

Test Series: October 2022

MOCK TEST PAPER

FINAL COURSE: GROUP – II

PAPER – 6C: INTERNATIONAL TAXATION

The Question Paper comprises of five case study questions. The candidates are required to answer any four case study questions out of five.

All questions relate to Assessment Year 2022-23, unless otherwise stated in the questions/case studies.

Time Allowed – 4 Hours

Maximum Marks – 100

CASE STUDY 1

Perth Inc. Country A is engaged in manufacture of toys. Perth Inc. solicited the services of Mr. Mithun, an Indian citizen, presently living in Country Y. Mithun visited India every year and secured orders from Indian buyers for supply of toys by Perth Inc.

The functional responsibility of Mr. Mithun, aged 38 years, included timely dispatch of goods by Perth Inc., and safe receipt of delivery by Indian customers and remittance of amounts by Indian customers to Perth Inc. Perth Inc. decides the itinerary of Mr. Mithun as regards date, time and place to be visited by him. He usually stayed in India for 90 days during every previous year. For the previous year 2021-22, Mithun was paid ₹ 15 lakhs (equivalent in US dollars) as commission by Perth Inc. by crediting his bank account in India. Mithun has no other income in India. The total amount of purchases made by Indian customers from Perth Inc. by placing orders through Mithun amounted to ₹ 500 lakhs. The normal profit that would have been earned by Perth Inc. is @ 12% on sale price.

Mr. Roshan, younger brother of Mr. Mithun, is a non-resident Indian based in London. He left India for the first time on 10.04.2013 for employment outside India. Mr. Roshan's wife Vidya is a physician (doctor) running a hospital as a partnership firm along with a group of doctors in London. She visited India on behalf of the firm to treat the patients in various hospitals in India and stayed here for 62 days during the previous year 2021-22. Mr. John, another partner of the firm, had also visited India for 30 days during the previous year 2021-22 to treat patients in various hospitals in India. The income arising from their services were paid to the bank account of the firm in UK.

Mr. Roshan gives you the following information for the year ended 31.03.2022:

- (i) Monthly Salary from a London based company - £ 5,000 (1 £ = ₹ 91) credited to his bank account in London.
- (ii) Interest on savings bank account with Bank of London - £ 186
- (iii) Dividend from London based companies credited to his bank account in India is ₹ 2,84,000.

- (iv) Roshan sold listed shares of Theta Ltd., an Indian company. Cost of acquisition on 27.3.2017 was ₹ 5 lakhs and sold on 11.08.2021 for ₹ 11 lakhs. STT was paid on acquisition and sale of shares.

Bonus shares were issued by Theta Ltd. in December 2017, which were also sold in October 2021 for ₹ 4,25,000.

The fair market value of Theta Ltd. as on 31.01.2018 was ₹ 8,60,000 for original shares and ₹ 3,05,000 for bonus shares.

- (v) Roshan had acquired 80 shares in an unlisted Indian company on 22.3.2012 for ₹ 1,84,000. These shares were sold on 14.3.2022 for ₹ 7,25,000.
- (vi) He paid ₹ 60,000 to New India Assurance Co. Ltd., Mumbai, towards health insurance premium of his mother aged 75 years and non-resident Indian.

Ganga Ltd. engaged in manufacture of semi-finished goods and exporting the same to its parent company Perth Inc. of Country A. It also completes the full process of manufacturing and exporting the finished goods in its brand name to European countries. The tax assessment of Ganga Ltd. for assessment year 2020-21 is pending as on 31.03.2022, as the Assessing Officer made reference to Transfer Pricing Officer (TPO) in September, 2021.

For the year ended 31.03.2022, the net income of Ganga Ltd. is ₹ 620 lakhs, after adjusting the following:

- (i) Depreciation of ₹ 320 lakhs;
- (ii) amortization of preliminary expenses under section 35D of ₹ 120 lakhs (on the capital employed of ₹ 100 crores);
- (iii) Interest on moneys borrowed from parent company Perth Inc. is ₹ 1000 lakhs. There is no other interest payable by the company.

The arm's length interest payable by Ganga Ltd. to Perth Inc. is ₹ 800 lakhs and Ganga Ltd. would be making the arm's length adjustment suo moto while computing its total income.

Ganga Ltd. bought shares for ₹ 30 crores from a Foreign Institutional Investor (FII). The purchase of shares resulted in long-term capital gain of ₹ 2 crores (computed) and short-term capital gain of ₹ 5 crores (computed) to the FII.

Ganga Ltd. carried out certain transactions with its parent company Perth Inc. during the FY 2021-22 which the Assessing Officer considers necessary to declare as impermissible arrangement lacking commercial substance. He made reference to the Commissioner and it was subsequently referred to Approving Panel on 30.09.2021 and the reference was received by the Approving Panel on 11.10.2021.

The Cost Inflation Index is as follows: F.Y. 2011-12:184; F.Y 2016-17:264, F.Y. 2021-22:317

Choose the most appropriate alternative for the following MCQs: (2 x 5 =10 Marks)

1. How much tax should be deducted at source from the amount payable to FII for the purchase of shares?
 - (a) ₹ 113.50 lakhs
 - (b) ₹ 137.54 lakhs
 - (c) ₹ 163.85 lakhs
 - (d) Nil
2. What is the time limit within which the Approving Panel must give direction to the Commissioner as regards invoking or otherwise of GAAR provisions in the assessment of Ganga Ltd.?
 - (a) 30.04.2022
 - (b) 31.03.2022
 - (c) 28.02.2022
 - (d) 31.03.2023
3. When Vidya came to India and rendered services on behalf of the partnership firm running a hospital in London, the income so earned is covered by which article of the tax treaty as per the India-UK DTAA?
 - (a) Article 7
 - (b) Article 15
 - (c) Article 16
 - (d) Article 23
4. What would be the most appropriate method applicable for determination of ALP for Ganga Ltd. for manufacturing and supplying semi-finished goods to Perth Inc.?
 - (a) Cost Plus Method
 - (b) Profit Split Method
 - (c) Resale Price Method
 - (d) Comparable Uncontrolled Price Method
5. If the payment made by Perth Inc. to Mr. Mithun is not covered by any of the specific articles of OECD Model Convention, in which country would the commission income be taxed as per OECD Model Convention?
 - (a) Country Y
 - (b) India.

(c) In both Country Y and India. However, Country Y will either grant credit of taxes paid by Mithun in India or exempt such income.

(d) Country A

DESCRIPTIVE QUESTIONS

6. Compute the total income and tax liability of Mr. Roshan for the A.Y. 2022-23. (5 Marks)

7. Compute the excess interest liable for disallowance in the A.Y. 2022-23 and state the maximum period upto which such interest can be carried forward.

Also, examine whether Ganga Ltd. is required to make secondary adjustment relating to interest and the related consequences. Does Ganga Ltd. have any other option if it does not wish to make secondary adjustment? (5 Marks)

8. *Determine the residential status of Mr. Mithun and examine whether the commission income of Mr. Mithun is chargeable to income-tax in his hands in India under the Income-tax Act, 1961. Also, examine whether income earned by Perth Inc. from selling goods in India would be taxable in India under the Income-tax Act, 1961.* (5 Marks)

Extracts of India-UK Double Taxation Avoidance Agreement

ARTICLE 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is directly or indirectly attributable to that permanent establishment.
2. Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, the profits which that permanent establishment might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment shall be treated for the purposes of paragraph (1) of this Article as being the profits directly attributable to that permanent establishment.

ARTICLE 15

INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual, whether in his own capacity or as a member of a partnership, who is a resident of a Contracting State in respect of professional services or

other independent activities of a similar character may be taxed in that State. Such income may also be taxed in the other Contracting State if such services are performed in that other State and if:

- (a) he is present in that other State for a period or periods aggregating 90 days in the relevant fiscal year; or
- (b) he, or the partnership, has a fixed base regularly available to him, or it, in that other State for the purpose of performing his activities;

but in each case only so much of the income as is attributable to those services.

- 2. For the purposes of paragraph (1) of this Article an individual who is a member of a partnership shall be regarded as being present in the other State during days on which, although he is not present, another individual member of the partnership is so present and performs professional services or other independent activities of a similar character in that State.
- 3. The term "professional services" includes independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, surgeons, lawyers, engineers, architects, dentists and accountants.

ARTICLE 16

DEPENDENT PERSONAL SERVICES

- 1. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
- 2. Notwithstanding the provisions of paragraph (1) of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall not be taxed in that other State if:
 - (a) he is present in that other State for a period or periods not exceeding in the aggregate 183 days during the relevant fiscal year;
 - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other State; and
 - (c) the remuneration is not deductible in computing the profits of an enterprise chargeable to tax in that other State.

ARTICLE 23

OTHER INCOME

- 1. Subject to the provisions of paragraph (2) of this Article, items of income beneficially owned by a resident of a Contracting State, wherever arising, other than income paid out of trusts

or the estates of deceased persons in the course of administration, which are not dealt with in the foregoing Articles of this Convention, shall be taxable only in that State.

2. The provisions of paragraph (1) shall not apply to income, other than income from immovable property as defined in paragraph (2) of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 15 of this Convention, as the case may be, shall apply.
3. Notwithstanding the provisions of paragraphs (1) and (2) of this Article, items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Convention, and arising in the other Contracting State may be taxed in that other State.

CASE STUDY 2

Alpha (P) Ltd. is engaged in manufacture of garments. It sold garments to Beta Inc. of California, USA (which has 28% voting power in Alpha (P) Ltd.) and to other unrelated parties. During the P.Y.2021-22, Alpha (P) Ltd. sold 2 lakh pieces of T-shirt @ USD 6 per piece to Beta Inc. Identical shirts were sold to other unrelated parties @USD 8 per piece. However, the terms of sales to Beta Inc. included provision of guarantee by Beta Inc. to Bank of America (BOA), on a loan of ₹ 10 crores availed by the company from BOA; and providing the company access to Beta Inc's database on market trends in Asia. The interest paid by Alpha (P) Ltd. on the BOA loan for the financial year ended 31st March, 2022 amounts to ₹ 200 lakhs. Alpha (P) Ltd. paid a fee @ 1% to Beta Inc. for providing the guarantee on the loan from BOA. The market rate for availing guarantee for a similar transaction is 2%. Alpha (P) Ltd. also paid ₹ 7 lakhs to Beta Inc. towards the cost incurred in providing access to its database. If the company had obtained similar database from an unrelated party, the cost would have been ₹ 12 lakhs.

Beta Inc. markets apparels globally under its brand name. It sells in many countries including India through e-commerce operators at a price, which is generally marked-up at 50% on its cost of purchase. During the F.Y. 2021-22, its sales in India was ₹ 2.80 crores through e-commerce operator viz., Phi e-Com Ltd., London, which does not have a permanent establishment in India. Leveraging their combined knowledge and experience, Alpha (P) Ltd. and Beta Inc. provided their know-how on the supply chain of textile industry to an unrelated party viz., Delta Inc., USA, a new company manufacturing garments from recycled plastics.

Alpha (P) Ltd. leased machinery from Gamma Pte. Ltd., Country X, for an annual payment of ₹ 100 lakhs. The machinery, if imported, would have costed ₹ 5 crores. The DTAA between India and Country X provides for withholding tax @ 15% on royalty paid. For the A.Y. 2022-23, the POEM of Gamma Pte. Ltd. is in India.

For the A.Y. 2019-20, the total income of Alpha (P) Ltd. was enhanced by ₹ 350 lakhs by the

Assessing Officer, in conformity with the arm's length price determined by the Transfer Pricing Officer. The assessment order is dated 31.10.2021. The company decided to accept the adjustment made in the assessment order.

Dr. Philip was Director (R & D) of Alpha(P) Ltd. up to 31.03.2017. On 1.4.2017, he returned to his home country, Country Y. He visits India every year for 55 days. In the F.Y. 2021-22, he earned royalty income of ₹ 15 lakhs from ABC Ltd., an Indian concern, under an agreement approved by the Central Government and incurred expenditure of ₹ 2 lakhs for earning such income. His interest income on fixed deposits with SBI, Baroda branch amounts to ₹ 4 lakhs. His business income in Country Y for the financial year 2021-22 is USD 22172 and interest on savings bank account in Country Y for that year is USD 1472.

Assume the rate of exchange as 1 USD = ₹ 80 and the one year marginal cost of fund lending rate of SBI as on 1.4.2020 is 10% and as on 1.4.2021 is 10.25%.

Choose the correct alternative for the following MCQs: (2 x 5 =10 Marks)

1. What is the 'due date' by which Alpha (P) Ltd. must receive the excess money consequent to ALP adjustment made in the assessment order for A.Y.2019-20?
 - (a) 29.1.2022
 - (b) 31.1.2022
 - (c) 28.02.2022
 - (d) 31.03.2022
2. What is the amount of interest which would be added to the total income of Alpha Ltd. for A.Y.2022-23, if the excess money referred to in MCQ 1 is not repatriated till 31.3.2022?
 - (a) ₹ 4,40,137
 - (b) ₹ 14,84,144
 - (c) ₹ 19,18,527
 - (d) ₹ 19,54,726
3. In case Alpha (P) Ltd. is not able to repatriate the excess money referred to in MCQ 1 from Beta Inc., what is the additional income-tax it should pay, so that there is no secondary adjustment?
 - (a) ₹ 75,42,080
 - (b) ₹ 73,38,240
 - (c) ₹ 72,05,380
 - (d) ₹ 70,01,640
4. What would be the most appropriate method for determination of ALP in respect of the transactions between Alpha (P) Ltd. and Beta Inc., who leveraged their combined

knowledge, and provided technical knowledge on the supply chain industry to Delta Inc. of USA?

- (a) Comparable Uncontrolled Price Method
 - (b) Transaction Net Margin Method
 - (c) Profit Split Method
 - (d) Cost Plus Method
5. At what rate Alpha (P) Ltd. would withhold tax on the amount paid to Gamma Pte. Ltd., Country X? What would be your answer if Alpha (P) Ltd. had leased the machinery from Gamma LLP in Country X instead of Gamma Pte. Ltd.?
- (a) 40% in both cases
 - (b) 40% and 30%, respectively.
 - (c) 15% in both cases
 - (d) 10% in both cases

DESCRIPTIVE QUESTIONS

6. Compute the total income and tax liability of Dr. Philip under the Income-tax Act, 1961, on the assumption that there is no DTAA between India and Country Y. Determine the amount of tax deductible at source from the royalty and interest paid/ payable to Dr. Philip. Is Dr. Philip required to file his income tax return (ITR) in India? (5 Marks)
7. Examine the tax implications on the transaction of sale of goods by Beta Inc. in India through Phi e-Com Ltd under the domestic tax laws.
- What would be your answer if the aggregate transactions with persons in India during the P.Y.2021-22 is ₹ 1.8 crores, instead of ₹ 2.8 crores? (6 Marks)
8. Compute the arm's length adjustment, if any, to be made to the transfer price in respect of garments supplied by Alpha (P) Ltd. to Beta Inc. for the A.Y.2022-23. (4 Marks)

CASE STUDY 3

Vintage (P) Ltd., Hyderabad is engaged in manufacture of electronic goods and exporting the same to various associated and other enterprises across Asia. It has been in the business from 1st April 2017. The income tax assessment for assessment year 2019-20 was completed by making reference to the Transfer Pricing Officer (TPO) who enhanced the arm's length price of the international transaction by ₹ 350 lakhs. The company applied for advance pricing agreement (APA) in May, 2021 which was signed in August 2021. The tax assessment for the A.Y.2018-19 regarding arm's length price of international transaction was disputed before the Tribunal which set aside the order for fresh consideration by the Assessing Officer in December 2021. The company also applied for rollback benefit which was agreed and signed in January 2022. If the APA is applied, the total income returned for the assessment year

2019-20 would get enhanced by ₹ 180 lakhs as against ₹ 350 lakhs originally determined by Assessing Officer.

Vintage (P) Ltd. has an associated enterprise by name Trident GmbH in Country G. The associated enterprise i.e., Trident GmbH, wants to appoint an agent in India for its business activities. The persons/ entity so appointed would be authorized to enter into contracts on its behalf after negotiations with the suppliers.

Vintage (P) Ltd. borrowed USD 70 lakhs from Babylon Inc. USA on 1st July 2016 under a loan agreement approved by the Central Government. Interest is payable half yearly in foreign currency @ 5% per annum, on every half year i.e. on 31st December and 30th June. For the half year ended 31st December 2021, interest was paid on 31st January, 2022 after deducting tax on source.

TT buying rate of SBI on various dates are: 31st December 2021 - 1 USD = ₹ 72; 31st January 2022 - 1 USD = ₹ 73; 28 February 2022 - 1 USD = ₹ 72.50; 31st March 2022-1 USD = ₹ 74.

Vintage (P) Ltd. exported its products to unrelated party Range Ltd., Australia. Vintage (P) Ltd. is dependent on Malta Ltd. for marketing its products and 48% of its sales are made by it through the price negotiations made and fixed by Malta Ltd. The terms of sale and price charged by Vintage (P) Ltd. to Range Ltd. were also influenced by Malta Ltd. Vintage (P) Ltd. did not maintain any document and information in respect of sales made to Range Ltd. During the financial year 2021-22, the aggregate sale made by Vintage (P) Ltd. to Range Ltd., was ₹ 12 crores

Thames Ltd of UK is an e-commerce operator providing foreign currency services through electronic mode. It does not have a PE in India. For the previous year 2021-22, it provided services to Vintage (P) Ltd. for a consideration of ₹ 250 lakhs.

Pratyoosh, aged 61 years, ex-Director of Vintage (P) Ltd., is resident of India. He has income of ₹ 9 lakhs chargeable to tax in India for the assessment year 2022-23. He remained in foreign country W earlier and has regular income of ₹ 20 lakhs (converted in Indian currency) per annum from that country.

Malta Ltd., UK is a business conglomerate with subsidiaries in various countries. It owns 51% shares of Vintage (P) Ltd., Hyderabad. Malta Ltd. has a liaison office at Baroda. It wants to utilize the services of liaison office for furthering its business in India and in South East Asia. The liaison office would carry out advertisement/marketing activities in India. This strategy would lead to turnover of around ₹ 100 crores per annum with resultant profit margin of 15%.

Waterworks Pte. Ltd., Singapore (a Foreign Institutional Investor) is a subsidiary company of Malta Ltd. U.K. Waterworks Inc. commenced its activities in India from 15th April, 2021, on which date it commenced purchase of securities. During the previous year ended 31st March 2022, it earned capital gain of ₹ 60 lakhs on transfer of listed securities (STT paid) in India.

Choose the correct alternative for the following MCQs

(2 x 5 = 10 Marks)

1. How much would be the quantum of penalty leviable on Vintage (P) Ltd. for failure to keep and maintain documents in respect of its transactions with Range Ltd.?
 - (a) ₹ 1,00,000
 - (b) ₹ 24,00,000
 - (c) ₹ 25,00,000
 - (d) Nil
2. Is equalization levy deductible/payable for the transaction between Vintage (P) Ltd. and Thames Ltd. of UK? If so, how much, and who is responsible for making the payment?
 - (a) Yes, ₹ 15 lakhs to be paid by Thames Ltd., UK
 - (b) Yes, ₹ 15 lakhs to be deducted and paid by Vintage (P) Ltd.
 - (c) Yes, ₹ 5 lakhs to be paid by Thames Ltd., UK
 - (d) No; equalization levy is not applicable on this transaction
3. How much is the amount of tax deductible at source by Vintage (P) Ltd. on interest paid to Babylon Inc. on 31st January, 2022?
 - (a) ₹ 6,68,304
 - (b) ₹ 6,77,586
 - (c) ₹ 13,36,608
 - (d) ₹ 26,73,216
4. In which of the following instances, a PE would not get constituted for Trident GmbH in India?
 - (a) Opening a branch in India for carrying business.
 - (b) Opening a liaison office in India solely for remittance services.
 - (c) Appointing an agent who would be interacting with potential customers in India which leads to the conclusion of contract between Trident GmbH and the customers in India. These contracts are routinely concluded without material modification by Trident GmbH.
 - (d) Appointing an agent in Mumbai for finalizing contracts with the suppliers on its behalf
5. How much is the tax payable by Waterworks Pte on the capital gain for the A.Y. 2022-23?
 - (a) Nil
 - (b) ₹ 6,24,000

(c) ₹ 9,36,000

(d) ₹ 12,48,000

DESCRIPTIVE QUESTIONS

6. Compute income-tax liability of Pratyoosh for the A.Y.2022-23 under (i) full exemption method; and (ii) exemption with progression method, assuming that he does not opt for section 115BAC. (5 Marks)
7. Considering the decisions of courts of law, list out the activities which can be carried out by a liaison office of Malta Ltd. in India without constituting a permanent establishment in India. Also, mention some of the activities which will constitute a PE in India. (4 Marks)
8. Which are the assessment years for which the rollback benefit would be applicable for Vintage (P) Ltd. Also mention the time limit for filing the modified return in pursuance of APA for the rollback years. (6 Marks)

CASE STUDY 4

Himalaya Ltd., Kolkata, is a constituent of Kingstown Ltd., London. Himalaya Ltd. is engaged in manufacture of perfumes under the brand name "Queen Himalaya". It contested the tax assessment of A.Y.2019-20. The disputes relate to certain clauses of DTAA between India and Country Z which resulted in enhancement of income and consequent tax liability. The tax head of Group consulted a legal counsel in London, Mr. Peter, for advice. Mr. Peter cited some UK court decisions for interpretation of DTAA and which could be used to the benefit of the assessee in appeal. He also opined that any term not defined in the Indian tax law but defined subsequently could be used for interpreting the DTAA and that would benefit the assessee.

₹ 2 lakhs is paid by Himalaya Ltd. to Andes Corp of Country M in the F.Y. 2021-22 for use of digital advertisement space. Andes Corp has no permanent establishment in India. A further sum of ₹ 1.50 lakhs is payable for the year to Andes Corp for the digital advertisement space used by Himalaya Ltd.

Himalaya Ltd. entered into a contractual agreement with ABC Ltd. of Country 'M' for availing project installation services in India. The term of the contract would span more than 12 months. To avoid constituting a PE in India, ABC Ltd. resorted to splitting the contract into 3 contracts of shorter duration. Further, ABC Ltd. wants to route the contract through its subsidiary in Country N. The DTAA between India and Country N provides a period of 12 months for an installation project to constitute a PE. Since Country N has a low tax rate, ABC Ltd. wants to assume key risks in its subsidiary there, so that significant residual profits are allocated to Country N.

Himalaya Ltd. had to pay royalty to Hibiscus GmbH of Country G for using the brand name owned by the foreign company. As per the agreement, the Indian tax liability on royalty payable to Hibiscus GmbH had to be borne by Himalaya Ltd. The DTAA between India and

Country G provides for withholding tax@10%. Himalaya Ltd., however, had deducted tax @40% on the royalty of ₹ 300 lakhs payable to Hibiscus GmbH.

Munnar (P) Ltd., Trivandrum, is a subsidiary of Himalaya Ltd. It is engaged in the activity of manufacture and sale of electronic components to Tokisho Corp. of Country J. It expects some interpretational disputes in certain articles of the DTAA between India and Country J.

Anish (aged 48 years) is the General Manager of Himalaya Ltd. since 1.4.2017. His income in India consists of salary (before standard deduction) of ₹ 18 lakhs; loss from self-occupied property ₹ 2 lakhs and interest on bank deposits with SBI, Mumbai ₹ 90,000. He was outside India in Country 'P' from 1.4.2005 to 31.03.2016 and has the following incomes for the year ended 31st March, 2022. (i) Income from business in Country P = USD 32,000; (ii) Dividend from shares held in Country 'P' where dividend was declared and paid in March, 2022 =USD 8,000; (iii) Short-term capital gain of USD 7,000 on sale of shares of companies registered in Country 'P' and sale proceeds were credited in bank account outside India on 4.3.2022.

India has a DTAA with Country P and the tax paid in Country P is eligible for tax credit in India. The fiscal year for income-tax is the same both in India and Country P. Rate of tax is 25% in Country P in respect of all incomes. Income-tax was paid by Anish in Country P on 18.5.2022 for the incomes of the year ended 31st March, 2022.

Kapil and Balan are brothers of Anish. Kapil is a US citizen but resident in India for the A.Y. 2022-23. Balan is also a foreign national and non-resident for the A.Y. 2022-23.

Sunshine Inc., USA

Sunshine Inc. of USA is one of the constituents of Kingstown Ltd., London.

Sunshine Inc. USA has 40 lakh equity shares in Moonlight Inc., Country C which has a PE in India. Sunshine Inc. sold 8 lakh equity shares in Moonlight Inc. to Hibiscus Pte. Ltd. of Singapore for USD 25 lakh on 7th December, 2021. The entire shareholding in Moonlight Inc. was acquired by Sunshine Inc. in one instalment for USD 45 lakhs on 30.06.2012.

The accounting period of Moonlight Inc. is 1st April to 31st March.

The details of assets and liabilities of Moonlight Inc. are as under:

	Country C		India	
	31.03.2021	7.12.2021	31.03.2021	7.12.2021
	₹ in crores			
Fair market value of assets	5	10	18	25
Book value of assets	4	9	15	19
Liabilities	2	5	8	17

Note: The TT buying rate of 1 USD on various dates are as follows: 30.6.2012 : ₹ 60; 31.03.2021 : ₹ 70; 30.11.2021 : ₹ 71; 7.12.2021 : ₹ 72; 28.02.2022 : ₹ 70; 28.03.2022 : ₹ 70.50; 31.03.2022 : ₹ 71; 30.04.2022 : ₹ 72; and 25.05.2022 : ₹ 73.

Choose the correct alternative for the following MCQs:

(2 x 5 =10 Marks)

1. Which of the following statements is correct as per Article 24 of the UN Model Convention, 2017, assuming Anish, Kapil and Balan have similar source of income in India and the amount of such income is also the same?
 - (a) There should be parity in tax treatment of Anish, Kapil and Balan.
 - (b) There should be parity in tax treatment of Kapil and Balan.
 - (c) There should be parity in tax treatment of Anish and Kapil.
 - (d) There should be parity in tax treatment of Anish and Balan.
2. Which of the BEPS Action Plans are intended to curb the approaches being adopted by ABC Ltd. to reduce its tax liability in India?
 - (a) BEPS Action 4, 6 and 7
 - (b) BEPS Action 3, 5 and 6
 - (c) BEPS Action 4, 5 and 6
 - (d) BEPS Action 5, 6 and 7
3. Can refund be claimed of tax excessively deducted by Himalaya Ltd. on royalty paid to Hibiscus GmbH? If so, by whom?
 - (a) Yes, Hibiscus GmbH can claim refund of tax deducted in excess of 10%.
 - (b) Yes, Himalaya Ltd. can claim refund of tax deducted in excess of 10%
 - (c) Yes, either Hibiscus GmbH or Himalaya Ltd. can claim the refund
 - (d) No; neither Hibiscus GmbH nor Himalaya Ltd. can claim the refund.
4. Is equalisation levy attracted on the amount payable by Himalaya Ltd. to Andes Corp.? If so, who has to pay/deduct and pay such equalisation levy and how much?
 - (a) No; Equalisation levy is not attracted either in the hands of Himalaya Ltd. or Andes Corp.
 - (b) Yes; Himalaya Ltd. has to deduct and pay equalisation levy of ₹ 21,000
 - (c) Yes; Andes Corp has to pay equalisation levy of ₹ 21,000
 - (d) Yes; Andes Corp has to pay equalisation levy of ₹ 7,000
5. Which of the following would help Munnar (P) Ltd. in resolving the interpretational disputes in certain articles of the DTAA between India and Country J?
 - (a) Mutual Agreement Procedure
 - (b) Dispute Resolution Panel

- (c) Multi-lateral Instrument
- (d) Advance Pricing Agreement

DESCRIPTIVE QUESTIONS

6. Compute the total income and net tax liability of Anish for the A.Y. 2022-23, assuming that he opts for tax under section 115BAC. (5 Marks)
7. Examine briefly the tax consequence on sale of shares of Moonlight Inc. by Sunshine Inc. and compute the tax liability in India, if any, arising from sale of shares in the hands of Sunshine Inc. (6 Marks)
8. What is your opinion on the approach suggested by Mr. Peter, legal counsel in UK, of defending the case in appeal in India by citing UK court decisions? Also, is it correct to interpret DTAA entered into by India (based on OECD MC) by adopting ambulatory approach? (4 Marks)

CASE STUDY 5

Kaveri Ltd., Chennai is engaged in the manufacture of food items. It entered into an agreement with Jupiter SpA, Turkey, for the export of processed and packaged food items for two financial years commencing from 1st April 2021. The total value of transactions would be Rs. 95 crore. The foreign company, Jupiter SpA, would source raw materials for manufacture of food items by Kaveri Ltd. according to its specifications. For this purpose, Jupiter SpA appointed procurement agents in India who supplied raw material and also monitored the quality standards of the material to be used in the manufacture of food items by Kaveri Ltd. Kaveri Ltd. applied for rollback provision on 2nd April, 2022. The rollback is applicable for the assessment years 2020-21 and 2021-22. The revised APA incorporating the rollback provisions was signed on 1st July 2022.

Welsh Bank Inc. of Country S is an associated enterprise of Kaveri Ltd. In April 2021, Welsh Bank Inc. established 10 branches in India for the purpose of doing banking business after taking permission and requisite licenses from RBI. During the F.Y.2021-22, it advanced, 100 crores to each of the branch to do the banking business in India. For the year ended 31st March 2022, the EBITDA (consolidated) of all the branches amounted to ₹ 150 crores and the aggregate interest payable to the head office was ₹ 60 crores.

Ramachandran, Ex-Director of Kaveri Ltd.

Ramachandran was one of the Executive Directors of Kaveri Co. Ltd. upto March, 2017. He left India in April 2017 for the first time and settled with his son in Canada. Consequent to a search under section 132 in the premises of Kaveri Co. Ltd. in April 2020, it was found that Ramachandran had earned commission income in respect of imports made from USA by the company and the said commission of USD 50,000 earned in financial year 2014-15 remains undisclosed in tax returns filed by him in India. The A.O. also found that the said commission income was used for acquiring an apartment in USA in April 2016. The fair market value of

the apartment on the valuation date is USD 75,000. The exchange rates are on 31st March 2016 1 USD = ₹ 51; on 1st April 2020 (valuation date) 1 USD = ₹ 68.

Ranjit, brother of Ex-director Ramachandran

Ranjit who remained in Country A returned to India permanently on 15th December, 2020. He has a property in Country A from which he earned income of \$ 30,000 and \$ 32,000 for the year ended 31st March, 2021 and 31st March, 2022, respectively, which is credited to his bank account in Country A. He is eligible for basic exemption limit of \$ 15,000 and on the balance income, he paid income-tax for both the years @ 18% in Country A. The tax was paid for the let out property income earned in Country A for both the years on 5th April 2021 and on 10th April 2022, respectively, from his bank account in Country A. His income from business in India is ₹ 20,00,000 for the year ended 31-03-2022.

Assume that the financial year is same for both India and Country A.

The exchange rate of 1 Country A Dollar on various dates is given below:

31st March 2021 - ₹ 51; 5th April 2021 - ₹ 52; 31st December 2021 - ₹ 54;

31st March 2022 - ₹ 55; 10th April 2022 - ₹ 56 and 31st December 2022 - ₹ 58

Sridhar, a resident of Country S deputed to Kaveri Ltd.

Sridhar, a resident of Country S, came to India with his family on 1st December 2021 on deputation for 8 months to work in Kaveri Ltd. Sridhar's mother had to take some ayurvedic medical treatment in India and that was the reason which prompted him to seek deputation to work at client's place in India. As per the agreement between Kaveri Ltd. where he was deputed and his original employer in Country S, the salary of Sridhar is to be paid by Kaveri Ltd. and his employer in Country S would not make salary payment for the deputed period. Accordingly, for P.Y.2021-22, he was paid salary of ₹ 3,00,000 per month in India from 1st December, 2021 to 31st March, 2022 by Kaveri Ltd.

Light GmbH, Germany

Light GmbH Germany is a group concern to which Kaveri Ltd. belongs. It is engaged in manufacturing and sale of solar panels. It opened a branch office in Hyderabad for sale in India. The profit mark-up was cost plus 30% in respect of sales made by the branch. The company also supplied the solar panels directly to various customers in India at cost plus 35%. The turnover for the previous year 2021-22 of the branch was ₹ 210 crores and direct sale to Indian customers was ₹ 70 crores.

Choose the correct alternative for the following MCQs (2 x 5 = 10 Marks)

1. How much is the value of undisclosed asset under the Black Money (Undisclosed Asset and Income and Imposition of Tax) Act, 2015 in the hands of Ramachandran?
 - (a) Nil
 - (b) ₹ 25,50,000

- (c) ₹ 34,00,000
 - (d) ₹ 51,00,000
2. If Kaveri Ltd. wishes to seek advance ruling from AAR in April, 2021 in respect of the transaction to be executed in pursuance of the agreement with Jupiter SPA, can it do so? If so, what would be the fees for advance ruling which it has to pay?
- (a) No, it cannot do so.
 - (b) Yes, it can do so. The prescribed fee is ₹ 10,000.
 - (c) Yes, it can do so. The prescribed fee is ₹ 2 lakh.
 - (d) Yes, it can do so. The prescribed fee is ₹ 3 lakh.
3. What is the time limit available to Kaveri Ltd. for filing modified return for rollback years consequent to revised APA?
- (a) 31st March, 2023
 - (b) 30th September, 2022
 - (c) 31st October, 2022
 - (d) 30th November, 2022
4. How much of the interest paid by the Indian branches of Welsh Bank to the head office, Country S, would be disallowed for computing the total income under the head 'Profits and gains of business or profession'? Assume that the branches have complied with TDS provisions as applicable for the interest paid.
- (a) Nil
 - (b) ₹ 15 crores
 - (c) ₹ 45 crores
 - (d) ₹ 60 crores
5. Which of the following deductions cannot be claimed by Mr. Ramachandran from his gross total income for the A.Y.2022-23, assuming that it comprises of interest of ₹ 15,000 on savings bank account with SBI and interest of ₹ 6,75,000 on fixed deposits with SBI?
- (a) Deduction u/s 80C in respect of tax saver deposit made with SBI.
 - (b) Deduction u/s 80D in respect of medical insurance premium paid for self to New India Assurance Ltd., India.
 - (c) Deduction u/s 80TTA in respect of interest on savings bank account with SBI
 - (d) Deduction u/s 80TTB in respect of interest on fixed deposits with SBI.

DESCRIPTIVE QUESTIONS

6. Compute tax liability of Ranjit in India for assessment year 2022-23 on the assumption that there is no DTAA between India and Country A. (5 Marks)
7. The Assessing Officer wants to tax the profit earned by Light GmbH from direct supply to customers in India through the PE (i.e., the Indian branch) had no role to play in it. Decide the validity of the Assessing Officers contention, if India's DTAA with Germany is in line with –
 - (i) OECD Model Tax Convention.
 - (ii) UN Model Tax Convention (5 Marks)
8. Assume Mr. Sridhar came to you in January, 2022 to plan his tax affairs for the period up to 31st March 2022. Suggest the available tax regime, eligible investments and optimal tax liability within the four corners of law. (5 Marks)