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Answer Paper	
Direct Tax Laws	**Duration**: 75
Details: Test – 5	**Marks**: 40

Instructions:

- All the questions are compulsory
- Properly mention test number and page number on your answer sheet, Try to upload sheets in arranged manner.
- In case of multiple choice questions, mention option number only Working notes are compulsory wherever required in support of your solution
- Do not copy any solution from any material. Attempt as much as you know to fairly judge your performance.

ANS 1:-

The tax implications will be as under:

(1) Primary and secondary adjustment: The addition of Rs. 15 crore on account of low margin earned on transaction with associated enterprise is known as primary adjustment. Since the primary adjustment is accepted by X Ltd., the provisions of Section 92CE for secondary adjustments get attracted. Under this section, Rs.15 crore will be considered as a separate transaction as a deemed loan given by X Ltd. to Y Inc. This deemed loan would exist for tax purposes only and would not appear in the books of account of X Ltd. Arm's length value of interest on deemed loan will be taxable in the hands of X Ltd. annually till Rs.15 crore is repatriated by Y Inc. (of US) to X Ltd. (in India).

Arm's length value of interest on deemed loan will be calculated as per rule 10CB [i.e., where international transaction is denominated in Indian rupee: MCLR of SBI (1 year) + 3.25%]. This interest will be taxable in the hands of X Ltd. annually till Rs. 15 crore is repatriated by Y Inc. (of US) to X Ltd. (in India). Tax consequences in this case will be as follows –

(2) Previous year 2020-21: Date of final assessment order (no appeal by X Ltd.) is December 20, 2020. Excess money is Rs.15 crore. Time limit for repatriation is 90 days from the date of final order (i.e., December 20, 2020 + 90 days, last date for repatriation is March 20, 2021). Deemed interest on Rs.15 crore will start from March 21, 2021 at the rate of 11.25%. The amount of Interest shall be: Rs.15 crore × 11.25% × 11 ÷ 365) = Rs. 508561.64. X Ltd. will pay income-tax on Rs.508562 at the applicable rate (i.e., 30% + applicable surcharge + HEC) besides tax on other income.

(3) Previous year 2021-22: The following calculations are given on the assumption that income of X Ltd. before the aforesaid secondary adjustment is Rs. 2 crore. Tax on secondary adjustment is calculated under two different situations : **Situation 1 -** X Ltd. does not pay additional income tax as per section 92CE(2A), **Situation 2 -** X Ltd. pays additional income tax on the entire excess money on October 31, 2021 under section 92CE(2A) -

Particulars	Situation 1	Situation 2
Primary adjustment for the previous year 2020-21	15,00,00,000	15,00,00,000
Add: Secondary adjustment for the previous year 2020-21 [Rs.15 crore ×11.25% × 11 ÷365)]	5,08,562	5,08,562
Total (a)	**15,05,08,562**	**15,05,08,562**
Secondary adjustment for the previous year 2021-22 -		
- In Situation 1 [i.e., interest @ 11.25% on Rs.15 crore from April 1, 2021 to March 31, 2022]	1,68,75,000	-
- In Situation 2 [i.e., interest @ 11.25% on Rs.15 crore from April 1, 2021 to October 31, 2021]	-	98,93,836
Other income	2,00,00,000	2,00,00,000
Net income	**3,68,75,000**	**2,98,93,836**
Tax @ 30% + SC @7% + HEC:4%	1,23,10,350	99,79,758
Additional income-tax under section 92CE(2A):		
Income-tax (18% of Rs.15,00,00,000)	-	2,70,00,000
Add: Surcharge @ 12% (always applicable, even if net income is below Rs.1 crore)	-	32,40,000
Total	-	**3,02,40,000**
Add: Health and education cess @ 4%	-	12,09,600

Additional tax under section 92CE(2A)	**-**	**3,14,49,600**

(7 Marks)

ANS 2:-

Computation of tax liability of XYZ Ltd. (amount in Rs.)—

Particulars		**Taxable amount**	**Tax Rate**	**Tax Liability**
1) Interest received from Indian Government from investment in government bonds u/s 115A(1)(a)	500,000			
Less: Expenditure incurred	Nil	500,000	20%	100,000
2) Interest received from infrastructure debt fund referred u/s 10(47)	6,25,000			
Less Expenditure incurred	Nil	625,000	5%	31,250
(3) Interest received from Indian concern from investment in debentures in Indian currency	485,000			
Less: Expenditure incurred	25,000			
Deduction under Chapter VI-A	15,000	445,000	40%	178,000
(4) Royalty derived from Indian concern (agreement entered on 01-4-2012) u/s	4,80,000			

115A(1)(b)				
Less: Expenditure incurred	Nil	4,80,000	10%	48,000
(5) Dividend from Indian company	95,000			
Less: Expenditure incurred	Nil	95,000	20%	19,000
(6) interest received from Indian company u/s 194LC		1,00,000	5%	5,000
Tax liability				**3,81,250**
Add: HEC@4%				15,250
Total tax liability (rounded off)				**3,96,500**

(7 Marks)

ANS 3:

Compute total income and tax payable by Mr. Kamesh in India for A.Y. 2022-23 (amount in Rs.):

Income from House Property		
Rent from a house situated in Country "Y" (gross)	2,40,000	
Less: Municipal tax in respect of the above house (not allowed as deduction in country "Y")	10,000	
Net Annual Value	2,30,000	

Less: Standard deduction - 30% of NAV	69,000	1,61,000
Profits and Gains of Business or Profession		
Income from profession carried on in India	7,50,000	
Business loss in Country "Y" (Proprietary business)	-65,000	6,85,000
Income From other Sources		
Agricultural income in Country "X" (gross)	50,000	
Royalty income from a literary book from Country "X"(Rs.6,00,000 – Rs.50,000)	5,50,000	
Dividend received from a company incorporated in Country "Y" (gross)	1,50,000	7,50,000
Gross Total Income		**15,96,000**
Less: Deduction u/s 80QQB -100% of Royalty Income or Rs. 3,00,000 whichever is less		3,00,000
Total Income (rounded off)		**12,96,000**
Tax on Total Income (including HEC)		2,09,352
Indian Rate of tax [Rs.2,09,352 ÷ Rs.12,96,000 ×100]	16.15	
Less: Double taxation relief -		

Country X [Rs.3,00,000 × 10%] [Being the lower of average Indian Rate of tax (16.15%) or rate of tax in foreign country (10%)] [WN-1]	30,000	
Country Y [Rs.2,46,000 × 16.15%] [Being the lower of average Indian Rate of tax (16.15%) or Rate of tax in foreign country (25%)] [WN-2]	39,729	69,729
Tax payable (rounded off)		**1,39,620**

Working Note:

(1) Computation of doubly taxed income pertaining to country "X" (amount in Rs.) :

Agricultural Income		50,000
Royalty income from a literary book from Country "X" [Rs.6,00,000 – Rs.50,000]	5,50,000	
Less: Deduction u/s 80QQB -100% of Royalty Income or 3,00,000 whichever is less	3,00,000	2,50,000
Doubly taxed income		**3,00,000**

(2) Computation of doubly taxed income pertaining to country "Y" (amount in Rs.):

Income from House Property	1,61,000
Dividend received from a company incorporated in Country "Y"	1,50,000
Business loss in Country "Y" (Proprietary business)	-65,000

Doubly taxed income	**2,46,000**

(7 Marks)

ANS 4:

Section 165A of the Finance Act, 2016 provides for equalization levy @ 2% on the amount of consideration received or receivable by an e-commerce operator from e-commerce supply or services made or provided or facilitated by it, inter alia, to a person resident in India and a person who buys such goods or services or both using internet protocol address located in India.

MNO & Co. is an e-commerce operator since it is a non-resident owning and operating an electronic facility for online sale of goods and provision of services.

(i) MNO & Co. has no permanent establishment in India: In this case, the gross receipts of the e-commerce operator from the e-commerce supply and a service facilitated is Rs.2.05 crore.

Sl No.	Particulars	Rs. in lakhs
(a)	Receipts from sale of goods to persons resident in India	145
(b)	Receipts from sale of goods to persons not resident in India (using internet protocol address located in India)	60
	Total receipts	**205**

Since total receipts which are chargeable to equalization levy exceed Rs.2 crore, equalization levy @ 2% is attracted on the above sum of 205 lakhs, which would amount to Rs.4.10 lakhs.

Note: If the receipts in (b) above were only Rs.45 lakhs, then equalization levy would not be attracted since the gross receipts would be only 190 lakhs, which is less than 2 crores.

(ii) MNO & Co. has a permanent establishment in India, and the sale of goods is effectively connected to the permanent establishment in India: Equalization levy would not be attracted where the non-resident E-Commerce Operator (MNO & Co., in this case) has a permanent establishment in India and the sale of goods is effectively connected to the permanent establishment in India.

This is irrespective of the quantum of receipts in (b) above i.e., whether Rs. 60 lakhs or Rs. 45 lakhs.

(7 Marks)

ANS 5:

The relevant provisions are discussed as under–

(i) Treaty [Article 2 of Vienna Convention on Law of Treaties, 1969) : "Treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single **instrument or in two or more related instruments** and whatever its particular designation.

In home country, tax is an obligation, while in the host country, tax is a cost. Therefore, there is need to achieving tax efficiency.

(2) Role of DTAA: Double Tax Avoidance Agreements come into play to mitigate hardship caused by subjecting the same income to double taxation. Tax Treaties attempt to eliminate double taxation and try to achieve balance and equity. They aim at sharing of tax revenues by the concerned states on a rational basis, Tax treaties do not always succeed in eliminating Double Taxation, but contain the incidence to a tolerable level.

(3) Types of DTAA: DTAAs can be of two types –

I. **Limited DTAA:** Limited DTAAs are those which are limited to certain types of incomes only. DTAA between India and Pakistan is limited to shipping and aircraft profits only.

II. **Comprehensive DTAA:** Comprehensive DTAAs are those which cover almost all types of incomes covered by any model convention. Many a time, a treaty also covers wealth tax, gift tax, surtax, etc. DTAA between India and UK is comprehensive in nature.

(4) Directive principles to be followed by the State in the context of International agreements and relationships: In the Indian context, Article 51 of the Indian Constitution has inter-alia set out some directive principles which must be followed by the State in the context of **International agreements and relationships. It has been provided that –**

The State shall endeavor to----

(i) Promote international peace and security;

(ii) Maintain just and honorable relations amongst nations;

(iii) Foster respect for international law and treaty obligations in the dealings of organized people with one another; and

(iv) Encourage settlement of international disputes by arbitration

(5) Statutory provisions under Indian law: It is pertinent to note that entries 10 and 14 of List I of the VIIth schedule the power on Parliament to legislate treaties with foreign countries. Further, this power of Parliament has been delegated to the Central Government vide section 90 and 90A of the Act. Section 90(4) provides that the non-resident to whom the DTAA in section 90(1) applies, shall be allowed to claim the relief under such DTAA if a Tax Residency Certificate (TRC) obtained from the Government of that country or that specified territory is furnished declaring his residence of the country outside India or the specified territory outside India, as the case may be.

(6) Role of Vienna Convention in application and interpretation of Tax Treaties: The international Law Commission initiated the work on the Vienna Convention on Law of Treaties in the year 1949 which was completed in the year 1969. It came into force in the year 1980. Further, in April, 2014, it was ratified by 114 Countries.

Since tax treaty is a part of international law, its interpretation should be based on certain set of principles and rules of interpretation.

The Vienna Convention on Law of Treaties provides the basic rules of interpretation of any international of Treaties provide agreement (including a tax treaty). Therefore, it would be worthy to understand some of the articles of the Vienna Convention of Law Treaties which are useful in understanding application and interpretation of tax treaties.

(7 Marks)

MCQ's

1. A

Explanation: Since Unit I is engaged in generation of power. It is entitled to claim deduction of 100% of profits u/s 80-IA. Since there is inter-unit transfer of goods to claim excessive deduction and aggregate value of transaction exceed Rs.20crores, hence, it fall under the ambit of specified domestic transaction. Hence, transfer pricing provisions are attracted in such case.

2. C

Explanation: Computation of total Income----

S. No.	Particulars	Amount in Rs.
1.	Indian Income	6,00,000

2.	Foreign Income	2,00,000
	Total Income	**8,00,000**

Computation of Tax payable-

Particulars	**Amounts**	**Amounts**
Income tax on Indian Income(Since senior citizen)		70,000
Add: HEC@4%		2,800
Total tax		72,800
Indian rate of tax[Total tax ÷ Total income × 100]	9.1%	
Foreign Rate of Tax	20%	
Less: Relief u/s 91 to the extent of the lower of--		
(i) Doubly taxed income × Indian Rate of Tax	18,200	
(ii) Doubly Taxed Income × Foreign rated Tax	40,000	18,200
Tax Payable (rounded off to the nearest Rs.10)		**54,600**

3. D

Explanation: Chapter VIII of the Finance Act, 2016, titled "Equalization Levy", provides for an equalization levy of 6% of the amount of consideration for specified services received or receivable by a non-resident not having permanent establishment in India, from a resident in India who carries out business or profession, or from a non-resident having permanent establishment in India.

Since, Mr. Rajesh, resident Indian, is not carrying any business or profession in India; hence provisions of equalization levy will not be applicable.

4. D

5. B

International Law and National Law are separate systems, and DTAA becomes part of the National Legal system by specific incorporation/ legislation