

Mock Test Paper - Series I: September, 2024

Date of Paper: 17<sup>th</sup> September, 2024

Time of Paper: 2 P.M. to 5 P.M.

**FINAL COURSE: GROUP – II****PAPER – 4: DIRECT TAX LAWS & INTERNATIONAL TAXATION****Division A – Multiple Choice Questions**

MCQ No.	Most Appropriate Answer	MCQ No.	Most Appropriate Answer
1.	(a)	9.	(b)
2.	(b)	10.	(b)
3.	(a)	11.	(c)
4.	(b)	12.	(c)
5.	(c)	13.	(a)
6.	(c)	14.	(b)
7.	(c)	15.	(c)
8.	(a)		

**Division B – Descriptive Questions**

1. (a) **Computation of total income and tax liability by Sunshine Industries Ltd. for A.Y.2024-25 in accordance with the provisions of section 115BAA**

Particulars	₹	₹	₹
<b>Profits and gains of business or profession</b>			
Net profit as per statement of profit and loss		1,47,50,000	
<b>Add: Items debited but to be disallowed</b>			
- Depreciation as per books of account	34,00,000		
- <b>Consideration for designs &amp; models</b> [Consideration for designs & models of washing machines is in the nature capital expenditure and hence, is an intangible asset which is eligible for depreciation as per section 32. Since lumpsum consideration has been	36,00,000		

debited to statement of profit and loss, the same has to be added back while computing business income]			
- <b>Purchased washing machine panels at a price higher than the fair market value</b>	14,00,000		
[As per section 40A(2), the difference between the purchase price (₹ 96 lakhs) and the fair market value (₹ 82 lakhs) has to be added back since the purchase is from a related party, i.e., Shine Ltd., a company in which directors of Sunshine Industries Ltd. have substantial interest and at a price higher than the fair market value]			
- <b>Legal expenses for issue of bonus shares</b>	Nil		
[There is no fresh inflow of funds or increase in capital employed on account of issue of bonus shares and there is only reallocation of the company's fund. Consequently, since there is no increase in the capital base of the company, legal expenses of ₹ 6 lakhs in connection with issue of bonus shares is a revenue expenditure and is hence, allowable as deduction <sup>1</sup> ]			
- <b>Legal expenses for issue of right shares</b>	<u>8,00,000</u>		
[Expenses incurred in relation to rights issue are of capital in nature <sup>2</sup> . Hence, not allowed as deduction from business income. Since, it is already debited in statement of profit and loss, the same has to be			

<sup>1</sup> It was held by Apex Court in case of CIT vs. General Insurance Corpn. (2006) 286 ITR 232

<sup>2</sup> It was held by Karnataka High Court in case of CIT Vs Motor Industries Ltd (1998) 229 ITR 137

added back while computing business income]			
		<u>92,00,000</u>	
		2,39,50,000	
<b>Less: Items credited but to be considered separately</b>			
- Short term capital gains on equity shares [Not taxable under this head]	15,00,000		
- Long term capital gains on Zero coupon bonds [Not taxable under this head]	8,00,000		
- Cash Subsidy [Subsidy from State Government on acquisition of asset is reduced from the actual cost of the asset. Hence, such subsidy is not the income of Sunshine Industries Ltd. Since, subsidy is already credited in the statement of profit and loss, the same has to be reduced while computing business income]	15,00,000		
		<u>38,00,000</u>	
		2,01,50,000	
<b>Less: Depreciation as per Income-tax Rules</b>			
- Depreciation	36,00,000		
- Depreciation on New Plant and machinery [₹ 50 lakhs x 15%, since it has been put to use for more than 180 days during the year] [Any expenditure for acquisition of any asset in respect of which payment or aggregate of payment made to a person in a day, otherwise than by an a/c payee cheque/ bank draft or use of ECS or through prescribed electronic mode, exceeds ₹ 10,000, such expenditure would	7,50,000		

not form part of actual cost of such asset. Further, where any part of the cost of asset acquired has been met directly or indirectly, <i>inter alia</i> , by State Government, then, so much of the cost as relates to subsidy would not be included in the actual cost. Hence, ₹10 lakhs paid by bearer cheque and ₹ 15 lakhs of cash subsidy received by State Government for acquisition of asset would not be included in the actual cost of plant and machinery.]			
- Depreciation on Intangible asset, being designs & models of washing machines [₹ 36 lakhs x 25% x 50%, since put to use for less than 180 days during P.Y. 2023-24]	4,50,000		
- No additional depreciation is allowable under section 32(1)(iia) since the assessee has opted for the provisions of section 115BAA.			
		<u>48,00,000</u>	
			1,53,50,000
<b>Capital Gains</b>			
- Short term capital gains on transfer of listed equity shares		15,00,000	
- Long term capital gains on transfer of zero-coupon bonds [after indexation benefit]		8,00,000	
- Short term capital gains on transfer of unlisted equity shares [Since not held for more than 24 months]	22,00,000		
Full value of consideration	<u>12,00,000</u>		
Less: Cost of acquisition		<u>10,00,000</u>	
			<u>33,00,000</u>

<b>Gross Total Income/Total Income</b>			<b><u>1,86,50,000</u></b>
<b>Computation of tax payable under section 115BAA</b>			
Tax u/s 115BAA on business income [₹ 1,53,50,000 x 22%]	33,77,000		
Tax u/s 111A on Short-term capital gains on transfer of listed equity shares on which STT is paid [₹ 15 lakhs x 15%]	2,25,000		
Tax u/s 112 on Long-term capital gains on transfer of zero-coupon bonds with indexation benefit [₹ 8 lakhs x 20%]	1,60,000		
Tax u/s 115BAA on short term capital gains on transfer of unlisted equity shares [₹ 10 lakhs x 22%]	<u>2,20,000</u>		
			39,82,000
Add: Surcharge @10%			<u>3,98,200</u>
			43,80,200
Add: HEC@4%			<u>1,75,208</u>
<b>Tax liability</b>			<b>45,55,408</b>
<b>Tax liability (rounded off)</b>			<b>45,55,410</b>

2. (a) **Computation of Total Income of M/s LS & Associates, a partnership firm, for the A.Y. 2024-25**

	<b>Particulars</b>	<b>Amount (in ₹)</b>	
<b>I</b>	<b>Profits and gains of business and profession</b>		
	Net profit as per profit and loss account		80,00,000
	<b>Add: Items debited but to be considered separately or to be disallowed</b>		
	<b>(1) Interest to partners on capital</b> [As per section 40(b), interest to partners authorized by the partnership deed is allowable as deduction subject to a maximum of 12% p.a.] [₹ 7,15,000 x 1%/13%]	55,000	
	<b>(2) Interest on loan taken from partner</b>	18,000	

<p>[As per section 40(b), interest to partners authorized by the partnership deed is allowable as deduction subject to a maximum of 12% p.a., whether it is interest on partner's capital or loan] [₹ 90,000 x 3%/15%]</p>		
<b>(3) Depreciation as per books of account</b>	1,15,650	
		1,88,650
		81,88,650
<b>Less: Items credited but chargeable to tax under another head/expenses allowed but not debited</b>		
<b>1. Interest on bank fixed deposits made out of surplus fund</b> [Interest received from bank on fixed deposits made out of surplus funds is assessable under the head 'Income from other sources'. Since the same has been credited to profit and loss account, it has to be deducted while computing business income]	35,000	
<b>2. Profit on sale of building</b> [Capital gain on sale of building is taxable under the head "Capital Gains". Since such gains has been credited to profit and loss account, the same has to be deducted while computing business income]	53,55,000	
		53,90,000
<b>Less: Depreciation as per Income-tax Rules, 1962</b>	14,000	
- Depreciation on Motor car [₹ 6,80,000 x 30%, eligible for higher depreciation since purchased and put to use on 1.1.2020]	2,04,000	
- Mobile phone [₹ 20,000 x 15% x 50%, since purchased and put to use for less than 180 days]	1,500	2,19,500
<b>Book Profit</b>		25,79,150

	<p><b>Less:</b> Salary to working partners</p> <p>(i) As per limits given under section 40(b)</p> <div style="margin-left: 60px;">On first ₹ 3,00,000 @90%                    2,70,000</div> <div style="margin-left: 60px;">On the balance of ₹ 22,79,150 @         <u>13,67,490</u></div> <div style="text-align: right; margin-right: 80px;"><u>16,37,490</u></div> <p>(ii) Salary actually paid to working partners [₹ 20,000 x 12 x 2]          4,80,000</p> <p>Deduction allowed being (i) or (ii) whichever is less</p> <div style="text-align: right;"><u>4,80,000</u></div>	20,99,150
<b>I</b>		
<b>II Capital Gains</b>		
	<p><b>1. Short term capital gain on sale of building forming part of block of asset</b> [Since building was the only asset in the block]</p> <div style="margin-left: 60px;">Full value of consideration                      90,00,000</div> <div style="margin-left: 60px;"><b>Less:</b> Cost of acquisition [WDV as on 1.4.2023]                      <u>36,45,000</u></div> <div style="text-align: right; margin-right: 80px;"><u>53,55,000</u></div> <div style="margin-left: 60px;"><b>Less:</b> Exemption under section 54EC [Investment in bonds of NHAI, the maximum deduction u/s 54EC would be ₹ 50 lakhs]</div> <div style="margin-left: 60px;"></div> <div style="margin-left: 60px;"><u>50,00,000</u></div>	3,55,000
<b>III Income from Other Sources</b>		
	Interest from bank on fixed deposits	35,000
	<b>Gross Total Income</b>  <b>Less: Deduction under section 10AA</b> [₹ 7,50,000 x 40,00,000 / ₹ 1,20,00,000 x 100%]	24,89,150

<sup>3</sup> *Hindustan Unilever Ltd. v. DCIT* (2010) 325 ITR 102 (Bom.)

[Unit in SEZ is eligible for deduction u/s 10AA since it obtained the letter of approval on or before 31 <sup>st</sup> March, 2020 and started operations before 31.3.2021]	2,50,000
<b>Total Income</b>	<b>22,39,150</b>

- (b) Since Mr. Gaurav is an individual resident in India for the P.Y.2023-24, his global income would be subject to tax in India. Therefore, income earned by him in Country M and Country N would be taxable in India. He would, however, be entitled to deduction under section 91, since India does not have a DTAA with Country M and Country N, and all conditions under section 91 are satisfied.

**Computation of total income of Mr. Gaurav for A.Y. 2024-25**

Particulars	₹	₹
<b>Income under the head “Salaries”</b>		
Pension from State Government	3,90,000	
Less: Standard deduction u/s 16(ia)	<u>50,000</u>	
		3,40,000
<b>Income from House Property</b>		
Rental income from property in Country N <sup>4</sup>	3,00,000	
Less: Municipal taxes	<u>20,000</u>	
	2,80,000	
Less: Deduction u/s 24(a)@30%	<u>84,000</u>	
		1,96,000
<b>Profits and Gains of Business or Profession</b>		
Speculative income in India	1,16,000	
Less: Set-off of business loss from proprietary business in Country N under section 70	<u>1,06,000</u>	
		10,000
<b>Short-term capital gains</b> on sale of plot in India		2,10,000
<b>Income from Other Sources</b>		
Agricultural income from Country M [not exempt u/s 10(1), since it is earned from land situated outside India]	90,000	
Dividend from a company in Country M	<u>64,000</u>	
		<u>1,54,000</u>

<sup>4</sup> In the absence of any information relating to fair rent, municipal value and standard rent, rental income is assumed to be the gross annual value.



<b>Gross Total Income</b>		9,10,000
<b>Less: Deduction under Chapter VI-A [No deduction allowable as per section 115BAC]</b>	-	<u>-</u>
<b>Total Income</b>		<b><u>9,10,000</u></b>

**Computation of net tax liability of Mr. Gaurav for A.Y.2024-25**

<b>Particulars</b>		<b>₹</b>
Tax payable on ₹ 9,10,000		
Upto ₹ 3,00,000	Nil	
₹ 3,00,000 to ₹ 6,00,000 @ 5%	15,000	
₹ 6,00,000 to ₹ 9,00,000 @ 10%	30,000	
₹ 9,00,000 to ₹ 9,10,000 @15%	1,500	46,500
<b>Add: Health and education cess@4%</b>		<u>1,860</u>
		<b>48,360</b>
<b>Less: Rebate under section 91 (See Working Note below)</b>		<u>9,283</u>
<b>Tax Payable</b>		<b>39,077</b>
<b>Tax Payable (rounded off)</b>		<b>39,080</b>
<b>Calculation of Rebate under section 91:</b>		<b>₹</b>
Average rate of tax in India [i.e., ₹ 48,360/ ₹ 9,10,000 x 100] = 5.314%		
<b>Doubly taxed income pertaining to Country M</b>		
Agricultural income	90,000	
Dividend from a company in Country M [Not includible, since exempt in Country M]	<u>-</u>	
	90,000	
Rebate under section 91 on ₹ 90,000 @5.314% [being the lower of average Indian tax rate (5.314%) and Country M tax rate (10%)]		4,783
<b>Doubly taxed income pertaining to Country N</b>		
Income from house property less business loss set-off against income chargeable to tax in India (₹ 1,96,000 – ₹ 1,06,000)	90,000	
Rebate under section 91 on ₹ 90,000 @5% [being the lower of average Indian tax rate (5.314%) and Country N tax rate (5%)]		<u>4,500</u>
<b>Total rebate under section 91 (Country M + Country N)</b>		<b><u>9,283</u></b>

3. (a) (i) **Computation of taxable income of public charitable trust**

Particulars		₹
(i)	Income from property held under trust	10,00,000
(ii)	Income from business (incidental to main objects)	4,00,000
(iii)	Voluntary contributions from public	7,00,000
	Voluntary contribution made with a specific direction towards corpus are alone to be excluded under section 11(1)(d). In this case, there is no such direction and hence, included.	
		21,00,000
	Less: 15% of the income eligible for retention / accumulation without any conditions	3,15,000
		17,85,000
	Less: Amount applied for the objects of the trust	
	(i) Amount spent for charitable purposes (₹ 11,60,000 - ₹ 3,60,000)	8,00,000
	(ii) Repayment of loan for construction of orphan home (See note below)	-
	<b>Taxable Income</b>	<b>9,85,000</b>

**Note** - As per *Explanation 4(ii)* to section 11(1), any application for charitable or religious purposes, from any loan or borrowing in the concerned year, shall not be treated as application of income for charitable or religious purposes. However, the amount not so treated as application, shall be treated as application in the year in which the loan is repaid. Therefore, the repayment of loan for construction of orphan home can be treated as application of income only if such expenditure on construction of orphanage was not treated as application in year such expenditure was incurred. However, in this case, the amount spent on construction of orphanage was allowed as deduction in the P.Y. 2020-21. Thus, repayment of loan taken for such purposes will not be allowed as application as it would tantamount to double deduction.

- (ii) As per *Explanation* below to section 10(23C)(iiia), it has been clarified that the limit of annual receipts of ₹ 5 crore is qua 'taxpayer' and not qua 'activity'. Therefore, if the aggregate annual receipts from educational activity and medical activity exceeds ₹ 5 crores, then exemption under sub-clause (iiia) and (iiib) cannot be availed.

Since, in the present case, the aggregate annual receipt of ₹ 7 crores (₹ 3 crores of educational institution and ₹ 4 crores from

hospital) exceeds the threshold of ₹ 5 crores, exemption under section 10(23C)(iiia) and (iiiae) cannot be availed, even though the individual receipts have not exceeded ₹ 5 crores.

**(b) Computation of income to be declared by the branch in its return of income**

<b>Computation of Head Office expenses allowable u/s 44C:</b>		
<b>Particulars</b>	<b>₹</b>	<b>₹</b>
Net profit of the branch		28,00,000
<b>Add:</b> Head office expenditure debited to profit and loss	1,20,00,000	
Unabsorbed depreciation	17,00,000	
Capital expenditure for promoting family planning	7,00,000	
Brought forward business loss	25,00,000	
Deductions under Chapter VI-A	<u>20,00,000</u>	
		<u>1,89,00,000</u>
<b>Adjusted total income</b>		<b><u>2,17,00,000</u></b>
<b>Note – Depreciation for the current financial year and capital expenditure on scientific research are not required to be added back for computing adjusted total income.</b>		
<b>Head office expenses allowable u/s 44C = ₹ 10,85,000</b>		
Being the lower of -		
(i) 5% of ₹ 2,17,00,000 = ₹ 10,85,000		
(ii) Actual Head Office expenses allocated to the branch = ₹ 1,20,00,000		
<b>Income to be declared by the branch for A.Y.2024-25</b>		
<b>Particulars</b>		<b>₹</b>
Net profit of the branch		28,00,000
<b>Add:</b> Head office expenditure debited to profit and loss		<u>1,20,00,000</u>
		1,48,00,000
<b>Less:</b> Head office expenses allowable u/s 44C		<u>10,85,000</u>
<b>Income to be declared by the branch</b>		<b><u>1,37,15,000</u></b>

4. (a) (i) TDS under section 194C is **not** attracted since the payment of ₹ 3 lakhs for repair of residential house is for personal purpose. TDS under section 194M is also not attracted as aggregate of contract payment to the payee in the P.Y.2023-24 does not exceed ₹ 50 lakhs. However, on payment of ₹ 75,000 towards commission to Mr. Mukesh for business purposes, tax is required to be deducted at source u/s 194H @5%, since the payment exceeds ₹ 15,000, and Mr. Mukesh's turnover from business exceeds ₹ 1 crore in the P.Y.2022-23.

Accordingly, amount of ₹ 3,750 (₹ 75,000 x 5%) is required to be deducted at source.

- (ii) Yes, he can do so. If a person has a loss in any previous year and has furnished a return of loss under section 139(3) on or before the due date of filing return of income u/s 139(1), he shall be allowed to furnish an updated return, if such updated return is a return of income. Accordingly, in this case, since the original return of Mr. Rajesh was filed on the due date u/s 139(1) i.e., on 31.10.2022, he can file an updated return within 2 years from the end of A.Y.2022-23, i.e., on or before 31.3.2025. Accordingly, he can file an updated return of income on 30.11.2023 declaring total income of ₹ 7 lakhs, after paying tax due on such total income along with interest under section 234B and section 234C and additional income-tax at 25% of aggregate of tax and interest payable (since the updated return is filed before 31.3.2024, i.e., before 12 months from the end of A.Y.2022-23).
- (b) As per section 194-I dealing with deduction of tax at source from payment of rent, the rate of TDS applicable is 2% for machinery hire charges and 10% for building lease rent. The scope of the section includes within its ambit, rent for machinery, plant and equipment. Tax is required to be deducted at source from payment of rent, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of building and machinery, irrespective of whether such assets are owned or not by the payee.
- The limit of ₹ 2,40,000 for tax deduction at source will apply to the aggregate rent of all the assets. Even if two separate agreements are entered into, one for sub-lease of building and another for hiring of machinery, rent and hire charges under the two agreements have to be aggregated for the purpose of application of the threshold limit of ₹ 2,40,000.
- In this case, since the payment for rent and hire charges credited to the account of James, the payee, aggregates to ₹ 2,48,000 (₹ 1,40,000 + ₹ 1,08,000), tax is deductible at source under section 194-I. Tax is deductible @10% on ₹ 1,40,000 (rent of building) and @2% on ₹ 1,08,000 (hire charges of machinery).

(c) **Computation of capital gains of Mr. Sarthak for A.Y. 2024-25**

Particulars	₹	₹
<b>Redemption of SLR growth fund</b>		
Full value of consideration [Redemption value]	1,40,00,000	
Less: Indexed cost of acquisition [₹ 1,20,00,000 × 348/301]	<u>1,38,73,754</u>	
<b>Long term capital gains</b> [Since it is debt fund (as not more than 65% of the		1,26,246]

proceeds are invested in equity shares of domestic companies) and it was held by Mr. Sarthak for more than 36 months immediately preceding the date of its transfer]		
<b>Redemption of XYZ Strategic fund</b>		
Full value of consideration [Redemption value]	50,00,000	
Less: Cost of acquisition	<u>46,00,000</u>	4,00,000
<b>Short term capital gains</b> [Since it is a specified mutual fund (as not more than 35% of its proceeds are invested in equity shares of domestic companies) which is acquired on or after 1.4.2023, this fund would be considered as short-term capital asset as per section 50AA irrespective of the period of holding]		
<b>Redemption of MNO Midcap fund</b>		
Full value of consideration [Redemption value]	1,18,00,000	
Less: Cost of acquisition	<u>1,15,00,000</u>	3,00,000
<b>Short term capital gains</b> [Since it is equity-oriented fund (as more than 65% of its proceeds are invested in equity shares of domestic companies) and it was held by Mr. Sarthak for not more than 12 months immediately preceding the date of its transfer]		
<b>Redemption of TBA Growth fund</b>		
Full value of consideration [Redemption value]	1,20,00,000	
Less: Cost of acquisition [Indexation benefit would not be available in case of income taxable under section 112A]	<u>1,10,00,000</u>	
<b>Long term capital gains</b> [Since it is equity-oriented fund (as more than 65% of its proceeds are invested in equity shares of domestic companies) and it was held by Mr. Sarthak for more than 12 months immediately preceding the date of its transfer]		10,00,000
		<b>18,26,246</b>
<b>Less: Exemption under section 54F</b>		
Capital gain arising on transfer of a long-		

term capital asset other than a residential house shall not be chargeable to tax to the extent such capital gain is invested in the purchase of one residential house property in India within one year before or two years after the date of transfer of original asset. Therefore, in the present case, the exemption would be available only in respect of long-term capital gains from redemption of SLR growth fund and TBA Growth fund.		
Exemption from long term capital gains from redemption of TBA Growth fund [10,00,000 x 1,20,00,000 / 1,20,00,000]		10,00,000
Exemption from long term capital gains from redemption of SLR short term fund [1,26,246 x 80,00,000 (2 crores – 1.20 crores)/1,40,00,000]		72,141
<b>Capital gains chargeable to tax for A.Y.2024-25</b>		<b>7,54,105</b>

5. (a) (i) Section 144C requires the eligible assessee, XYZ Ltd., to file his objections within 30 days of the receipt of draft assessment order from the Assessing Officer with the DRP and the Assessing Officer. If he fails to do so, the Assessing Officer will proceed to complete the assessment on the basis of the draft order.
- The CBDT has clarified that the assessee has a choice whether to file an objection before the DRP against the draft assessment order or not to exercise this option and file an appeal later before CIT (Appeals) against the final assessment order passed by the Assessing Officer.
- Therefore, XYZ Ltd. can choose to file an appeal before Commissioner (Appeals) against the final assessment order instead of filing objection before the DRP against the draft assessment order passed by the Assessing Officer.
- In case XYZ Ltd. files objection before the DRP, then, he has the right to appeal to Appellate Tribunal, if he is aggrieved by the final order passed by the Assessing Officer in pursuance of the directions of the DRP.
- (ii) As per section 132B, the amount of existing liability under the Income-tax Act and the amount of liability determined on completion of assessment under section 148 may be recovered out of assets seized under section 132. The words “existing liability” postulates a liability that is crystallized by adjudication.

Likewise, “a liability is determined” only on completion of the assessment. Until the assessment is complete, it cannot be postulated that a liability has been crystallized.

It is only when the liability is determined on the completion of assessment that it would stand crystallized and in pursuance of which a demand can be raised and recovery can be initiated. Accordingly, the assessee may make an application to the Assessing Officer within 30 days from the end of the month in which the asset was seized, for release of the assets seized.

However, in the present case, the assessee moved an application before the Assessing Officer for adjustment of tax liability on income surrendered during search by sale of seized gold bars.

In this case, assessment is not complete and the liability has not been crystallised.

Therefore, the action of the Assessing Officer in turning down the application of the assessee is in order, since the assets seized cannot be adjusted against tax liability on income surrendered during search<sup>5</sup>.

- (iii) The time limit for service of notice under section 143(2) is three months from the end of the financial year in which the return of income was furnished by the assessee. The return of income for assessment year 2023-24 was filed by the assessee on 25<sup>th</sup> October, 2023. Therefore, the notice under section 143(2) has to be served by 30<sup>th</sup> June, 2024. However, the notice was served on the assessee only on 9<sup>th</sup> July, 2024. Hence, the notice issued under section 143(2) is time-barred.

However, as per section 292BB, where an assessee had appeared in any proceedings or co-operated in any enquiry relating to an assessment or reassessment, it shall be deemed that any notice required to be served upon him, has been duly served upon him in time in accordance with the provisions of the Act and such assessee shall be precluded from raising any objection in any proceeding or enquiry that the notice was (a) not served upon him or (b) not served upon him in time or (c) served upon him in an improper manner.

The above provision shall not be applicable where the assessee has raised such objection before the completion of such assessment or reassessment. Therefore, in the instant case, if the assessee, T Ltd., had raised an objection to the proceeding, on the ground of non-service of the notice under section 143(2) on time, then, the validity of the assessment order can be challenged. In

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<sup>5</sup> It was so held in *Hemant Kumar Sindhi & Another v. CIT* (2014) 364 ITR 555 (All)

absence of such objection, the assessment order cannot be challenged.

- (b) In India, the Finance Act, 2016 has introduced a concessional taxation regime for royalty income from patents for the purpose of promoting indigenous research and development and making India a global hub for research and development. The purpose of the concessional taxation regime is to encourage entities to retain and commercialise existing patents and for developing new innovative patented products. Further, this beneficial taxation regime will incentivise entities to locate the high-value jobs associated with the development, manufacture and exploitation of patents in India.

The nexus approach has been recommended by the OECD under BEPS Action Plan 5. This approach requires attribution and taxation of income arising from exploitation of Intellectual property (IP) in the jurisdiction where substantial research and development (R & D) activities are undertaken instead of the jurisdiction of legal ownership. Accordingly, section 115BBF has been inserted in the Income-tax Act, 1961 to provide that where the total income of the eligible assessee (being a person resident in India who is the true and first inventor of the invention and whose name is entered in the patent register as the patentee in accordance with the Patents Act, 1970 and includes every such person, being the true and the first inventor of the invention, where more than one person is registered as patentee under Patents Act, 1970 in respect of that patent) includes any income by way of royalty in respect of a patent developed and registered in India, then such royalty shall be taxable at the rate of 10% (plus applicable surcharge and cess). For this purpose, developed means atleast 75% of the expenditure should be incurred in India by the eligible assessee for any invention in respect of which patent is granted under the Patents Act, 1970.

6. (a) Equalisation levy of 6% is attracted in respect of the amount of consideration exceeding ₹ 1 lakh for, *inter alia*, online advertisement, received or receivable by a non-resident not having permanent establishment in India, from, *inter alia*, a resident in India who carries on business or profession.

In this case, the payment of ₹ 10 lakhs by NI Ltd., a resident in India (since it is an Indian company) to SK Inc., New York, a non-resident not having PE in India, for online advertisement services would be subject to Equalisation Levy@6%. Such income is, however, exempt under the Income-tax Act, 1961 by virtue of section 10(50) thereof.

NI Ltd. is required to deduct equalisation levy of ₹ 60,000 i.e., @6% of ₹ 10 lakhs from such payment.



(b) **Computation of Tax Liability of Mr. Aryan & Mr. Aditya for the A.Y. 2024-25 as per section 115BAC**

Particulars	Mr. Aryan	Mr. Aditya
<b>Income under the head “Salaries”</b>		
Salary	13,00,000	13,00,000
Less: Standard deduction u/s 16(ia)	<u>50,000</u>	<u>50,000</u>
	12,50,000	12,50,000
Less: Set-off loss from house property in respect interest on loan for self-occupied property [not allowable as deduction u/s 115BAC]	<u>-</u>	<u>-</u>
<b>Gross Total Income</b>	<b>12,50,000</b>	<b>12,50,000</b>
Less: Deduction under section 80D & 80GGC [Not allowable as deduction u/s 115BAC]	<u>-</u>	<u>-</u>
<b>Total income as per section 115BAC</b>	<b>12,50,000</b>	<b>12,50,000</b>
<b>Tax Liability</b>		
Upto ₹ 3,00,000	Nil	Nil
₹ 3,00,001 to ₹ 6,00,000 @ 5%	15,000	15,000
₹ 6,00,001 to ₹ 9,00,000 @ 10%	30,000	30,000
₹ 9,00,001 to ₹ 12,00,000 @ 15%	45,000	45,000
₹ 12,00,001 to ₹ 12,50,000 @ 20%	<u>10,000</u>	<u>10,000</u>
	1,00,000	1,00,000
Add: Health and education cess @4%	<u>4,000</u>	<u>4,000</u>
<b>Tax Liability</b>	<b>1,04,000</b>	<b>1,04,000</b>

**Computation of Tax Liability of Mr. Aryan & Mr. Aditya for the A.Y. 2024-25 as per regular provisions of Income-tax Act**

Particulars	Mr. Aryan	Mr. Aditya
<b>Income under the head “Salaries”</b>		
Salary	13,00,000	13,00,000
Less: Standard deduction u/s 16(ia)	<u>50,000</u>	<u>50,000</u>
	12,50,000	12,50,000
Less: Set-off of loss from house property in respect of interest on loan borrowed for self-occupied property, restricted to ₹ 2,00,000, as per section 71(3A)	<u>-</u>	<u>2,00,000</u>
<b>Gross Total Income</b>	<b>12,50,000</b>	<b>10,50,000</b>
<b>Less: Deduction u/s VI-A</b>		
Section 80D – Medical insurance premium	24,000	-

Section 80GGC – Contribution to political party by cheque	-	1,50,000
<b>Tax Liability</b>	12,26,000	9,00,000
Upto ₹ 2,50,000	Nil	Nil
₹ 2,50,001 to ₹ 5,00,000 @ 5%	12,500	12,500
₹ 5,00,001 to ₹ 10,00,000 @ 20%	1,00,000	80,000
Above ₹ 10,00,000 @30%	67,800	-
	1,80,300	92,500
Add: Health and Education cess @4%	7,212	3,700
<b>Tax liability</b>	<b>1,87,512</b>	<b>96,200</b>
<b>Tax liability (rounded off)</b>	<b>1,87,510</b>	<b>96,200</b>

Since tax liability of Mr. Aryan as per section 115BAC of ₹ 1,04,000 is lower than the tax liability of ₹ 1,87,510 computed as per the regular provisions of the Act, it is advisable for him to not to opt out of section 115BAC.

However, in case of Mr. Aditya, since his tax liability as the normal provisions of ₹ 96,200 is lower than the tax liability of ₹ 1,04,000 as per section 115BAC, it is advisable for him to opt out of the default tax regime under section 115BAC and pay tax as per regular provisions.

- (c) A transaction where one of the parties thereto is a person located in a NJA would be deemed to be an international transaction and all parties to the transaction would be deemed as associated enterprises. Accordingly, all the provisions of transfer pricing would be attracted in case of such a transaction.

Hence, the transactions between TI Ltd, an Indian company and LMP Ltd., located in NJA, would be deemed to be international transactions between associated enterprises.

The transactions of TI Ltd. with TOP Inc. of Country X and MON Inc. of Country Y for sale of identical goods are comparable uncontrolled international transactions, since they are neither associated enterprises of TI Ltd. nor are they situated in NJA. Hence, Comparable Uncontrolled Price (CUP) method can be used to determine ALP.

Where more than one price is determined by the most appropriate method, CUP method in this case, then, the arithmetic mean has to be taken in cases where the number of entries in the dataset is less than 6 (in this case it is only 2). Moreover, the benefit of permissible variation between the ALP and the transfer price based on the rate notified by the Central Government (i.e., maximum of 3% of transaction price) would **not** be available in respect of such transaction.

**Computation of ALP using CUP method**

<b>Particulars</b>	<b>TOP Inc.</b>	<b>MON Inc.</b>
	<b>₹ in crores</b>	<b>₹ in crores</b>
Price charged by TI Ltd. (on CIF basis)	10.50	11.00
<i>Less:</i> Ocean freight and insurance, has to be reduced since the price charged to LMP Ltd. is on FOB basis	<u>0.18</u>	<u>0.18</u>
	<b>10.32</b>	<b>10.82</b>
<i>Less:</i> Cost of after-sales support service (has to be reduced, since such services are being provided to TOP Inc. and MON Inc. but not to LMP Ltd.)	<u>0.13</u>	<u>0.13</u>
Arm's Length Price	<b><u>10.19</u></b>	<b><u>10.69</u></b>
<b>Arithmetic mean of the above prices [(₹ 10.19 crores + ₹ 10.69 crores)/2]</b>		<b>10.44</b>
<i>Less:</i> Price at which goods were sold to LMP Ltd.		<u>9.50</u>
<b>Arm's length adjustment [increase in profit of TI Ltd.]</b>		<b><u>0.94</u></b>