

EXAMINATION OF ARTICLED CLERKS
PAPER IV
TAXATION
Monday, 24th April, 2017
Time: 3 Hours (1:00 PM to 4:00 PM)
(Total Marks: 100)

1. Answer any 5 of the following:

30 marks (6 marks each)

- i. What are a discretionary and a determinate trust? How are they different in terms of their features? Are they taxed differently? If so, how?
- ii. Who are "persons" liable to tax under the ITA? Is a trust a taxable "person"?
- iii. What is a capital asset? What is the difference between a short term and a long term capital asset? Where in the ITA is the tax rate specified for a short term capital asset if the asset is a share in a private unlisted company?
- iv. What does transfer pricing mean? Which part or sections of the ITA deal with transfer pricing? Do these provisions apply if there is no tax liability ultimately due an exemption under the ITA or due to availability of treaty benefits under a Double Tax Avoidance Agreement?
- v. Differentiate between tax planning, tax avoidance and tax evasion.
- vi. What are deemed dividends? What is the difference between a provision and a reserve? Would the creation of a provision or a reserve affect the calculation or applicability of the provision with respect to deemed dividends?

2. Answer either one of the following:

15 marks

- i. What is the jurisdiction of Authority of Advance Ruling (AAR)? Explain the process before the AAR. Can AAR take up proceedings in which the tax assessment has already been initiated? How can the AAR ruling be challenged?
- ii. What are appealable orders against which an appeal can be filed before Commissioner of Appeals? What are the powers of the Commissioner (Appeals) while deciding the appeal?

3.

15 marks

- a. A company has two plants. It wishes to transfer one plant to a buyer. It has three options, namely an asset sale, a slump sale and a demerger. What are the tax consequences in each method and which method would you advice the client to adopt?
- b. In the same question above, since the method adopted is tax efficient, can it be questioned as violative of GAAR provisions? If so, what commercial substance can be demonstrated to show inapplicability of GAAR?

4.

10 marks

- a. What is the difference between Sections 56 (2) (viia) and 56(2)(viib)?
- b. Would both apply to shares with respect to a foreign company?

15 marks

5. A US company holds 100% of the shares in a Mauritian company which holds 80% of the shares in an Indian company. The US and Mauritian entities do not have any other business. The US company sells the shares of the Mauritian entity to a buyer in Hong Kong for a substantial gain. Would the sale of such shares be taxable in India? If so, would it be taxable as a long term or a short term capital gain based on the holding period of the shares in the Mauritian company or the holding period of the shares in the Indian company? Would the taxability change if 100% of the shares of the US company were held by a different Mauritian entity (new Mau co), and this new Mau co sold the shares of the US company to the Hong Kong buyer.

10 marks

6. Does Doctrine of Res Judicata or Estoppel by Record apply to Income Tax Proceedings? Discuss whether a Circular issued by the Board under Section 119 (2) (a) of the Income Tax Act is binding on an Assessee and Income Tax Department? What if the circular is inconsistent with the statutory provisions? Give reasons

7.

5 marks

- How are losses set off and carried forward by businesses under Section 72 of Income Tax Act, 1961. Can it be carried forward if the shareholders are different at the time of claiming the losses? Can all both long term and short term capital loss be set off against short term and long term capital gains?
-