

PAPER 6C: INTERNATIONAL TAXATION
SOLUTIONS TO MOCK TEST PAPER

SOLUTION TO CASE STUDY 1

Answers to MCQs

Q. No.	Answer
1	(d)
2	(a)
3	(b)
4	(a)
5	(a)

Answers to Descriptive Questions

6. Mr. Roshan left India for the first time on 10.4.2013 and settled in London. Since he was not present in India at any time during the P.Y.2021-22, he would be a non-resident in India for A.Y.2022-23. He, being a non-resident, is chargeable to tax in respect of income received or deemed to be received in India and income which accrues or arises or is deemed to accrue or arise to him in India.

Therefore, salary from UK based company credited to his bank account in London and interest on savings bank account with Bank of London would not be included in computation of his total income in India.

Long-term capital gains from shares of an Indian company (an asset situated in India) is deemed to accrue or arise in India. Dividend from foreign company is taxable in India since the same is credited to his bank account in India.

Computation of total income and tax liability of Mr. Roshan for A.Y.2022-23

Particulars	Amount (₹)	
Long-term capital gains		
Original Shares (Listed shares of Theta Ltd.)		
Sale consideration	11,00,000	
Less: Cost of acquisition	<u>8,60,000</u>	
Higher of -		
(i) Actual cost	₹ 5,00,000	
(ii) Lower of -	₹ 8,60,000	
FMV as on 31.1.2018	₹ 8,60,000	

Sale consideration	₹ 11,00,000		2,40,000
Bonus Shares (Listed shares of Theta Ltd.)			
Sale consideration		4,25,000	
Less: Cost of acquisition		<u>3,05,000</u>	
Higher of -			
(i) Actual cost	Nil		
(ii) ₹ 3,05,000, being lower of	₹ 3,05,000		
FMV as on 31.1.2018	₹ 3,05,000		
Sale consideration	₹ 4,25,000		
			<u>1,20,000</u>
			3,60,000
Unlisted shares			
Sale Consideration		7,25,000	
Less: Indexed cost of acquisition [₹ 1,84,000 x 317/184]		<u>3,17,000</u>	
			<u>4,08,000</u>
Long-term capital gains			7,68,000
Income from Other Sources			
Dividend from foreign companies credited to his bank account in India			<u>2,84,000</u>
Gross Total Income			10,52,000
Less: Deduction under Chapter VI-A			
Deduction under section 80D in respect of Medici claim premium of his mother to the extent of ₹ 25,000 (as his mother is a non-resident) is not allowable since all income of Mr. Roshan are chargeable to tax at special rates contained in section 112A, section 115A and section 112; and deduction under Chapter VI-A is not permissible while computing income under these provisions.			<u>Nil</u>
Total Income			<u>10,52,000</u>
<u>Computation of tax liability</u>			
Tax on LTCG of ₹ 3,60,000 i.e., @10% on ₹ 2,60,000 u/s 112A			26,000
Tax on LTCG on unlisted shares i.e., @10% u/s 112 on ₹ 5,41,000 i.e., capital gain computed without indexation benefit (₹ 7,25,000 – ₹ 1,84,000)			54,100
Tax on dividend income of ₹ 2,84,000@20% u/s 115A			<u>56,800</u>

	1,36,900
Add: Health & Education Cess@4%	<u>5,476</u>
Tax liability	<u>1,42,376</u>
Tax liability	1,42,380

Note – (1) Since Roshan is a non-resident, he cannot adjust unexhausted basic exemption limit against LTCG taxable u/s 112 or 112A.

(2) The tax liability computed under the regular provisions would be the same as the tax liability computed under section 115BAC, since all income of Roshan are chargeable to tax at special rates u/s 112, 112A and 115A.

7.

Computation of Excess interest to be disallowed u/s 94B		
Particulars	₹ in lakhs	₹ in lakhs
Computation of EBITDA		
Net income		620
Add: Depreciation	320	
Interest	1000	
Amortisation of preliminary expenses	<u>120</u>	
		<u>1440</u>
EBITDA		<u>2060</u>
30% of EBITDA = 30% of ₹ 2060 lakhs		618
Disallowance u/s 94B		
Lower of -		
- Interest paid to Perth Inc., a non-resident AE	1000	
- Interest paid to Perth Inc. ₹ 1000 lakhs		
Less: 30% of EBITDA ₹ 618 lakhs		
	382	
Therefore, disallowance u/s 94B would be ₹ 382 lakhs However, since arm's length adjustment is being made by the assessee <i>suo moto</i> for ₹ 200 lakhs, adjustment u/s 94B would be ₹ 182 lakhs. Such excess interest of ₹ 182 lakhs can be carried forward for 8 assessment years and claimed as deduction against business income to the extent of maximum allowable interest expenditure (30% of EBITDA).		

Secondary adjustment to be made by Ganga Ltd.

The excess money on account of primary adjustment (ALP) i.e., ₹ 200 lakhs has to be repatriated on or before 28th February, 2023 (i.e., 90 days from 30.11.2022, the due date of filing of return of income).

If it is not so repatriated on or before 28th February, 2023, then, interest would be chargeable on ₹ 200 lakhs from 30.11.2022@SBI lending rate as on 1.4.2022 + 3.25%, where the international transaction is denominated in Indian rupees and @LIBOR as on 30.9.2022 + 3%, where the international transaction is denominated in foreign currency.

Alternatively, in lieu of repatriation, Ganga Ltd. can pay additional income-tax of ₹ 41.9328 lakhs i.e., 20.9664% on ₹ 200 lakhs, in which case, Ganga Ltd. need not make secondary adjustment and repatriate the excess money.

8. Mr. Mithun is an Indian citizen residing in Country Y who comes to India on a visit for 90 days every year. Mr. Mithun would be non-resident in India for the A.Y.2022-23, since his stay in India in the P.Y.2021-22 does not exceed 182 days.¹ In case of a non-resident, income accruing or arising in India, income which is deemed to accrue or arise in India and income received in India are taxable in India.

In this case, the agent, Mr. Mithun comes and stays in India to secure orders from Indian buyers. His commission is credited to his bank account in India. Hence, since he renders services in India and the commission is also received in India, such commission is taxable in the hands of Mr. Mithun in India, even though he is non-resident in India.

As regards the second part of the question, business connection is required to be established for taxing the income earned in India by Perth Inc. from selling goods in India.

Explanation 2 to section 9(1)(i) says that business connection shall include activity carried out through a person acting on behalf of non-resident, when a person habitually procures orders in India, mainly or wholly for the non-resident. In this case agent Mr. Mithun habitually secures orders in India wholly for Perth Inc. Therefore, Mr. Mithun is not an independent agent.

Accordingly, the profit of ₹ 60 lakhs (12% of ₹ 500 lakhs) attributable to operations in India is deemed to accrue or arise in India u/s 9(1)(i) and would be chargeable to tax in India in the hands of Perth Inc.

¹ The condition of stay in India for 120 days or more in the P.Y.2021-22 and 365 days or more in the four immediately preceding previous years does not apply to Mr. Mithun, since his total income (other than income from foreign sources) does not exceed Rs.15 lakhs. In any case, his stay in India is only for 90 days in the P.Y.2021-22.

SOLUTION TO CASE STUDY 2

Answers to MCQs

Q. No.	Answer
1	(a)
2	(d)
3	(b)
4	(c)
5	(c)

Answers to Descriptive Questions

6. Dr. Philip would be a non-resident in India for A.Y. 2022-23, since he has stayed in India only for 55 days during the P.Y. 2021-22.

As per section 5(1), in the case of a non-resident, income which accrues or arises or which is deemed to accrue or arise to him in India or which is received or is deemed to be received in India would be includible in his total income. Accordingly, only royalty from an Indian concern and interest on fixed deposit with SBI, Baroda branch would be taxable in India in his hands. Income earned from business in Country Y and interest on savings bank account in Country Y would not be included in his total income.

Computation of total income of Dr. Philip for A.Y. 2022-23	
Particulars	Amount (₹)
Royalty [No deduction in respect of any expenditure would be allowed as per section 115A(3)]	15,00,000
Interest on fixed deposit with SBI, Baroda branch	<u>4,00,000</u>
Gross Total Income/Total Income	<u>19,00,000</u>

Computation of tax liability:	Amount (₹)
Tax @10% on royalty u/s 115A [Since it is received from an Indian concern, in pursuance of an agreement with the Central Government]	1,50,000
Tax on other income of ₹ 4 lakhs (5% of ₹ 1.50 lakhs, being the income in excess of the basic exemption limit of ₹ 2.50 lakhs)	<u>7,500</u>
	1,57,500
Add: Health and education cess@4%	<u>6,300</u>
Tax Liability	<u>1,63,800</u>

Determination of tax deductible at source:

Any person responsible for paying interest or any other sum chargeable to tax (other than salaries) to a non-corporate non-resident or to a foreign company is liable to deduct tax at source at the rates prescribed by the relevant Finance Act.

Tax has to be deducted at source on royalty and interest paid/payable to Dr. Philip @10% and 30%, respectively. Further, since Dr. Philip is a non-resident, health and education cess @ 4% on TDS would also be added.

Tax to be deducted at source would be ₹ 1,56,000 i.e., @10.4% on ₹ 15 lakhs, being the royalty income and ₹ 1,24,800 i.e., @ 31.2% on ₹ 4 lakhs, being the interest income.

Requirement for filing ITR:

Section 115A(5) provides that if the total income of the non-resident comprises of only income referred to in section 115A and tax deductible at source has been fully deducted and the rate of such deduction is not less than the rate specified therein, it shall not be necessary for him to file his return of income.

However, in this case, Dr. Philip has interest income as well. Therefore, he cannot avail the benefit of exemption from filing of return of income as contained in section 115A. Hence, he would be liable to file his return of income for A.Y.2022-23.

7. As per section 9(1)(i), business profits of a non-resident would be deemed to accrue or arise in India, if such income accrues or arises through or from any business connection in India. In such a case, such income would be taxable in the hands of the non-resident in India.

As per *Explanation 2A* to section 9(1)(i), significant economic presence of a non-resident shall constitute business connection. In this case, significant economic presence is constituted since the aggregate of payments arising from transactions in respect of goods carried out by Beta Inc., a non-resident, in India during the P.Y.2021-22 is ₹ 2.80 crores, which exceeds the annual threshold of ₹ 2 crores.

Therefore, Beta Inc. has a significant economic presence in India, which constitutes business connection. Accordingly, so much of income as is attributable to such transactions will be deemed to accrue or arise in India.

Phi ECom Ltd., the non-resident e-commerce operator facilitating e-commerce supply of goods, would be liable to pay equalization levy@2% of ₹ 2.80 crores, being the amount of consideration received from e-commerce supply of goods, since it does not have a PE in India and the amount of consideration exceeds the threshold of ₹ 2 crores.

Hence, in this case, Beta Inc. has to pay income-tax due to significant economic presence in India and Phi ECom Ltd. has to pay equalization levy@2% on consideration received from e-commerce supply of goods. It is logical to take a view that exemption under section 10(50) from levy of income-tax, in a case where equalization levy has been paid, would apply only if both taxes are to be paid by the same person, which is not so in this case.

If the aggregate of payments arising from transactions in respect of goods carried out by Beta Inc., a non-resident, in India during the P.Y.2021-22 is ₹ 1.80 crores, significant economic presence would not be constituted since the said sum is lower than the annual threshold of ₹ 2 crores. Hence, no part of the income would be chargeable to tax in India. Likewise, equalization levy is not attracted since the consideration is less than of ₹ 2 crores.

8. As per section 92A, Beta Inc., California and Alpha (P) Ltd., an Indian company, would be deemed to be associate enterprises, since Beta Inc., California, holds shares carrying not less than 26% (28%, in the present case) of the voting power in Alpha (P) Ltd.

As per section 92B, the transactions entered into between Alpha (P) Ltd., an Indian company, and Beta Inc., USA, being associated enterprises, for sale of T-shirts would be international transactions.

Alpha (P) Ltd. is also selling T-shirts to unrelated parties, which would be the comparable uncontrolled transaction in this case. The selling price for unrelated customers has to be adjusted by taking into consideration the functional differences existing between the transactions of Alpha (P) Ltd., with associated enterprise (Beta Inc.) and other unrelated parties.

Accordingly, the arm's length price for sale of T-shirts has to be computed for working out the impact on assessable value as per CUP method.

Computation of arm's length adjustment to be made	
Particulars	Amount (in ₹)
Selling price of T-shirts to unrelated parties by Alpha (P) Ltd. [2 lakh x \$ 8 per piece x ₹ 80]	12,80,00,000
Adjustments for functional differences	
Less: Guarantee fee [Beta Inc. provided guarantee to BOA on a loan of ₹ 10 crores availed by Alpha (P) Ltd. for a fee @1% while market rate for availing guarantee for similar transaction is 2%. Therefore, guarantee fee @1% on ₹ 10 crores shall be adjusted]	10,00,000
Less: Cost of accessing the database [Alpha (P) Ltd. paid ₹ 7 lakhs to Beta Inc for providing access to its database on markets trend while similar database is available from unrelated party at a cost of ₹ 12 lakhs. Therefore, adjustment for cost of such database has to be carried out]	<u>5,00,000</u>
Arm's length price	12,65,00,000
Sale price of T-shirts to Beta Inc. (associated enterprise) [2 lakh x \$ 6 per unit x ₹ 80]	<u>9,60,00,000</u>
Amount to be added to its total income	<u>3,05,00,000</u>

SOLUTION TO CASE STUDY 3

Answers to MCQs

Q. No.	Answer
1	(d)
2	(c)
3	(a)
4	(b)
5	(c)

Answers to Descriptive Questions

6. (i) Computation of income-tax liability of Pratyoosh for A.Y.2022-23 under Full Exemption Method

Particulars	Amount (in ₹)
Income earned in India (Residence State)	9,00,000
Income of ₹ 20,00,000 earned in Country W (Source State) would be exempt under Full Exemption Method	<u>Nil</u>
Total income	<u>9,00,000</u>
Tax liability (Mr. Pratyoosh, being a resident and a senior citizen is eligible for higher exemption limit of ₹ 3,00,000)	
Upto ₹ 3,00,000	Nil
₹ 3,00,001 to ₹ 5,00,000 @5%	10,000
₹ 5,00,001 to ₹ 9,00,000 @20%	<u>80,000</u>
Add: Health and education cess @4%	<u>3,600</u>
Tax liability	<u>93,600</u>

- (ii) Computation of Income-tax liability of Pratyoosh for A.Y. 2022-23 under Exemption with progression method

Particulars	Amount (in ₹)
Income earned in India (Residence State)	9,00,000
Income earned in country W (Source State) of ₹ 20,00,000 would be includible for computing effective tax rate	<u>20,00,000</u>
Total income	<u>29,00,000</u>

Tax liability		
Upto ₹ 3,00,000	Nil	
₹ 3,00,001 to ₹ 5,00,000 @5%	10,000	
₹ 5,00,001 to ₹ 10,00,000 @20%	1,00,000	
₹ 10,00,001 to ₹ 29,00,000 @30%	<u>5,70,000</u>	6,80,000
Add: Health and Education cess @4%		<u>27,200</u>
Tax liability		<u>7,07,200</u>
Effective tax rate [₹ 7,07,200 / ₹ 29,00,000 x 100] = 24.386%		
Tax liability on income earned in India [9,00,000 x 24.386%]		2,19,474
Tax liability (rounded off)		2,19,470

7. The activities of a liaison office which are auxiliary or preparatory in nature would not constitute a PE² and accordingly the profits attributable to such office would not be taxable in India in the hands of Malta Ltd.

Certain activities of a liaison office have been held by Courts to be auxiliary or preparatory in nature, and hence do not result in PE. Such activities are as follows:

- remittance services
- downloading information (such as names and addresses of beneficiaries, amount to be remitted, etc.) by accessing the main servers of assessee in another country, printing cheques/draft and dispatching them to the addresses of beneficiaries through courier.
- receiving information, enquiries and feedback for passing it on to the Head Office and co-ordination activities

Moreover, in some cases, where no violation is reported by the RBI, the activities of the liaison office are presumed to be of preparatory and auxiliary character³.

However, identifying new customers, marketing activities, price negotiation, discussion of commercial issues, securing and processing orders can lead to the liaison office forming a PE⁴.

8. Roll back year means any previous year, falling within the period not exceeding four previous years, preceding the first of the five consecutive previous years for which advance pricing agreement is valid.

²Union of India v. UAE Exchange Center (SC)

³ Union of India v. UAE Exchange Center (SC)

⁴Jebon Corporation India v CIT (2012) 206 Taxman 7 (Kar HC), Brown And Sharpe Inc v CIT (2014) 369 ITR 704 (All HC)

The application for advance pricing agreement (APA) may be filed at any time before the first day of the previous year relevant to the first assessment year for which the application is made, in respect of transactions which are of a continuing nature from dealings that are already occurring; or before undertaking the transaction in respect of remaining transactions.

In the present case, since Vintage (P) Ltd. has made an application for APA and also opted for rollback provisions, the APA is apparently in respect of international transactions which are of continuing nature. Accordingly, the APA application filed in May, 2021 would be in respect of five previous years beginning with P.Y. 2022-23 relevant to the A.Y. 2023-24.

Consequently, Vintage (P) Ltd. can make an application for roll back for four previous years immediately preceding P.Y.2022-23 i.e., P.Y.2018-19 (A.Y. 2019-20), P.Y.2019-20 (A.Y. 2020-21), P.Y.2020-21 (A.Y. 2021-22) and P.Y.2021-22 (A.Y. 2022-23).

Therefore, Vintage (P) Ltd. cannot make application for roll back for A.Y. 2018-19 even though the Appellate Tribunal has not decided the matter and has only set aside the order for fresh consideration and the matter has not reached finality, since it falls beyond the four year period.

However, it can apply for roll back for the A.Y. 2019-20, even if ALP adjustment was reduced to addition of ₹ 180 lakhs as against addition of ₹ 350 lakhs originally determined by the TPO on account of APA, since such reduction in the amount of ALP adjustment does not result in reducing the total income or increasing the total loss, as declared in the return of income of the said year by Vintage (P) Ltd.

Vintage (P) Ltd. has to file a modified return within 3 months from the end of the month in which the revised APA incorporating the roll back provisions was signed.

Since agreement for rollback is signed in January, 2022, it has to file modified return on or before 30th April, 2022 for A.Y.2019-20, A.Y.2020-21 and A.Y.2021-22.

SOLUTION TO CASE STUDY 4

Answers to MCQs

Q. No.	Answer
1	(c)
2	(d)
3	(b)
4	(b)
5	(a)

Answers to Descriptive Questions

6.

Computation of total income of Mr. Anish for A.Y. 2022-23 as per section 115BAC		
Since Mr. Anish is resident in India for the P.Y.2021-22, his global income would be subject to tax in India. Therefore, income earned by him in Country P would be taxable in India.		
Particulars	Amount (₹)	Amount (₹)
Salaries Salary from Himalaya Ltd. [Standard deduction u/s 16(ia) not allowable, since Mr. Anish opts for section 115BAC]		18,00,000
Income from house property Loss from self-occupied property [Interest u/s 24(b) is not allowable in respect of self-occupied property, since Mr. Anish opts for section 115BAC]	-	-
Profits and gains from business or profession Income from business in Country P [\$ 32,000 x 71, being the last day of previous year i.e., 31.3.2022 as per Rule 115]		22,72,000
Capital Gains Short-term capital gains on sale of shares of companies registered in Country P [\$ 7,000 x 70, being the last day of the month immediately preceding the month in which the shares are transferred i.e., 28.2.2022 as per Rule 115]		4,90,000
Income from Other Sources Interest on bank deposits	90,000	
Dividend from shares held in Country P [\$ 8,000 x 70, being the last day of the month immediately preceding the month in which the dividend is declared i.e., 28.2.2022 as per Rule 115]	<u>5,60,000</u>	
		<u>6,50,000</u>
Gross Total Income/Total Income		<u>52,12,000</u>

Computation of tax liability of Anish for A.Y.2022-23

Particulars		Amount
Upto ₹ 2,50,000	Nil	
₹ 2,50,001 – ₹ 5,00,000 [i.e., ₹ 2,50,000@5%]	12,500	
₹ 5,00,001 – ₹ 7,50,000 [i.e., ₹ 2,50,000@10%]	25,000	
₹ 7,50,001 – ₹ 10,00,000 [i.e., ₹ 2,50,000@15%]	37,500	
₹ 10,00,001 – ₹ 12,50,000 [i.e., ₹ 2,50,000@20%]	50,000	
₹ 12,50,001 – ₹ 15,00,000 [i.e., ₹ 2,50,000@25%]	62,500	
₹ 15,00,001 – ₹ 52,12,000 [i.e., ₹ 37,12,000@30%]	<u>11,13,600</u>	
		13,01,100
Add: Surcharge@10% [Since the total income exceeds ₹ 50 lakhs but does not exceed ₹ 1 crores]		<u>1,30,110</u>
		14,31,210
Add: Health and Education Cess@4%		<u>57,248</u>
		14,88,458
Less: Deduction in respect of tax paid in Country P		
- Tax payable in India @28.5583% on ₹ 33,22,000, being business income of ₹ 22,72,000 plus capital gains of ₹ 4,90,000 plus dividend income of ₹ 5,60,000 [i.e., ₹ 14,88,458 / ₹ 52,12,000 x 100] = 28.5583%	9,48,706	
- Tax paid in Country P@25% [\$ 47,000@25% x ₹ 72, being the rate on 30.4.2022, being the last day of the month immediately preceding the month in which tax is paid, i.e., May, 2022]	8,46,000	
Lower of the above		<u>8,46,000</u>
Tax Payable		<u>6,42,458</u>
Tax Payable (Rounded off)		6,42,460

7. Capital gain arising in the hands of Sunshine Inc. of USA from transfer of a capital asset situated in India is deemed to accrue in India. Shares of Moonlight Inc. Country C, a foreign company, shall be deemed to be situated in India if those shares derive directly or indirectly, its value substantially from the assets located in India.

Shares of Moonlight Inc. would be deemed to derive its value substantially from the assets located in India, if on the specified date, the value of Indian assets (without reduction of liabilities)–

- ◆ exceeds ₹ 10 crore; and
- ◆ represents at least 50% of the value of all the assets owned by the Moonlight Inc.

Specified date would be the date on which the accounting period of the Moonlight Inc. ends preceding the date of transfer of a share i.e., 31.3.2021.

However, in case the book value of the assets of the Moonlight Inc. on the date of transfer i.e., 7.12.2021 exceeds the book value of the assets as on 31.3.2021 by at least 15%, the date of transfer i.e., 7.12.2021 would be the specified date.

In the instant case, specified date would be 7.12.2021, since book value of the assets of Moonlight Inc. on the date of transfer i.e., 7.12.2021 is ₹ 28 crores (₹ 9 crore + ₹ 19 crore) which exceeds the book value of the assets as on 31.3.2021 i.e., ₹ 19 crore (₹ 4 crore + ₹ 15 crore) by more than 15%.

Shares of Moonlight Inc. derives its value substantially from assets located in India since the value of assets located in India (without reduction of liabilities) on 7.12.2021, being the specified date i.e., ₹ 25 crores,

- ◆ exceeds ₹ 10 crores and
- ◆ represents 71.43% of the value of assets of Moonlight Inc. $[25/35 \times 100]$.

Computation of long term capital gains attributable to assets located in India	
Particulars	₹ in lakhs
Full value of consideration for transfer of shares of Moonlight Inc.	\$ 25
Less: Cost of acquisition of shares of Moonlight Inc. (\$ 45 lakhs x 8/40)	<u>\$ 9</u>
Long term capital gains [Since the shares of Moonlight Inc. have been held for more than 24 months]	<u>\$ 16</u>
Long term capital gains in Rupees [$\$ 16 \text{ lakhs} \times 71$, being the TTBR on 30.11.2021, being the last day of the month immediately preceding the month in which the capital asset was transferred, as per Rule 115 [A]	1136
Fair Market value of assets of Moonlight Inc. located in India on 7.12.2021[B]	2500
Fair Market value of all assets of Moonlight Inc. on 7.12.2021 [C] [₹ 1000 lakhs + ₹ 2500 lakhs]	3500
Long term capital gains attributed to assets located in India [A x B/C]	811.4286
Computation of tax liability of Sunshine Inc.	
Particulars	₹ in lakhs
Tax@10% u/s 112 (without indexation and currency fluctuation benefit)	81.1429

Add: Surcharge@2% (Since the long-term capital gain exceeds ₹ 1 crore but does not exceed ₹ 10 crores)	<u>1.6229</u>
	82.7658
Add: Health and education cess@4%	<u>3.3106</u>
Tax liability	<u>86.0764</u>

8. In *CIT v. Vishakhapatnam Port Trust's case* [1983] 144 ITR 146, the Andhra Pradesh High Court observed that, in view of the standard OECD Models which are being used in various countries, a new area of genuine 'international tax law' is now in the process of developing. Any person interpreting a tax treaty must now consider decisions and rulings worldwide relating to similar treaties. The maintenance of uniformity in the interpretation of a rule after its international adoption is just as important as the initial removal of divergences. Therefore, the judgments rendered by courts in other countries or rulings given by other tax authorities would be relevant.

Accordingly, the approach suggested by Mr. Peter, Legal counsel in UK, of defending the case in appeal in India by citing UK court decisions is valid.

Validity of interpreting DTAA (based on OECD MC) by adopting ambulatory approach:

Article 3(2) of the OECD Model Convention provides that meaning of a term not defined in the treaty shall be interpreted in accordance with the provisions of the tax laws of the Contracting State that may be applying the Convention.

The current position under the domestic law or the latest version of the commentary should be resorted to if that interpretation provides a suitable meaning of the term and clarifies the term in a better way.

Therefore, it is valid to interpret DTAA entered by India by adopting ambulatory approach.

However, this provision is subject to one caveat and that is if the context requires interpreting the term 'otherwise', then the meaning should be assigned accordingly. Therefore, the reference to the domestic tax law is not automatic if the term is not defined under the treaty. The term is to be first interpreted in light of the context provided under the treaty and if the context does not provide the meaning, then, the domestic tax law meaning may be resorted to.

SOLUTION TO CASE STUDY 5

Answers to MCQs

Q. No.	Answer
1	(d)
2	(a)
3	(c)
4	(a)
5	(d)

Answers to Descriptive Questions

6. Ranjit is a resident but not ordinarily resident for the P.Y.2021-22. He is resident since he has stayed in India for the whole year and hence, he satisfies the condition of stay in India for a period of 182 days or more during the P.Y.2021-22.

However, he is not ordinarily resident, since he has stayed in India only for a period of 107 days prior to P.Y.2021-22.

Hence, he satisfies the condition of stay in India for a period of 729 days or less in the seven previous years immediately preceding P.Y.2021-22 stipulated under section 6(6) for being treated as a "not ordinarily resident" in India in the P.Y.2021-22.

Also, he has been non-resident in all the ten previous years immediately preceding P.Y.2021-22. Hence, he also satisfies the condition in section 6(6) of being non-resident in 9 out of 10 previous years immediately preceding P.Y.2021-22. In this case, he has satisfied two conditions even though satisfaction of any one condition would suffice for being treated as "not-ordinarily resident".

In case of a resident but not ordinarily resident, income which accrues or arises to him outside India would be included in his total income, only if it is derived from a business controlled from or profession set up in India. Accordingly, income from property earned and received in Country A would not be taxable in Ranjit's hands in India in the P.Y.2021-22.

Resultantly, only income of ₹ 20 lakh from business in India would be taxable in India. The same would constitute his total income. It would be more beneficial for him to opt for concessional tax rates u/s 115BAC, in the absence of deduction under Chapter VI-A. Tax on such income u/s 115BAC would be calculated as follows -

Particulars	₹
Tax on total income of ₹ 20 lakh u/s 115BAC	
Upto ₹ 2,50,000	Nil

2,50,001 – ₹ 5,00,000 [i.e., ₹ 2,50,000 x 5%]	12,500
₹ 5,00,001 – ₹ 7,50,000 [i.e., ₹ 2,50,000 x 10%]	25,000
₹ 7,50,001 – ₹ 10,00,000 [i.e., ₹ 2,50,000 x 15%]	37,500
₹ 10,00,001 – ₹ 12,50,000 [i.e., ₹ 2,50,000 x 20%]	50,000
₹ 12,50,001 – ₹ 15,00,000 [i.e., ₹ 2,50,000 x 25%]	62,500
₹ 15,00,001 – ₹ 20,00,000 [i.e., ₹ 5,00,000 x 30%]	<u>1,50,000</u>
	3,37,500
Add: HEC@4%	<u>13,500</u>
Tax liability as per section 115BAC	3,51,000

7. Article 7 of the OECD and UN Model Conventions, 2017 on “Business Profits” provides the situation when business profits of a non-resident would be taxable in the Source State.

Both the Conventions state that the profits of an enterprise of a Contracting State would be taxable only in that State (i.e., the State of Residence).

An exception is when such enterprise carries on business in another Contracting State (i.e., Source State) through a Permanent Establishment (PE) situated in that State.

- (i) If India’s DTAA with Germany is in line with OECD Model Convention, 2017: The OECD Model Convention provides that if the enterprise of the Residence State carries on business in the Source State through a PE situated therein, then, the profits that are attributable to the PE alone may be taxed in the Source State.

OECD Model Convention does not incorporate “Force of Attraction” rule

Thus, if Article 7(1) of the DTAA with Germany is in line with OECD Model Convention, 2017, then, only profits from turnover of ₹ 210 crores, representing sale of solar panels made by the Hyderabad branch would be taxable in India in the hands of Light GmbH, Germany.

Accordingly, in this case, the Assessing Officer's proposed action to bring to tax profit earned by Light GmbH, Germany from direct supply to customers in India, in which the PE had no role to play, is not valid.

- (ii) If India’s DTAA with Germany is in line with UN Model Convention, 2017: The UN Model Convention amplifies this attribution principle by a limited Force of Attraction rule, which permits Source State taxation of the enterprise, not only in respect of the business carried on by it through a PE in the Source State, but also on business profits arising from sales in Source State of same or similar goods or merchandise as those sold through that PE and other business activities carried on in Source State of the same or similar kind as those effected through that PE.

If Article 7(1) of the DTAA with Germany is in line with UN Model Convention, 2017, then, profits from turnover of ₹ 280 crore, representing sale of solar panels made by the Hyderabad branch as well as the direct sale of solar panels made by Light GmbH, Germany to Indian customers would be taxable in India in the hands of Light GmbH, Germany.

Accordingly, in this case, the Assessing Officer's proposed action to bring to tax profit earned by Light GmbH, Germany from direct supply to customers in India is valid, even though the PE had no role to play.

8. Sridhar's stay in India for the P.Y.2021-22 is 121 days. He does not stay for 182 days in the P.Y.2021-22. Therefore, he does not satisfy the first basic condition for being a resident.

Further, even though his stay in India exceeds 60 days in the P.Y.2021-22, he does not satisfy the second basic condition for being a resident, since he has not stayed in India for a minimum period of 365 days in the four immediately preceding previous years.

Hence, he is non-resident for P.Y.2021-22.

Accordingly, only salary earned and received in India from Kaveri Ltd. would be taxable in his hands in India for the P.Y.2021-22.

He can declare total income under the regular provisions, by paying life insurance premium or making a term deposit for 5 years etc. up to ₹ 1,50,000, since he has sufficient cash flow from salary. He can also make additional investment of ₹ 50,000 in NPS and claim deduction u/s 80CCD(1B). Also, he can take health insurance policy and claim deduction of ₹ 25,000.

The computation of tax liability under the regular provisions, after claiming standard deduction in respect of salary and deduction for investments and payment, is as follows –

Particulars	₹
Salary (₹ 3,00,000 x 4)	12,00,000
Less: Standard deduction u/s 16(ia)	<u>50,000</u>
Gross total income	11,50,000
Less: Deduction under Chapter VI-A	
Deduction u/s 80C	1,50,000
Deduction u/s 80CCD(1B)	50,000
Deduction u/s.80D	<u>25,000</u>
	<u>2,25,000</u>
Total Income	<u>9,25,000</u>
Tax on total income of ₹ 9.25 lakh under the regular provisions	
Upto ₹ 2,50,000	Nil

2,50,001 – ₹ 5,00,000 [i.e., ₹ 2,50,000 x 5%]	12,500	
₹ 5,00,001 – ₹ 9,25,000 [i.e., ₹ 4,25,000 x 20%]	<u>85,000</u>	
		97,500
Add: HEC@4%		<u>3,900</u>
Tax liability as per the regular provisions of the Act		<u>1,01,400</u>

He is eligible to opt for the special provisions u/s 115BAC even if he is a non-resident, in which case he would not be eligible for standard deduction as well as deductions under Chapter VI-A. His tax liability on total income (comprising of gross salary income) of ₹12,00,000 would be as follows –

Tax on total income of ₹ 12 lakh u/s 115BAC	₹
Upto ₹ 2,50,000	Nil
2,50,001 – ₹ 5,00,000 [i.e., ₹ 2,50,000 x 5%]	12,500
₹ 5,00,001 – ₹ 7,50,000 [i.e., ₹ 2,50,000 x 10%]	25,000
₹ 7,50,001 – ₹ 10,00,000 [i.e., ₹ 2,50,000 x 15%]	37,500
₹ 10,00,001 – ₹ 12,00,000 [i.e., ₹ 2,00,000 x 20%]	<u>40,000</u>
	1,15,000
Add: HEC@4%	<u>4,600</u>
Tax liability as per section 115BAC	<u>1,19,600</u>

Thus, Sridhar can opt to make investments of ₹ 2 lakhs and payment of mediclaim premium of ₹ 25,000; and consequently, claim deduction in respect of the same and pay lower tax of ₹ 1,01,400 under the regular provisions of the Income-tax Act, 1961.

Alternatively, he may be advised to pay tax as per section 115BAC instead of making investments since he visited you for consultation in January, 2022 and would leave India by 31st July, 2022. Making investments at the fag end of his stay in India could be avoided and he can pay tax of ₹ 1,19,600 in one go and avoid keeping track of those investments made in India for encashing them at a later date. His cash outflow would be substantially reduced, even though tax payable is higher by ₹ 18,200.