

**MOCK TEST PAPER 1**  
**FINAL COURSE: GROUP – II**  
**PAPER – 7: DIRECT TAX LAWS & INTERNATIONAL TAXATION**  
**SOLUTIONS**

**Division A – Multiple Choice Questions**

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

**Division B – Descriptive Questions**

1. (a) **Computation of total income and tax payable by Diamond Industries Ltd. for A.Y.2022-23 in accordance with the provisions of section 115BAB**

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 debited to statement of profit and loss, the same has to be added back while computing business income]	36,00,000		
- <b>Purchased washing machine panels at a price higher than the fair market value</b> [As per section 40A(2), the difference between the purchase price (₹ 96 lakhs)	14,00,000		
		1	

and the fair market value (₹ 82 lakhs) has to be added back since the purchase is from a related party, i.e., Shipra Ltd., a company in which directors of Diamond Industries Ltd. have substantial interest and at a price higher than the fair market value]		
- <b>Legal expenses for issue of bonus shares</b> [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> ]	Nil	
- <b>Legal expenses for issue of right shares</b> [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 added back while computing business income]	<u>8,00,000</u>	
		<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 Diamond 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>

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<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

		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 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.]	7,50,000		
- 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. 2021-22]	4,50,000		
- No additional depreciation is allowable under section 32(1)(ia) since the assessee has opted for the provisions of section 115BAB			
		<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]			
Full value of consideration	22,00,000		
Less: Cost of acquisition	<u>12,00,000</u>		
		<u>10,00,000</u>	
		1	<u>33,00,000</u>
<b>Total Income</b>			<b><u>1,86,50,000</u></b>

<b>Computation of tax payable under section 115BAB</b>		
Tax u/s 115BAB on business income [₹ 1,53,50,000 x 15%]	23,02,500	
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 115BAB on short term capital gains on transfer of unlisted equity shares [₹ 10 lakhs x 22%]	<u>2,20,000</u>	
		29,07,500
Add: Surcharge @10%		<u>2,90,750</u>
		31,98,250
Add: HEC@4%		<u>1,27,930</u>
<b>Tax liability</b>		<b>33,26,180</b>

2. (a) **Computation of "Book Profit" for levy of MAT under section 115JB for A.Y.2022-23**

Particulars	₹	₹
Net Profit as per Statement of Profit and Loss		20,00,000
Add: Net profit to be increased by the following amounts as per <i>Explanation 1</i> to section 115JB(2):		
- <b>Provision for the loss of subsidiary</b>	1,70,000	
- <b>Provision for doubtful debts</b> , being the amount set aside as provision for diminution in the value of any asset	1,75,000	
- <b>Provision for income-tax</b> [As per <i>Explanation 2</i> to section 115JB, income-tax shall include, inter alia, any interest charged under the Act, therefore, whole of the amount of provision for income-tax including ₹ 55,000 towards interest payable has to be added back]	2,05,000	
- <b>Depreciation</b>	<u>4,60,000</u>	<u>10,10,000</u>
		30,10,000

Less: Net profit to be decreased by the following amounts as per <i>Explanation 1</i> to section 115JB:		
- <b>Share in income of an AOP as a member</b> [In a case, where AOP has paid tax on its total income at maximum marginal rate, no income-tax is payable by the company, being a member of AOP, in accordance with the provisions of section 86. Therefore, share in income of an AOP on which no income-tax is payable in accordance with the provisions of section 86, would be reduced while computing book profit, since the same has been credited to profit and loss account]	2,00,000	
- <b>Income from units in UTI</b> [Income from units in UTI not to be reduced while computing the book profits, since the same is taxable in the hands of unitholders]	-	
- <b>Depreciation</b> other than depreciation on revaluation of assets (₹ 4,60,000 – ₹ 2,50,000)	2,10,000	
- <b>Unabsorbed depreciation or brought forward business loss</b> , whichever is less, as per the books of account. Lower of unabsorbed depreciation ₹ 5,00,000 and brought forward business loss ₹ 6,00,000 as per books of accounts has to be reduced while computing the book profit]	<u>5,00,000</u>	
		<u>9,10,000</u>
<b>Book Profit</b>		<b><u>21,00,000</u></b>

**Computation of MAT liability under section 115JB**

Particulars	₹
15% of book profit	3,15,000
Add: Health & education cess@4%	<u>12,600</u>
<b>Minimum Alternate Tax liability</b>	<b><u>3,27,600</u></b>

**Notes:**

- (1) It is only the specific items mentioned under *Explanation 1* to section 115JB, which can be adjusted from the net profit as per the Statement of Profit and Loss prepared as per the Companies Act for computing book profit for levy of MAT. Since the following items are not specified thereunder, the same cannot be adjusted for computing book profit:
  - Interest to financial institution (unpaid before filing of return) and
  - Penalty for infraction of law
- (2) Provision for gratuity based on actuarial valuation is an ascertained liability [*CIT v. Echjay Forgings (P) Ltd. (2001) 251 ITR 15 (Bom.)*]. Hence, the same should not be added back to compute book profit.
- (3) As per proviso to section 115JB(6), the profits from unit established in special economic zone cannot be excluded while computing the book profit, and hence, such income would be liable for MAT.

(b) **Computation of total income of Mr. Narayan for A.Y.2022-23**

Particulars	₹	₹
<b>Income from House Property</b>		
Rental income from property in Country X <sup>3</sup>	3,60,000	
Less: Municipal taxes paid	<u>12,000</u>	
	3,48,000	
Less: Deduction u/s 24(a) @30%	<u>1,04,400</u>	
		2,43,600
<b>Profits and gains from business or profession</b>		
Royalty <sup>4</sup> from Country X for writing article in journals [only the amount which is received during the previous year is includible, since he maintains cash system of accounting]		13,60,000
<b>Income from Other Sources</b>		
Dividend from M Ltd. an Indian company		<u>5,50,000</u>
<b>Gross Total Income</b>		<b>21,53,600</b>
<b>Less: Deduction under Chapter VI-A</b>		
U/s 80E – deduction in respect of interest on educational loan for his son	36,000	
U/s 80QQB – No deduction is allowable since royalty income is for writing articles in journals and newspapers and not for writing books	<u>-</u>	
		<u>36,000</u>
<b>Total Income</b>		<b><u>21,17,600</u></b>

**Computation of tax liability of Mr. Narayan for A.Y.2022-23**

Particulars	₹
Tax on total income [30% of ₹ 11,17,600 + ₹ 1,12,500,]	4,47,780
Add: Health and education cess @4%	<u>17,911</u>
	4,65,691
Less: Relief under section 91 -	
Average rate of tax in India [(i.e., ₹ 4,65,691/21,17,600 x 100)]	21.991%
Average rate of tax in Country X	15%
Doubly Taxed income [Rental income of Rs. 2,43,600 + royalty income of Rs. 13,60,000]	16,03,600
Deduction under section 91 on Rs. 16,03,600 @15%, being lower average Indian tax rate and foreign tax rate.	<u>2,40,540</u>
<b>Tax Payable</b>	<b><u>2,25,151</u></b>
<b>Tax Payable (rounded off)</b>	<b>2,25,150</b>

<sup>3</sup> In the absence of any information relating to fair rent, municipal value and standard rent, rental income assumed to be gross annual value.

<sup>4</sup> Royalty can also be shown under the head "Income from other sources" instead of "Profits and gains from business or profession."

3. (a) (i) As per section 11(1A), where a capital asset held under trust (building, in this case) is transferred, and only a part of the net consideration is utilized for acquiring another capital asset, the amount of capital gains deemed to have been utilised for charitable or religious purposes shall be the excess of the proceeds utilised over the cost of the asset transferred.

In the present case, short-term capital gain of ₹ 1,30,000 [₹ 5,00,000 less ₹ 3,70,000] would arise on transfer of building held under trust, as building is held for a period of not more than 24 months. Further, the trust has invested part of the net consideration i.e., ₹ 4,00,000 out of ₹ 5,00,000, in fixed deposits for the tenure of 2 years.

Where the net consideration on sale of a capital asset is invested in fixed deposits, it is regarded as utilised for acquiring another capital asset<sup>5</sup>. Accordingly, capital gains utilised for investing in fixed deposits is deemed to be applied for charitable purpose.

Since only a part of the net consideration of ₹ 4,00,000 out of ₹ 5,00,000 is utilized for investing in fixed deposits, the amount of short-term capital gains to the extent of ₹ 30,000 (being the excess of proceeds utilized i.e., ₹ 4,00,000 over cost of transferred asset i.e., ₹ 3,70,000) would be deemed to be utilised for charitable purpose.

The balance of ₹ 1,00,000 is taxable in the hands of the trust. Applying such income to the objects of the trust would make the transaction, tax neutral.

- (ii) As per section 115BBC, anonymous donations received *inter alia* by trust or institution referred u/s 11 would be taxable @ 30% in excess of higher of -

- 5% of the total donations received by the assessee; or

- ₹ 1 lakh

However, the provisions of section 115BBC would not apply to anonymous donations received by trusts/institutions created or established wholly for religious and charitable purposes (i.e., partly charitable and partly religious institutions/trusts) other than anonymous donation made with a specific direction that such donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution.

In the present case, Samarpit trust is established for religious and charitable purposes and runs a hospital and a school. During the P.Y. 2021-22, it received anonymous donation of ₹ 3.2 crores in hospital and ₹ 4.8 crores in School. Since it received anonymous donation separately for hospital and school, the provisions of section 115BBC would not be attracted in respect of donations of ₹ 3.2 crores received by hospital.

However, the provisions of section 115BBC would be attracted in respect of anonymous donation received by school.

- (iii) As per *Explanation* below to section 10(23C)(iii), 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 (iiiad) and (iii) cannot be availed.

Since, in the present case, the aggregate annual receipt of ₹ 7.7 crores (₹ 3.5 crores from educational institution and ₹ 4.2 crores from hospital) exceeds the threshold of ₹ 5 crores, exemption under section 10(23C)(iiiad) and (iii) cannot be availed, even though the individual receipts have not exceeded ₹ 5 crores.

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<sup>5</sup> CIT v. Ambalal Sarabhai Trust No. 3 [1988] 173 ITR 683 (Guj)/ CIT v. Hindustan Welfare Trust [1994] 206 ITR 138 (Cal)/ CBDT instruction no. 883, dated 24.09.1975

- (b) (1) PR Ltd. and SK Ltd. of Canada are deemed to be associated enterprises, since SK Ltd., a Canadian company provides guarantee for loan of ₹ 9 crores taken by PR Ltd., which is 15% of the total borrowings (i.e., not less than 10%) of PR Ltd. i.e., 60 crores.

As per section 92B, the transactions entered into between PR Ltd. and SK Ltd., two associate enterprises, for sale of bedsheets falls within the meaning of “international transaction”.

As PR Ltd. has sold similar bedsheets to other dealers, being unrelated entity, at ₹ 2,300 per unit, the transactions between PR Ltd. and such unrelated party can be considered as a comparable uncontrolled transaction for the purpose of determining the arm’s length price of the transactions between PR Ltd. and SK Ltd. However, such figure needs to be adjusted by the functional adjustments.

#### Computation of ALP of transaction between PR Ltd. and SK Ltd.

Particulars	Amount (in ₹)
Selling price of each bedsheets to unrelated dealers in Canada	2,300
Add: Adjustment of cost of credit [PR Ltd. provides credit for 1 month to unrelated entity whereas it provided credit period of 3 months to SK Ltd. Therefore, adjustment for the cost of such credit has to be carried out to arrive at arm’s length price. (12% x 2,300 x 2/12)]	46
<b>Arm’s length price of 1 unit of bedsheets</b>	<b>2,346</b>
Arm’s length price of 4 lakh units of bedsheets (A)	93,84,00,000
Sale price of 4 lakh units of bedsheets by PR Ltd. to SK Ltd. (associated enterprise) (B) [2,200 x 4,00,000]	88,00,00,000
<b>Amount to be added to PR Ltd.’s total income by way of ALP adjustment</b>	<b>5,84,00,000</b>

- (2) Where the primary adjustment to transfer price has been made *suo moto* by PR Ltd. in its return of income, the time limit for the repatriation of such excess money (i.e., ₹ 584 lakhs) available with the associated enterprise (i.e., SK Ltd.) is within 90 days from 30.11.2022, being the due date of filing of return u/s 139(1) i.e., 28.2.2023.

- (3) The excess money (i.e., ₹ 584 lakhs) available with the associated enterprise (i.e., SK Ltd.) not repatriated to India within 90 days from the due date of filing return of income u/s 139(1) would be deemed as an advance made by the PR Ltd. to its associated enterprise, SK Ltd.

Interest would be calculated on such advance at the rate of one year marginal cost of fund lending rate of SBI as on 1st April of the relevant previous year i.e., 1.4.2022 + 3.25%, since the international transaction is denominated in Indian rupee.

#### Option to pay additional income-tax, if the excess money not repatriated

PR Ltd. has the option to pay additional income-tax @20.9664% (tax @18% plus surcharge @12% plus cess@4%) on excess money (i.e., ₹ 584 lakhs), in lieu of repatriation of such excess money.

Where additional income-tax is so paid by PR Ltd., it will not be required to make secondary adjustment and compute interest from the date of payment of such tax.

The additional income-tax so paid by PR Ltd. would be treated as the final payment of tax in respect of excess money not repatriated and no further credit would be allowed to PR Ltd. or to any other person in respect of the amount of additional income-tax so paid.

4. (a) (i) TDS under section 194C is not attracted since the payment of ₹ 3 lakhs<sup>1</sup> 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.2021-22 does not exceed ₹ 50 lakhs.



However, on payment of Rs. 75,000 towards commission to Mr. Vallish for business purposes, tax is required to be deducted at source u/s 194H @5%, since the payment exceeds ₹ 15,000, and Mr. Suresh's turnover from business exceeds ₹ 1 crore in the P.Y.2020-21.

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

- (ii) TDS provisions under section 194C are not attracted in respect of payments made for reconstruction of his residential house, since his turnover from business does not exceed ₹ 1 crore in the P.Y.2020-21. Even in case his turnover exceeds ₹ 1 crore, provisions of section 194C would not be attracted, as such amount is incurred for his personal purposes.

However, tax is required to be deducted at source under section 194M @5%, since TDS is not required to be deducted at source under section 194C and aggregate of payments (i.e., ₹ 55 lakhs) exceed ₹ 50 lakhs.

Accordingly, Rs. 2,75,000 (5% of Rs. 55,00,000) is required to be deducted at source under section 194M.

- (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) If an Indian company, being the borrower, incurs any expenditure by way of interest in respect of any debt issued by its non-resident associated enterprise and such interest exceeds ₹ 1 crore, then, the interest paid or payable by such Indian company in excess of 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA) or interest paid or payable to associated enterprise, whichever is lower, shall not be allowed as deduction as per section 94B.

Further, where the debt is issued by lender which is not associated enterprise but an associated enterprise provides an implicit or explicit guarantee to such lender, such debt shall be deemed to have been issued by an associated enterprise and limitation of interest deduction would be applicable.

In the present case, since Lite Ltd., a Country Y company, holds 36% share in Ridham Ltd., an Indian company, i.e., more than 26% of voting power, Lite Ltd. and Ridham Ltd. are deemed to be associated enterprise.

Since loan of ₹ 120 crores taken by Ridham Ltd., an Indian company from M & T Inc., Country M company, is guaranteed by Lite Ltd., an associated enterprise, such debt shall be deemed to have been issued by an associated enterprise and interest paid or payable to M & T Inc. shall be considered for the purpose of limitation of interest deduction under section 94B.

**Computation of income under the head profits and gains of business or profession of  
Ridham Ltd**

Particulars	Amount (in lakhs)
<b>Interest allowable u/s 94B for A.Y. 2021-22</b>	
Gross Profit	2,030
Less: Employee benefits expenses	<u>390</u>
<b>EBITDA</b>	<b>1,640</b>
Interest paid or payable to M & T Inc.	562
Lower of the following would be disallowed	
- Total interest paid or payable in excess of 30% of EBITDA [₹ 562 lakhs – ₹ 492 lakhs (i.e., 30% of ₹ 1,640 lakhs)]	₹ 70 lakhs
- Interest paid or payable to M & T Inc.	₹ 562 lakhs
Interest to be disallowed as deduction for A.Y. 2021-22, which can be carried forward up to 8 assessment years	70
<b>Interest allowable u/s 94B for A.Y. 2022-23</b>	
Gross Profit	1,780
Less: Employee benefits expenses	<u>402</u>
<b>EBITDA</b>	<b>1,378</b>
Interest paid or payable to M & T Inc.	389
Lower of the following would be disallowed	
- Total interest paid or payable in excess of 30% of EBITDA [₹ 389 lakhs – ₹ 413.40 lakhs (30% of ₹ 1,378 lakhs)]	Nil
- Interest paid or payable to M & T Inc.	₹ 389 lakhs
Interest to be disallowed as deduction for A.Y. 2022-23	Nil
Brought forward interest of A.Y. 2021-22 allowed as deduction against profits and gains of A.Y. 2022-23 to the extent of maximum allowable interest expenditure u/s 94B i.e., ₹ 24.4 lakhs [₹ 413.40 lakhs – ₹ 389 lakhs]	
Total interest allowed in A.Y. 2022-23 [₹ 389 lakhs + ₹ 24.40 lakhs]	<u>413.40</u>
Balance of amount of interest relating to AY 2021-22 is eligible for carried forward i.e., ₹ 45.60 lakhs (₹ 70 lakhs minus ₹ 24.40 lakhs) to 7 more subsequent assessment years.	
<b>Income under the head profit and gains of business or profession of Ridham Ltd. for A.Y. 2022-23</b>	
EBITDA	1,378.00
Less: Interest (maximum interest allowable as deduction u/s 94B)	413.40
Depreciation (As per the Income-tax Act, 1961)	<u>254.00</u>
	<b><u>710.60</u></b>

5. (a) (i) The authorised officer being DDI, Delhi is not having any jurisdiction over SK Ltd., Bhopal, and therefore, as per section 132(9A), the papers seized relating to this company shall be handed over by him to the Assessing Officer having jurisdiction over SK Ltd., Bhopal within a period of 60 days from the date on which the last of the authorisations for search was executed for taking further necessary action thereon.
- (ii) The contention raised by the Director will not be acceptable because as per the provisions of sub-section (4A)(i) of section 132, where any books of account, other documents, money, bullion, jewellery or other valuables are found in the possession or control of any person in the course of search, then, in respect thereof, it may be presumed that the same belongs to that person.
- (b) The action of the Commissioner in issuing the second notice is not justified. The term “record” has been defined in clause (b) of *Explanation* to section 263(1). According to this definition “record” shall include and shall be deemed always to have included all records relating to any proceeding under the Act available at the time of examination by the Commissioner. In other words, the information, material, report etc. which were not in existence at the time the assessment was made and came into existence afterwards can be taken into consideration by the Commissioner for the purpose of invoking his jurisdiction under section 263(1). However, at the same time, in view of the express provisions contained in clause (b) of the *Explanation* to section 263(1), such information, material, report etc. can be relied upon by the Commissioner only if the same forms part of record when the action under section 263 is taken by the Commissioner.
- Issuance of a notice under section 263 succeeds the examination of record by Commissioner. In the present case, the Commissioner initially issued a notice under section 263, after the examination of the record available before him. The subsequent second notice was on the basis of material collected under section 133A, which was totally unrelated and irrelevant to the issues sought to be revised in the first notice. Accordingly, the material on the basis of which the second notice was issued could not be said to be “record” available at the time of examination as emphasized in *Explanation (b)* to section 263(1).
- (c) 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) As per section 178, every person who is the liquidator of any company which is being wound up, whether under the orders of a Court or otherwise, is under a statutory obligation to give notice of such appointment within thirty days to the Assessing Officer who is entitled to assess the income of the company.

The liquidator is debarred from parting with the assets of company and its properties in his hands until he is notified by the Assessing Officer of the amount which will be sufficient to provide for any tax which is then, or is likely thereafter, to become payable by the company except with the prior approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and on being so notified, shall set aside an amount equal to the amount notified.

#### Consequences on failure to perform such obligations

If the liquidator fails to notify the Assessing Officer of his appointment within the time specified or fails to set aside the amount intimated by the Assessing Officer as being sufficient to provide for the tax liability of the company or parts with any of the assets or property of the company in his hands in contravention of the above provisions, he shall be personally liable for payment of the tax which the company would be liable to pay.

However, if the amount of any tax payable by the company is notified by the Assessing Officer, the personal liability of the liquidator shall be to the extent of such amount.

Failure to comply with the above requirement would be an offence punishable under section 276A.

- (b) **Computation of Tax Liability of Mr. Atharva & Mr. Vihaan for the A.Y. 2022-23 as per regular provisions of Income-tax Act**

Particulars	Mr. Atharva	Mr. Vihaan
<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/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	<u>24,000</u>	<u>-</u>
<b>Tax Liability</b>	<b>12,26,000</b>	<b>10,50,000</b>
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	1,00,000
Above ₹ 10,00,000 @30%	<u>67,800</u>	<u>15,000</u>
	1,80,300	1,27,500
Add: Health and Education cess @4%	<u>7,212</u>	<u>5,100</u>
<b>Tax liability</b>	<b>1,87,512</b>	<b>1,32,600</b>
<b>Tax liability (rounded off)</b>	<b>1,87,510</b>	<b>1,32,600</b>

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**Computation of Tax Liability of Mr. Atharva & Mr. Vihaan for the A.Y. 2022-23 as per section 115BAC**

Particulars	Mr. Atharva	Mr. Vihaan
<b>Total Income (computed as per regular provisions)</b>	<b>12,26,000</b>	<b>10,50,000</b>
Add: Standard deduction u/s 16(ia) [Not allowable as deduction u/s 115BAC]	<u>50,000</u>	<u>50,000</u>
	12,76,000	11,00,000
Add: 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>2,00,000</u>
	12,76,000	13,00,000
Add: Deduction under section 80D[Not allowable as deduction u/s 115BAC]	<u>24,000</u>	<u>-</u>
<b>Total income as per section 115BAC</b>	<b>13,00,000</b>	<b>13,00,000</b>
<b>Tax Liability</b>		
Upto ₹ 2,50,000	Nil	Nil
₹ 2,50,001 to ₹ 5,00,000 @ 5%	12,500	12,500
₹ 5,00,001 to ₹ 7,50,000 @ 10%	25,000	25,000
₹ 7,50,001 to ₹ 10,00,000 @ 15%	37,500	37,500
₹ 10,00,001 to ₹ 12,50,000 @ 20%	50,000	50,000
₹ 12,50,001 to ₹ 13,00,000 @ 25%	<u>12,500</u>	<u>12,500</u>
	1,37,500	1,37,500
Add: Health and education cess @4%	<u>5,500</u>	<u>5,500</u>
<b>Tax Liability</b>	<b>1,43,000</b>	<b>1,43,000</b>
<p>Since tax liability of Mr. Atharva as per section 115BAC of ₹ 1,43,000 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 opt for section 115BAC.</p> <p>However, in case of Mr. Vihaan, since his tax liability as the normal provisions of ₹ 1,32,600 is lower than the tax liability of ₹ 1,43,000 as per section 115BAC, it is advisable for him not to opt for section 115BAC and pay tax as per regular provisions.</p>		

- (c) Section 165A in the Finance Act, 2016 provides for equalisation 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.

In the present case, Trade & 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) Trade & Co. has no permanent establishment in India**

In this case, the gross receipts of the e-commerce operator from the e-commerce supply and services facilitated is ₹ 218 lakhs.

	Particulars	Amount in ₹
(a)	Receipts from sale of goods to persons resident in India	180 lakhs
(b)	Receipts from sale of goods to persons not resident in India (using internet protocol address located in India)	38 lakhs
<b>Total receipts</b>		<b>218 lakhs</b>

Since total receipts which are chargeable to equalisation levy exceed ₹ 2 crore, equalisation levy@2% is attracted on the above sum of ₹ 218 lakhs, which would amount to ₹ 4.36 lakhs.

**Note** – If the receipts in (b) above were only ₹ 14 lakhs, then equalisation levy would not be attracted since the gross receipts would be only ₹ 194 lakhs, which is less than ₹ 2 crores.

**(ii) Trade & Co. has a permanent establishment in India, and the sale of goods is effectively connected to the permanent establishment in India**

Equalisation levy would not be attracted where the E-Commerce Operator (Trade & 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 ₹ 38 lakhs or ₹ 14 lakhs.