

Roll No.

NOV 2018

Total No. of Questions – 6

Final New Syllabus

Total No. of Printed Pages – 12

Paper - 7

Time Allowed – 3 Hours

**Direct Tax Laws &
International Taxation**

Maximum Marks – 100

RATQ

Answers to questions are to be given only in English except in the case of candidates who have opted for Hindi Medium. If a candidate who has not opted for Hindi Medium, his / her answers in Hindi will not be valued.

Question No. 1 is compulsory.

Answer any **four** questions from the remaining **five** questions.

Working notes should form part of the respective answer.

All questions relate to **Assessment year 2018-2019**, unless stated otherwise in the question.

Marks

1. (a) M/s. Hind Udyog, a manufacturing partnership firm, consisting of three partners namely X, Y and Z, provides following information relating to the year ending on 31.03.2018 :

14

Net profit of ₹ 28.75 Lakhs, as per profit and loss account, was arrived at after debiting/crediting the following items :

- (i) The firm had provided an amount of ₹ 2 lakhs being sum estimated as payable to workers based on agreement to be entered with the workers union towards periodical wage revision once in three years. The provision is based on a fair estimation on wage and reasonable certainty of revision once in three years.

RATQ

P.T.O.

(2)

RATQ

Marks

- (ii) Sale proceeds of import entitlements amounting to ₹ 1 lakh have been credited to profit and loss account, which the firm claims as capital receipt not chargeable to income tax.
- (iii) Goods and Service Tax demand paid includes an amount of ₹ 5,300 charged as penalty for delayed filing of returns and ₹ 12,750 towards interest for delay in deposit of tax.
- (iv) A free air ticket was provided by a supplier for reaching a certain volume of purchase during the F.Y. 2017-18. The same is not credited in profit & loss account because it was encashed by the firm for ₹ 2 lakhs in April 2018.
- (v) Interest amounting ₹ 20,000 paid to X as a Karta of HUF @ 18% per annum.
- (vi) The firm had taken on lease an old building for the purpose of locating its business. Due to old age of building, it was demolished and a new building put up, which was used by the firm from September, 2017. The cost of new building ₹ 10 lakh was written off as revenue expenditure. The lessor permitted the firm to have an extension of the lease by another 20 years.
- (vii) Loss incurred in transactions of purchase and sale of shares (without delivery) of various companies ₹ 3 lakhs.
- (viii) A scheduled bank sanctioned and disbursed a term loan in the financial year 2014-15 for a sum of ₹ 50 lakhs. Interest of ₹ 8 lakhs was in arrears. The bank has converted the arrear of interest into a new loan repayable in 10 equal instalments. During the year, the company has paid 2 instalments and the amount so paid has been reduced from Funded Interest in the Balance Sheet.
- The firm furnishes following additional information relating to it :**
- (1) Provision for audit fees ₹ 2.5 lakhs was made in the books for the year ended on 31.03. 2017 without deducting tax at source. Such fees was paid to the auditors in September, 2017 after deducting tax u/s 194J and the tax so deducted was deposited on 7th October, 2017.

RATQ

(3)

RATQ

Marks

- (2) The firm had made an investment of ₹ 23 lakhs and ₹ 12 lakhs on the construction of two warehouses (excluding the cost of land), in rural areas for the purpose of storage of agricultural produce and edible oil respectively. These were made available for use from 15.09.2017. The profits from setting of these warehouses (before claiming deduction u/s 35AD and 32) for the A.Y. 2018-2019 is ₹ 15 lakhs and ₹ 5 lakhs respectively.
- (3) In July, 2017 firm received a dividend of ₹ 11 lakhs from A Ltd. in which it holds 10% of shares.

Compute the total income of M/s Hind Udyog for the A.Y. 2018-19 by analysing, integrating and applying the relevant provisions of Income tax law. Explain in brief, the reasons for the treatment of each item.

- (b) Red Ltd., a non-resident foreign company, had entered into a collaboration agreement, approved by the Central Government, with Blue Ltd., an Indian company on February 21, 2003 and is in receipt of following payments during the previous year ending on March 31, 2018 :

6

- (i) Interest on 8% debentures for ₹ 40 lakhs issued by Blue Ltd. on July 1, 2017 in consideration of providing of technical know-how, manufacturing process and designs (date of payment of interest being March 31 every year).
- (ii) Service charges @ 2.5% of the value of plant and machinery for ₹ 500 Lakhs leased out to Blue Ltd. payable each year before March 31.
- (iii) Apart from the above incomes, Red Ltd. received a long term capital gain amounting to ₹ 1.90 Lakhs on sale of debentures of Green Ltd., an Indian company, subscribed in US\$.

Compute the Total Income of Red Ltd. and determine its tax liability for the assessment year 2018-19.

RATQ

P.T.O.

(4)

RATQ

Marks

14

2. (a) Anustup Chandra Flour mills Ltd., a domestic company engaged in manufacture of wheat flour, furnishes the following information pertaining to the year ended 31-3-2018 :
- (i) Net profit as per the statement of Profit and Loss is ₹ 77 lakhs, after **considering the items listed in (ii) to (vi) below.**
 - (ii) The company is a member of Vishnu Foods & Co., an AOP in which the members' shares are determinate and their shares in profit/loss are clearly known. The entire income of the AOP is from business activities. During the year, the company has derived share income of ₹ 9 lakhs from the AOP. The company has spent a sum of ₹ 90,000 towards earning such income.
 - (iii) The company has provided for income-tax (including interest under sections 234B and 234C of ₹ 62,000) for ₹ 3 lakhs, and ₹ 5 lakhs towards share in loss of foreign subsidiary.
 - (iv) Amount debited to the statement Profit and Loss towards interest to a public financial institution is ₹ 12 lakhs. Of this, ₹ 4 lakhs was paid on 12-12-2017 only.
 - (v) The company committed breach of building norms while extending the factory building. The City Corporation initiated proceedings against the company and the company settled the issue by paying compounding fee of ₹ 1 lakh. This amount forms part of general expenses, which has been debited to the statement Profit and Loss.
 - (vi) In the administrative expenses, the company has debited a sum of ₹ 70,000 towards fee for delayed filing of statement of TDS under section 234E of the Income-tax Act, 1961.
 - (vii) The company has credited revaluation surplus of ₹ 10 lakhs on fair valuation of assets under Ind AS 16 and Ind AS 38 to other equity.
 - (viii) The company has credited ₹ 5 lakhs to other comprehensive income on fair valuation of equity instruments in which the company has Investment.

RATQ

During the current year, the depreciation charged as per books of account of the company is the same as allowable under the IT Act, 1961 [before considering the provisions of section 32(2)]. The company proposes to adopt this practice consistently in the future years.

You are required to compute the income-tax payable by the company for the assessment year 2018-19. The company is an Indian Accounting standard compliant company.

Note : The Turnover of company for the P.Y 2015-16 was ₹ 50 crore.

- (b) Mr. Manav, a resident, has derived certain income from a nation Q with which no DTAA exists. In Q, any income chargeable to tax is charged at a flat rate of 18%.

6

Mr. Manav has derived the following income from Q.:

- (i) Agricultural income from lands in Q ₹ 14 lakhs
(ii) Share income from a partnership firm in Q ₹ 18 lakhs

In nation Q, agricultural income is exempt and does not form part of total income.

State with reasons, whether, Mr. Manav (assessee) can claim double taxation relief in respect of the above two items of income and also determine the quantum of double taxation relief available.

The "Indian rate of tax" may be taken as 20%.

3. (a) Eden Fabs Private Ltd. went into liquidation on 31.07.2017. The company was seized and possessed of the following funds prior to the distribution of assets to the shareholders :

6

	₹
Share capital (issued on 01.04.2012)	8,00,000
Reserves prior to 31.07.2017	4,00,000
Excess realization in the course of liquidation	6,00,000
Total	18,00,000

There are 8 shareholders, each of whom received ₹ 2,25,000 from the liquidator in full settlement. You are required to examine the various issues and advice the shareholders about their liability to Income tax.

(6)

RATQ

Marks

- (b) Mani foundations, a charitable trust registered u/s 12AA of the Income tax Act run schools for primary and secondary education. The following particulars pertaining to the previous year 2017-18 are furnished to you by the trust :

8

₹ (in lakhs)

- | | |
|--|-----|
| (i) Gross receipts from students towards tuition fees, development fees, laboratory fees, etc. | 200 |
| (ii) Voluntary contributions received from public (including anonymous donation ₹ 5 lakhs) | 25 |
| (iii) Government grants | 8 |
| (iv) Donation given towards corpus to a trust registered u/s 10(23C) | 2 |
| (v) Amount applied for the purpose of schools | 90 |
| (vi) Included in (v) above, a sum of ₹ 5 lakhs, being the amount applied for the benefit of the founder of the trust. | |
| (vii) The trust set apart ₹ 55 lakhs for acquiring a building to expand its schools. But the amount was paid in December 2018 when the sale deed was registered in its name. | |
| (viii) Excess of expenditure over income in the previous year 2016-17 | 25 |

Compute the total income of the trust for the assessment year 2018-2019 in order to avail maximum benefits within the four corners of law.

RATQ

- (c) State with reasons, whether Netlon LLC., (Incorporated in Singapore) and Briggs Ltd., a domestic company, are/can be deemed to be associated enterprises for the transfer pricing regulations (Each situation is independent) of the others : 6
- (i) Netlon LLC. has advanced a loan of ₹ 53 crores to Briggs Ltd. on 12-1-2018. The total book value of assets of Briggs Ltd. is ₹ 100 crores. The market value of the assets, however, is ₹ 150 crores. Briggs Ltd. repaid ₹ 10 crores before 31-3-2018.
- (ii) Netlon LLC. has the power to appoint 2 of the directors of Briggs Ltd, whose total number of directors in the Board is 4.
- (iii) Total value of raw materials and consumables of Briggs Ltd. is ₹ 900 crores. Of this, Netlon LLC. supplies to the tune of ₹ 820 crores, at prices mutually agreed upon once in six months and depending upon the market conditions.
4. (a) Tulsi Private Ltd., a company engaged in ship breaking activity, sold some old and used plates, wood etc., in respect of which it did not collect tax from the buyer. The company claimed that such items are usable as such. Hence these are not 'scrap' to attract the provisions for collection of tax at source. The Assessing Officer treated such items in the nature of 'scrap' and raised a demand u/s 201(1) and interest u/s 201(1A). 4
- Is the action of the Assessing Officer in treating such items as 'scrap' tenable in law ? Discuss.
- (b) Discuss whether liability to deduct tax at source arises in the under-mentioned (independent) situations in respect of following payments made by residents in India :
- (i) Dindayal & Co., a partnership firm, has credited a sum of ₹ 67,000 and ₹ 4,000 respectively, as interest to partners L (Resident in India) and M (non-resident) respectively. 4

RATQ**Marks**

- (ii) Lumnous Pvt. Ltd., whose accumulated profits are ₹ 20 lakhs, wants to disburse a loan of ₹ 25 lakhs to Mrs. Nisha, a resident shareholder holding 20% of the equity shareholding in the company. Can the entire amount of loan be disbursed to the shareholder, keeping in mind the provisions of the Income-tax Act, 1961 ? The Finance Manager feels that this being a pure loan transaction, there is no bar for disbursing the entire amount. Is his view correct ? 4
- (iii) Payment of ₹ 5 lakhs made by Shiv & Company (partnership firm) to Jyoti & Company Ltd. For organising debate competition on the subject 'Rural Heritage of Rajasthan'. 2
- (c) "Every jurisdiction, in the domestic law, prescribes the mechanism to determine residential status of a person. In case, a person is considered to be resident of both contracting states, it becomes necessary to apply the tie-breaker rule." 6
- Discuss the manner for application of the tie-breaker rule.

5. Attempt Either 5 (a) (i) OR 5 (a) (ii)

- (a) (i) The business premise of Mr. Rajneesh was subjected to a survey under section 133A of the Act. There were some indiscriminating materials found at the time of survey. The assessee apprehends reopening of assessments of the earlier years. He wants to know whether he can approach the Settlement Commission. 5
- Explain briefly the basic conditions to be satisfied and the benefits that may accrue to Mr. Rajneesh by approaching the Settlement Commission.

RATQ

(9)

RATQ

Marks

- (ii) The assessment of Foundation Bank Ltd. for Assessment Year 2014-15 was made under section 143(3) on 30th November, 2015 allowing deduction u/s 36(1)(vii) and deduction in respect of foreign exchange rate difference as claimed in the return of income. Subsequently, two notices of reassessment were issued u/s 148 and an order of reassessment was passed u/s 147 on 31st December, 2017 which did not deal with the above deductions. Later the Principal Commissioner after examining the records of assessment, initiated revisionary proceeding u/s 263 on 31st May, 2018 for disallowing deduction u/s 36(1)(vii) and deduction in respect of foreign exchange rate difference. The bank claims that the order passed by the Principal Commissioner u/s 263 is barred by limitation.

5

Is the claim made by Foundation Bank tenable in law ?

- (b) State with brief reason, whether the following statements are true or false :

6

(No mark will be awarded for answers without reason.)

- (i) Where a notice under section 143(2) is issued to the assessee, it is not required to process u/s 143(1), the return of income filed by the assessee.
- (ii) Even without rejecting the books of account, if any, maintained by the assessee, the Assessing Officer can make a reference to the Valuation Officer u/s 142A for estimating the cost of construction of an immovable property.
- (iii) Expenses of special audit conducted under section 142 shall be paid by the Central Government.
- (iv) Only an individual can be regarded as a Tax Return Preparer under section 139B.

RATQ

P.T.O.

- (c) In the course of search operation under section 132 of the Income Tax Act, 1961, in the month of July, 2018, Mr. Khemka has made a declaration under section 132(4) to the Income Tax authorities on the earning of his income not disclosed in respect of previous year 2017-18. Can that statement save Mr. Khemka from a levy of penalty, if he is yet to file his return of income for assessment year 2018-19 ? 3
- (d) John Butler Tex. Inc., is a company incorporated in Colombo, Sri Lanka. 60% of its shares are held by I Pvt. Ltd., a domestic company. John Butler Tex. Inc. has its presence in India also. The data relating to John Butler Tex. Inc., are as under : 6

Particulars	India	Sri Lanka
Fixed assets at depreciated values for tax purposes (₹ in cores)	90	70
Intangible assets (₹ in cores)	40	180
Other assets (₹ in cores)	30	90
Income from trading operations (₹ in cores)	15	42
Income from investments (₹ in cores)	30	13
Number of employees	40	60

(Residents in respective countries)

For POEM purposes, state whether,

- (i) The company shall be said to be engaged in 'active business outside India'.
- (ii) Because of increased operations in India, more manpower is needed. 30 more employees may be required in this regard. The company can either take these employees directly in its roll or can outsource the increased operation to an external agency which will engage the 15 employees in its roll and finish the work for the company. Which choice will be better ?

Note : If for any test, average figures are needed, the same may be ignored and the data as given above to the applicant may be used.

6. (a) Mr. B proposes to purchase for his business, certain raw materials from Mr. S. In view of the scarcity of the products, S insists on cash payments for the purchases, to which B agrees. On 27-3-2018, the purchases are effected through a cash invoice for ₹ 3,20,000. 5

In respect of the above transactions, will there be any detrimental effect in the hands of B and S under the provisions of the Income-Tax Act, 1961 ? Explain briefly.

Will your answer be different, if the cash purchases are effected by the buyer B on two different dates for different raw materials for ₹ 1,80,000 and ₹ 1,40,000 respectively ?

- (b) Mr. Sarthak a software engineer wants to commence a business in manufacture of solar powered car. He provides the following information : 9

- (i) The project cost is estimated at ₹ 5 Crores.
- (ii) He has a residential house in Surat Since 2010 which could be sold for ₹ 3 Crores.
- (iii) And the balance ₹ 2 Crores could be financed through bank borrowings at a cost of 13% per annum.
- (iv) He has another option Viz. his friend Miss Juhi who is willing to contribute ₹ 2 Crores and become a co-promoter.

The indexed cost of acquisition of the residential house (Computed) is ₹ 70 lakhs.

Mr. Sarthak seeks your guidance on the project finance taking into account any tax incentives available under Income Tax Law besides the funding of project through bank finance or accepting Miss Juhi as Co-Promoter.

You are requested to advise Mr. Sarthak, on Income tax aspects to avail tax benefits within the four corners of law.

- (c) T, Inc., a non-resident entity incorporated in Mauritius, has permanent Establishment (PE) in India. The PE filed its return of income for the assessment year 2018-19 disclosing income ₹ 100 lakhs and paid tax at the rate applicable to the domestic company I.e. 30% plus applicable surcharge and cess on the basis of paragraph 2 of Article 24 of Double Tax Avoidance Agreement (non-discrimination) between India and Mauritius, which reads as follows :
- “The taxation on PE which is an enterprise of a contracting state has in the other contracting state shall not be less favourably levied in that other state than the taxation levied on enterprise of that other state carrying on the same activities in the same circumstances.”
- However, the Assessing Officer computed the Tax on the PE at the rate applicable to a foreign company (40%). Is the action of AO in accordance with law ?
- (d) Alpha Inc., a non-resident company has an IT enabled business process outsourcing Unit in India (BPO) and it provides certain outsourcing services to a resident Indian entity.
- Discuss, the tax implications, in the hand of Alpha Inc. due to presence of BPO unit in India.