

PROFESSIONAL PROGRAMME
SUPPLEMENT
FOR
ADVANCED TAX LAWS

(Part II - Direct Tax and International Tax)

(Relevant for Students appearing in December, 2022 Examination)

MODULE 1- PAPER 2

Students appearing in December, 2022 Examination shall note the following:

1. For Direct taxes, Finance Act, 2021 is applicable.
2. Applicable Assessment year is 2022-23 (Previous Year 2021-22).

Students are also required to update themselves on all the relevant Rules, Notifications, Circulars, Clarifications, etc. issued by the CBDT & Central Government, on or before 31st May, 2022.

Note: The Finance Act, 2021 i.e. Assessment year is 2022-23 (Previous Year 2021-22) is applicable for Direct Tax & International Taxation Part – II for December 2022 examinations. Therefore, the students are advised to refer the study material for Direct Tax & International Taxation Part – II (based on Finance Act, 2021) for December 2022 exam. The same is available at ICSI website weblink:

https://www.icsi.edu/media/webmodules/16112021_Advance_Tax_Laws.pdf

| Sr. No. | Lesson No. | Amendments to Regulations /Rules /Act /Circular /Notification | Weblink (For Details) |
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| 1. | Lesson 18 Taxation of Companies, LLP and Non-Resident | <p>Imposition of charge on the prescribed electronic modes under section 269SU of the Income-tax Act, 1961 [Circular No. 16/2020 Dated August 30, 2020]</p> <p>Section 269SU of the Income tax Act, 1961 provides every person having a business turnover of more than Rs. 50 Crores during the immediately preceding previous year shall mandatorily provide facilities for accepting payment through prescribed electronic modes.</p> <p>However representations were received that banks are collecting charges on transactions carried out through UPI.</p> <p><i>Hence, Central Board of Direct Taxes 'CBDT' vide its Circular No. 16/2020 Dated August 30, 2020 advised banks to refund all the charges collected on and after 1st January 2020 on transactions carried out using the electronic modes as prescribed under section 269SU and not to impose any such charges on any future transactions carried through the prescribed digital modes.</i></p> | https://www.incometaxindia.gov.in/communications/circular/circular-16-2020.pdf |
| 2. | Lesson 20 Basics of International Taxation – Transfer Pricing | <p>Notification No. 83 (October 19, 2020)</p> <p>The Central Government vide Notification No. 83 Dated October 19, 2020 notifies that where the variation between the arm's length price determined under section 92C of the Income tax Act, 1961 and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed 1% of the latter in respect of wholesale trading and 3% of the latter in all other cases, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price for assessment year 2020-2021.</p> <p><i>Accordingly, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price if the variation between the arm's length price and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed 1% of the latter in respect of wholesale trading and 3% of the latter in all other cases.</i></p> | https://www.incometaxindia.gov.in/communications/notification/notification_83_2020.pdf |
| 3. | Lesson 18 Taxation of Companies, LLP & Non-Resident | <p>Amount of remuneration prescribed under section 9A(3)(m) of the Income-tax Act, 1961 (Circular No. 1/2021 Dated January 15, 2021)</p> <p>Finance (No 2) Act, 2019 amended clause (m) of sub-section (3) of section 9A of the Income-tax Act, 1961 w.e.f. 01.04.2019 to provide for payment of remuneration by an eligible investment fund to an eligible fund manager in respect of fund management</p> | https://www.incometaxindia.gov.in/communications/circular/circular_1_2021.pdf |

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| | | <p>activity undertaken by him on its behalf to be not less than the amount calculated in such manner as may be prescribed.</p> <p>Accordingly, rule 10V of the Income-tax Rules, 1962 has been amended, w.e.f. 01.04.2019, vide Notification No 29/2020 dated 27.05.2020 by way of insertion of sub-rules (12) and (13) as follow:</p> <p>Sub-rule (12) provides for the amount of remuneration to be paid by the fund to a fund manager. 2nd proviso of the said sub-rule provides that the fund may seek Board's approval in case where the amount of remuneration is lower than the amount so prescribed.</p> <p>In this regard, representations have been received expressing inability to comply with the provisions of sub-rule 12 of rule 10V of the Rules regarding the amount of remuneration to be paid by the fund to a fund manager for the financial year 2019-20 as the said Notification No 29/2020 was notified after the financial year got over and the financial year 2020-21 had already commenced.</p> <p><i>In order to avoid genuine hardship in such cases, the Board, provided that for the financial years 2019-20 and 2020- 21 in cases where the remuneration paid to the fund manager is lower than the amount of remuneration prescribed under sub-rule (12) of rule 10V of the Rules, but is at arm's length, it shall be sufficient compliance to clause (m) of sub-section (3) of section 9A of the Act. It is stated that the remuneration to be paid to the fund manager, for the financial year 2021- 22, shall be in accordance with sub-rule (12) of rule 10V of the Rules and the application for lower remuneration in terms of 2nd proviso for this year, if any, may be filed not later than 1st February, 2021.</i></p> | |
| 4. | <p>Lesson 18</p> <p>Taxation of Companies, LLP and Non-resident</p> | <p>Thresholds for the purposes of Significant Economic Presence - Rule 11UD [Notification No. 41 Dated May 3, 2021]</p> <p>The Central Board of Direct Taxes has notified the Income-tax (13th Amendment) Rules, 2021 which shall come into force from 1st April 2022. Through this amendment a new rule 11UD has been inserted which notifies the threshold for significant economic presence.</p> <p>As per the new rule, for the thresholds “the amount of aggregate of payments arising from transaction or transactions in respect of any goods, services or property carried out by a non-resident with any person in India, including provision of download of data or software in India during the previous year, shall be two crore rupees.”</p> <p>Further, the number of users with whom systematic and continuous</p> | <p>https://www.incometaxindia.gov.in/communications/notification/notification_41_2021.pdf</p> |

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| | | <p>business activities are solicited or who are engaged in interaction shall be three lakhs.</p> <p><i>Accordingly, the threshold limit has been notified for the purpose of significant economic presence.</i></p> | |
| 5. | <p>Lesson 22</p> <p>Income Tax Implication on specified transactions</p> | <p>Income-tax (16th Amendment) Rules, 2021 [Notification No. 68 Dated May 24, 2021]</p> <p>The Central Board of Direct Taxes on 24th May 2021 has published the Income- tax (16th Amendment) Rules, 2021 which has notified a new rule for computation of fair value of capital assets in slump sale. As per the Amendment a new rule 11UAE has been inserted which provides two formulae for calculation of fair market value of the capital asset.</p> <p><i>The FMV1 shall be the fair market value of the capital assets transferred by way of slump sale determined and FMV2 shall be the fair market value of the consideration received or accruing as a result of transfer by way of slump sale.</i></p> | <p>https://www.incometaxindia.gov.in/communications/notification/notification_68_2021.pdf</p> |
| 6. | <p>Lesson 22</p> <p>Income Tax Implication on Specified Transactions</p> | <p>Cost Inflation Index for FY 2021-22 [Notification No. 73 Dated June 15, 2021]</p> <p>The Central Board of Direct Taxes (CBDT) has notified the cost inflation index (CII) for FY 2021-22 as "317" via a notification dated June 15, 2021. CII is used to calculate the inflation adjusted cost price of an asset.</p> <p><i>Accordingly, the above inflation adjusted price then is used to arrive at long-term capital gains or long-term losses.</i></p> | <p>https://www.incometaxindia.gov.in/communications/notification/notification_73_2021.pdf</p> |
| 7. | <p>Lesson 18</p> <p>Taxation of Companies , LLP and Non-Resident</p> | <p>Guidelines under section 9B and sub-section (4) of section 45 of the Income-tax Act, 1961 [Circular No. 14 Dated July 02, 2021]</p> <p>The Government has inserted a new section 9B of the Income Tax Act, 1961 and substituted sub-section (4) of section 45 of the Income Tax Act, 1961 by the Finance Act, 2021. The CBDT has come out with Notification No. 76 dated July 2, 2021 to insert sub-rule (5) to Rule 8AA and a new Rule-8AB so as to prescribe the manner of calculating the income chargeable to tax under section 45(4) of the Act as "capital gains" and also the manner in which such income shall be attributed to remaining assets with the specified entity under clause (iii) of section 48 of the Act.</p> <p>Further, the CBDT issued Circular No. 14 dated July 02, 2021 to provide guidelines for application of section 9B and section 45(4) read with the aforesaid rules.</p> | <p>https://www.incometaxindia.gov.in/communications/circular/circular_14_2021.pdf</p> |

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| 8. | Lesson 18 Taxation of Companies , LLP and Non-Resident | Income Tax (19th Amendment), Rules, 2021 [Notification No. 77 Dated July 7, 2021] The Central Board of Direct taxes hereby makes Income-tax (19th Amendment), Rules, 2021 further to amend the Income-tax Rules, 1962. As per notification, after rule 8AB, rule 8AC [i.e. Computation of short term capital gains and written down value under section 50 where depreciation on goodwill has been obtained] has been inserted. | https://egazette.nic.in/WritereadData/2021/228152.pdf | | | | |
| 9. | Lesson 18 Taxation of Companies , LLP and Non-Resident | Income Tax (22nd Amendment) Rules 2021 [Dated August 9, 2021] CBDT has notified Income tax (22nd Amendment) Rules, 2021 to insert the following two rules as follow: <table border="1" data-bbox="428 659 1300 1241"> <tr> <td data-bbox="428 659 505 898">Rule 21AI</td> <td data-bbox="505 659 1300 898"> Computation of exempt income of specified fund for the purposes of clause (4D) of section 10 The Rule provides formula for computation of income attributable to units held by non-resident (not being the permanent establishment of a non-resident in India) in a specified fund for the purpose of clause (4D) of section 10 of the Income tax Act, 1961. </td> </tr> <tr> <td data-bbox="428 898 505 1241">Rule 21AJ</td> <td data-bbox="505 898 1300 1241"> Determination of income of a specified fund attributable to units held by non-residents under sub-section (1A) of section 115AD The Rule provides formula of calculation, for purposes of sub-section (1A) of section 115AD, the income of a specified fund by way of short-term or long-term capital gains, referred to in clause (b) of sub-section (1) of section 115AD, attributable to the units held by non-resident (not being the permanent establishment of a non-resident in India) </td> </tr> </table> | Rule 21AI | Computation of exempt income of specified fund for the purposes of clause (4D) of section 10 The Rule provides formula for computation of income attributable to units held by non-resident (not being the permanent establishment of a non-resident in India) in a specified fund for the purpose of clause (4D) of section 10 of the Income tax Act, 1961. | Rule 21AJ | Determination of income of a specified fund attributable to units held by non-residents under sub-section (1A) of section 115AD The Rule provides formula of calculation, for purposes of sub-section (1A) of section 115AD, the income of a specified fund by way of short-term or long-term capital gains, referred to in clause (b) of sub-section (1) of section 115AD, attributable to the units held by non-resident (not being the permanent establishment of a non-resident in India) | https://www.incometaxindia.gov.in/communications/notification/notification_90_2021.pdf |
| Rule 21AI | Computation of exempt income of specified fund for the purposes of clause (4D) of section 10 The Rule provides formula for computation of income attributable to units held by non-resident (not being the permanent establishment of a non-resident in India) in a specified fund for the purpose of clause (4D) of section 10 of the Income tax Act, 1961. | | | | | | |
| Rule 21AJ | Determination of income of a specified fund attributable to units held by non-residents under sub-section (1A) of section 115AD The Rule provides formula of calculation, for purposes of sub-section (1A) of section 115AD, the income of a specified fund by way of short-term or long-term capital gains, referred to in clause (b) of sub-section (1) of section 115AD, attributable to the units held by non-resident (not being the permanent establishment of a non-resident in India) | | | | | | |
| 10. | Lesson 18 Taxation of Companies , LLP and Non-Resident | Income tax (23rd Amendment) Rules, 2021 [Notification No. 92 Dated August 10, 2021] CBDT notifies the Income tax (23rd Amendment), Rules, 2021, to prescribe the procedure / methodology for re-computation of book profit u/s 115JB of the Income tax Act, 1961, to provide relief in MAT payable in certain cases. Accordingly, new IT Rule 10RB on ‘Relief in tax payable u/s 115JB(1) due to operation of section 115JB(2D)’ along with new FORM No. 3CEEA for ‘annual furnishing of particulars of re-computation for any adjustment on account of income of past year(s) included in books of account of previous year by a Company on account of secondary adjustment u/s 92CE or on account of an Advance Pricing Agreement entered u/s 92CC’ have been introduced/ inserted in the Income Tax Rules, 1962. | https://www.incometaxindia.gov.in/communications/notification/notification_92_2021.pdf | | | | |

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| 11. | Lesson 20 Basics of International Taxation | Income Tax 30th Amendment Rules 2021 [Notification No. 117 Dated Sept. 24, 2021] The Central Board of Direct Taxes hereby makes the Income-tax (30th Amendment) Rules, 2021 as per which, in the Income-tax Rules, 1962, in rule 10TD [Safe Harbour Rules], in sub-rule (3B), for the words and figures “assessment year 2020-21”, the words and figures “assessment years 2020-21 and 2021-22” shall be substituted. | https://egazette.nic.in/WriteReadData/2021/229929.pdf |
| 12. | Lesson 20 Basics of International Taxation | Notification No. 135 [Dated December 8, 2021] The Protocol, amending the Agreement between the Government of the Republic of India and the Government of the Kyrgyz Republic for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income which was signed at New Delhi on 13th April, 1999, has been signed at Bishkek, Kyrgyz Republic on 14th June, 2019, as set out in the Annexure. The date of entry into force of the said amending Protocol is the 22nd October, 2020, being the date of the later notification of the completion of the procedures required by the respective laws for the entry into force of the said amending Protocol, in accordance with Article 3 of the said amending Protocol. Now, therefore, in exercise of the powers conferred by sub-section (1) of section 90 of the Income-tax Act, 1961, the Central Government hereby notifies that all the provisions of the said amending Protocol shall have effect in the Union of India. | https://income-taxindia.gov.in/communications/notifications/notification-135-2021.pdf |
| 13. | Lesson 20 Basics of International Taxation | Clarification regarding the Most-Favoured-Nation (MFN) clause in the Protocol to India's DTAA's with certain countries [Circular No. 3 Dated 3rd February, 2022] The Protocol to India’s Double Taxation Avoidance Agreements (DTAAs) with some of the countries, especially the European States and OECD members contains a provision, referred to as the Most-Favoured-Nation (MFN) clause. Though each MFN clause in these DTAAs has a different formulation, the general underlying provision is that if after the signature/ entry into force of the DTAA with the first State, India enters into a DTAA with another OECD Member State, wherein India limits its source taxation rights in relation to certain items of income (such as dividends, interest income, royalties, Fees for Technical Services, etc.) to a rate lower or a scope more restricted than the scope provided for those items of income in the DTAA with the first State, such beneficial treatment should also be extended to the First State. | https://income-taxindia.gov.in/communications/circular/circular-3-2022.pdf |

The Central Board of Direct Taxes (CBDT) has received representations seeking clarity on the applicability of the MFN clause (particularly to dividend withholding rates) available in the Protocol to some of the DTAA's with OECD member States. India's DTAA's with countries, namely Slovenia, Colombia, and Lithuania, provide for the lower rate of source taxation with respect to certain items of income. However, these States were not members of the OECD at the time of the conclusion of their DTAA's with India and have become members of the OECD thereafter.

On a plain reading of the MFN clauses in India's DTAA's especially with respect to the above-mentioned countries, it is clear that there is a requirement that the third State is to be a member of the OECD both at the time of conclusion of the treaty with India as well as at the time of applicability of MFN clause. Therefore, it is clarified that for the applicability of the MFN clause, the third State has to be an OECD Member State on the date of the conclusion of DTAA with India.

It may also be pointed out that the MFN clause in these DTAA's clearly states that the reduced rate takes effect from the date of entry into force of Indian DTAA with the third State. Thus, the declaration in the decree/bulletin/publication of The Netherlands, France, and the Swiss Confederation to make the reduced rate effective from the date of the third State becoming member of OECD subsequent to the entry into force of a DTAA is not in accordance with the relevant provision of the MFN clause in the Protocol. In fact, these countries could not have made it effective from the date of entry into force of Indian DTAA with the third State as the third State was not a member of the OECD on such date of entry into force. ***This makes it clear that the intention of the MFN clause in the Protocol of the DTAA's is not to give the benefit of India's DTAA with the third State which was not a member of OECD when India entered into DTAA with it.***