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BUSINESS TAX PLANNING

EXAM REVISION NOTES

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MODULE I

CORPORATE TAX PLANNING FRAMEWORK AND MINIMUM ALTERNATE TAX

Corporate Tax Planning: A systematic, forward-looking exercise wherein an enterprise arranges its commercial affairs to minimize fiscal liabilities by utilizing all permissible statutory exemptions, deductions, rebates, and reliefs provided under the Income Tax Act, 1961, without violating legal mandates.

Tax Avoidance: The practice of exploiting statutory ambiguities, loopholes, or drafting deficiencies to reduce tax liability. Although technically operating within the letter of the law, it violates legislative intent, and is increasingly neutralized by General Anti-Avoidance Rules (GAAR) and judicial substance-over-form doctrines.

Tax Evasion: The deliberate, unlawful practice of suppressing or misrepresenting true financial facts to reduce tax liability. It encompasses suppression of taxable sales, inflation of fictitious expenditure, unrecorded inventory, non-disclosure of income, and willful falsification of books. It represents an illegal act attracting heavy pecuniary penalties under Section 270A and criminal prosecution under Section 276C.

Tax Management: The day-to-day procedural and administrative compliance with tax statutes to avoid penalties and interest. Key components: **Timely Tax Deduction at Source (TDS)**, **Maintenance of Audited Books under Section 44AB**, **Payment of Advance Tax Installments**, and **Timely Filing of Returns under Section 139(1)**.

Scope of Total Income and Residential Status (Section 5): Resident corporate entities are taxed on global income earned worldwide. Non-resident corporations are taxed exclusively on Indian-sourced income (income received, accrued, or deemed to accrue in India under Section 9). Corporate residency is governed by incorporation in India or having its **Place of Effective Management (POEM)** situated in India in that previous year.

Classical Corporate Tax Regime vs Concessional Regime: Domestic companies operate under two distinct tax tracks. Under the classical regime, base corporate tax is 25% (turnover up to Rs. 400 Crores) or 30% (turnover exceeding Rs. 400 Crores), plus applicable surcharge (7% or 12%) and 4% Health and Education Cess, alongside Minimum Alternate Tax (MAT) under Section 115JB. Under the concessional regime (Section 115BAA), domestic companies can opt for an unconditional flat corporate tax rate of 22% (effective rate 25.168% inclusive of mandatory 10% surcharge and 4% cess). Companies opting for Section 115BAA are completely exempt from Minimum Alternate Tax (MAT) under Section 115JB, but must permanently forego specified tax deductions (Sections 10AA, 32(1)(iia), 33AB, 35(1)(ii), 35AD, and Chapter VI-A deductions other than Section 80JJAA and Section 80M).

Concessional Regime for New Manufacturing Companies (Section 115BAB): Enacted to incentivize fresh industrial capital expenditure, offering an ultra-low flat base tax rate of 15% (effective rate 17.16% with 10% surcharge and 4% cess) for newly incorporated domestic manufacturing companies commencing production within statutory timeframes, with zero MAT exposure.

Minimum Alternate Tax (MAT) Mechanism under Section 115JB: Designed to bring "zero-tax companies" (corporations generating substantial commercial accounting profits but reporting zero or negligible taxable income through statutory tax deductions) into the fiscal net. If corporate tax payable under normal provisions is less than 15% of its book profit, such book profit is deemed to be the total income, and tax is levied at 15% (plus surcharge and 4% cess).

Statutory Book Profit Computation (Section 115JB): Computed by taking net profit as per Statement of Profit and Loss (prepared under Schedule III of Companies Act, 2013) and applying statutory adjustments: **Positive Additions:** Income tax paid or payable, transfers to any reserves, provisions for unaccrued liabilities, dividend paid or proposed, expenditure relatable to exempt income under Section 10, provisions for diminution in asset values, and transition adjustments under Ind AS. **Permissible Deductions:** Transfers from reserves, exempt income under Section 10, brought-forward unabsorbed depreciation or business loss (whichever is less as per books of account, excluding revaluation), and profits of sick industrial companies.

MAT Credit Entitlement (Section 115JAA): When a company pays MAT under Section 115JB, the excess of MAT paid over regular corporate tax constitutes MAT Credit. This credit can be carried forward for up to **15 consecutive assessment years** and set off against regular tax liability in future years when regular tax exceeds MAT.

Inter-Corporate Dividend Deduction under Section 80M: Prevents the cascading taxation of distributed corporate profits in tiered group holdings. Where a domestic company receives dividend income from another domestic company, a foreign company, or a business trust, it can claim a deduction under Section 80M of an amount equal to the dividend distributed by it to its own shareholders on or before the due date (one month prior to the due date of furnishing return of income under Section 139(1)).

MODULE II

TAX PLANNING FOR BUSINESS SETUP, FINANCING, AND DISTRIBUTION

Entity Selection: Sole Proprietorship vs LLP vs Company: Entity form establishes baseline tax incidence. **Sole Proprietorship:** Subject to progressive individual slab rates (up to 30% plus surcharge), no double taxation on profit withdrawals, but unlimited personal liability. **Limited Liability Partnership (LLP):** Flat 30% tax rate plus 12% surcharge (if taxable income exceeds Rs. 1 Crore) and 4% cess; partner profit shares are completely exempt under Section 10(2A); working partner remuneration deductible up to statutory limits under Section 40(b); Alternate Minimum Tax (AMT) at 18.5% applies. **Private Limited Company:** Flat 22% corporate tax under Section 115BAA; complete exemption from MAT; dividend distributed to shareholders is taxable in shareholder hands at individual slab rates.

Startup Tax Holidays under Section 80-IAC: Eligible recognized startups incorporated between 1st April 2016 and 31st March 2025 can claim a **100% deduction of profits for 3 consecutive assessment years** out of a block of 10 years, provided annual turnover does not exceed Rs. 100 Crores and the enterprise holds a certificate from the Inter-Ministerial Board.

Specified Infrastructure Investments under Section 35AD: 100% deduction of capital expenditure (excluding land, goodwill, and financial instruments) incurred wholly and exclusively for specified businesses: cold chain facilities, agricultural warehousing, cross-country oil pipelines, affordable housing, and newly built 2-star or higher hotels.

Locational Optimization and SEZ Section 10AA Deductions: Industrial units established in notified Special Economic Zones (SEZs) commencing operations before statutory cut-offs receive stepped export profit deductions: **100% of export profits** for the first 5 consecutive assessment years; **50% of export profits** for the next 5 years (Years 6 to 10); and **50% of export profits** for the final 5 years (Years 11 to 15), provided an amount equal to or exceeding 50% is credited to the SEZ Re-Investment Reserve Account and utilized within 3 years for acquiring new plant and machinery.

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Formula for Section 10AA Export Profit: Eligible Export Profit = Profits of the Business multiplied by the ratio of Export Turnover to Total Turnover. Crucially, freight, telecommunication charges, and transit insurance incurred in foreign currency outside India must be deducted symmetrically from both Export Turnover and Total Turnover.

Capital Structure Tax Planning: Debt versus Equity Financing: Debt capital generates a valuable **Interest Tax Shield** because contractual interest paid on borrowed funds is fully deductible as a revenue business expense under Section 36(1)(iii). Conversely, dividend payments on equity share capital represent an appropriation of post-tax profits and are non-deductible in corporate tax computations. Effective post-tax cost of debt is given by: Cost of Debt = Pre-tax Interest Rate multiplied by (1 minus Corporate Tax Rate).

Thin Capitalisation Rules under Section 94B: Imposes a statutory ceiling on the deductibility of interest paid or payable to non-resident Associated Enterprises (AEs) to prevent base erosion via excessive intra-group leverage. If total cross-border interest exceeds **Rs. 1,00,00,000 (Rs. 1 Crore)**, deductible interest is capped at **30% of operating EBITDA**. Any disallowed interest can be carried forward for set-off for up to **8 consecutive assessment years**.

Deemed Dividend Mechanics under Section 2(22)(e): Safeguard against closely held private companies distributing disguised profits as tax-free loans to influential shareholders. Any payment of advance or loan by a closely held company to: (a) a shareholder holding not less than 10% voting power, or (b) any concern in which such shareholder holds a substantial interest (20% or more), is deemed to be a taxable dividend in the recipient's hands to the extent the company possesses accumulated profits (whether capitalized or not). Loans advanced in the ordinary course of business lending are explicitly exempt.

Corporate Earnings Policy: Retention vs Distribution: Retained earnings eliminate immediate dividend taxation in shareholder hands, financing internal capital expenditure with zero flotation costs. Distributed dividends trigger withholding tax under Section 194 (10% on payments exceeding Rs. 5,00,000) and are taxed at individual slab rates in investor hands.

MODULE III

TAX PLANNING FOR MANAGEMENT DECISIONS AND RESTRUCTURING

Make or Buy Tax Analysis: The "Make" alternative requires capital expenditure depreciable over multiple future tax periods under Section 32 (15% WDV on plant), while operating costs are expensed under Section 37(1), allowing Goods and Services Tax (GST) Input Tax Credit (ITC) on capital equipment and inputs. The "Buy" alternative delivers an immediate 100% revenue deduction for component purchase invoices in the current fiscal year under Section 37(1), eliminating asset obsolescence risks, subject to Section 194Q TDS (0.1% on purchases exceeding Rs. 50 Lakhs).

Own or Lease Evaluation: In a **Borrow-and-Buy** structure, the enterprise claims statutory depreciation under Section 32, deducts loan interest under Section 36(1)(iii), and absorbs scrap salvage values upon retirement. In an **Equipment Leasing** structure, the lessee deducts full periodic lease rentals as revenue expenditure under Section 37(1), generating an immediate tax shelter equal to Lease Rental multiplied by Corporate Tax Rate, subject to 2% TDS under Section 194I.

Repairs and Renovations: Section 31 vs Capital Expenditure: Outlays incurred on "current repairs" to buildings, machinery, and plant are 100% deductible as revenue expenses under Section 31. Under landmark Supreme Court rulings, a current repair preserves or restores an asset to its original operating functionality without creating a new asset or conferring an enduring commercial advantage. Substantial renewals, reconstructions, or capacity-expanding modernizations must be capitalized to the asset block and depreciated under Section 32.

Tax Planning in Employee Remuneration: Salary packaging maximizes net take-home compensation within Cost to Company (CTC) limits: **House Rent Allowance (Section 10(13A)):** Exempt up to least of actual HRA, 50% basic (metros), or rent paid in excess of 10% basic. **Employer NPS Contribution (Section 80CCD(2)):** Deductible up to 10% of basic salary for private employees, permissible under both old and new regimes. **Communication Reimbursement (Rule 3(7)(ix)):** Fully exempt against actual mobile and broadband expenses. **Food Facility:** Exempt up to Rs. 50 per meal. **Rent-Free Accommodation (Rule 3(1)):** Taxable perquisite restricted to 10% of salary in major cities. **Motor Car Perquisite (Rule 3(2)):** Fixed taxable perquisite of Rs. 1,800 to Rs. 2,400 per month for combined official and personal usage.

ESOPs Two-Stage Taxation: Taxed as perquisite under Section 17(2) upon exercise (FMV minus Exercise Price), and subsequently taxed as Capital Gains under Section 45 upon eventual share sale (Sale price minus FMV on exercise date).

Tax-Neutral Amalgamations (Section 2(1B)): Restructuring qualifying for tax neutrality requires transfer of all properties and liabilities, plus at least **75% in value of shareholders** becoming shareholders in the amalgamated entity. Conferred benefits: **Capital Gains Exemption to Company (Section 47(vi))**, **Capital Gains Exemption to Shareholders (Section 47(vii))**, and **Carry Forward of Accumulated Losses and Unabsorbed Depreciation (Section 72A)** granting a fresh 8-year statutory carry-forward life.

Demerger Tax Mechanics (Section 2(19AA)): Tax-neutral transfer of an autonomous undertaking to a resulting company on a going concern basis. Book value transfers ensure complete capital gains exemption under Section 47(vib) and 47(vid). Accumulated losses and unabsorbed depreciation are apportioned between demerged and resulting companies under Section 72A(4) in the ratio of fixed assets retained and transferred.

Slump Sale Mechanics under Section 50B: Transfer of an entire industrial undertaking for a lump sum consideration without assigning individual asset values. **Net Worth Computation:** Depreciable assets valued at WDV under Section 43(6); Section 35AD assets valued at NIL; other assets at book value; revaluation reserves strictly excluded; liabilities deducted at book values. Capital gains are Long-Term if the undertaking was held for **more than 36 months**. Cost inflation indexation is strictly prohibited under the second proviso to Section 48.

Intra-Group Transfers and Clawback (Section 47 & 47A): Asset transfers between parent and 100% Indian subsidiary companies are completely exempt from capital gains tax under Sections 47(iv) and 47(v). However, under Section 47A, this exemption is completely revoked if, within **8 years from transfer**, the asset is converted into stock-in-trade or the parent company reduces its shareholding below 100%.

MODULE IV

OPERATIONAL TAX COMPLIANCE, ADVANCE TAX, AND TRANSFER PRICING

Tax Deduction at Source (TDS) Operational Scheme: Deductors must withhold tax at time of credit or payment. Key rates: **Section 192 (Salaries - Average Slab)**, **Section 194A (Interest - 10%)**, **Section 194C (Contractors - 1% individual / 2% others)**, **Section 194H (Commission - 2%)**, **Section 194I (Rent - 10% land/building; 2% machinery)**, **Section 194J (Professional Fees - 10%; FTS - 2%)**, **Section 194Q (Goods Purchase > Rs. 50 Lakhs - 0.1%)**, **Section 194R (Business Perks/Benefits - 10% on benefits exceeding Rs. 20,000)**. Monthly deposit is due by the **7th of the following month** (30th April for March). Quarterly returns: Form 24Q (Salaries), Form 26Q (Resident Non-Salaries), Form 27Q (Non-Residents).

Consequences of TDS Non-Compliance: Failure to deduct or deposit resident TDS triggers **30% expenditure disallowance under Section 40(a)(ia)**; non-resident default triggers **100% disallowance under Section 40(a)(i)**. Interest is levied under Section 201(1A) at **1% per month** for non-deduction and **1.5% per month** for late payment. Late filing fee of **Rs. 200 per day** applies under Section 234E.

Higher TDS/TCS for Non-Filers (Sections 206AB and 206CCA): Where a payee has not filed income tax returns for the preceding previous year and aggregate TDS/TCS exceeded Rs. 50,000, tax must be deducted or collected at twice the statutory rate or 5%, whichever is higher.

Tax Collection at Source (TCS) under Section 206C: Sellers collect tax from buyers: **Section 206C(1)** on specified goods (scrap 1%, minerals 1%, timber 2.5%, liquor 1%); **Section 206C(1F)** on motor vehicles exceeding Rs. 10 Lakhs (1%); **Section 206C(1G)** on foreign tour packages (5% up to Rs. 7 Lakhs, 20% thereafter); **Section 206C(1H)** on sale of goods exceeding Rs. 50 Lakhs (0.1%, subordinated to Section 194Q). Quarterly returns in Form 27EQ; certificates in Form 27D.

Advance Tax Installment Schedule (Section 211): Applicable where estimated net tax liability equals or exceeds **Rs. 10,000**. Four quarterly installments: **15% by 15th June**; **45% by 15th September**; **75% by 15th December**; **100% by 15th March**. Deferment attracts Section 234C interest at 1% per month on quarterly shortfalls. Total shortfall below 90% of assessed tax attracts Section 234B interest at 1% per month from 1st April of Assessment Year.

Transfer Pricing Framework (Sections 92 to 92F): Mandates that all international transactions between **Associated Enterprises (Section 92A)** must be executed at **Arm's Length Price (ALP)**. Associated enterprises exist where shareholding reaches 26%, loans exceed 51% of book value of total assets, or functional operational control exists.

Five Statutory Transfer Pricing Methods: (1) **Comparable Uncontrolled Price (CUP):** Direct price comparison for standardized goods; (2) **Resale Price Method (RPM):** Deducts distributor gross margin on resold finished goods; (3) **Cost Plus Method (CPM):** Production cost base plus standard manufacturing markup; (4) **Profit Split Method (PSM):** Splits combined profit based on relative economic contributions for integrated intangibles; (5) **Transactional Net Margin Method (TNMM):** Compares operating net margin against independent market comparables. Reporting via **Form 3CEB** by 31st October.

Secondary Adjustments in Transfer Pricing (Section 92CE): Where a primary transfer pricing adjustment exceeds Rs. 1 Crore and is accepted by the assessee, the excess money lying with the foreign AE must be repatriated to India within 90 days. If not repatriated, it is treated as an advance, attracting interest at SBI one-year MCLR plus 3.25%.

Digital Economy Taxation and E-Commerce: (1) **Equalisation Levy 1.0:** 6% on foreign online advertising exceeding Rs. 1 Lakh; (2) **Equalisation Levy 2.0:** 2% on non-resident e-commerce operators with revenue exceeding Rs. 2 Crores; (3) **Section 194O:** E-commerce platforms deduct 1% TDS on gross participant sales; (4) **Significant Economic Presence (SEP):** Deemed nexus if digital revenue exceeds Rs. 2 Crores or user interactions reach 3,00,000.

Board for Advance Rulings (BAR): Replaced the erstwhile AAR. Provides binding advance rulings on tax liability of transactions proposed by non-residents or resident entities engaging in major transactions exceeding Rs. 100 Crores. Orders appealable before High Court within 60 days under Section 245W.

Tax Audit under Section 44AB: Mandatory for business enterprises where total sales, turnover, or gross receipts exceed Rs. 1 Crore (or Rs. 10 Crores where aggregate cash receipts and cash payments do not exceed 5% of total transactions). The tax audit report must be submitted electronically in Form 3CA/3CD (for corporate entities) or Form 3CB/3CD (for non-corporate entities) by 30th September of the relevant assessment year. Failure to get accounts audited or submit the report attracts a mandatory penalty under Section 271B equal to 0.5% of turnover or Rs. 1,50,000, whichever is lower.

MODULE V

INTERNATIONAL TAXATION, DOUBLE TAX RELIEF, AND GAAR

Principles of International Taxation: Residence Principle: State asserts worldwide taxing jurisdiction over residents regardless of income origin. **Source Principle:** State asserts territorial taxing jurisdiction over income originating or deemed to arise within its physical or economic borders. Interaction generates cross-border double taxation.

Juridical vs Economic Double Taxation: Juridical Double Taxation: Same legal entity taxed by two distinct sovereign states on identical income in the same tax year. Mitigated via DTAA tax credit/exemption mechanisms and Section 91. **Economic Double Taxation:** Same underlying economic profit taxed in hands of two distinct taxpayers (corporate operating profit taxed at entity level and dividend taxed at shareholder level). Mitigated via inter-corporate dividend deductions (Section 80M) and participation exemptions.

Double Taxation Avoidance Agreements (DTAAs): Bilateral treaties allocating sovereign taxing rights: **Article 5 (Permanent Establishment):** Fixed place of business, construction site (> 6 months), or dependent agent creating source taxable presence; **Article 7 (Business Profits):** Taxable only in residence state unless business is conducted via a PE in the source state; **Articles 10, 11, 12:** Passive dividends, interest, royalties, and fees for technical services taxed at capped source withholding rates (5% to 15%).

The Multilateral Instrument (MLI) & BEPS Action 15: Automatically updates bilateral tax treaties to combat base erosion: **Principal Purpose Test (PPT):** Denies treaty benefits if obtaining tax benefit was one of the principal purposes of the transaction; **Limitation on Benefits (LOB):** Prevents conduit and shell companies from treaty shopping.

Bilateral Relief (Section 90) & Treaty Override (Section 90(2)): Assessee may choose either the domestic Income Tax Act or the DTAA, whichever is **more beneficial**. Access to treaty benefits requires a valid **Tax Residency Certificate (TRC)** and electronic submission of Form 10F. Foreign Tax Credit (FTC) is granted under Rule 128 via Form 67 on a country-by-country basis, restricted to the Indian tax attributable to such foreign income.

Unilateral Relief under Section 91: Protects resident assessees earning income in nations with which **India has NO DTAA**. Relief is granted as a direct deduction from Indian tax payable: Section 91 Relief = Doubly Taxed Income multiplied by the **LOWER of the Indian Average Tax Rate or the Foreign Average Tax Rate**.

General Anti-Avoidance Rules (GAAR) Framework (Chapter X-A): Empowers Revenue to disregard or recharacterize an **Impermissible Avoidance Arrangement (IAA)**. Gateway test: Main purpose is obtaining a tax benefit. Tainted elements (any one required): (1) Non-arm's length terms, (2) Misuse or abuse of the Act, (3) Lack of commercial substance under Section 97 (round-tripping, accommodating parties), (4) Non-bona fide business manner. Safe harbour: Total tax benefit must exceed **Rs. 3,00,00,000 (Rs. 3 Crores)**; invoked only with prior sanction of an independent High Court-headed Approving Panel.

Advance Pricing Agreements (APA) under Section 92CC: Formal binding agreement between CBDT and taxpayer establishing transfer pricing methodologies for up to **5 future consecutive years**, with optional **4-year rollback provisions** covering up to 9 years of absolute fiscal certainty. Eliminates cross-border transfer pricing litigation and audit exposure.

Mutual Agreement Procedure (MAP): Article 25 government-to-government dispute resolution between Competent Authorities to relieve economic double taxation and resolve treaty interpretative ambiguities without domestic court litigation.

Base Erosion and Profit Shifting (BEPS) Action Plans: A comprehensive 15-point multilateral initiative developed by the OECD and G20 to equip sovereign governments with domestic and international instruments to address multinational tax avoidance. Core implementation pillars in Indian law include: Action 1 (Digital Economy Taxation via Equalisation Levy and SEP), Action 4 (Limiting Base Erosion via Interest Deductions under Section 94B), Action 6 (Preventing Treaty Abuse through Principal Purpose Test and LOB), Action 13 (Three-tiered Transfer Pricing Documentation and CbC Reporting in Form 3CEAD), and Action 15 (Multilateral Instrument).

Dispute Resolution Panel (DRP) under Section 144C: A collegium of three Principal Commissioners or Commissioners of Income Tax constituted to provide a specialized alternative dispute resolution mechanism for eligible assessees (foreign companies and assessees subject to transfer pricing variations). The Assessing Officer must forward a draft assessment order to the assessee, against which objections can be filed within 30 days. The DRP must issue binding directions within 9 months, ensuring speedy dispute resolution without upfront tax payment.

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