

Direct Tax laws & International Taxation

Nov 2019 – an analysis

Nov 2019 DT paper (new): an analysis and coverage

The syllabus of DT is very vast and the trick to scoring well is the last day revision of all the course. Thus before the exams I always release the SET's [Special emphasis topics] for *that* attempt, which in my perspective will cover 80% of the paper. As I firmly believe in smart study to score maximum marks alongwith conceptual clarity.



CA. Arvind Tuli

a) Past trend and comparative coverage in Nov 2019

The trick is in being able to target the paper smartly as well. We had given an analysis of the topics covered in the exams and mock tests from the previous 3 attempts before the exams

Module	Chapter	May-18	Nov-18	Mock Test 2019		May-19	Average		Nov-19	
				MCQ	Subjective		total	%age	total	%age
1	Basics				4		4	1%		
	House Property						0	0%		
	Salary						0	0%	3	3%
	TDS & TCS	9	14	4	11	8	46	10%	8	9%
2	B&P	7	20	6		14	47	11%	18	20%
3A	Capital Gains	13	15				28	6%		
	Business Reorganisation						0	0%		
3B	Other Sources			2			2	0%		
	Clubbing						0	0%		
	Set off or losses	4			5		9	2%		
	Deductions	11			3		14	3%	3	3%
	HUF						0	0%		
4A	Firms & AOP						0	0%	8	9%
	Charitable Trust	4	8		8	8	28	6%	8	9%
	MAT & AMT	14	14		14	8	50	11%		0%
	Returns of Income	3					3	1%		
4B	Assessments	3	6	3		8	20	4%		
	Appeals & Revisions	4	5	2	4		15	3%	4	5%
	Powers of ITA	4	8	1	4	4	21	5%		
	Settlement Commission	3					3	1%		
	Misc Topics	8					8	2%	4	5%
	10AA	5					5	1%	4	5%
	Interest						0	0%		0%
	penalties				4		4	1%		0%
5	DTAA & Relief	6	9	1	10		26	6%		0%

	RS & PE	6	9				15	3%	6	7%
	Special Incomes of NR	6	6	2	2	9	25	6%	6	7%
	AAR & DRP	3		1	3	3	10	2%		0%
	Transfer Pricing	6	6	3	4	6	25	6%	6	7%
						6	6	1%		
	NJA				3		3	1%		
	E – Commerce transactions						0	0%		
	Conversion of Branch into Subsidiary						0	0%		
	Model Tax Conventions	3					3	1%		
	Application & Interpretation of tax treaties	3	6		6	6	21	5%	6	7%
	BEPS						0	0%		
	GAAR			2		4	6	1%	4	5%

Nov 19: Point wise sections covered and related coverage from topic in the notes

My view on the paper:

- As can be seen there is a 80% paper from topics marked in yellow and this can help in scoring marks as these are the topics we tell a student to lay stress on.
- The paper was a tricky paper with some unexpected questions mainly from smaller topics
- The framing of the questions was in a manner to simulate practical situations and thus checking the ability of a student to think and not just answer the questions from memory

The Paper is always going to be relatively difficult after all its the CA Final direct tax paper. I always say the Indian chartered accountant exams are the toughest in the world , more so because of the competition , we have with so many brilliant students appearing in one attempt. Having said that this , in my view, this was a relatively simpler paper with more or less standard points raised.

I have always advocated the mastering of the 3 - Presentation , Timing & Concepts [PTC] to ensure success in the course. Thus If you had an in depth understanding of the concepts and had presented the paper with working notes to maximise marks and had completed the paper then the chances are that you will pass.

I will share a story of two students which I always tell in class

Anuradha: who after the paper came to me telling me that she cannot pass as she had only attempted 74 marks of the paper. She had written in detail all the working notes and was sure that whatever she had attempted, she had attempted well

Ankit: one of the best students I have had and could understand and grasp the concepts of taxation better than most. He had attempted the entire paper and completed it before time (almost one hour to spare) and had written most answers in short (totally correct but without explaining the reasons), was sure he is going to get an exemption.

The result - Anuradha got 64 and Ankit scored 32.

Knowing the subject and scoring marks are totally different and one must understand the marking scheme and examination pattern to be able to score marks and that's what I lay stress on. We are enclosing the scanned images of the paper with comments for your appraisal

Am giving here a detailed question by question analysis of the paper

GMS2

Roll No. 422204

Total No. of Printed Pages – 15

Total No. of Questions – 6

Maximum Marks – 70

GENERAL INSTRUCTIONS TO CANDIDATES

1. The question paper comprises two parts, Part I and Part II.
2. Part I comprises Multiple Choice Questions (MCQs).
3. Part II comprises questions which require descriptive type answers.
4. Ensure that you receive the question paper relating to both the parts. If you have not received both, bring it to the notice of the invigilator.
5. Answers to Questions in Part I are to be marked on the OMR answer sheet only. Answers to questions in Part II are to be written on the descriptive type answer book. Answers to MCQs, if written in the descriptive type answer book, will not be evaluated.
6. OMR answer sheet will be in English only for all candidates, including for Hindi medium candidates.
7. The bar coded sticker provided in the attendance register, is to be affixed only on the descriptive type answer book. No bar code sticker is to be affixed on the OMR answer sheet.
8. You will be allowed to leave the examination hall only after the conclusion of the exam. If you have completed the paper before time, remain in your seat till the conclusion of the exam.
9. Duration of the examination is 3 hours. You will be required to submit (a) Part I of the question paper containing MCQs, (b) OMR answer sheet thereon and (c) the answer book in respect of descriptive type answer book to the invigilator before leaving the exam hall, after the conclusion of the exam.
10. The invigilator will give you acknowledgement on Page 2 of the admit card, upon receipt of the above-mentioned items.
11. Candidate found copying or receiving or giving any help or defying instructions of the invigilators will be expelled from the examination and will also be liable for further punitive action.

PART – II

70 marks

1. Question paper comprises 6 questions. Answer Question No. 1 which is compulsory and any 4 out of the remaining 5 questions.
2. Working notes should form part of the answer.
3. Answers to the questions are to be given only in English except in the case of candidates who have opted for Hindi Medium. If a candidate has not opted for Hindi Medium, his/her answers in Hindi will not be evaluated.
4. All questions relate to Assessment Year 2019-20, unless stated otherwise in the question.

GMS2

P.T.O.

NOTE:

in RED: I have marked the appl. section

in Green: I have mentioned the topic of my notes where these are covered

(2)

GMS2

PART - II

1. Anamika Builders and Constructions Ltd., a company resident in India is engaged in the business of construction and real estate. Net profit as per profit and loss account is ₹ 54,80,000 (prepared in accordance with ICDS) after debiting/crediting the following items :

14

- (i) Depreciation debited to books, ₹ 8,47,000.
- (ii) Gross revenue includes ₹ 5,00,000 in respect of a service contract for maintenance of the office building for Nitup Ltd. for the period from 1st March, 2019 to 30th April, 2019. The expenses incurred on the project till 31-3-2019 amounts to ₹ 1,27,000 which is included in other expenses.
- (iii) The amount of employee benefits include a sum of ₹ 4,41,000 in respect of bonus payable to employees. In the previous year 2018-19, the company and its employee's union had a dispute over payment of bonus. In order to avoid late payment of bonus, the company formed a trust and transferred the amount of bonus payable to employees to the said trust. The dispute was settled in the month of November, 2019 and the trust paid the amount of bonus to the employees on 30th December, 2019.
- (iv) Capital gains on sale of shares in Yara Ltd. ₹ 3,77,500.
- (v) In respect of one of its on-going projects, the assessee had made some structural changes contrary to what was earlier approved by the municipal authorities. Assessee hence paid a sum of ₹ 98,000 as regularization fee in respect of such changes made in the construction plan.
- (vi) Other expenses include ₹ 1,45,000 as expenditure incurred on CSR.

Sec 32
[8.2.3]
ICDS IV

[8A.4-1]

Sec 43B
[8.2.8]

Sec 37(i)
[8.2.5k]

CIT v Milleria Develop

Sec 37(i)
[8.2.5l]

GMS2

(3)

GMS2

(vii) During the previous year 2018-19, the assessee-company decided to expand its business and open a retail petrol out let. Accordingly, a sum of ₹ 1,75,000 was deposited with the concerned authority. However, the assessee could not start this operation and the deposit with the authority was forfeited. Amount paid for advertisement in political parties' brochure ₹ 48,000.

Sec 37

Sec 37(2B)
[8.2.5m]

(viii) During the previous year, 2018-19 the assessee entered into an agreement with Bat Ltd. As per the agreement, Bat Ltd. has agreed to not to engage in the business of real estate trading. The assessee paid ₹ 11 lakhs without deduction of tax at source on 1-6-2018 as non-compete fee.

Sec 194J

Sec 40(a)

[8.1.4c]

Additional Information :

(i) Depreciation as per Income-tax Act, ₹ 5,14,000. This includes an amount of ₹ 78,000 in respect of fire fighting equipments installed in various business premises/offices of the assessee. During the year, as there were no incidence of fire, these equipments were not used.

Sec 32

[8.2.3]

(ii) On 26th October, out of 5 unsold office spaces in a mall, the assessee converted one such space into its own office. The fair market value of that space as on that date was ₹ 15,00,000. The cost incurred originally to construct such space was ₹ 10,00,000.

Sec 28(via)

[8.1.4c]

(4)

GMS2

(iii) In respect of ongoing construction contracts, there was a claim for escalation of prices, to the tune of ₹ 8,50,000. The company had filed a lawsuit in the year 2017. In the previous year 2018-19, the court gave its judgement in favour of the company. The company has received ₹ 2,00,000 till 31-03-2019. Gross receipt in the profit and loss account includes ₹ 2,00,000 in respect of such claims.

(iv) The assessee held 250 shares in Yara Ltd. On 1-4-2017, Y Ltd. allotted bonus shares in the ratio of 1 : 1. The company sold all the shares in Yara Ltd. on 24th September 2018 for ₹ 2,050 per share. The company had acquired the original shares for ₹ 540 on 23-06-2015. The fair market value of the shares as at 31st January 2018 was ₹ 1,980 per share.

You are required to compute the total income chargeable to tax in the hands of Anamika Builders and Constructions Ltd., for the Assessment Year 2019-20 giving a brief explanation to each item of additions or deletions. Ignore provisions of MAT.

Add Dep.

2. (a) Ram Manufactures LLP., engaged in manufacturing activity which is liable for GST @ 18%. The firm consists of 4 equal partners who contributed ₹ 15 lakhs each as capital. The partnership deed authorises interest on capital @ 9% per annum besides working partner salary of ₹ 25,000 per month to each partner, as all of them are working partners.

ICDS III

[8A.3]

Investment
< 9

[9.4]

8

Sec 40(b)

[16.2.1]

GMS2

A survey under section 133A was conducted in the premises of the firm on 23-01-2019 and during the course of survey (a) bills and vouchers (each below ₹ 10,000) aggregating to ₹ 2,50,000 were found in the premises which were not recorded in the books of account; and (b) unaccounted stock of ₹ 10,50,000 was found in the premises on 23-01-2019.

Note : No effect was given in the books of account of the firm for the above said items even after the conclusion of survey.

The following issues are presented to you :

(i) Depreciation debited in the profit and loss account includes ₹ 3,00,000 representing depreciation on non-compete fee of ₹ 30,00,000 being the amount paid to a retired partner on 30-4-2016.

Sec 45(4).

[16.2.3A]

(ii) The firm allowed ₹ 4,00,000 as discount on goods sold to A & Co, a proprietary concern owned by one of the partners.

40(b)

[16.2-8]

(iii) Depreciation debited to profit and loss account does not include depreciation on the following :

(a) Plant & Machinery (new) acquired in November, 2018 and used during the year cost ₹ 23,60,000 (including GST @ 18%).

Sec 32

[8.2.3]

(b) Construction of one factory building was completed on 31st December, 2018 and it was put to use w.e.f. 01-01-2019. The cost of construction admitted in the books was ₹ 40,90,000.

Sec 32

[8.2.3]

(6)

GMS2

The firm availed loan from a bank for construction of the above said factory building on 20th October, 2017. Interest payable details are as under :

Period	₹
From 20-10-2017 to 31-03-2018	2,00,000
From 01-04-2018 to 31-12-2018	7,00,000
From 01-01-2019 to 31-03-2019	4,20,000

43B
[82.8]

No amount by way of loan interest was paid till 'due date' of filing the return of income prescribed under section 139(1). The loan interest is not debited to profit and loss account and also not included in the cost of construction of the factory building.

- (iv) The net profit of the firm for the year ended 31-03-2019 was ₹ 17,21,375 after deducting interest on capital and working partner salary.

You are requested to compute the total income of the firm by giving brief reasons for each of the item given above.

- (b) Mr. Bhist, a non-resident individual, earned an interest income of ₹ 12 lakhs on an investment made in a notified Infrastructure Debt Fund set up in India eligible for exemption under section 10(47) during the financial year 2018-19. Further, he incurred an expenditure of ₹ 15,000 for earning such interest income. Examine the Tax implications in the hands of both Fund and Mr. Bhist and justify your conclusions with relevant provisions of Income-tax Act, 1961 in two situations, when
- (i) Mr. Bhist is residing in Notified Jurisdictional Area; and
- (ii) Mr. Bhist is stationed outside India, in a place other than NJA.

6

Sec
194LB
10(47)

262-2

Similar
Ques on
[29.1-5]

Sec 94A

Will there be any change in tax liability of Mr. Bhist, if the income received is fee for technical services from an Indian Company in lieu of interest income from Infrastructure Debt Fund ?

- Same -

- (a) GVB Charitable Trust engaged in the activities of running a charitable hospital and medical college since 8 years, has been merged with a Corporate hospital on 31st March, 2019. The said Corporate Hospital is not eligible for registration under section 12AA of the Act. The position of assets and liabilities of the Charitable trust as on the date of merger are furnished as under :

Sec 115TD
[17.5]

A : Properties and Assets :

₹

- | | |
|---|----------|
| (a) Shares and securities held by Trust acquired out of agricultural income exempt u/s 10(1) of the Act : | 25 lakhs |
| (b) Book value of Quoted shares and securities : | 35 lakhs |
| Market value (Average of lowest and highest price of such shares as on date of merger quoted on recognised stock exchange : | 40 lakhs |
| (c) Book value of Land and Buildings held by Trust : | 60 lakhs |
| Value of Immovable Properties (Land & Buildings) as per valuation report from Registered Valuer : | 40 lakhs |
| Stamp Duty value : | 38 lakhs |

The Trust was created on 01st January, 2013 and obtained registration under section 12 AA on 31st March, 2013.)

GMS2

- (d) The Trust holds 40% of equity shares in an unlisted company and the financial position of said unlisted company as on date of merger is as under :

Book value of assets (other than immovable property)	25 lakhs
Fair Market value of Immovable Property	45 lakhs
Reserves and Surplus	15 lakhs
Provision for taxation	5 lakhs
Total amount of Paid-up Equity Share Capital :	25 lakhs

B : Liabilities :

- (a) Liability in respect of shares and securities (unlisted) 8 lakhs
- (b) Bank Liability in respect of quoted shares and securities 15 lakhs
- (c) Advance Tax paid 12 lakhs

Compare the tax liability, if any, of Charitable Trust, arising out of above merger, giving explanation for treatment of each item in the context of relevant provisions contained in the Act. Assume that the trust has no tax liability in respect of other activities undertaken during previous year 2018-19.

(9)

GMS2

6

Sec 15E17
Topic 6

- (b) Miss Sapna, a resident of India and a salaried employee employed with a private co., aged 30 years, received the following sums during the previous year 2018-19.

Basic Salary	₹ 45,000 p.m.
DA	10% of basic salary
Transport Allowance	₹ 8,000 p.m.
Medical Allowance	₹ 3,500 p.m.

She contributed ₹ 25,000 to approved Pension Fund of LIC. She also paid ₹ 1,75,000 by account payee cheque for Medi-claim premium to insure the health of her father, aged 65 years, who is not dependent on her as a lumpsum payment for 5 years including the current previous year.

Sec 80D
[14-1-12]

Apart from this, she also provided guest lecture to a foreign university during the year. She received ₹ 7,92,000 from such university after deduction of tax of ₹ 1,08,000 in the country in which such university is located. India does not have any double taxation avoidance agreement under section 90 of the Income-tax Act, 1961, with that country. Compute the tax liability of Ms. Sapna for the AY 2019-20.

Sec 91
[25-2-4a]

4. (a) (i) Nath Ltd., an Indian company, pays ₹ 8,40,000 to its Chief Financial Officer Mr. Raman as gross salary including taxable allowances and bonus. Besides that, it also provides Non-monetary perquisites which cost the company ₹ 1,50,000. Discuss the TDS implication in the hands of Nath Ltd. as well as in the hands of Raman as regards non-monetary perquisite.

8
Sec 192(1B)
[7-2-3b]

GMS2

- (ii) KLS Ltd. gives a multilevel parking building in front of a shopping mall in Delhi to PQR Ltd. on a lease of 90 years. PQR Ltd. is liable to pay ₹ 3 crores as one time lease premium in addition to an annual lease rent of ₹ 26 lakhs. What will be the TDS/TCS liability in the hands of KLS Ltd. as well as in the hand of PQR Ltd. ? What will be your answer if PQR Ltd. does not have PAN ? Sec 194I [7.2.9]
- (iii) Ranu Ltd., engaged in manufacturing of paper, pays ₹ 4,00,000 to the head of labour union to be distributed to various workmen as per the work done by them. The AO wants the assessee to deduct tax on such payment under section 194C. Is the action of AO tenable in law ? Sec 194C [7.2.11]
- (b) DIY Ltd. a company registered in India and subsidiary of CD Inc., a company registered in Austria. DIY Ltd. engaged in the manufacturing of fabric. To arrive at the arm's length price applicable to its transactions with CD Inc., DIY Ltd. enters into an advance pricing agreement with the Board on 25th November 2018. Accordingly, there will be a substantial change in the income of DIY Ltd. Also, DIY Ltd. wishes to apply for roll back provisions to PY 2014-15, 2015-16, 2016-17 and 2017-18. The AO wants to apply such transfer pricing provisions from the year in which DIY Ltd. became the subsidiary of CD Inc. i.e., AY 2012-13 onwards. Sec 92CC [28.3.4a] 6

(11)

GMS2

DIY Ltd. had filed its return of income for the AY 2018-19 on 26th August 2018 and for AY 2019-20, on 31st August, 2019. The assessments for the AYs, 2015-16 to 2018-19 are completed but the assessment of AY 2019-20 is pending on the date of entering into APA.

You are required to answer the following questions :

- (i) Whether the AO is correct to apply the transfer pricing provisions from AY 2012-13 onwards ?
- (ii) In respect of AY 2016-17, the transfer price arrived at by the Board is resulting in reduction in income of the assessee. Discuss whether the roll back provisions can be applied for that assessment year as well.
- (iii) What will happen to completed as well as pending assessments ?

5. (a) Answer any **two** out of the following **three** :

2×4
=8

- (i) An Assessee, who is aggrieved by all or any of the following orders, is desirous to know the remedial recourse and the time limit against each order under the Income-tax Act, 1961 ?

Sec 246A
to 264.

- (1) Passed under section 153A (except an order passed in pursuance of the direction of the Dispute Resolution Panel) by the Assessing Officer.
- (2) Passed under section 263 by the Commissioner of Income Tax.

[Chapter]
21

(12)

GMS2

(3) Passed under section 272A by the Principal Commissioner.

(4) Passed under section 254 by the ITAT.

- (ii) ABC Ltd., a developer, is engaged in the business of developing of Special Economic Zones, notified on or after 1st April 2005 under the SEZ Act, 2005. It was established in the previous year 2013-14. It had exercised its option for claiming deduction under section 80-IAB from the Assessment Year 2016-17. It received the following incomes during the previous year 2018-19 :

Income from the maintenance of SEZ ₹ 50,40,000

Income from lease rent from letting out of buildings along with other amenities in SEZ ₹ 14,25,000

Interest received from bank deposits (from the refundable security deposits received from lessees) ₹ 9,50,000

- (1) Calculate the amount of deduction available to ABC Ltd. for the AY 2019-20.
- (2) On 1st April, 2019, it transferred the operation and maintenance of the SEZ to another company, DEF Ltd. Now, DEF Ltd. wants to claim deduction under section 80-IAB in respect of the income derived from such maintenance of SEZ as was available for ABC Ltd. Comment whether the contention of DEF Ltd. is valid in law ?

- (iii) Rama Cements Ltd., is a company engaged in the manufacturing of cement. The company issued 20 lakh equity shares of ₹ 100 each to the general public. The shares were issued at a premium of ₹ 150 per share. The assessee claimed deduction under section 35D in respect of preliminary expenses at 5% of capital employed and added the amount of share premium to the capital employed to arrive at 5% as eligible amount of deduction under section 35D. The Assessing Officer, however, disallowed the said expenditure on the basis that capital employed does not include the share premium amount. Is the action of the Assessing Officer tenable in law ?

Sec 35D

CIT ✓
Benger
butts
India
Ltd (sc)
[8.2.11-7]

- (b) ABC Ltd, a software giant in India, set up a 100% subsidiary company by name SHD Inc. in Switzerland on 01st April, 2018. The subsidiary company SHD Inc., is mainly engaged in the software services, hardware services and data backup services in three different countries viz., Switzerland, Sweden and India. The following information is furnished by SHD Inc., for FY 2018-19 :

6

POEM
2-ABOI.[25.1.2]
switzerlandQue
covered
[25.1.26]

Particulars	In Switzerland	In Sweden	In India
Value of Assets as per books of account (₹ in crores)	24	12	24
Number of Employees working (in thousands)	30	10	28
Pay Roll expenditure (₹ in crores)	4	2.6	5.4
Total aggregate income earned	₹ 80 crores		

Other Information :**I. Break up of total income :**

- ₹ 28 crores derived from the transactions where purchases are made from associated enterprises and sold to non-associated enterprises;
- ₹ 24 crores derived from the transactions where both purchases and sales are made from/to associated enterprises;
- ₹ 16 crores derived from the transactions where purchases are made from non-associated enterprises and sold to associated enterprises ;
- ₹ 8 crores by way of income from capital gains on trading of shares;
- ₹ 4 crores by way of interest from non-associated enterprises;

II. During FY 2018-19, total 5 board meetings were held, 2 in India, 1 in Sweden and 2 in Switzerland.

Based on the above information, determine the residential status of SHD Inc., applying the provisions of POEM for the AY 2019-20.

POEM**[25.1.20]**

6. (a) MNO Ltd. in Mumbai is a wholly owned subsidiary of a holding company located in Low Tax Jurisdiction (LTJ). MNO Ltd. has accumulated profit of ₹ 1,500 lakhs. It deposited ₹ 1,000 lakhs in fixed deposit with a branch of foreign bank located in India. Based on the security of the deposit, the holding company located in LTJ availed bank loan of ₹ 800 lakhs. Is this an impermissible arrangement lacking commercial substance ? Support your answer with applicable legal provisions. 4 GAAR [29.7]
- (b) There is a tax arrear of ₹ 52 lakhs payable by Super Six Traders (P) Ltd. relating to various assessment years. The court appointed a liquidator on 30-06-2018. The liquidator failed to notify his appointment to the Assessing Officer and also omitted to take note of the tax arrears. He sold some of the assets of the company and settled the suppliers' dues. What would be the legal consequence of the actions of the liquidator ? 4 Sec 178.
- (c) (i) Explain briefly Jurisdictional double taxation and Economic double taxation. How does the tax law provide for remedial measures ? 4 [28.5.1]
- (ii) Do you agree that the tax treaties are to be interpreted liberally ? 2
- If so, why ?
-