PAPER 7: DIRECT TAX LAWS & INTERNATIONAL TAXATION

The provisions of direct tax laws, as amended by the Finance Act, 2020, the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and significant notifications and circulars issued upto 30.4.2021, are relevant for November, 2021 examination. The relevant assessment year is A.Y.2021-22. The November, 2020 edition of the Study Material has to be read along with the Statutory Update and Judicial Update for November, 2021 Examination webhosted at https://resource.cdn.icai.org/65081bos52350s.pdf and https://resource.cdn.icai.org/65080bos52350j.pdf, respectively, at the BoS Knowledge Portal.

QUESTIONS AND ANSWERS

Case Scenario 1

Mr. Harshit, a resident Indian, is in retail business in Mumbai and his turnover for F.Y.2019-20 was ₹ 8 crores. He regularly purchases goods from another resident, Mr. Pranav, a wholesaler in Mumbai, and the aggregate payments made by Mr. Harshit to Mr. Pranav during the F.Y.2020-21 was ₹ 80 lakh (₹ 20 lakh on 8.5.2020, ₹ 25 lakh on 27.8.2020, ₹ 20 lakh on 18.10.2020 and ₹ 15 lakh on 11.2.2021). Mr. Pranav's turnover for F.Y.2019-20 was ₹ 11 crores.

Mr. Pranav paid ₹ 5 lakhs on 1.9.2020 to M/s. Thomas Cook for a holiday package to Singapore for a week with his family, comprising of his wife and two children, being twins aged 22 years, in the last week of September. He also took an education loan of ₹ 15 lakhs on 1.2.2021 from State Bank of India, Madam Cama Road, Mumbai, for his son's two-year Master of Public Administration program in Columbia University, USA and remitted the said amount through the same bank, which is an authorised dealer, under the Liberalised Remittance Scheme of RBI (LRS). For his daughter's MBA in Iowa State University, USA, he remitted ₹ 12 lakhs on 15.2.2021, out of his personal savings, through Bank of India, Bandra branch, Mumbai which is also an authorised dealer, under LRS. Mr. Pranav also remitted ₹ 6 lakh on 28.3.2021, out of his personal savings, under LRS through Bank of India, Bandra branch, as gift to his sister residing in London, on the occasion of her 50th birthday.

On the basis of the facts given above, choose the most appropriate answer to Q.1 to Q.5 below -

1. Are provisions of TDS/TCS under the Income-tax Act, 1961 attracted in respect of purchase/sale transaction between Mr. Harshit and Mr. Pranav? If so, what is the quantum of tax to be deducted/collected for the P.Y.2020-21?

   (a) No; TDS/TCS provisions are not attracted for F.Y.2020-21, since the turnover of Mr. Harshit in the immediately preceding financial year i.e., F.Y.2019-20 does not exceed ₹ 10 crores.

   (b) Yes, Mr. Harishit has to deduct tax@0.075% of ₹ 30 lakhs (₹ 15 lakhs on 18.10.2020 and ₹ 15 lakhs on 11.2.2021)

(c) Yes, Mr. Pranav has to collect tax@0.075% of ₹ 30 lakhs (₹ 15 lakhs on 18.10.2020 and ₹ 15 lakhs on 11.2.2021)

(d) Yes, Mr. Pranav has to collect tax@0.1% of ₹ 30 lakhs (₹ 15 lakhs on 18.10.2020 and ₹ 15 lakhs on 11.2.2021)

2. In case of failure to furnish PAN by the deductee/collectee as required based on the answer to Q.1 above, what would be the applicable rate of TDS/TCS?

(a) Not applicable, since there is no requirement to deduct or collect tax

(b) 20%

(c) 5%

(d) 1%

3. Is Thomas Cook required to collect tax at source on receipt of ₹ 5 lakh from Mr. Pranav for holiday package to Singapore? If so, what is the amount of tax to be collected?

(a) TCS provisions are not attracted in respect of this transaction

(b) Yes; ₹ 25,000

(c) Yes; ₹ 2,500

(d) No tax is required to be collected at source, since the receipt does not exceed ₹ 7 lakh

4. What is the amount of tax to be collected from Mr. Pranav in respect of the remittance of amounts overseas for his son's and daughter's education?

(a) TCS@0.5% of ₹ 8 lakhs and ₹ 5 lakhs are attracted in respect of remittance for son's and daughter's education, respectively.

(b) TCS@5% of ₹ 8 lakhs and ₹ 5 lakhs are attracted in respect of remittance for son's and daughter's education, respectively

(c) TCS@0.5% of ₹ 8 lakhs and TCS@5% of ₹ 5 lakhs are attracted in respect of remittance for son's and daughter's education, respectively.

(d) TCS@5% of ₹ 8 lakhs is attracted in respect of remittance for son's education; No TCS is attracted in respect of remittance for daughter's education.

5. Are TCS provisions attracted in respect of remittance of gift to sister? If so, what is the amount of tax to be collected from Mr. Pranav?

(a) No, since the remittance is out of personal savings for a personal purpose

(b) No, since the amount remitted to his sister is less than ₹ 7 lakhs

(c) No, due to reasons stated in (a) and (b) above

(d) Yes, ₹ 30,000.

Case Scenario 2

A Ltd. is an Indian company which has invested in shares of other Indian and foreign companies. During the P.Y.2020-21, A Ltd. received dividend from these companies as follows:

	% of holding of A Ltd.	Date of declaration of dividend by the company	Date of distribution of dividend by the company	Amount of dividend [Gross] (₹)	Interest expenditure on loan borrowed for investment in shares (₹)
B Ltd., an Indian company	10%	20.6.2020	3.7.2020	2,00,000	45,000
C Inc, a foreign company	22%	17.9.2020	12.10.2020	4,00,000	90,000
D Inc., a foreign company	30%	13.11.2020	28.11.2020	6,00,000	1,30,000
E Ltd., an Indian company	15%	14.1.2021	2.2.2021	3,20,000	70,000

A Ltd. declared and distributed dividend of ₹ 6 lakhs for the F.Y.2019-20 in June, 2020 and dividend of ₹ 7 lakhs for the F.Y.2020-21 in July, 2021.

Mr. Aakash and Mr. Aarav are two brothers who have invested in shares of A Ltd. Both of them were born in India; their parents and grand parents were also born in India. Mr. Aakash is an Indian citizen who lives in Hyderabad. He is employed with a leading textile manufacturing unit at a salary of ₹ 1 lakh per month. His brother, Mr. Aarav is settled in Country Y since the year 2010. He is a citizen of Country Y and is a partner with a software development firm in Country Y. His share of profit in the Country Y firm for the F.Y.2020-21 is CYD 1,20,000, which was credited to his bank account in Country Y. The value of one CYD may be taken as ₹ 25. He is not subject to income-tax in Country Y, since the share of profits of a firm is exempt in the hands of partners in Country Y. Mr. Aarav visits India for four months (in continuation) every year. He earns interest of ₹ 14 lakhs from fixed deposits with Bank of India.

The details of investment in shares of A Ltd. by Mr. Aakash and Mr. Aarav are given below –

Name of the shareholder	% of holding	Month of declaration & distribution of dividend	Amt of dividend [Gross] (₹)	Interest expenditure on loan borrowed for investment in shares (₹)
Akash	10%	June, 2020	60,000	15,000
	10%	July, 2021	70,000	15,000
Aarav	15%	June, 2020	90,000	20,000
	15%	July, 2021	1,05,000	20,000

On the basis of the facts given above, choose the most appropriate answer to Q.6 to Q.10 below, on the basis of the provisions of the Income-tax Act, 1961 [Ignore the provisions of DTAA, if any, with Country Y for the purpose of answering these questions] -

6. What is the amount of dividend income includible in the gross total income of A Ltd. for A.Y.2021-22 under the provisions of the Income-tax Act, 1961?
   (a) ₹ 11,85,000
   (b) ₹ 12,16,000
   (c) ₹ 13,15,000
   (d) ₹ 13,36,000
7. What is the deduction allowable under section 80M to A Ltd. for A.Y.2021-22?
   (a) ₹ 6,00,000
   (b) ₹ 7,00,000
   (c) ₹ 9,20,000
   (d) ₹ 13,00,000
8. What is the tax liability (rounded off) of Mr. Aakash for A.Y.2021-22 under the provisions of the Income-tax Act, 1961 if he wishes to make maximum tax savings (ignore TDS)?
   (a) ₹ 1,32,600
   (b) ₹ 1,44,040
   (c) ₹ 1,78,780
   (d) ₹ 1,29,580
9. What is the residential status of Mr. Aarav for A.Y.2021-22?
   (a) Resident and Ordinarily resident
   (b) Resident but not ordinarily resident
   (c) Non-resident
   (d) Deemed resident
10. What is the tax liability (rounded off) of Mr. Aarav under the provisions of the Income-tax Act, 1961 for A.Y.2021-22, if he wishes to make maximum tax savings (ignore TDS)?
   (a) ₹ 11,22,260
   (b) ₹ 2,60,520
   (c) ₹ 1,87,720
   (d) ₹ 1,90,840

11. During the F.Y.2020-21, the following income accrues or arises to a specified fund –

    (i) Capital gains on transfer of rupee denominated bonds of NTPC Ltd., an Indian company (transfer effected in September, 2020 through India International Exchange, GIFT City, Gujarat and consideration received in US dollars)

    (ii) Interest on debentures issued by PQR Inc., a Country P company, whose POEM is outside India (assume that such income does not otherwise accrue or arise in India)

    (iii) Capital gains on transfer of shares of MNO Ltd., an Indian company

    (iv) Capital gains on transfer of debentures issued by MNO Ltd.

    (v) Income under the head "Profits and gains of business or profession" of a securitisation trust

    Which of the income referred to above when computed in the prescribed manner would be exempt in the hands of the specified fund under section 10(4D), assuming that the same are attributable to units held by a non-resident (not being the permanent establishment of a non-resident in India)?

    (a) (i) and (ii) only

    (b) (i), (ii) and (v) only

    (c) (i), (ii), (iv) and (v) only

    (d) (i), (ii), (iii), (iv) and (v).

12. During the P.Y.2020-21, Helpage, a charitable trust, made voluntary contributions, not being corpus donations, to –

    (i) another charitable trust registered u/s 12AA out of its current year income derived from property held under trust

    (ii) an educational institution referred to in section 10(23C)(vi) out of its current year income derived from property held under trust

    (iii) another charitable trust registered u/s 12AA out of the accumulated income of the trust

    Which of the above voluntary contributions are permitted as application of income for charitable purposes for A.Y.2021-22 under the provisions of the Income-tax Act, 1961?

    (a) None of the above

    (b) Only (i) above

    (c) (i) and (ii) above

    (d) (i) and (iii) above

13. What would be your answer to Q.12 above, had the voluntary contributions to the said trust/institution been in the form of corpus donations?

(a) None of the above

(b) Only (i) above

(c) (i) and (ii) above

(d) (i) and (iii) above

14. A real estate investment trust (REIT) receives dividend of ₹ 8 lakh in February, 2021 from A Ltd., a special purpose vehicle, in which the business trust holds 80% of shareholding. The REIT distributes the dividend to its unit holders in March, 2021. Mr. X is a resident Indian holding 5% units and Mr. Y is a non-resident holding 10% units. What would be the tax consequence in the hands of the REIT and its unit-holders Mr. X and Mr. Y?

(i) REIT enjoys pass-through status in respect of dividend received from A Ltd., only if A Ltd. does not opt for section 115BAA

(ii) REIT enjoys pass-through status in respect of dividend received from A Ltd., only if A Ltd. opts for section 115BAA

(iii) REIT enjoys pass-through status in respect of dividend received from A Ltd., irrespective of whether A Ltd. opts for section 115BAA

(iv) In cases where dividend is taxable in the hands of REIT, the same would be subject to tax at maximum marginal rate

(v) Dividend is exempt in the hands of Mr. X and Mr. Y, only if A Ltd. opts for section 115BAA

(vi) Dividend is exempt in the hands of Mr. X and Mr. Y, only if A Ltd. does not opt for section 115BAA

(vii) Dividend is exempt in the hands of Mr. X and Mr. Y, irrespective of whether A Ltd. opts for section 115BAA.

(viii) Tax is deductible by REIT on dividend distributed to Mr. X and Mr.Y@10%, only in cases where dividend is taxable in their hands

(ix) Tax is deductible by REIT on dividend distributed to Mr. X@7.5% and Mr.Y@10%, only in cases where dividend is taxable in their hands

(x) Tax is deductible by REIT on dividend distributed to Mr. X and Mr.Y@7.5%, only in cases where dividend is taxable in their hands

Which of the above statements are correct?

(a) (i), (iv) and (vii)

(b) (iii), (v) and (x)

(c) (iii), (vi) and (ix)

(d) (ii), (v) and (viii)

15. A Ltd. is a Singapore Company (whose POEM is in Singapore) which owns and operates an electronic platform for provision of services. B Ltd. is a Malaysian company (whose POEM is in Malaysia) which provides online advertisement services. The gross receipts from such services may be taken as ₹ 3 crores in the F.Y.2020-21 for both A Ltd and B Ltd. A Ltd. does not have a branch in India whereas B Ltd. has a branch in India at Mumbai and the online advertisement services are effectively connected to that branch. If Mr. X, a citizen and resident of India, has availed services from A Ltd. and B Ltd. in September, 2020 for purposes of business in India, and the amount payable to A Ltd. and B Ltd. is ₹ 5 lakhs and ₹ 12 lakhs, respectively, would equalisation levy be attracted in respect of the same?

(a) Equalisation levy would be attracted in both cases, albeit at different rates

(b) Equalisation levy@2% would be attracted in the hands of A Ltd. in respect of consideration received from Mr. X.

(c) Equalisation levy@6% would be attracted in respect of the transaction between Mr. X and B Ltd. However, no equalisation levy would be attracted in respect of transaction between Mr. X and A Ltd., since the said transaction has taken place before 1.10.2020.

(d) No equalisation levy would be attracted in both cases.

16. X Ltd. is an Indian company engaged in the business of generation of electricity. The company was set up on 1.4.2018 and on that date, it had employed 500 new employees, all of whom participate in recognized provident fund. The emoluments of these employees are paid by ECS through bank account @ ₹ 18,000 per month per employee for 150 employees, @₹ 22,000 per month per employee for 150 employees and @₹ 26,000 per month per employee for 200 employees. On 28.9.2019, it had exercised option for depreciation on written down value method on block of assets for A.Y.2019-20. Its turnover for P.Y.2018-19 and P.Y.2019-20 are ₹ 402 crores and ₹ 249 crores, respectively. On 1.10.2020, the company installed new plant and machinery of ₹ 9 crore and put the same to use immediately. The company has received dividend of ₹ 60 lakhs from other domestic companies during the P.Y.2020-21. X Ltd. distributed dividend of ₹ 72 lakhs for the F.Y.2020-21 in July, 2021.

Y Ltd. is an Indian company set up on 1.10.2020 for printing of books. On the same date, it installed new plant and machinery for ₹ 2 crore and put the same to use immediately. It employed 200 new employees on the said date@ ₹ 25,000 per month per employee. Their emoluments were paid by account payee cheque and all of them participate in recognized provident fund.

The gross total income for A.Y.2021-22 computed under the special provisions of the Income-tax Act, 1961 inserted by the Taxation Laws (Amendment) Act, 2019 is ₹ 6.60 crore for X Ltd. and ₹ 1 crore for Y Ltd. Both X Ltd. and Y Ltd. are subject to tax audit for A.Y.2021-22.

You are required to -

(i) Compute the tax liability of X Ltd. and Y Ltd. for A.Y.2021-22, assuming that the companies desire to avail the beneficial tax rates under the special provisions inserted by the Taxation Laws (Amendment) Act, 2019 in the Income-tax Act, 1961 by fulfilling the conditions specified thereunder.

(ii) Compute the total income of X Ltd. and Y Ltd. under the regular provisions of the Income-tax Act, 1961.

(iii) Examine whether it would it be beneficial for X Ltd. to opt for the special provisions inserted by the Taxation Laws (Amendment) Act, 2019. For this purpose, you may assume that the book profit of X Ltd. computed under section 115JB for A.Y.2021-22 for levy of minimum alternate tax is ₹ 4.20 crore.

17. Examine the tax consequences for A.Y.2021-22 in the case of the following charitable institution/trust, considering each case independently -

(i) A charitable institution, having its main object as "any other object of general public utility", carries on business in the course of actual carrying out of such advancement of any other object of general public utility and maintains separate books of account in respect of business. The gross receipts during the P.Y.2020-21 is ₹ 2 crore, which comprises of receipts of ₹ 44 lakh from such business and ₹ 1.56 crore by way of voluntary contributions (not being corpus donations). It has applied 85% of its gross receipts for charitable purposes.

(ii) A charitable trust paid annual rent of ₹ 12 lakh in the P.Y.2019-20 and ₹ 15 lakh in the P.Y.2020-21 in respect of a building used for charitable purposes, after deducting tax at source. However, tax deducted on such rent in the P.Y.2019-20 was remitted only in January, 2021; and tax deducted in the P.Y.2020-21 was remitted only in July, 2021.

(iii) A charitable trust registered under section 12AA with the object of "Relief of poor" changed its object on 1.4.2020 to "any other object of general public utility". The application of income in the year P.Y.2020-21 was towards general public utility and not relief of poor. It has, however, not applied for fresh registration under section 12AA (based on the modified object) upto 31.3.2021.

18. Saraswati Centre of Excellence Ltd. (SCEL) is an Indian company which is the end-user of shrink-wrapped computer software directly imported from Kallang Ltd. (KAL), a Singapore company (whose POEM is in Singapore) through an End-User Licence Agreement (EULA).

The broad terms of the EULA between the two companies are as follows -

Grant of licence. KAL grants SCEL a limited non-exclusive licence to install, use, access, display and run one copy of the shrink-wrapped Computer Software (SWCS) on a single Kallang Mobile Device, local hard disk(s) or other permanent storage media of one computer. SCEL should not make SWCS available over a network where it could be used by multiple computers at the same time. SCEL may make one copy of the SWCS in machine readable form for backup purposes only; provided that the backup copy must include all copyright or other proprietary notices contained on the original.

Reservation of rights and ownership. KAL reserves all rights not expressly granted to SCEL in this EULA. The SWCS is protected by copyright and other intellectual property laws and treaties. KAL owns the title, copyright and other intellectual property rights in the SWCS. The SWCS is licenced (only for use and not any other purpose), not sold.

Limitations on end user rights. SCEL shall not, and shall not enable or permit others to, copy, reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code or algorithms of, SWCS (except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation), or modify, or disable any features of, SWCS, or create derivative works based on the SWCS. SCEL should not rent, lease, lend, sub-license or provide commercial hosting services with the SWCS. SCEL should not transfer this EULA or the rights to the SWCS granted herein to any third party.

Based on the above terms of EULA, the provisions of the Income-tax Act, 1961 and the India-Singapore DTAA (the relevant extract of which is given below), examine whether the amount paid by SCEL to KAL, as consideration for the use of the SWCS can be considered as payment of royalty for the use of copyright in the computer software. If yes, are tax deduction provisions u/s 195 attracted in this case? Examine.

Extract of Article 12 of India-Singapore DTAA – Royalties and Fees for Technical Services

1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the royalties or fees for technical services, the tax so charged shall not exceed 10 per cent.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use :

(a) any copyright of a literary, artistic or scientific work, including cinematograph film or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, including gains derived from the alienation of any such right, property or information

19. A petition for stay of demand was filed by XYZ Ltd. before the Income-tax Appellate Tribunal in respect of a disputed demand for which appeal was pending before it. The Appellate Tribunal granted stay vide order dated 1.1.2021 for a period of 180 days from the date of such order, on deposit of 20% of the amount of tax by XYZ Ltd. Thereafter, the bench was functioning intermittently till 1.2.2022 on account of the COVID pandemic and therefore, the disputed matter could not be disposed of. In the meanwhile, in June 2021, XYZ Ltd. had made an application for extension of stay and was granted extension of stay upto 31.12.2021. Thereafter, on 5.1.2022, the Assessing Officer attached the bank account of XYZ Ltd. and recovered the amount of ₹ 15 lakhs against the arrear demand of ₹ 25 lakhs. The company requested the Assessing Officer to refund the amount as it holds stay over it. The Assessing Officer, however, rejected the contention of the assessee stating that the stay period expired on 31.12.2021, after which the order of stay stood vacated automatically. Examine the correctness of contention of the Assessing Officer.

20. Hutch Ltd., engaged in development of housing projects, filed its return of income for A.Y.2021-22 claiming deduction of ₹ 40 lakhs under section 80-IBA. The return was selected for scrutiny. In the assessment, a sum of ₹ 18 lakhs, being 30% of ₹ 60 lakhs, towards sub-contract payment was disallowed for non-deduction of tax at source by invoking section 40(a)(ia). The Assessing Officer, however, limited the deduction under section 80-IBA to the original amount claimed by Hutch Ltd. Hutch Ltd. contended that it was eligible for a higher deduction of ₹ 58 lakhs under section 80-IBA consequent to disallowance under section 40(a)(ia). Examine the correctness of contention of Hutch Ltd.

21. Mr. Vaibhav, a resident Indian aged 61 years, furnishes you the following particulars of income earned in India, Country P and Country Q for the P.Y. 2020-21. India does not have a double taxation avoidance agreement (DTAA) with Country P and Country Q.

Particulars	₹
Income from profession carried on in India	11,00,000
Agricultural income in Country P	75,000
Dividend received from a company incorporated in Country Q	2,20,000
Royalty income from a literary book from Country P (gross)	4,50,000
Expenses incurred for earning royalty	80,000
Business loss of proprietary business in Country Q	72,000
Rent from a house situated in Country Q (gross)	3,09,000
Municipal tax paid in respect of the above house in Country Q (not allowed as deduction in Country Q)	9,000

Note: Business loss in Country Q not eligible for set off against other incomes as per law of that country. Royalty income is brought into India in August, 2021 in US dollars.

The rates of tax in Country P and Country Q are 15% and 20%, respectively. Compute total income and tax payable by Mr. Vaibhav in India for A.Y.2021-22, assuming that he does not opt for the provisions of section 115BAC.

22. Jupiter Ltd. is an Indian company whose turnover for the P.Y. 2018-19 was ₹ 380 crores and P.Y.2019-20 was ₹ 410 crores. The following are the particulars furnished for the Assessment Year 2021-22:

Particulars	Total Income (₹)
As per return of income filed under section 139(1)	(10,00,000)
Determined under section 143(1)(a)	(7,00,000)
Assessed under section 143(3)	(2,00,000)
Reassessed under section 147	1,00,000

Can penalty be levied u/s 270A on M/s Jupiter Ltd.? If yes, compute the penalty leviable u/s 270A, assuming that –

(i) the company has not opted for section 115BAA;

(ii) none of the additions or disallowances made in the assessment or reassessment qualifies under section 270A(6); and

(iii) the under-reporting of income is not on account of mis-reporting.

23. Delta Ltd., an Indian company, declared total income of ₹ 2,100 crores computed in accordance with Chapter IV-D before making primary adjustment, if required, in respect of the loan transaction with Alps Inc, a Swiss company, for the year ended 31.03.2021. Alps Inc. had advanced a loan of Euro 350 crores carrying interest@9% p.a. on 1.4.2020 to Delta Ltd. The total book value of assets of Delta Ltd. was ₹ 60,000 crores. Assume that the amount of interest computed@9% p.a. and payable to Alps Inc. does not exceed 30% of EBITDA and that this is the only loan taken by Delta Ltd.

Alps Inc also advanced a loan of similar nature and amount to Beta Ltd., another Indian company@7% p.a. during the F.Y. 2020-21. The value of 1 Euro may be taken as ₹ 88. You are required to:

(i) Examine whether transfer pricing provisions under the Income-tax Act, 1961 would be attracted in this case and if so, on what basis.

(ii) Advise Delta Ltd. regarding primary adjustments, if any, to be made to the above income keeping in mind the transfer pricing provisions contained in the Income-tax Act, 1961 and compute the total income for A.Y.2021-22.

(iii) Elaborate on secondary adjustments, if any, required to be made under the provisions of Income-tax Act, 1961, assuming that Delta Ltd. has made the primary adjustment *suo moto*.

(iv) Calculate the additional income-tax liability, if Delta Ltd. opts for payment of additional income-tax in lieu of making secondary adjustment.

24. Analyze the tax consequence in the hands of Mr. Hugh Grant, a non-resident, for A.Y. 2021-22 in respect of fees for technical services (FTS) received from Himalaya Ltd., an Indian company, in pursuance of an agreement approved by the Central Government, if -

(a) India has no Double Tax Avoidance Agreement (DTAA) with Country X

(b) India has a DTAA with Country X, which provides for taxation of such FTS @8%.

(c) India has a DTAA with Country X, which provides for taxation of such FTS@15%.

Assume that Mr. Hugh Grant is a resident of Country X and he has no fixed place of his profession in India and that the technical services are utilised by Himalaya Ltd. for its business in India.

Also, examine whether Mr. Hugh Grant would be exempt from filing his return of income if tax deductible at source had been fully deducted in each case mentioned above in a manner most beneficial to him; and his total income comprises only of the said fees from technical services.

Would your answer change if he has a fixed place of his profession in India and he renders technical services through that place? Examine, in a case where India has no DTAA with Country X.

25. The Assessing Officer, with prior approval of Commissioner of Income-tax, surveyed Good Day Cyber Café, which was within his jurisdiction, at 1 a.m. on 1.6.2020 for the purpose of obtaining information which may be relevant to the proceedings under the Income-tax Act, 1961. The Cyber Café is kept open for business every day between 2 p.m. and 2 a.m.

On 15.6.2020, the Assessing Officer entered Bright Light Cyber Café which was also within his jurisdiction at 11 p.m. for the purpose of collecting information which may be useful for the purposes of the Income-tax Act, 1961. This Cyber Café is kept open for business every day between 12 noon to 12 midnight.

In both the above cases, the Assessing Officer impounded and retained in his custody for a period of 12 days (inclusive of holidays), books of account and other documents inspected by him, after recording reasons for doing so. The Assessing Officer, however, did not take prior permission from the Commissioner for doing so.

The owners of these Cyber Cafés claim that the Assessing Officer could not enter the café after sunset and take away with him the books of account kept at the Cyber Café. Also, the owner of Bright Light Cyber Café claimed that the Assessing Officer ought to have obtained the prior approval of the Commissioner before entering the Café. Examine the validity of the claim made by the owners and the action of the Assessing Officer in both the cases.

Would your answer change if the Assessing Officer had surveyed Good Day Cyber Café only for the purpose of verifying whether tax has been deducted/collected at source in accordance with the provisions of the Income-tax Act, 1961? Examine.

SUGGESTED ANSWERS/HINTS

MCQ No.	Most Appropriate Answer
1.	c
2.	d
3.	a
4.	c
5.	d
6.	d
7.	d
8.	d

MCQ No.	Most Appropriate Answer
9.	c
10.	c
11.	c
12.	c
13.	a
14.	c
15.	b

16. (i) Computation of tax liability of X Ltd. and Y Ltd. for A.Y.2021-22 u/s 115BAA

Particulars	X Ltd. ₹	Y Ltd. ₹
Gross Total Income computed u/s 115BAA	6,60,00,000	1,00,00,000
***Less:* Permissible deductions under Chapter VI-A**		
Under section 80JJAA	2,16,00,000	-
X Ltd - [(₹ 18,000 x 12 x 150) + (₹ 22,000 x 12 x 150)] x 30%		
Under section 80M	60,00,000	-
Dividend received (₹ 60 lakhs), to the extent of dividend distributed on or before the due date i.e., the date one month prior to the due date of filing of return u/s 139(1) (₹ 72 lakhs)		
Total Income	**3,84,00,000**	**1,00,00,000**
Computation of tax liability		
Income-tax@22% [As per section 115BAA]	84,48,000	22,00,000
Add: Surcharge@10%	8,44,800	2,20,000
	92,92,800	24,20,000

Add: Health and Education cess@4%	3,71,712	96,800
Total tax liability	**96,64,512**	**25,16,800**
Total tax liability (rounded off)	96,64,510	25,16,800

Notes:

(1) X Ltd. is eligible to opt for special provisions under section 115BAA, as per which the rate of tax would be 22% *plus* surcharge@10% *plus* HEC@4%. It is not eligible to opt for section 115BAB even though it is engaged in generation of electricity, since it was set up before 1.10.2019.

Y Ltd. is a set up after 1.10.2019, but it is not eligible to opt for section 115BAB, and avail benefit of concessional rate of tax@15% *plus* surcharge@10% and HEC@4%., since business of manufacture or production of any article or thing does not include business of printing of books. It is, however, eligible to opt for section 115BAA and pay tax@22% *plus* surcharge@10% *plus* HEC@4%.

(2) X Ltd. is eligible to claim deduction u/s 80JJAA, which is a permissible Chapter VI-A deduction while computing total income under section 115BAA, subject to fulfillment of conditions specified thereunder.

Since new employees are employed on 1.4.2018 in case of X Ltd., it can claim 30% of additional employee cost for three years, namely, P.Y.2018-19, P.Y.2019-20 and P.Y.2020-21. Accordingly, it would be entitled to deduction u/s 80JJAA for P.Y.2020-21. 150 employees whose emoluments are ₹ 18,000 p.m. and 150 employees whose emoluments are ₹ 22,000 p.m. qualify as additional employees. Further, these employees also participate in recognized provident fund and their emoluments are paid by way of ECS through bank account. 200 employees whose emoluments exceed ₹ 25,000 p.m. do not qualify as additional employees.

Y Ltd. is not entitled to claim deduction u/s 80JJAA for A.Y.2021-22, since its employees are not employed for a minimum period of 240 days in the P.Y.2020-21.

(3) X Ltd. is eligible to claim deduction u/s 80M, which is also a permissible Chapter VI-A deduction while computing total income under section 115BAA, subject to fulfillment of conditions specified thereunder. X Ltd. would be eligible to claim deduction in respect of dividend of ₹ 60 lakhs received from other domestic companies in the P.Y.2020-21, to the extent of the amount distributed to its shareholders on or before the due date, i.e., the date one month prior to the date of furnishing return of income under section 139(1). In this case, since it has distributed ₹ 72 lakhs in July, 2021, it is entitled to claim deduction of the entire amount of ₹ 60 lakhs received in the P.Y.2020-21 as dividend from other domestic companies.

(ii) Computation of total income of X Ltd. and Y Ltd. for A.Y.2021-22 under the regular provisions of the Income-tax Act, 1961

Particulars	X Ltd. ₹	Y Ltd. ₹
Gross Total Income computed u/s 115BAA	6,60,00,000	1,00,00,000
Less: Additional Depreciation [20% of ₹ 9 crore and ₹ 2 crore, respectively, since the plant and machinery has been put to use for 182 days (180 days or more) in the P.Y.2020-21]	1,80,00,000	40,00,000
Gross Total Income (computed under the regular provisions of the Act)	**4,80,00,000**	**60,00,000**
***Less:* Deductions under Chapter VI-A**		
Under section 80JJAA	2,16,00,000	-
X Ltd - [(₹ 18,000 x 12 x 150) + (₹ 22,000 x 12 x 150)] x 30%		
Under section 80M	60,00,000	-
Dividend received (₹ 60 lakhs), to the extent of dividend distributed on or before the due date i.e., the date one month prior to the due date of filing of return u/s 139(1) (₹ 72 lakhs)		
Total Income	**2,04,00,000**	**60,00,000**

Note – Both X Ltd. and Y Ltd. are entitled to additional depreciation@20% on new plant and machinery installed by them. X Ltd. is engaged in the business of generation of electricity, and hence qualifies for additional depreciation, since it has opted for depreciation as per written down value method. Once it has opted for WDV method for A.Y.2019-20, the same will apply for subsequent years also, as such option, once exercised shall be final and shall apply to all the subsequent assessment years. Further, the CBDT has, vide Circular No.15/2016 dated 19.5.2016 clarified that the business of printing amounts to manufacture or production of article or thing and is, therefore, eligible for additional depreciation. Hence, Y Ltd., engaged in the business of printing of books, is also eligible to claim additional depreciation.

(iii) Computation of tax liability of X Ltd. for A.Y.2021-22 as per the other provisions of the Act (other than section 115BAA)

Particulars	₹
Tax@30% on ₹ 2,04,00,000 [Since turnover of P.Y.2018-19 exceeds ₹ 400 crore]	61,20,000
Add: Surcharge @7% (since total income exceeds ₹ 1 crore but does not exceed ₹ 10 crore)	4,28,400
	65,48,400
Add: Health and Education cess@4%	2,61,936
Total tax liability	**68,10,336**
Total tax liability (rounded off)	**68,10,340**
Computation of MAT liability for A.Y.2021-22	
15% of book profit of ₹ 4.2 crore	63,00,000
Add: Surcharge@7% since book profit exceeds ₹ 1 crore but does not exceed ₹ 10 crore	4,41,000
	67,41,000
Add: Heath and Education cess@4%	2,69,640
	70,10,640
MAT credit to be carried forward u/s 115JAA	
MAT liability u/s 115JB	70,10,640
Less: Tax computed under the regular provisions of the Act	68,10,340
MAT credit to be carried forward	2,00,300

Since the MAT liability u/s 115JB is higher than the income-tax payable under the regular provisions of the Act, the book profit of ₹ 4.20 crore of X Ltd. would be deemed to be its total income and tax would be payable@16.692% (15% *plus* surcharge@7% *plus* HEC@4%). Hence, the tax liability of X Ltd. for A.Y.2021-22 would be ₹ 70,10,640. X Ltd. would, however, be entitled to carry forward MAT credit of ₹ 2,00,300 and set it off in future years, when the tax liability under the regular provisions of the Act is higher than the MAT liability.

Accordingly, since the tax liability under the other provisions of the Act (i.e., MAT liability) for A.Y.2021-22 is ₹ 70,10,640 *vis-à-vis* tax liability of ₹ 96,64,510 computed under section 115BAA, it is not beneficial for X Ltd. to opt for the special provisions under section 115BAA for A.Y.2021-22. Moreover, X Ltd. would be eligible to carry forward MAT credit of ₹ 2,00,300, if it pays tax as per the other provisions of the Act (i.e., other than section 115BAA). Hence, X Ltd. should **not** opt for the special provisions under section 115BAA for A.Y.2021-22.

17. Tax consequences in the hands of the charitable trust/institution for A.Y.2021-22

(i) In this case, the main object of the charitable institution is "any other object of general public utility" and therefore, its aggregate receipts from business undertaken in the course of actual carrying out of such advancement of any other object of general public utility should not exceed 20% of total receipts, if it wants to retain its "charitable status". However, the aggregate receipts from business for P.Y.2020-21, in this case, is 22% of total receipts. Hence, the institution would lose its "charitable status" for the P.Y.2020-21. Application of 85% of receipts for its main object during the year would not help in retaining its "charitable" status for that year.

(ii) Rent paid in respect of a building used for charitable purposes can be claimed as application of income for charitable purposes. However, since tax deducted on such rent paid for P.Y.2019-20 was remitted after the due date of filing of return of income u/s 139(1) for A.Y.2020-21, ₹ 3,60,000, being 30% of annual rent of ₹ 12 lakh, would not have been allowed as application in the P.Y.2019-20, by virtue of *Explanation 3* to section 11(1) read with section 40(a)(ia). However, since the tax so deducted was remitted in January, 2021, the said amount of ₹ 3,60,000 (i.e., 30% of rent not allowed as application in the P.Y.2019-20) would be allowed as application in the P.Y.2020-21 (A.Y.2021-22). Further, the rent of ₹ 15 lakh paid in the P.Y.2020-21 would also be allowed as application in A.Y.2021-22, since the tax deducted in respect of such rent was remitted in July, 2021 i.e., before the due date of filing of return u/s 139(1) for A.Y.2021-22. Therefore, an amount of ₹ 18,60,000 towards rent paid would be allowed as application of income in the P.Y.2020-21 (A.Y.2021-22).

(iii) As per section 115TD(3)(ii)(a), a trust would be deemed to have been converted into any form not eligible for registration under section 12AA in the P.Y.2020-21, if it has adopted or undertaken modification of its objects which do not confirm to the conditions of registration and it has not applied for fresh registration under section 12AA in that previous year. Accordingly, it would tantamount to deemed conversion of the trust into a form not eligible for registration under section 12AA and the accreted income of the trust shall be taxable at maximum marginal rate (@34.944%) as per section 115TD(1).

18. The issue of whether the amount paid by a resident Indian end-user to a non-resident computer software supplier for use of computer software can be treated as royalty came up before the Apex Court in *Engineering Analysis Centre of Excellence P. Ltd v. CIT and Another (2021) ITR 471.*

The Apex Court observed that as per the definition given in *Explanation 2(v)* to section 9(1)(vi) of the Income-tax Act, 1961, "royalty" means consideration for, *inter alia*, the transfer of all or any rights (including the granting of a licence), in respect of any copyright, literary, artistic or scientific work. Further, as per *Explanation 4* thereto, such transfer of all or any rights includes transfer of all or any right for use or right to use a computer software (including the granting of a licence).

As per the meaning assigned in the DTAA with Singapore, however, "royalty" means payment of any kind received as consideration for "**the use of, or the right to use, any copyright**" of a literary, artistic or scientific work. The Apex Court observed that where computer software is purchased directly by an end-user, resident in India, from a foreign, non-resident supplier or manufacturer, the end-user licence agreement (EULA) does not create any interest or right to such end-user, which would amount to the use of or right to use any copyright. The "licence" that is granted vide the EULA, is not a licence in terms of the Copyright Act, but is a "licence" which imposes restrictions or conditions for the use of computer software.

There is an important difference between the right to reproduce and the right to use computer software. Whereas the former would amount to parting with a copyright by the owner thereof, the latter would not. Under the non-exclusive licence, the end-user only receives a right to use the software and nothing more.

Accordingly, the Apex Court held that the amount paid by a resident Indian end-user to a non-resident computer software manufacturer or supplier, as consideration for the use of the computer software through EULA, is not royalty for the use of copyright in the computer software.

As per section 90(2), the provisions of the Income-tax Act, 1961 will apply only to the extent they are more beneficial to the assessee, in a case where India has entered into a DTAA with the other country. In this case, since the provisions under the DTAA are more beneficial, the taxability of the payment would be determined as per the meaning of royalty assigned under the DTAA between India and Singapore. The Apex Court, accordingly, held that the provisions contained in the Income-tax Act, 1961 [namely, section 9(1)(vi) read along with *Explanations 2 and 4 thereo*f], which deal with royalty, not being more beneficial to the assessee, would not be applicable.

Applying the rationale of the above decision to the facts of this case, the consideration paid by SCEL to KAL for use of SWCS as per the terms of EULA is not "royalty" as per the meaning assigned in the DTAA, since it does not create any interest or right to SCEL which would amount to the use of or right to use any copyright. Accordingly, the same does not give rise to any income chargeable to tax in India. Since the provisions of the DTAA are

more beneficial, the same would apply in the case on hand. Hence, the tax deduction at source provisions u/s 195 would not be attracted in this case.

19. As per section 254(2A), the Appellate Tribunal may, on merit, pass an order of stay in any proceedings relating to an appeal. However, such period of stay cannot exceed 180 days from the date of such order subject to the condition that the assessee deposits not less than 20% of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnishes security of equal amount in respect thereof.

No extension of stay shall be granted by the Appellate Tribunal, where such appeal is not so disposed of within the said period as specified in the order of stay, unless the assessee makes an application and has complied with the condition of depositing 20% of tax and the Appellate Tribunal is satisfied that the delay in disposing of the appeal is not attributable to the assessee. However, the aggregate of the period of stay originally allowed and the period of stay so extended cannot exceed 365 days and the Appellate Tribunal has to dispose of the appeal within the period or periods of stay so extended or allowed.

If such appeal is not so disposed of within 180 days or the period or periods extended not exceeding 365 days, the order of stay shall stand vacated after the expiry of such period or periods, **only if the delay in disposing of the appeal is attributable to the assessee.** It was so held by the Supreme Court in *DCIT v. Pepsi Foods Ltd (2021) 433 ITR 295.*

Accordingly, if an appeal is not heard by the bench, due to the bench functioning intermittently on account of the COVID pandemic, the delay is not attributable to XYZ Ltd. In such a case, though the extended stay period of 365 days had expired on 31.12.2021, the recovery of ₹ 15 lakhs against the arrear demand of ₹ 25 lakhs made by the Assessing Officer on 5.1.2022 is not in order, since the delay in disposing of the appeal is not attributable to XYZ Ltd. Therefore, the contention of the Assessing Officer is not correct. The order of stay would stand vacated after 31.12.2021, only in a case where the delay in disposing of the appeal had been attributable to XYZ Ltd.

***Note** – On account of the Supreme Court ruling in DCIT v. Pepsi Foods Ltd (2021) 433 ITR 295, the answer to Q.9 in pages 18.52 – 18.53 of the November, 2020 edition of the Study Material has undergone a change. Students are advised to read Q. 19 in this RTP and the answer given above in the place of Q.9 and its answer given in the Study Material.*

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

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

income becomes eligible for deduction as profit-linked deduction under Chapter VI-A is with reference to an assessee's gross total income.

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

Further, the CBDT has, in its *Circular No.37/2016 dated 2.11.2016*, mentioned that the courts have generally held that if the expenditure disallowed is related to the business activity against which the Chapter VI-A deduction has been claimed, the deduction needs to be allowed on the enhanced profits. Thus, the settled position is that the disallowances made under, *inter alia*, section 40(a)(ia), relating to the business activity against which the Chapter VI-A deduction has been claimed, result in enhancement of the profits of the eligible business, and that deduction under Chapter VI-A is admissible on the profits so enhanced by the disallowance.

Accordingly, applying the rationale of the Bombay High Court ruling and the CBDT Circular in this regard to the facts of this case, Hutch Ltd. would be entitled to claim deduction under section 80-IBA in respect of the enhanced profits of ₹ 58 lakhs, consequent to disallowance under section 40(a)(ia).

21. Computation of total income of Mr. Vaibhav for A.Y.2021-22

Particulars	₹	₹
Income from House Property [House situated in Country Q]		
Gross Annual Value[1]	3,09,000	
Less: Municipal taxes paid in Country Q	9,000	
Net Annual Value	3,00,000	
Less: Deduction under section 24 – 30% of NAV	90,000	2,10,000
Profits and Gains of Business or Profession		
Income from profession carried on in India	11,00,000	
Royalty income[2] from a literary book from Country P (after deducting expenses of ₹ 80,000)	3,70,000	
Less: Business loss of proprietary business in Country Q	72,000	
		13,98,000
Income from Other Sources		
Agricultural income in Country P [Not exempt]	75,000	

[1]Rental income has been taken as GAV in the absence of other information relating to fair rent, municipal value etc.

[2] Alternatively, royalty income can be taxable under the head "Income from Other Sources".

Dividend received from a company in Country Q	2,20,000	2,95,000
Gross Total Income		**19,03,000**
***Less:* Deduction under Chapter VI-A**		
Under section 80QQB – Royalty income of a resident from literary book allowable as deduction since the amount has been brought into India in convertible foreign exchange within six months from the end of the previous year		3,00,000
Total Income		**16,03,000**
Note – Since the adjusted total income of ₹ 19,03,000 [i.e., ₹ 16,03,000 (total income) + ₹ 3,00,000 (deduction u/s 80QQB)] does not exceed ₹ 20 lakhs, AMT would not be attracted in this case.		

Computation of tax liability of Mr. Vaibhav for A.Y.2021-22	
Particulars	**₹**
Tax on total income [30% of ₹ 6,03,000 + ₹ 1,10,000, since Mr. Vaibhav is a senior citizen, he is eligible for higher basic exemption limit of ₹ 3,00,000]	2,90,900
Add: Health and education cess@4%	11,636
	3,02,536
Less: Deduction u/s 91 **(See Working Note below)**	89,315
Tax Payable	**2,13,221**

Working Note: Computation of deduction under section 91

Deduction u/s 91 is available in respect of doubly taxed income earned in Country P and Q, with whom India does not have a double taxation avoidance agreement.		
Average rate of tax in India [i.e., ₹ 3,02,536/16,03,000 x 100]		18.873%
Rate of tax in Country P		15%
Rate of tax in Country Q		20%
Particulars	**₹**	**₹**
Doubly taxed income pertaining to Country P[3]		
Agricultural Income	75,000	
Royalty Income [₹ 4,50,000 – ₹ 80,000 (Expenses) –		

[3]*Doubly taxed income includes only that part of income which is included in the assessees total income. The amount deducted under Chapter VIA is not doubly taxed and hence, no relief is allowable in respect of such amount – CIT v. Dr. R.N. Jhanji (1990) 185 ITR 586 (Raj.).*

₹ 3,00,000 (deduction under section 80QQB)]	70,000	
	1,45,000	
Deduction under section 91 on ₹ 1,45,000 @15% [being the lower of average Indian tax rate (18.873%) and Country P tax rate (15%)]		21,750
Doubly Taxed Income pertaining to Country Q		
Income from house property	2,10,000	
Dividend	2,20,000	
	4,30,000	
Less: Loss from business set-off against other business income	72,000	
	3,58,000	
Deduction under section 91 on ₹ 3,58,000 @18.873% [being the lower of average Indian tax rate (18.873%) and Country Q tax rate (20%)]		67,565
Total deduction under section 91		**89,315**

Note: Mr. Vaibhav shall be allowed deduction u/s 91, since the following conditions are fulfilled:-

(a) He is a resident in India during the relevant previous year (i.e., P.Y.2020-21).

(b) The income in question accrues or arises to him outside India in foreign countries P and Q during that previous year and such income is not deemed to accrue or arise in India during the previous year.

(c) The income in question has been subjected to income-tax in the foreign countries P and Q in his hands and it is presumed that he has paid tax on such income in those countries.

(d) There is no agreement u/s 90 for the relief or avoidance of double taxation between India and Countries P and Q where the income has accrued or arisen.

22. Jupiter Ltd. is deemed to have under-reported its income since:

(1) the assessment u/s 143(3) has the effect of reducing the loss determined in a return processed u/s 143(1)(a); and

(2) the reassessment u/s 147 has the effect of converting the loss assessed u/s 143(3) into income.

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

The applicable rate of income-tax for Jupiter Ltd., an Indian company, for A.Y.2021-22 is 25%**,** since its turnover for the P.Y.2018-19 does not exceed ₹ 400 crores.

Computation of penalty leviable under section 270A

Particulars	₹	₹
Assessment under section 143(3)		
Under-reported income:		
Loss assessed u/s 143(3)	(2,00,000)	
(-) Loss determined under section 143(1)(a)	(7,00,000)	
	5,00,000	
Tax payable on under-reported income @25%	1,25,000	
Add: HEC@4%	5,000	
	1,30,000	
Penalty leviable @50% of tax payable		65,000
Reassessment under section 147		
Under-reported income:		
Total income reassessed under section 147	1,00,000	
(-) Loss assessed under section 143(3)	(2,00,000)	
	3,00,000	
Tax payable on under-reported income @25%	75,000	
Add: HEC @4%	3,000	
	78,000	
Penalty leviable@50% of tax payable		39,000

23. (i) Delta Ltd., an Indian company and Alps Inc, a Swiss company are deemed to be associated enterprises since the latter has advanced a loan to the former which constitutes 51.33% of the book value of total assets of the former [Euro 350 crores x ₹ 88/Rs.60,000 crores]. Since the loan advanced by Alps Inc is not less than 51% of the book value of the total assets of Delta Ltd., the two companies are deemed to be associated enterprises.

A loan transaction between two enterprises, one of whom is a non-resident (Alps Inc, Switzerland, in this case), would be an international transaction. Accordingly, transfer pricing provisions would be attracted in this case.

(ii) The interest rate charged by Alps Inc. on loan advanced to Delta Ltd. is 9% p.a. whereas the arm's length interest charged by Alps Inc. in a comparable uncontrolled transaction with Beta Ltd., another Indian company, is 7% p.a. Therefore, the arm's length adjustment (primary adjustment) to be made is = 9% - 7% = 2% of ₹ 30,800 crores (Euro 350 crores x ₹ 88, being the value of 1 Euro) = ₹ 616 crores

The total income (after primary adjustment) of Delta Ltd for P.Y.2020-21 = ₹ 2,100 crores + primary adjustment of ₹ 616 crores = ₹ 2,716 crores.

(iii) Since the primary adjustment has been made by Delta Ltd. *suo moto* while filing its return of income for A.Y.2021-22, Delta Ltd. has to carry out secondary adjustment in the following manner.

The excess money (i.e., ₹ 616 crores) lying with Alps Inc has to be repatriated within 90 days from 30.11.2021, being the due date for filing return of income.

If the excess money is not repatriated on or before 28th February, 2022, it would be deemed as an advance made by Delta Ltd. to Alps Inc and interest would be chargeable from 30.11.2021 at six month LIBOR as on 30th September, 2021 + 3%, since the loan is denominated in Euros. Such interest for the period from 30.11.2021 to 31.3.2022 (assuming that it has not been repatriated upto 31.3.2022) would be included in the total income of Delta Ltd. for P.Y.2021-22.

(iv) If Delta Ltd. opts for payment of additional income-tax, it has to pay ₹ 129.153 crores [i.e., 20.9664% (tax@18% + surcharge@12% + cess@4%) of ₹ 616 crores].

24. As per section 9(1)(vii)(b), income by way of fees for technical services payable by a resident is deemed to accrue or arise in India, except where the fees is payable, *inter alia,* in respect of services utilized in a business or profession carried on by such person outside India. In this case, since Himalaya Ltd. utilizes the technical services for its business in India, the fees for technical services payable by Himalaya Ltd. is deemed to accrue or arise in India in the hands of the non-resident, Mr. Hugh Grant.

In accordance with the provisions of section 115A, where the total income of a non-corporate non-resident includes any income by way of fees for technical services other than the income referred to in section 44DA(1), received from an Indian concern in pursuance of an agreement made by him with the Indian concern and the agreement is approved by the Central Government, then, the special rate of tax at 10% of such fees for technical services is applicable. No deduction would be allowable under sections 28 to 44C and section 57 while computing such income. The non-resident would be exempt from the requirement of filing return of income under section 139(1), if tax deductible at source has been fully deducted and the rate of tax deduction is not less than the rate specified in section 115A and his total income comprises only of income referred to in section 115A.

Section 90(2) makes it clear that where the Central Government has entered into a DTAA with a country outside India, then, in respect of an assessee to whom such agreement applies, the provisions of the Act shall apply to the extent they are more beneficial to the assessee.

(a) In this case, since India does not have a DTAA with Country X, of which Mr. Hugh Grant is a resident, the fees for technical services (FTS) received from Himalaya Ltd., an Indian company, would be taxable @10%, by virtue of the provisions of section 115A (*plus* surcharge, if applicable, and health and education cess@4%). If tax deductible at source at the said rate has been fully deducted, he would be exempt from the requirement of filing return of income under section 139(1), since his total income comprises only of such fees for technical services taxable u/s 115A.

(b) In this case, the FTS from Himalaya Ltd. would be taxable @8%, being the rate specified in the DTAA, even though section 115A provides for a higher rate of tax, since the tax rate specified in the DTAA is more beneficial. However, since Mr. Hugh Grant is a non-resident, he has to furnish a tax residency certificate from the Government of Country X for claiming such benefit. Also, he has to furnish other information, namely, his nationality, his tax identification number in Country X and his address in Country X. Further, he would not be exempt from the requirement to file return of income under section 139(1), since tax would have been deducted at 8%, being the rate specified in the DTAA, which is lower than the rate of 10% u/s 115A.

(c) In this case, the FTS from Himalaya Ltd. would be taxable @10% as per section 115A (plus surcharge, if applicable, and health and education cess@4%), even though DTAA provides for a higher rate of tax, since the provisions of the Act (i.e. section 115A in this case) are more beneficial. If tax deductible at source at the said rate has been fully deducted, he would be exempt from the requirement of filing return of income under section 139(1), since his total income comprises only of such fees for technical services taxable u/s 115A.

If Mr. Hugh Grant has a fixed place of profession in India, and he renders technical services through the fixed place of profession, then, by virtue of section 44DA, such income by way of fees for technical services received by Mr. Hugh Grant from Himalaya Ltd., India, would be computed under the head "Profits and gains of business or profession" in accordance with the provisions of Income-tax Act, 1961, since technical services are provided from a fixed place of profession situated in India and fees for technical services is received from an Indian concern in pursuance of an agreement with the non-resident and is effectively connected with such fixed place of profession. No deduction would, however, be allowed in respect of any expenditure or allowance which is not wholly and exclusively incurred for the fixed place of profession in India. Mr. Hugh Grant would be required to keep and maintain books of account and other documents in accordance with the provisions contained in section 44AA and get his accounts audited by an accountant and furnish the report of such audit in the prescribed form duly signed and verified by such accountant on or before the specified date referred to in section 44AB [i.e., date one month prior to the due date of filing of return of income u/s 139(1)].

It may be noted that the concessional rate of tax@10% under section 115A would not apply in this case. Further, he would not be exempt from the requirement of filing return of income under section 139(1).

25. Good Day Cyber Cafe

For the period upto 31.10.2020, the Assessing Officer can exercise his power of survey under section 133A only after obtaining the approval of the Joint Director/Joint Commissioner, where information is received from prescribed authority and Director/Commissioner, in any other case. In this case, since he has obtained prior approval of the Commissioner, he is empowered under section 133A to enter any place of business of the Good Day Cyber Café, which was within his jurisdiction, only during the hours at which such place is open for the conduct of business. It is only in case he wishes to enter any other place, other than the place of business, he has to do so before sunset.

Good Day Cyber Cafe is open from 2.00 p.m. to 2.00 a.m. for the conduct of business. The Assessing Officer entered the cyber cafe at 1 a.m. which falls within the working hours of the cyber cafe. Therefore, the claim made by the owner of Good Day Cyber Cafe to the effect that the Assessing Officer could not enter the cyber cafe after sunset is not correct.

Further, as per section 133A(3)(ia), the Assessing Officer may, impound and retain in his custody for such period as he thinks fit, any books of account or other documents inspected by him. However, he shall not impound any books of account or other documents except after recording his reasons for doing so. He shall not retain in his custody any such books of account or other documents for a period exceeding 15 days (exclusive of holidays) without obtaining the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner or Principal Director or Director therefor, as the case may be. In this case, since the Assessing Officer has recorded his reasons for impounding and the period of retention is only 12 days (inclusive of holidays), prior approval of higher authorities is not required for this purpose.

Hence, the action of the Assessing Officer in entering the premises at 1 a.m. and impounding and retaining books of account and other documents inspected by him for 12 days is within the powers of survey conferred on him under section 133A.

However, in case the Assessing Officer had surveyed the Cyber Café only for the purpose of verifying whether tax has been deducted/collected at source in accordance with the provisions of the Income-tax Act, 1961, then, he cannot enter the Café after sunset and impound and retain books of account inspected by him, by virtue of the restrictions laid down in section 133A(2A) read with the proviso to section 133A(3).

Bright Light Cyber Cafe

Section 133B empowers an income-tax authority to enter any place of business during the hours at which such place is open for the conduct of business for the purpose of collecting information which may be useful for the purposes of the Income-tax Act, 1961. The Cyber Cafe is open from 12 noon to 12 midnight for the conduct of business. The Assessing Officer entered the hotel at 11 p.m. which fell within the working hours. The claim made by the Cyber Café owner to the effect that the Assessing Officer could not enter the Cyber Cafe after sunset is not in accordance with law. Also, in case of section 133B, the prior permission of Commissioner or any other higher authority is not required[4].

Section 133B(3) provides that the Assessing Officer acting under this section shall, on no account, remove or cause to be removed from the place wherein he has entered, any books of account. In view of this clear prohibition in section 133B(3), the action of the Assessing Officer in impounding and retaining with him the books of account kept at the Bright Light Cyber Cafe is **not** valid in law.

[4] Except in case the income-tax authority happens to be an Inspector of Income-tax, in which authorisation of Assessing Officer is required.