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CA FINAL MAY'19

SUBJECT- DIRECT TAX

Test Code - FNJ 7191

BRANCH - () (Date :)

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Answer 1: **(1 to 10 = 1 mark x 10 = 10 marks**
11 to 20 = 2 marks x 10 = 20 marks)

(A)

1) A
2) D
3) A
4) A
5) D
6) A
7) D
8) B
9) A
10) A
11) D
12) C
13) D
14) D
15) C
16) A
17) C
18) D
19) B
20) A

(B)

i) Any income arising from an international transaction, where two or more "associated enterprises" enter into a mutual agreement or arrangement, shall be computed having regard to arm's length price as per the provisions of Chapter X of the Act.

Section 92A defines an "associated enterprise" and sub-section (2) of this section speaks of the situations when the two enterprises shall be deemed to associated enterprises. Applying the provisions of section 92A(2)(a) to (m) to the given facts, it is clear that "Anush Motors Ltd." is associated with :-

(i) Rida Ltd. as per section 92A(2)(a), because this company holds shares carrying more than 26% of the voting power in Anush Motors Ltd.;

(ii) Kyoto Ltd. as per section 92A(2)(g), since this company is the sole owner of the technology used by Anush Motors Ltd. in its manufacturing process;

(iii) Dorf Ltd. as per section 92A(2)(c), since this company has financed an amount which is more than 51% of the book value of total assets of Anush Motors Ltd.

The transactions entered into by Anush Motors Ltd. with different companies are, therefore, to be adjusted accordingly to work out the income chargeable to tax for the A.Y. 2019-20.
(3 marks)

	Particulars	` (in crores)
Income of Anush Motors Ltd. as computed under Chapter IV-D, prior to adjustments as per Chapter X		300.00
Add:	Difference on account of adjustment in the value of international transactions:	
(i)	Difference in price of car @ $ 200 each for 10,000 cars ($ 200 x 10,000 x ` 63)	12.60
(ii)	Difference for excess payment of royalty of $ 30,00,000 ($ 30,00,000 x ` 63) [See Note below]	18.90
(iii)	Difference for excess interest paid on loan of EURO 1000 crores (` 84*1000*1/100)	840.00
Total Income		**1,171.50**

The difference for excess payment of royalty has been added back presuming that the manufacture of cars by Anush Motors Ltd is wholly dependent on the use of know-how owned by Kyoto Ltd. **(3 marks)**

***Note**: It is presumed that Anush Motors Ltd. has not entered into an Advance Pricing Agreement or opted to be subject to Safe Harbour Rules.*

ii)

Section 44BBA says for computing profits and gains of the business of operation of aircraft in the case of non-residents a sum equal to 5% of the aggregate of the following amounts -

(a) paid or payable, whether in or out of India, to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods from any place in India; and

(b) received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods from any place outside India.

Keeping in view the provisions of section 44BBA, the income of Mr. Q chargeable to tax in India under the head "Profits and gains of business or profession" is worked out hereunder-

Particulars	Rs.
Amount received in India on account of carriage of passengers from Chennai	2,00,00,000
Amount received in India on account of carriage of goods from Chennai	1,00,00,000
Amount received in India on account of carriage of passengers from Singapore	3,00,00,000
Amount received in Singapore on account of carriage of passengers from Chennai	1,00,00,000
	7,00,00,000

Income from business under section 44BBA at 5% of Rs. 7,00,00,000 is Rs. 35,00,000, which is the income of Mr. Q chargeable to tax in India under the head "Profits and gains of business or profession" for the A.Y. 2019-20. **(4 marks)**

Answer 2:

(A)

The issue under consideration is whether dividend distribution tax under section 115-O can be levied on dividend income of a tea company, and if so, whether in whole or in part, to be restricted to 40%, being the proportion of business income of a tea company. This issue came up before the **Supreme Court in *Union of India v. Tata Tea*** *and Others [2017] 398 ITR 260 (SC).*

The Supreme Court observed that as per Entry 82 of List I, the Union Parliament has the competence to tax "income other than agricultural income". Section 115-O pertains to additional tax at the stage of distribution of dividend by a domestic company which is covered by Entry 82 in List I. **When dividend is declared to be distributed and paid to a company's shareholders, it is not impressed with character of the source of its income.** The Court relied on *Mrs. Bacha F Guzdar v. CIT AIR 1955 SC 74* which looked into the nature of the dividend income in the hands of the shareholders. **Dividend is derived from the investment made in the company's shares and the foundation rests on the contractual relations between the company and the shareholder.**

Dividend is not 'revenue derived from land' and therefore, cannot be termed as agricultural income in the hands of a shareholder. Hence, despite the company being involved in agricultural activities, in the shareholder's hands, the income is only dividend and not agricultural income.

The Calcutta High Court had upheld the vires of section 115-O but put a qualification that additional tax levied under section 115-O shall be only to the extent of 40% which is the taxable income of the tea company. The Supreme Court overturned this cap placed by the Calcutta High Court. Section 115-O is within the competence of the Parliament and hence, no limits can be placed on the same.

Accordingly, applying the rationale of the Supreme Court ruling to the facts of this case, the contention of the Appellate Authority that only 40% of dividend distributed by the company is to be taxed under section 115-O is **not** correct. The entire dividend distributed would be subject to dividend distribution tax under section 115-O. **(6 marks)**

(B)

Computation of deduction allowable under section 36(1)(vii) for the A.Y.2019-20

Particulars		Rs. in lakh
Bad debts written off (for the first time) in the books of account		210
Less: Credit balance in the "Provision for bad and doubtful debts" under section 36(1)(viia) as on 31.3.2019		
(i) Provision for bad and doubtful debts u/s 36(1)(viia) upto A.Y.2018-19	100	

(ii) Current year provision for bad and doubtful debts u/s 36(1)(viia) [8.5% of Rs. 800 lakhs + 10% of Rs. 300 lakhs]	98	198
Deduction under section 36(1)(vii) in respect of bad debts written off for A.Y.2019-20		**12**

(5 marks)

(C)

Computation of total income of Edu All Charitable Trust for the A.Y.2019-20

Particulars	Rs.	Rs.
Gross receipts from Hospital		2,00,00,000
Gross receipts from Medical College [exempt, since less than Rs.1 crore]		-
		2,00,00,000
Add: Anonymous donations [to the extent not chargeable to tax@30% under section 115BBC(1)(i)] **[See Note 1 & 2]**		3,00,000
		2,03,00,000
Less: 15% of income eligible for being set apart without any condition[1]		30,45,000
		1,72,55,000
Less: Amount applied for charitable purposes		
- **On revenue account** – Administrative expenses	75,00,000	
- **On capital account** – Land & Building [Section 56(2)(x) is not attracted in respect of value of property received by a trust or institution registered u/s 12AA]	80,00,000	
- Corpus donation to Help Aid Trust registered u/s 12AA – not allowable even if it is out of current year income of the trust	-	1,55,00,000
Total income [other than anonymous donation taxable@30% under section 115BBC(1)(i)]		**17,55,000**
Add: Anonymous donation taxable @30% u/s 115BBC(1)(i) **[See Note 1]**		9,00,000
Total Income of the trust (including anonymous donation taxable@30%)		**26,55,000**

(4 marks)

Computation of tax liability of the trust for the A.Y. 2019-20

Particulars	Rs.	Rs.
Tax on total income of Rs. 17,55,000 [Excluding anonymous donations]		
Upto Rs. 2,50,000	Nil	
Rs. 2,50,001 – Rs. 5,00,000 [Rs.2,50,000 x 5%]	12,500	

Rs. 5,00,001 – Rs. 10,00,000 [Rs.5,00,000 x 20%]	1,00,000	
> Rs. 10,00,000 [Rs.7,55,000 x 30%]	2,26,500	
	3,39,000	
Tax on anonymous donations taxable@30% [Rs. 9,00,000 x 30%]	2,70,000	6,09,000
Add: Health and education cess @4%		24,360
Total tax liability		**6,33,360**

(3 marks)

Notes:

(1) Anonymous donations taxable @30%	Rs.	Rs.
Anonymous Donations received (lakhs)		12.00
5% of total donations received, i.e. 5% of 60 lakhs	3.00	
Monetary limit	1.00	
Higher of the above		3.00
Anonymous donations taxable@30%		9.00

(2) The provisions of section 13(7) have been interpreted in a manner that it excludes only anonymous donations subject to tax@30% under section 115BBC(1)(i). All taxable income of the trust [excluding anonymous donations taxable@30% u/s 115BBC(1)(i)] falls under section 115BBC(1)(ii), and are subject to tax at normal rates and eligible for benefit of unconditional accumulation u/s 11(1). Anonymous donation of Rs. 3,00,000 taxable at normal rates also falls under section 115BBC(1)(ii) and hence, like other taxable income of the trust falling within the scope of this clause, the same would also be eligible for the benefit of unconditional accumulation under section 11(1). The above solution has been worked out on the basis of this interpretation of section 13(7). Accordingly, in the above solution, the benefit of unconditional accumulation up to 15% under section 11(1) has been given in respect of anonymous donation of Rs. 3,00,000 subject to tax at normal rates.

However, an alternative view is also possible on the basis of the plain reading of section 13(7), as per which anonymous donation referred to in section 115BBC has to be excluded from the purview of exemption under sections 11 and 12. As per this view, even the anonymous donations of Rs. 3,00,000 subject to tax at normal rates would not be eligible for unconditional accumulation of up to 15%.

(3) Corpus donations, whether received by way of cheque or cash, are not includible in the total income of the trust by virtue of section 11(1)(d).

(4) Since corpus donations and anonymous donations are indicated separately and the question does not mention that the same are included in gross receipts, the solution has been worked out on the assumption that corpus donations and anonymous donations are not included in the figure of gross receipts of Rs. 200 lakhs from hospital.

(5) Since the trust follows cash system of accounting, fees not realized from patients would not form part of gross receipts. Therefore, there is no need of applying the provisions of *Explanation 1* to section 11(1) to exclude such income.

(6) Where the cost of assets is claimed as application, no deduction for depreciation on such assets would be allowed in determining income for the purposes of application. Therefore, since cost of assets of the trust has been claimed as application of income, no

depreciation would be allowed on these assets while determining income for the purposes of application. **(2 marks)**

Answer 3:

(A)

Computation of total income of Rhombus(P) Ltd. for the A.Y. 2019-20

Particulars			Rs.	Rs.
Income from House Property (Note 1)				
Gross Annual Value (GAV) (Rental income has been taken as GAV in the absence of other information) [Rs. 50,000 x 12]			6,00,000	
Less: Municipal taxes (not deductible since it has not been paid)			Nil	
Net Annual Value (NAV)			6,00,000	
Less: Deduction under section 24 (30% of NAV)			1,80,000	4,20,000
Profits and gains of business or profession				
Net profit as per profit and loss account			2,10,00,000	
Add:	Licence fee for obtaining franchise **(Note 2)**		32,00,000	
	Municipal taxes in respect of let-out part of office premises **(Note 1)**		8,000	
	Contribution to approved and notified scientific research association (treated separately) **(Note 4)**		1,00,000	
	Loss due to destruction of machinery by fire **(Note 5)**		2,00,000	
	Amount paid to contractor without deduction of tax at source [Rs.5 lakhs x 30%] **(Note 6)**		1,50,000	
	Short-term capital loss on sale of shares of Gama Ltd. **(Note 7)**		20,000	
	Depreciation on tangible fixed assets **(Note 8)**		2,20,000	
			2,48,98,000	
Less:	Depreciation under section 32 **(Note 8)**			
	Tangible fixed assets **(Note 8)**	2,60,000		
	Intangible asset (Franchise) 25% of Rs. 32,00,000 **(Note 2)**	8,00,000	10,60,000	
	Weighted deduction under section 35(1)(ii) **(Note 4)**			
	Rs. 1,00,000 x 150% (Contribution of scientific research association)		1,50,000	
	Rental income to be taxed under "Income from house property" **(Note 1)**		6,00,000	

Dividend credited to profit and loss account to be excluded **(Note 7)**	10,000	
		2,30,78,000
Capital Gains (Note 7)		
Short-term capital loss (Rs. 20 x 1000 shares)	20,000	
Less: Dividend exempt under section 10(34)	10,000	
Short-term capital loss to be carried forward to A.Y. 2020-21	10,000	
Income from Other Sources (Note 9)		
Deemed dividend under section 2(22)(e) subject to DDT in the hands of Theta (P) Ltd.		-
Total Income		**2,34,98,000**

(10 marks)

Notes:

(1) Rental income from letting out a part of the office premises is taxable under "Income from house property". Therefore, it has to be deducted while calculating business income, since the income has been credited to profit and loss account. Likewise, municipal taxes due in respect of such property, debited to profit and loss account has to be added back to compute business income.

(2) Franchise is an intangible asset eligible for depreciation @ 25%. Since one-time licence fees of Rs. 32 lakh paid for obtaining franchise has been debited to profit and loss account, the same has to be added back. Depreciation @ 25% has to be provided in respect of the intangible asset since it has been used for more than 180
days during the year.

(3) Rs. 32,000 paid to Beta & Co., a goods transport operator in cash is deductible while computing business income, as the limit for disallowance under section 40A(3) would be attracted in case of payment to a transport contractor only when it exceeds Rs. 35,000. Since it is already debited to profit and loss account, no further adjustment is required.

(4) Contribution to a scientific research association approved and notified under section 35(1)(ii) is eligible for a weighted deduction of 150%. Therefore, the contribution of
Rs. 1,00,000 debited to profit and loss account has been added back and Rs. 1,50,000 (being 150% of Rs. 1,00,000) has been deducted while computing business income.

(5) Loss of Rs. 2 lakh due to destruction of machinery caused by fire is not deductible since it is capital in nature.

(6) Payment to contractor without deduction of tax at source would attract disallowance at 30% of the expenditure under section 40(a)(ia).

(7) As per section 94(7), where any person buys any shares within 3 months prior to the record date and sells such shares within 3 months after such date and the dividend received on such shares is exempt, then, the loss arising out of such purchase and sale of shares shall be ignored to the extent of dividend income.

	Rs.
Loss on sale of shares (Rs. 100 - Rs. 80) x 1000 shares	20,000
Less: Dividend exempt under section 10(34)	10,000

Short-term capital loss	10,000

Since short term capital loss can be set-off only against income under the head "Capital Gains", the short-term capital loss of Rs. 10,000 has to be carried forward to the next year. Dividend of Rs. 10,000 credited to profit and loss account has to be deducted and short-term capital loss of Rs. 20,000 debited to profit and loss account has to be added back.

(8) Depreciation as per Income-tax Rules, 1962, is deductible while calculating business income. Therefore, Rs. 2.60 lakh depreciation on tangible fixed assets and Rs. 8 lakh on intangible assets is deducted. The amount of Rs. 2.20 lakh depreciation debited to profit and loss account as per books of account has been added back.

(9) As per section 2(22)(e), any payment by a company in which the public are not substantially interested by way of loan to a shareholder, who is the beneficial owner of shares holding not less than 10% of voting power, is deemed as dividend to the extent to which to company possesses accumulated profits. Accordingly, in this case, Rs. 50,000 would be deemed as dividend under section 2(22)(e) and subject to dividend distribution tax @30% (plus surcharge @12% and health and education cess @4%) in the hands of Theta (P) Ltd. Hence, such dividend is exempt in the hands of Rhombus (P) Ltd. under section 10(34). **(6 marks)**

(B)

As per section 245S(1), the advance ruling pronounced under section 245R by the Authority for Advance Rulings **shall be binding only on the applicant who had sought it and in respect of the specific transaction in relation to which advance ruling was sought.** It shall also be binding on the Principal Commissioner/Commissioner and the income-tax authorities subordinate to him, in respect of the concerned applicant and the specific transaction.

In view of the above provision, Mr. Balram cannot use the advance ruling, obtained on an identical issue by his brother, for his assessment pertaining to the assessment year 2015-16. **(4 marks)**

Note *– Though the ruling of the Authority for Advance Rulings is not binding on others but there is no bar on the Tribunal taking a view or forming an opinion in consonance with the reasoning of the Authority for Advance Rulings de hors the binding nature [CIT v. P. Sekar Trust (2010) 321 ITR 305 (Mad.)].*

Answer 4:

(A)

The long-term capital gain arising on sale of residential house would be exempt under section 54 if it is utilized*, inter alia*, for purchase of one residential house situated in India within one year before or two years after the date of transfer. Release by the other co-owners of their share in co- owned property in favour of Vijay would amount to "purchase" by Vijay for the purpose of claiming exemption under section 54 *[CIT v. T.N. Arvinda Reddy (1979) 120 ITR 46 (SC)].* **Since such purchase is within the stipulated time of two years from the date of transfer of asset, Vijay is eligible for exemption under section 54.** As Vijay has utilised the entire long-term capital gain arising out of the sale of the residential house for payment of consideration to the other co-owners

who have released their share in his favour, he can claim full exemption under section 54.

There is no requirement in section 54 that the new house should be used by the assessee for his own residence. The condition stipulated is that the new house should be utilised for residential purposes and its income is chargeable under the head "Income from house property". This requirement would be satisfied even when the new house is let out for residential purposes. **(5 marks)**

(B)

Where Xylo Inc., a US company, has a PE in India and rendering technical services is effectively connected with the PE in India.

Since Xylo Inc. carries on business through a PE in India, in pursuance of an agreement with Alpha Ltd. or other Indian companies entered into after 31.3.2003, and the income by way of fees for technical services is effectively connected with the PE in India as per section 44DA, such income shall be computed under the head "Profits and gains of business or profession" in accordance with the provisions of the Income-tax Act, 1961.

Accordingly, expenses of Rs. 23 lakhs (Rs. 8 lakhs + Rs. 15 lakhs) incurred for earning fees for technical services of Rs. 6 crore (Rs. 2 crore + Rs. 4 crore) is allowable as deduction therefrom. However, expenditure of Rs. 6 lakhs which is not incurred wholly and exclusively for the business of the PE and the amount of Rs. 12 lakhs paid by the PE to the Head Office is **not** allowable as deduction.

Xylo Inc. is required to maintain books of account under section 44AA and get the same audited under section 44AB and furnish report along with the return of income under section 139. **(5 marks)**

(C)

Samsung India Electronics P. Ltd. v. DCIT **(1 mark)**

High Court's Observations: The High Court observed the Apex court ruling in the case of *GKN Driveshafts (India) Ltd. v. ITO [2003] 259 ITR 19 (SC)*, wherein, it was laid down that when a notice under section 148 is issued, the proper course of action for the noticee is to file a return and if he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of the reasons, the noticee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the objections by passing a speaking order.

The High Court noted that the assessee has not filed objections before the Assessing Officer and has directly approached the court by way of the writ petition. On this issue, the assessee contended that they were justified in approaching the High Court directly as the reassessment proceedings *ex facie* were unjustified and illegal. The assessee relied upon the decision of the Delhi High Court in *Techspan India P. Ltd. v. ITO [2006] 283 ITR 212 (Delhi)* in which reference was made to the decision of the Gujarat High Court in *Garden Finance Ltd. v. Asst. CIT [2004] 268 ITR 48 (Guj),* wherein it was observed that the exercise of the powers under section 148 may be so arbitrary or *mala fide* that the court may entertain the petition without requiring the assessee to approach the Assessing Officer, but such a case was an exception and not a rule. In *Techspan India P. Ltd.'s* case, the High Court had given concurrent reasons and made observations when a writ court should interfere. However, there is no need to go into the said question and controversy in the present case, since it does not occasion or require a different treatment from the

procedure followed in other cases in which re-assessment proceedings were/are initiated.

High Court's Decision: The High Court, thus, held that it will not be appropriate and proper in the facts of the present case to permit and allow the petitioner to bypass and forgo the procedure laid down by the Supreme Court in *GKN Driveshafts (India) Ltd. (supra),* **since the said procedure has been almost universally followed and has helped cut down litigation and crystallise the issues, if and when the question comes up before the Court.** **(4 marks)**

(D)

CIT v. Priya Blue Industries (P) Ltd **(1 mark)**

Appellate Authorities' views: The Commissioner (Appeals) observed that the assessee was engaged in ship breaking activity and the products obtained from the activity were finished products which constituted sizable chunk of production done by the ship breakers. The Commissioner (Appeals) agreed with the assessee that such products though commercially known as 'scrap' were definitely not "waste and scrap". He further agreed with the contention of the assessee that the items in question were usable as such and, therefore, do not fall within the definition of "scrap" as given in clause (b) of *Explanation* to section 206C(1).

The Tribunal firstly recorded a list of items sold by the assessee from the ship breaking activity. It found that the assessee collected and paid tax, for seven items, but did not collect tax at source on certain items viz. old and used plates; non-excisable (exempted) goods like wood etc. It observed that the 'waste and scrap' must be from manufacture or mechanical working of material which is *definitely not usable as such because of breakage, cutting up, wear and other reasons.* Since the assessee is engaged in ship breaking activity, these items/products are finished products obtained from such activity which are usable as such and hence, are not 'waste and scrap' though commercially known as scrap. Accordingly, the Tribunal also decided the issue in favour of the assessee.

High Court's Decision: The High Court concurred with the views of the Tribunal and held that any material which is usable as such would not fall within the ambit of the expression 'scrap' as defined in clause (b) of the *Explanation* to section 206C. **(4 marks)**

Answer 5:

(A)

The liability of a director of a private limited company for arrears due from the company is provided in **section 179. There is no necessity to issue a notice to a director, because the position of a person on whom liability is fastened is equated to that of an 'assessee' in default.**For the purpose of section 220(4), the person held liable under section 179 would be deemed to be an assessee-in-default. This may be contrasted with the arrears of a partnership firm which may be recovered from the erstwhile partners only after issue of a notice under section 156 and a default is committed by them.

Under section 179, **every person who was a director of a private limited company at any time during the relevant previous year shall be jointly and severally liable for the payment of taxes which cannot be recovered from the company**, unless he proves that the non-recovery cannot be attributed to any gross negligence, misfeasance or breach of duty on his part in relation to the affairs of the company.

(B)

As per *Explanation 2A* to section 9(1)(i), **"significant economic presence" of a non-resident in India shall constitute "business connection" for attracting deemed accrual provisions in India.**

"Significant Economic Presence" means-

(a) transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds the prescribed amount; or

(b) systematic and continuous soliciting of business activities or engaging in interaction with such prescribed number of users in India through digital means.

Further, the above transactions or activities shall constitute significant economic presence in India, whether or not,—

(i) the agreement for such transactions or activities is entered in India;

(ii) the non-resident has a residence or place of business in India; or

(iii) the non-resident renders services in India:

However, where a business connection is established by reason of significant economic presence in India, only so much of income as is attributable to the transactions or activities referred to in (a) or (b) above shall be deemed to accrue or arise in India.

This provision has been inserted in the Income-tax Act, 1961 in line with "BEPS Action Plan 1 Addressing the challenges of the digital economy" to take care of new business models such as digitized businesses, which do not require physical presence of itself or any agent in India. Such businesses can now be covered within the scope of section 9(1)(i). **(5 marks)**

(C)

The taxability of a foreign entity in any country depends upon two distinct factors, namely, whether it is doing business **with that country** or **in that country**. Internationally, the term used to determine the jurisdiction for taxation is "connecting factors". There are two types of connecting factors, namely, "Residence" and "Source". It means a company can be subject to tax either on its residence link or its source link with a country. Broadly, if a company is doing business **with** another country (i.e. host/source country), then it would be subject to tax in its home country alone, based on its residence link. However, if a company is doing business **in a** host/source country, then, besides being taxed in the home country on the basis of its residence link, it will also be taxed in the host country on the basis of its source link.

Jurisdictional double taxation: Accordingly, when source rules overlap, double taxation may arise i.e. tax is imposed by two or more countries as per their domestic laws in respect of the same transaction, income arises or is deemed to arise. in their respective jurisdictions. This is known as "jurisdictional double taxation".

In order to avoid such double taxation, a company can invoke provisions of Double Taxation Avoidance Agreements (DTAAs) (also known as **Tax Treaty** or Double Taxation Convention– DTC) with the host/source country, or in the absence of such an agreement, an Indian company can invoke provisions of section 91 of the Income-tax Act, 1961, providing unilateral relief in the event of double taxation.

- **<u>Economic double taxation:</u>** 'Economic double taxation' happens when the same transaction, item of income or capital is taxed in two or more states but in hands of different person (because of lack of subject identity). **(5 marks)**

(D)

Business profits of an enterprise can only be taxed by the Residence State. Right of Source State to tax business profits of an enterprise only arises if it carries on business through a Permanent Establishment (PE) situated in that State.

As per the approach under the OECD Model Convention, once a PE is proven, the Source State can tax only such profits as are attributable to the PE. The UN Model Convention amplifies this attribution principle by a **<u>limited</u>** Force of Attraction rule (FOA).

The FOA rule implies that when a foreign enterprise sets up a PE in State of Source, it brings itself within the fiscal jurisdiction of that State (State of Source) to such a degree that profits that the enterprise derives from Source State of Source, whether through the PE or not, can be taxed by it (State of Source State).

As per Article 7 of the UN Model Convention, if the enterprise carries on business in the other Contracting State through a PE, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to:

(a) that PE;

(b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that PE; or

(c) other business activities carried on in that other State of the same or similar kind as those effected through that PE. **(6 marks)**