustment of depreciation of ₹ 1,50,000. She did not pay any amount by way of advance tax during the financial year 2018-19. She has two residential house properties, of which one is self-occupied for residence and another is let out for the monthly rent of ₹ 15,000 during the financial year 2018-19.

   Is Janani eligible to opt for presumptive tax provisions, if any, under the Income-tax Act, 1961? If so, is it beneficial for her to opt for such provisions? Advise, assuming that she approached you for consulting on this matter in April, 2019.

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3. Calculate the capital gains/loss on transfer of listed equity shares (STT paid both at the time of acquisition and transfer of shares) for the A.Y.2019-20, in the following cases:
   (i) Mr. Ravi purchased 500 shares in Tapti Ltd. on 15.11.2016 at a cost of ₹ 1,200 per share. The Fair Market Value (FMV) of the share as on 31.1.2018 is ₹ 2,300. Ravi sold all the shares of Tapti Ltd. on 15.5.2018 for ₹ 3,000.
   (ii) Mr. Giri purchased 700 shares in Narmada Ltd. on 3.12.2016 at a cost of ₹ 3,100 per share. The Fair Market Value (FMV) of the share as on 31.1.2018 is ₹ 4,500. Mr. Giri sold all the shares of Narmada Ltd. on 24.4.2018 for ₹ 4,200.
   (iii) Mr. Mani purchased 300 shares in Cauvery Ltd. on 12.1.2017 at a cost of ₹ 2,500 per share. The Fair Market Value (FMV) of the share as on 31.1.2018 is ₹ 1,800. Mr. Mani sold all the shares of Cauvery Ltd. on 15.7.2018 for ₹ 3,200.
   (iv) Mr.Sathy purchased 600 shares in Mahanadi Ltd. on 25.1.2017 at a cost of ₹ 1,900 per share. The Fair Market Value (FMV) of the share as on 31.1.2018 is ₹ 2,400. Mr. Sathy sold all the shares of Mahanadi Ltd. on 31.1.2019 for ₹ 1,700.
4. PQR Ltd. is engaged in the manufacture of multi-layer tubes and other speciality packaging and plastic products. It came out with an initial public issue of shares during the year 2017-18 and deposited the share application money received in banks till the allotment of shares was completed. The company earned interest of ₹ 75 lakhs on such deposits, which it set off against the public issue expenses, while computing total income for A.Y.2018-19. Accordingly, the company paid the tax on total income, after adjusting tax deducted at source and advance tax paid, and filed its return of income in September, 2018. On scrutiny, the Assessing Officer contended that interest of ₹ 75 lakhs is not eligible for set-off against public issue expenses but is taxable under the head 'Income from Other Sources'. Examine the correctness of contention of the Assessing Officer.
5. ABC Ltd. has approached the Supreme Court under a special leave petition. There has been a delay of 439 days in filing the appeal under section 260A for which reason ABC Ltd. requested for a condonation of delay under section 14 of Limitation Act, 1963. The company submitted that the delay was on account of pursuing an alternate remedy of filing a miscellaneous application before the Income-tax Appellate Tribunal (ITAT) under section 254(2).

   From the above facts, examine whether delay in filing appeal under section 260A can be condoned under section 14 of Limitation Act, 1963 where the stated reason for delay is the pursuance of an alternate remedy by way of filing an application before the ITAT under section 254(2) for rectification of mistake apparent on record.
6. (a) HelpAll charitable trust, having its main object as relief of poor, earned agricultural income of ₹ 2.80 lakh, dividend income of ₹ 1.10 lakh and income of ₹ 1.30 lakh from mutual funds specified under section 10(23D) during the P.Y.2018-19.

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

(b) HistoSpace charitable trust, having its main object as preservation of monuments of historic interest, purchased computers for ₹ 12 lakh in March, 2018 for the purposes of the trust and claimed the same as application of income in the P.Y.2017-18. It also claims depreciation @ 40% on such computers for P.Y.2018-19, while computing income for the purpose of application for that year. Examine the correctness or otherwise of the claim of the trust.

7. Sigma Ltd., incorporated on 1.4.2017, is a technology enabled eligible start-up engaged in innovation of processes. The company filed its return of income for A.Y.2019-20 after claiming deduction of ₹ 18 lakhs under section 80-IAC. The return was selected for scrutiny. In the assessment, a sum of ₹ 7 lakhs, being 30% of ₹ 21 lakhs, towards payment of fees for professional services was disallowed for non-deduction of tax at source by invoking section 40(a)(ia). The Assessing Officer, however, limited the deduction under section 80-IAC to the original amount claimed by Sigma Ltd. Sigma Ltd. contended that it was eligible for a higher deduction of ₹ 25 lakhs under section 80-IAC consequent to disallowance under section 40(a)(ia). Examine the correctness of contention of Sigma Ltd.

8. Satpura Ltd. is an Indian company in which 52% of shares are held by Vindhyas Ltd. Satpura Ltd. declared a dividend amounting to ₹ 60 lakhs to its shareholders for the financial year 2017-18 in its Annual General Meeting held on 29th May, 2018. Dividend distribution tax was paid by Satpura Ltd. on 5th June, 2018. Vindhyas Ltd. declared an interim dividend amounting to ₹ 48 lakhs on 2nd December, 2018.

   Compute the amount of tax on dividend payable by Vindhyas Ltd., an Indian company.

   Would your answer change if Vindhyas Ltd. held 48% of shares of Satpura Ltd? Examine.

9. The following are the details pertaining to M/s. Aravali, a partnership firm, for the year ended 31-3-2019:

   (i) Gross total income of ₹ 600 lakhs, which includes a profit of ₹ 550 lakhs from an undertaking engaged in an irrigation project.

   (ii) The profits of the undertaking are eligible for deduction under section 80-IA. This is the third year and the deduction available is ₹ 510 lakhs.

   (iii) The firm has undertaken "specified domestic transactions" referred to in section 92BA during the said year and has to obtain a report from an accountant under section 92E and furnish such report.

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Since M/s. Aravali wishes to seek opinion of tax consultants in relation to certain issues before filing its return of income, it is planning to file its return of income only in the month of March, 2020. Advise M/s. Aravali the right course of action. You may ignore interest under section 234A, 234B, 234C and 234F while making your computations in support of your advice.

10. Godavari Ltd., an Indian Company engaged in manufacture and sale of electrical appliances in India and abroad, started adoption of Ind AS with effect from 1st April, 2017. The following particulars are furnished for the year ended 31st March, 2019:-

   (a) The book profit after adjustment of all items specified in section 115JB(2) amounted to ₹ 87.34 lakhs (except the adjustment for brought forward losses/ unabsorbed depreciation), for the year ended 31.3.2019.

   (b) Brought forward losses as per books are as under : (₹ In lakhs)

Financial Year	Business loss	Depreciation
2016-17	8.20	7.60
2017-18	7.30	9.50

   (c) The particulars of "Other Comprehensive Income" for the year ended 31.03.2019:

(₹ In lakhs)

Other Comprehensive Income (OCI) that will not be re-classified to profit and loss:		**Debit**	**Credit**
(i)	Deferred costs of hedging	3.80	
(ii)	Changes in fair values of equity instruments	8.00	
(iii)	Revaluation surplus for assets		8.20
(iv)	Deferred gains on cash flow hedges		6.70
(v)	Re-measurement of post-employment benefit obligations		5.20
(vi)	Share of other comprehensive income of other associates		2.80
Other Comprehensive Income (OCI) that may be re-classified to profit and loss:		**Debit**	**Credit**
(i)	Deferred gains on cash flow hedges		8.20
(ii)	Comprehensive income from discontinued operations		5.30
(iii)	Exchange Differences of foreign exchange operations	1.80	
(iv)	Deferred costs of hedging	0.80	

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(d) The transition amount as on convergence date (01-04-2017) stood at ₹ 48 lakhs (credit balance) including capital reserve of ₹ 6 lakhs and adjustment of ₹ 5 lakhs relating to translation difference in a foreign operation.

(e) The National Company Law Tribunal (NCLT), Mumbai Bench has admitted an application under section 7 of Insolvency and Bankruptcy Code, 2016 (IBC) made by financial creditor against the company for initiation of Corporate Insolvency Resolution Process on 30th March, 2019.

You are required to compute the MAT liability for the assessment year 2019-20, applying the provisions relating to Ind AS compliant companies. Assuming that the income tax under normal provisions of Income-tax Act, 1961 for the assessment year 2019-20 works out to ₹ 13.20 lakhs, compute the tax credit, if any, to be carried forward by the company including the period up to which it will be available to be carried forward.

11. M/s. Uranus LLP filed its return of income for the A.Y. 2016-17 on 23-07-2016. The assessment u/s 143(3) was completed on 27th April, 2017. The Assessing Officer made two additions to the income of the LLP, namely, ₹ 12 lakhs towards unexplained investment u/s 69 and ₹ 4 lakhs u/s 40(b) due to excess interest paid to partners.

    The LLP, being aggrieved, contested the addition of ₹ 12 lakhs under section 69 and filed an appeal before the Commissioner (Appeals). The appeal was decided on 12th February, 2019 against the LLP.

    In March, 2019, the LLP approaches you to know whether it should apply for revision to Principal Commissioner u/s 264 or for rectification u/s 154 to the Assessing Officer as regards disallowance u/s 40(b). You are required to advise the LLP, keeping in mind the relevant provisions of income-tax law.

12. M/s. Pluto LLP filed its return of income for A.Y.2019-20, declaring total income of ₹ 25 lakhs, on 2nd October, 2019. On processing of return, the total income determined under section 143(1)(a) was ₹ 30 lakhs, after disallowing claim for deduction under section 10AA on account of late furnishing of return of income. Thereafter, on scrutiny, the Assessing Officer made some additions under section 40(a)(ia) and section 43B and passed an assessment order under section 143(3) assessing total income of ₹ 40 lakhs. Later on, the Assessing Officer noticed that certain income had escaped assessment and issued notice for reassessment under section 148. The total income reassessed under section 147 was ₹ 45 lakhs.

    Considering that none of the additions or disallowances made in the assessment or re-assessment as above qualifies under section 270A(6), compute the amount of penalty to be levied under section 270A of the Income-tax Act, 1961 at the time of assessment under section 143(3) and at the time of reassessment under section 147 (Assume under-reporting of income is not on account of misreporting).

13. Neptune Inc, a notified Foreign Institutional Investor (FII), derived the following incomes for the financial year 2018-19:-

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(1) Interest received on investment in Rupee Denominated Bonds of ABC Ltd., an Indian company (investment was made in the F.Y.2017-18) - ₹ 8,50,000

(2) Dividend from listed shares of Indian companies – ₹ 6,20,000

(3) Interest on securities – ₹ 17,32,000 (Expenses of ₹ 26,000 has been incurred to earn such income)

(4) **Income from sale of securities and shares**:

(i) **Bonds of Jupiter Ltd.**

[Date of purchase 5 May 2015; Date of sale 7 March 2019]

Sale proceeds :	₹ 47,00,000
Cost of purchase :	₹ 32,00,000

Cost Inflation Index: F.Y.2015-16:254; F.Y.2018-19:280

(ii) Listed Shares of Earth Ltd.

[Date of purchase – 2 May, 2018; Date of sale – 9 February, 2019]

Sale Consideration	₹ 12,40,000
Purchase cost	₹ 7,80,000

[STT paid both at the time of purchase and sale]

(iii) Unlisted equity shares of Mars Ltd.

[Date of purchase – 1 July, 2018; Date of sale – 7 March, 2019]

Sale Consideration	₹ 8,40,000
Purchase cost	₹ 3,72,000

Compute the total income and tax liability of the FII, Neptune Inc., for the A.Y. 2019-20, assuming that no other income is derived by Neptune Inc. during the F.Y.2018-19.

14. Examine the following transactions and discuss whether the transfer price declared by the following assessees, who have exercised a valid option for application of safe harbour rules, can be accepted by Income-tax authorities –

(i) Mercury Ltd., an Indian company, provided data processing services to Venus Inc., which is a specified foreign company in relation to Mercury Ltd. The aggregate value of such international transactions entered into in the P.Y.2018-19 is ₹ 105 crores. It declared an operating profit margin of ₹ 16 crores. Its operating expenses were ₹ 80 crores.

(ii) Jupiter Ltd., an Indian company, provides contract R & D services relating to software development to Saturn Inc., a US company which guarantees 12% of the borrowings of Jupiter Ltd. The value of such international transactions entered into in the P.Y.2018-19 is ₹ 190 crores. It declared an operating profit margin of ₹ 40 crores against an operating expenses of ₹ 175 crores.

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In case it is not binding on the income-tax authorities to accept the transfer price declared by Mercury Ltd. or Jupiter Ltd., what is the primary adjustment, if any, to be made by either company in the A.Y.2019-20?

15. Mr. Gopal, aged 50 years, is a resident individual having income from the following sources:
    (i) Income from a sole-proprietary business in Pune ₹ 75 lakhs.
    (ii) Share of profit from a partnership firm in Mumbai ₹ 25 lakhs.
    (iii) Agricultural Income (gross) from tea gardens in Country G, a foreign country with which India has no DTAA, CGD 45000. Withholding Tax on the above income CGD 9,000
    (iv) Brought forward business loss of F.Y.2015-16 in Country G was CGD 5,000 which is not permitted to be set off against other income as per the laws of that country.
    (v) Mr. Gopal has deposited ₹ 1,50,000 in public provident fund and paid medical insurance premium of ₹ 28,000 by account payee cheque to insure the health of himself and his wife.

    Compute total income and tax liability of Mr. Gopal for the A.Y. 2019-20, assuming that 1 CGD = ₹ 70.

16. Explain the meaning of "fees for technical services" and "professional services" under the relevant articles of the UN Model Convention, 2017. Does the Contracting State in which such income arises have the right to tax such income, and if so, what are the conditions/limitations for such taxability? Discuss.

17. Which action plan of BEPS requires introduction of Limitation of Benefits clause in a tax treaty? Has India introduced Limitation of Benefits clause in its tax treaties in line with the BEPS Action Plan? Discuss.

MOST APPROPRIATE OPTION – OBJECTIVE TYPE QUESTIONS

(i) (d)

(ii) (d)

(iii) (c)

(iv) (d)

(v) (c)

(vi) (d)

(vii) (c)

(viii) (b)

(ix) (c)

(x) (d)

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SUGGESTED ANSWERS/HINTS – DESCRIPTIVE QUESTIONS

1. (i) **Sale of shares of Berkley Ltd. by PQR Ltd. to LMN Ltd. on 1.4.2010**

Since LMN Ltd. is an Indian company which holds 100% of shares of PQR Ltd., the transfer of capital asset, namely, shares of Berkley Ltd., by PQR Ltd. to LMN Ltd. would not be treated as a transfer for attracting capital gains tax liability as per section 47(v).

Hence, no capital gains tax would have been attracted on such transfer in the hands of PQR Ltd.

(ii) **Disinvestment by LMN Ltd., of 7% shares held in PQR Ltd. in November, 2018**

As per section 47A(1), where a holding company ceases to hold 100% of shares of the subsidiary company before the expiry of a period of eight years from the date of transfer of capital asset, the amount of capital gains not charged to tax at the time of transfer would be deemed to be income chargeable under the head "Capital gains" of the previous year in which such transfer took place.

However, in this case, the above deeming provision would not apply because the eight year period from the date of transfer expires on 31.3.2018 and the disinvestment by LMN Ltd. of 7% shares held in PQR Ltd. was only in November, 2018.

(iii) **Sale of shares of Berkley Ltd. by LMN Ltd. in February 2019**

This transaction would attract capital gains tax in the hands of LMN Ltd. for the A.Y.2019-20. The capital gains would be long-term, since the period of holding is more than 24 months.

The cost of acquisition to PQR Ltd. in the year 1992 (i.e., ₹ 7,00,000) or the fair market value as on 1.4.2001 (₹ 32,00,000), whichever is higher, would be deemed as the cost of acquisition in the hands of LMN Ltd.

Computation of capital gains in the hands of LMN Ltd.

Particulars	₹
Sale consideration	95,00,000
Less: Indexed cost of acquisition [₹ 32,00,000 x 280/100]	89,60,000
Long-term capital gains	**5,40,000**
Tax on long-term capital gains@20.8% (₹ 5,40,000 x 20.8%)	1,12,320

2. Since gross receipts of ₹ 47,80,000 of Ms. Janani from interior decoration profession carried on by her is less than ₹ 50,00,000, she can opt for presumptive tax provisions under section 44ADA.

In such a case, her income from interior decoration profession would be ₹ 23,90,000, being 50% of ₹ 47,80,000. Since all deductions allowable under sections 30 to 38 are deemed to

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have been given full effect to, no deduction in respect of depreciation would be allowable from the income computed on presumptive basis under section 44ADA.

I. Where Ms. Janani declares income from profession on presumptive basis u/s 44ADA

Computation of total income of Ms. Janani		
Particulars	**₹**	**₹**
Income from house property		
Self-occupied property	Nil	
Let-out Property:		
Annual Value [₹ 15,000 x 12][3]	1,80,000	
Less: Deduction u/s 24 [30% of ₹ 1,80,000]	54,000	
		1,26,000
Profits and gains from business or profession		
Income from interior decoration profession [50% of ₹ 47,80,000]		23,90,000
Total Income		**25,16,000**

Computation of tax liability of Ms. Janani	
Particulars	**₹**
Tax on total income = [30% of ₹ 15,16,000 (₹ 25,16,000 – ₹10,00,000) + ₹ 1,12,500]	5,67,300
Add: Health and education cess@4%	22,692
Total tax liability	**5,89,992**
Add: Interest under section 234B [1% of ₹ 5,89,900[4]]	5,899
Interest under section 234C [1% of ₹ 5,89,900, since the advance tax liability has to be paid in one instalment on or before 15.3.2019]	5,899
Total tax and interest liability	**6,01,790**

Ms. Janani can, however, declare lower profits than the presumptive profits of ₹ 23,90,000, if she maintains books of accounts under section 44AA and gets the same audited under section 44AB. In such case, she can file return on or before 30.9.2019.

[3] Rent received is taken as Annual Value in the absence of information relating to fair rent, municipal value and standard rent.

[4] Rounded off as per Rule 119A

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II Where Ms. Janani declares income from profession as per books of account

Computation of total income of Ms. Janani

Particulars	₹	₹
Income from house property		
Self-occupied property	Nil	
Let-out property:		
Annual Value [₹ 15,000 x 12]	1,80,000	
Less: Deduction u/s 24 [30% of ₹ 1,80,000]	54,000	1,26,000
Profits and gains from business or profession		
Income from interior decoration profession [₹ 25,00,000 – ₹ 1,50,000]		23,50,000
Total Income		**24,76,000**
Computation of tax liability:		
Tax on total income = [30% of ₹ 14,76,000 (₹ 24,76,000 – ₹ 10,00,000) + ₹ 1,12,500]		5,55,300
Add: Health and education cess@4%		22,212
Total tax liability		**5,77,512**
Add: Interest under section 234B [1% of ₹ 5,77,500]		5,775
Interest under section 234C **[See Working Note below]**		29,164
Total tax and interest liability		**6,12,451**
Total tax and interest liability (rounded off)		**6,12,450**

Although the income from profession computed as per books of account is lower than the income from profession computed on presumptive basis under section 44ADA, however, the cumulative tax and interest liability would be higher by ₹ 10,660 (i.e., ₹ 6,12,450 - ₹ 6,01,790) in case of the former. Therefore, Ms. Janani should opt to declare income on presumptive basis under section 44ADA, in which case, she has to file her return of income on or before 31st July, 2019.

Working Note: Computation of interest under section 234C

Date	Advance tax payable till date	Short-fall	Rate of interest [1% per month]	Interest
		(₹)		(₹)
15.06.2018	15%	86,625	3% [1% x 3]	2,599
15.09.2018	45%	2,59,875	3% [1% x 3]	7,796

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15.12.2018	75%	4,33,125	3% [1% x 3]	12,994
15.03.2019	100%	5,77,500	1%	5,775
				29,164

Note *– The above solution has been worked out by considering that Ms. Janani pays the advance tax required to be paid in April, 2019 itself, after consulting the tax advisor in the month of April, 2019.*

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

(i) cost of acquisition of such asset, i.e., actual cost; and

(ii) lower of

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

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

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

(i) In the case of Mr. Ravi, the cost of acquisition of equity share of Tapti Ltd. would be ₹ 2,300, being higher of actual cost i.e., ₹ 1,200 and ₹ 2,300 (being the lower of FMV of ₹ 2,300 as on 31.1.2018 and actual sale consideration of ₹ 3,000). Thus, the long-term capital gain would be ₹ 3,50,000 i.e., (₹ 3,000 – ₹ 2,300) x 500 shares.

(ii) In the case of Mr. Giri, the cost of acquisition of equity shares of Narmada Ltd. would be ₹ 4,200, being higher of actual cost i.e., ₹ 3,100 and ₹ 4,200 (being the lower of FMV of ₹ 4,500 as on 31.1.2018 and actual sale consideration of ₹ 4,200). Thus, the long-term capital gains would be Nil (₹ 4,200 – ₹ 4,200) x 700 shares.

(iii) In the case of Mr. Mani, the cost of acquisition of equity shares of Cauvery Ltd. would be ₹ 2,500, being higher of actual cost i.e., ₹ 2,500 and ₹ 1,800 (being the lower of FMV of ₹ 1,800 as on 31.1.2018 and actual sale consideration of ₹ 3,200). Accordingly, the long-term capital gains would be ₹ 2,10,000 i.e., [(₹ 3,200 – ₹ 2,500) x 300].

(iv) In the case of Mr. Sathy, the cost of acquisition of equity shares of Mahanadi Ltd. would be ₹ 1,900, being higher of actual cost i.e.,₹ 1,900 and ₹ 1,700 (being the lower of FMV of ₹ 2,400 as on 31.1.2018 and actual sale consideration of ₹ 1,700). The long-term capital loss would be ₹ 1,20,000 (₹ 1,700 – ₹ 1,900) x 600 shares.

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4. The issue under consideration is whether the interest income from share application money is taxable under the head 'Income from Other Sources', or can the same be set-off against public issue expenses.

This issue came up before the Supreme Court in *CIT v. Sree Rama Multi Tech Ltd. [2018] 403 ITR 426.* The Supreme Court observed that the assessee-company was statutorily required to keep share application money in a separate account till the allotment of shares was completed. Part of the share application money would normally have to be returned to unsuccessful applicants, and therefore, the entire share application money would not ultimately be appropriated by the company. The interest earned was inextricably linked with the requirement of raising share capital.

The Supreme Court further observed that any surplus money deposited in the bank for the purpose of earning interest is liable to be taxed as "Income from Other Sources"; however, in this case, the share application money was deposited with the bank not to make additional income by earning interest but to comply with the statute. The interest accrued on such deposit is merely incidental. Moreover, the issue of shares relates to capital structure of the company and hence, expenses incurred in connection with the issue of shares are to be capitalized. Accordingly, the Supreme Court held that the accrued interest on deposit of share application money is eligible to be set-off against public issue expenses.

Applying the rationale of the Supreme Court ruling to the case on hand, the contention of the Assessing Officer that interest income is taxable under the head "Income from Other Sources" is **not** correct.

5. The issue under consideration is whether delay in filing appeal under section 260A can be condoned under section 14 of the Limitation Act, 1963, where the stated reason for delay is the pursuance of an alternate remedy by way of filing an application before the ITAT under section 254(2) for rectification of mistake apparent on record.

This issue came up before the Supreme Court in *Spinacom India (P.) Ltd. v. CIT [2018] 258 Taxman 128.* The Supreme Court rejected the question of invoking section 14 of the Limitation Act 1963 which allows condonation of delay on demonstration of sufficient cause. The Apex Court did not accept the submission that the application before the ITAT under section 254(2) was an alternate remedy to filing of the application under section 260A. The former is an application for rectifying a 'mistake apparent from the record' which is much narrower in scope than the latter. Under section 260A, an order of the ITAT can be challenged on substantial questions of law. The Court stated that the appellant had the option of filing an appeal under section 260A while also mentioning in the Memorandum of Appeal that its application under section 254(2) was pending before the ITAT. The Supreme Court, therefore, held that the time period for filing an appeal

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under section 260A does not get suspended on account of the pendency of an application before the ITAT under section 254(2).

Accordingly, applying the rationale of the above Supreme Court ruling to the facts of this case, the delay in filing appeal under section 260A due to pursuance of an alternate remedy by way of filing an application before the ITAT under section 254(2) cannot be condoned.

6. **(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. Accordingly, it has to apply 85% of such income for charitable purposes to claim exemption under section 11. 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 HelpAll 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 (i.e., ₹ 12 lakh) has been claimed and allowed as application of income under section 11 while computing the income of the trust for the P.Y.2017-18, depreciation on computers will not be allowed for the purpose of determining income for the purposes of application in the P.Y.2018-19.

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

7. The issue under consideration in this case is whether the increase in gross total income on account of disallowance of expenditure under section 40(a)(ia) can be considered for the purpose of deduction under section 80-IAC.

The Bombay High Court, in *CIT v. Sunil Vishwambharnath Tiwari (2016) 388 ITR 630*, observed that if, on account of non-deduction of tax at source by a company, expenses have been disallowed under section 40(a)(ia) which goes to increase the income

chargeable under the head 'Profits and gains of business or profession', such enhanced income becomes eligible for deduction, as profit-linked deduction under Chapter VI-A is with reference to an assessee's gross total income.

The High Court held that the company is entitled to claim profit-linked deduction under Chapter VI-A in respect of the enhanced gross total income as a consequence of disallowance of expenditure under section 40(a)(ia).

Further, the CBDT has, in its Circular No.37/2016 dated 2.11.2016, mentioned that 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. Thus, the settled position is that the disallowances made under, *inter alia*, section 40(a)(ia), relating 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.

Accordingly, applying the rationale of the Bombay High Court ruling and the CBDT Circular in this regard to the facts of this case, Sigma Ltd. would be entitled to claim deduction under section 80-IAC in respect of the enhanced profits of ₹ 25 lakhs, consequent to disallowance under section 40(a)(ia). The contention of Sigma Ltd. is, therefore, correct.

8. As per section 115-O, dividend distribution tax at the rate of 17.472% (i.e., 15% plus surcharge @12% and health and education cess@4%) is leviable on dividend declared, distributed or paid by a domestic company. As per section 115-O(1A), a holding company receiving dividend from its domestic subsidiary company can reduce the same from dividend declared, distributed or paid by it for the purpose of payment of dividend distribution tax. 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-O(1B) provides that for the purposes of determining the tax on distributed profits payable in accordance with section 115-O, any amount by way of dividends referred to in section 115-O(1), as reduced by the amount referred to in section 115-O(1A) [referred to as net distributed profits], shall be increased to such amount as would,

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after reduction of the tax on such increased amount at the rate specified in section 115-O(1), be equal to the net distributed profits.

(i) Where Vindhyas Ltd. holds 52% of shares of Satpura Ltd.

In this case, Vindhyas Ltd. is the holding company of Satpura Ltd. It receives dividend during the year from its subsidiary company, Satpura Ltd., which has paid the DDT as payable on such dividend. Accordingly, dividend distributed by the holding company, Vindhyas Ltd., in the same year to the extent of dividend received from the subsidiary, Satpura Ltd., shall not be subject to DDT under section 115-O. Therefore, Vindhyas Ltd. can reduce the amount of dividend received from Satpura Ltd. from the dividend distributed by it for computation of dividend distribution tax payable.

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

Particulars	₹ in lakh
Dividend distributed by Vindhyas Ltd.	48.00
Less: Dividend received from subsidiary Satpura Ltd. (52% of ₹ 60 lakhs)	31.20
Net distributed profits	**16.80**
Add: Increase for the purpose of grossing up of dividend 16.80 × 15/85	2.96
Gross dividend	**19.76**
Additional income-tax payable by Vindhyas Ltd. u/s 115-O [15% of ₹ 19.76 lakh]	2.96
Add: Surcharge@12%	0.36
	3.32
Add: Health and education cess@4%	0.13
	3.45

Therefore, dividend distribution tax payable by Vindhyas Ltd. shall be 17.472% of ₹ 19.76 lakhs (grossed up amount) i.e. ₹ 3.45 lakhs.

(ii) Where Vindhyas Ltd. holds 48% of shares of Satpura Ltd.

In this case, since Vindhyas Ltd. is **not** the holding company of Satpura Ltd., it cannot reduce the dividend received from Satpura Ltd. from dividend distributed by it, for computing dividend distribution tax payable.

Particulars	₹ in lakh
Dividend distributed by Vindhyas Ltd.	48.00

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Add: Increase for the purpose of grossing up of dividend 48 × 15/85	8.47
Gross dividend	**56.47**
Additional income-tax payable by Vindhyas Ltd. u/s 115-O [15% of ₹ 56.47 lakh]	8.47
Add: Surcharge@12%	1.02
	9.49
Add: Health and education cess@4%	0.38
	9.87

9. As per section 80AC, while computing the total income of an assessee of a previous year ***(P.Y. 2018-19, in this case)*** relevant to any assessment year ***(A.Y. 2019-20, in this case)***, any deduction is admissible, *inter alia,* under section 80-IA, such deduction shall not be allowed unless it furnishes a return of income for such assessment year on or before the due date specified in section 139(1).

Since the partnership firm, M/s. Aravali, has undertaken specified domestic transactions and has to file transfer pricing report under section 92E for A.Y.2019-20, its due date of filing return of income for A.Y.2019-20 would be 30th November, 2019 as per section 139(1). Therefore, the difference in tax liability where return is filed on or before 30th November, 2019 and where return is filed in March, 2020 has to be computed to understand the impact of late filing of return on the tax liability of the firm.

Computation of total income and tax liability of M/s. Aravali for A.Y.2019-20

I. Where the firm files its return of income on 30th November 2019:

Particulars	₹ in lakhs
Gross Total Income	600.00
Less: Deduction under section 80-IA	510.00
Total Income	**90.00**
Tax liability@30%	27.00
Add: Health and education cess@4%	1.08
Regular income-tax payable	**28.08**
Computation of Alternate Minimum Tax payable [Section 115JC]	
Total Income	90.00
Add: Deduction under section 80-IA	510.00
Adjusted Total Income	**600.00**
Alternate Minimum Tax (AMT) @ 18.5% on ₹ 600 lakhs	**111.00**
Add: Surcharge@12% (Since adjusted total income > ₹ 1 crore)	13.32

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	124.32
Add: Health and education cess@4%	4.97
Total tax payable (AMT)	**129.29**

Since the regular income-tax payable by the firm is less than the alternate minimum tax payable, the adjusted total income shall be deemed to be the total income of the firm for P.Y.2018-19 and it shall be liable to pay income-tax on such total income@18.5% **[Section 115JC(1)]**. Therefore, the tax payable for the A.Y.2019-20 would be ₹ 129.29 lakhs.

Tax credit for Alternate Minimum Tax [Section 115JD]	₹ in lakhs
Total tax payable for A.Y.2019-20 (Alternate Minimum Tax)	129.29
Less: Regular income-tax payable	28.08
To be carried forward for set-off against regular income-tax payable (upto a maximum of fifteen assessment years).	101.21

II. Where the firm files its return of income in March, 2020:

Where the firm files its return in March, 2020, it would be a belated return under section 139(4). Consequently, as per section 80AC, deduction under section 80-IA would not be available. In such circumstances, the gross total income of ₹ 600 lakhs would be the total income of the firm.

Particulars	₹ in lakhs
Income-tax@30% of ₹ 600 lakhs	180.000
Add: Surcharge@12% (since total income exceeds ₹ 100 lakhs)	21.600
Income-tax (plus surcharge)	201.600
Add: Health and education cess@4%	8.064
Total tax liability	**209.664**

Right course of action to minimize tax liability

The right course of action to minimize tax liability would be to file the return of income under section 139(1) on or before the due date 30.11.2019 and claim deduction under section 80-IA. In such a case, the firm can claim deduction of ₹ 510 lakhs under section 80-IA. Thereafter, consequent to the clarifications obtained, if any change is required, it can file a revised return under section 139(5) within 31.3.2020 (i.e., within the end of A.Y.2019-20) which would replace the original return filed under section 139(1). A revised return filed under section 139(5) would replace the original return filed under section 139(1).

If the firm files the return of income under section 139(1) on or before 30.11.2019, its tax liability would stand reduced to ₹ 129.29 lakhs, as against ₹ 209.664 lakhs to be paid if

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return is furnished after due date. Further, it would also be eligible for tax credit for alternate minimum tax under section 115JD to the extent of ₹ 101.21 lakhs. Therefore, the firm is advised to file its return of income on or before 30.11.2019.

10. Computation of MAT liability of Godavari Ltd. under section 115JB for A.Y.2019-20

Particulars	₹	₹
Book profit after adjustment of items under section 115JB(2) [except brought forward business loss and unabsorbed depreciation]		87,34,000
Less: Brought forward business loss [₹ 8,20,000 + ₹ 7,30,000]	15,50,000	
Unabsorbed depreciation [₹ 7,60,000 + ₹ 9,50,000]	17,10,000	
[Since Godavari Ltd. is a company against which an application for corporate insolvency resolution process has been admitted by NCLT under section 7 of the Insolvency and Bankruptcy Code, 2016, the amount of total loss brought forward (including unabsorbed depreciation) is allowed to be reduced from the book profit for the purposes of levy of MAT under section 115JB].		32,60,000
Book profit computed in accordance with *Explanation 1* to section 115JB(2)		54,74,000
Add: **Items credited to OCI that will not be reclassified to profit or loss:**		
Deferred gains on cash flow hedges	6,70,000	
Share of Other Comprehensive Income of Other Associates	2,80,000	
Re-measurement of post-employment benefit obligations	5,20,000	
Revaluation surplus for assets ₹ 8,20,000 [Book profit not to be increased by revaluation surplus for assets as per proviso to section 115JB(2A)]	Nil	
		14,70,000
		69,44,000
Less: **Items debited to OCI that will not be reclassified to profit or loss:**		
Deferred costs of hedging	3,80,000	
Changes in fair values of equity instruments ₹ 8,00,000 [Book profit not to be decreased by changes in fair values of equity instruments as per proviso to section 115JB(2A)]	Nil	3,80,000
		65,64,000

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Add: **One-fifth of Transition amount [Credit Balance]**		
Transition amount	48,00,000	
Less: Amounts to be excluded from above		
Capital Reserve	6,00,000	
Translation difference in foreign operations	5,00,000	
	37,00,000	
One-fifth of ₹ 37,00,000		7,40,000
Book Profit for levy of MAT		**73,04,000**
MAT on book profit under section 115JB = 18.5% of ₹ 73,04,000		13,51,240
Add: Health and education cess@4%		54,050
MAT liability for A.Y.2019-20		**14,05,290**

Computation of tax credit to be carried forward

Particulars	₹
MAT liability for A.Y.2019-20 (rounded off)	14,05,290
Income-tax computed as per the normal provisions of the Act for A.Y.2019-20	13,20,000
Since the income-tax liability computed as per the regular provisions of the Income-tax Act,1961 is less than the MAT payable, the book profit would be deemed to be the total income and tax is leviable @18.5%: The total tax liability (rounded off) is ₹ 14,05,290.	
Computation of tax credit to be carried forward	
Tax payable for A.Y.2019-20 on deemed total income	14,05,290
Less: Income-tax payable as per the normal provisions of the Act	13,20,000
Tax credit in respect of tax paid on deemed income	**85,290**
[Can be carried forward for 15 Assessment Years i.e., upto A.Y.2034-35]	

11. Section 264(4)(c) provides that the Principal Commissioner or Commissioner has no power to revise any order which has been made the subject matter of an appeal to the Commissioner (Appeals), even if the relief claimed in the petition is different from the relief claimed in appeal. The concept of total merger would apply in the case of section 264. It was so held by the Supreme Court in the case of *Hindustan Aeronautics Ltd v. CIT (2000) 243 ITR 898.*

Section 154(1A) provides that where any matter had been considered and decided in any proceeding by way of appeal or revision relating to an order, Assessing Officer may amend the order for rectification of mistake apparent from the record, in relation to a

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matter other than the matter which has been considered and decided. The concept of partial merger would apply in the case of section 154.

In the present case, since the order passed by the Assessing Officer in respect of the addition of unexplained investment of ₹ 12 lakhs became the subject matter of an appeal to the Commissioner (Appeals), the assessee, M/s. Uranus LLP, cannot apply for revision under section 264 even if the subject matter of revision i.e., addition of ₹ 4 lakhs under section 40(b) is different from the subject matter of appeal.

However, M/s. Uranus LLP can apply to the Assessing Officer for rectification of the order in respect of addition of ₹ 4 lakh under section 40(b), if the mistake is apparent from the record, as this matter has not been considered and decided in any proceeding by way of appeal or revision.

In the view of above, the assessee, M/s. Uranus LLP should seek rectification under section 154.

12. M/s. Pluto LLP is deemed to have under-reported its income since:

(1) its income assessed under 143(3) exceeds its income determined in a return processed under section 143(1)(a); and

(2) the income reassessed under section 147 exceeds the income assessed under section 143(3).

Therefore, penalty is leviable under section 270A for under-reporting of income.

Computation of penalty leviable under section 270A

Particulars	₹	₹
<u>Assessment under section 143(3)</u>		
<u>Under-reported income</u>:		
Total income assessed under section 143(3)	40,00,000	
(-) Total income determined u/s 143(1)(a)	30,00,000	
	10,00,000	
Tax payable on under-reported income:		
Tax on under-reported income of ₹ 10 lakhs *plus* tax on total income of ₹ 30 lakhs determined u/s 143(1)(a) *[30% of ₹ 40 lakh + HEC@4%]*	12,48,000	
Less: Tax on total income determined u/s 143(1)(a) *[30% of ₹ 30 lakh +HEC@4%]*	9,36,000	
	3,12,000	
Penalty leviable@50% of tax payable		1,56,000

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Reassessment under section 147		
Under-reported income:		
Total income reassessed under section 147	45,00,000	
(-) Total income assessed under section 143(3)	40,00,000	
	5,00,000	
Tax payable on under-reported income:		
Tax on under-reported income of ₹ 5 lakhs *plus* tax on total income of ₹ 40 lakhs assessed u/s 143(3) *[30% of ₹ 45 lakh + HEC@4%]*	14,04,000	
Less: Tax on total income assessed u/s 143(3) *[30% of ₹ 40 lakh + HEC@4%]*	12,48,000	
	1,56,000	
Penalty leviable@50% of tax payable		78,000

13. Computation of total income of Neptune Inc., a notified FII, for A.Y.2019-20

Particulars	₹	₹
Interest on Rupee Denominated Bonds	8,50,000	
Dividend income of ₹ 6,20,000 [Exempt under section 10(34)]	Nil	
Interest on securities [No deduction is allowable in respect of expenses incurred in respect thereof]	17,32,000	25,82,000
Long-term capital gains on sale of bonds of Jupiter Ltd.		
Sale consideration	47,00,000	
Less: Cost of acquisition	32,00,000	
[Benefit of indexation is not allowable]		15,00,000
Short-term capital gains on sale of STT paid equity shares of Earth Ltd.		
Sale consideration	12,40,000	
Less: Cost of acquisition	7,80,000	4,60,000
Short-term capital gains on sale on unlisted equity shares of Mars Ltd.		
Sale consideration	8,40,000	
Less: Cost of acquisition	3,72,000	4,68,000
Total Income		**50,10,000**

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

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

14. (i) Venus Inc. is a specified foreign company in relation to Mercury Ltd. Therefore, the condition of Mercury Ltd. holding shares carrying not less than 26% of the voting power in Venus Inc is satisfied. Hence, Venus Inc. and Mercury Ltd. are deemed to be associated enterprises as per section 92A(2). Therefore, provision of data processing services by Mercury Ltd., an Indian company, to Venus Inc., a foreign company, is an international transaction between associated enterprises, and consequently, the provisions of transfer pricing are attracted in this case.

Data processing services with the use of information technology falls within the definition of “information technology enabled services”, and is hence, an eligible international transaction. Since Mercury Ltd. is providing data processing services to a non-resident associated enterprise and has exercised a valid option for safe harbour rules, it is an eligible assessee.

Since the aggregate value of transactions entered into in the P.Y.2018-19 exceeds ₹ 100 crore but does not exceed ₹ 200 crore, Mercury Ltd. should have declared an operating profit margin of not less than 18% in relation to operating expense, to be covered within the scope of safe harbour rules. In this case, since Mercury Ltd. has declared an operating profit margin of 20% $\left(\text{i.e.} \frac{16}{80} \times 100\right)$, the same is in accordance with the circumstance mentioned in Rule 10TD. Hence, the income-tax authorities shall accept the transfer price declared by Mercury Ltd in respect of such international transaction.

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Therefore, Mercury Ltd. need not make any primary adjustment.

(ii) Saturn Inc., a foreign company, guarantees 12% of the total borrowings of Jupiter Ltd., an Indian company. Since Saturn Inc. guarantees not less than 10% of the total borrowings of Jupiter Ltd., Saturn Inc. and Jupiter Ltd. are deemed to be associated enterprises as per section 90A(2). Therefore, provision of contract R & D services relating to software development by Jupiter Ltd., an Indian company, to Saturn Inc., a foreign company, is an international transaction between associated enterprises, and consequently, the provisions of transfer pricing are attracted in this case.

Provision of contract R& D services in relation to software development is an eligible international transaction. Since Jupiter Ltd. is providing such services to a non-resident associated enterprise and has exercised a valid option for safe harbour rules, it is an eligible assessee.

Since the value of the international transaction does not exceed ₹ 200 crore, Jupiter Ltd. should have declared an operating profit margin of not less than 24% in relation to operating expense, to be covered within the scope of safe harbour rules. In this case, since Jupiter Ltd. has declared an operating profit margin of 22.86% $\left(\text{i.e.}\frac{40}{175}\times 100\right)$, the same is not in accordance with the circumstance mentioned in Rule 10TD. Hence, it is not binding on the income-tax authorities to accept the transfer price declared by Jupiter Ltd.

Jupiter Ltd. has to, therefore, make a primary adjustment of ₹ 2 crores [i.e., ₹ 42 crores, being 24% of ₹ 175 crores – ₹ 40 crores] in the A.Y.2019-20.

15. Computation of total income and tax liability of Mr. Gopal for A.Y. 2019-20

Particulars	₹	₹
Profits and gains from business and profession		
Income from sole proprietary concern in India	75,00,000	
Share of profit from a partnership firm in India of ₹ 25 lakhs, is exempt	Nil	
Business profit	75,00,000	
Less: Business Loss[5] in Country G (CGD 5000 x ₹ 70/CGD)	3,50,000	71,50,000

[5] Since the eight year has not expired from the assessment year in which such business loss was incurred, such business loss can be set-off against current year business income.

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Income from Other Sources		
Agricultural income from tea gardens in Country G, is taxable in India (CGD 45000 x ₹ 70/CGD)		31,50,000
Gross Total Income		**1,03,00,000**
Less: **Deductions under Chapter VI-A**		
Under section 80C [deposit in PPF]	1,50,000	
Under section 80D	25,000	
[Medi-claim premium paid ₹ 28,000, restricted to		1,75,000
Total Income		**1,01,25,000**
Tax on total income		
Tax on ₹ 1,01,25,000 [(30% x ₹ 91,25,000) plus ₹ 1,12,500]		28,50,000
Add: Surcharge@15%, since total income exceeds ₹ 1 crore		4,27,500
		32,77,500
Less: Marginal Relief (**See Working Note below)**		58,750
		32,18,750
Add: HEC@4%		1,28,750
		33,47,500
Average rate of tax in India [i.e., ₹ 33,47,500/₹ 1,01,25,000 x 100]	33.06%	
Average rate of tax in Country G [i.e., CGD 9000/CGD 45000]	20%	
Doubly taxed income [₹ 31,50,000 – ₹ 3,50,000]	28,00,000	
Rebate under section 91 on ₹ 28,00,000 @20% (lower of average Indian tax rate and rate of tax in Country G)		5,60,000
Tax payable in India [₹ 33,47,500 – ₹ 5,60,000]		**27,87,500**

Note: *Since Mr. Gopal is resident in India for the P.Y.2018-19, his global income would be subject to tax in India. He is eligible for deduction under section 91 since the following conditions are fulfilled:-*

(a) He is a resident in India during the relevant previous year.

(b) Agricultural income accrues or arises to him outside India during that previous year.

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(c) *Such agricultural income is not deemed to accrue or arise in India during the previous year.*

(d) *The income in question i.e., agricultural income, has been subjected to income-tax in Country G in his hands and he has paid tax on such income in Country G.*

(e) *There is no agreement under section 90 for the relief or avoidance of double taxation between India and Country G, where the income has accrued or arisen.*

Working Note : Computation of Marginal Relief

(A)	Tax payable including surcharge on total income of ₹ 1,01,25,000		
	₹ 2,50,000 – ₹ 5,00,000@5%	₹ 12,500	
	₹ 5,00,000 – ₹ 10,00,000@20%	₹ 1,00,000	
	₹ 10,00,000 – ₹ 1,01,25,000@30%	₹ 27,37,500	
	Total	₹ 28,50,000	
	Add: Surcharge @ 15%	₹ 4,27,500	₹ 32,77,500
(B)	Tax payable on total income of ₹ 1 crore [(₹ 12,500 plus ₹ 1,00,000 plus ₹ 27,00,000) plus surcharge@10%]		₹ 30,93,750
(C)	Excess tax payable (A)-(B)		₹ 1,83,750
(D)	Marginal Relief (₹ 1,83,750 – ₹ 1,25,000, being the amount of income in excess of ₹ 1,00,00,000)		**₹ 58,750**

16. <u>Meaning of Fees for technical services and professional services under the UN Model Convention, 2017</u>

Fees for technical services

Article 12A of the UN Model Convention pertains to Fees for technical services (FTS). FTS is defined as payments for managerial, technical or consultancy services but excludes payment to an employee, payment for teaching in an educational institution or for teaching by an educational institution, payments by an individual for services for personal use.

Professional services

Article 14 of the UN Model Convention pertains to Independent Personal Services. As per this article, "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.

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Right of Source State to tax FTS and income for professional services under the UN Model Convention, 2017

Fees for technical Services (FTS)

Article 12A(1) provides that the FTS may be taxed in the Residence State but does not provide that the FTS is exclusively taxable in the Residence State. Article 12A(2) establishes the right of the country in which FTS arises to tax in accordance with its domestic law, subject to the limitation on the maximum rate of tax, if the beneficial owner is a resident of the other Contracting State. The maximum rate of tax is to be established through bilateral negotiations.

Income for Professional Services

As per article 14, 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 (i.e., Residence State) except in the following circumstances, when such income may also be taxed in the other Contracting State (i.e., Source State):

(a) If he has a fixed base regularly available to him in the Source 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 the Source State; or

(b) If his stay in the Source 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 the Source State may be taxed in that State.

17. BEPS Action Plan 6 – Preventing Treaty Abuse requires introduction of Limitation of Benefits (LOB) clause or Principal Purpose Test (PPT) rule or both to protect against treaty shopping. Treaty shopping is a practice by which a resident of a third country takes advantage of beneficial treaty provisions between two countries by establishing a shell or conduit company in one of the two countries, where tax incidence is low.

Given the risk to revenues posed by treaty shopping, countries have committed to ensure a minimum level of protection against treaty shopping (the minimum standard). That commitment will require countries to include in their tax treaties an express statement that their common intention is to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty shopping arrangements.

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Accordingly, on 10th May, 2016, India and Mauritius has signed a protocol amending the India-Mauritius tax treaty at Mauritius. In the said treaty, for the first time, it has been provided that gains from the alienation of shares acquired on or after 1.4.2017 in a company which is a resident of India may be taxed in India. The tax rate on such capital gains arising during the period from 1.4.2017-31.3.2019 should, however, not exceed 50% of the tax rate applicable on such capital gains in India. A Limitation of Benefit (LOB) Clause has been introduced which provides that a resident of a Contracting State shall not be entitled to the benefits of 50% of the tax rate applicable in transition period if its affairs are arranged with the primary purpose of taking advantage of concessional rate of tax. Further, a shell or a conduit company claiming to be a resident of a Contracting State shall not be entitled to this benefit. A shell or conduit company has been defined as any legal entity falling within the meaning of resident with negligible or nil business operations or with no real and continuous business activities carried out in that Contracting State.

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