MTP – Final (New) Paper 6C – International Taxation

Solutions to Case Studies

Solution to Case Study 1

Answer to MCQs

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

Answers to Descriptive Questions

1. Computation of income to be declared by the branch in its return of income

Computation of Head Office expenses allowable u/s 44C:		
Particulars	**₹**	**₹**
Net profit of the branch		32,00,000
Add: Head office expenditure debited to profit and loss	90,00,000	
Unabsorbed depreciation	14,00,000	
Capital expenditure on family planning	5,00,000	
Brought forward business loss	19,00,000	
Deductions under Chapter VI-A	17,00,000	
		1,45,00,000
Adjusted total income		**1,77,00,000**
Note – *Depreciation for the current financial year and expenditure incurred for scientific research are not required to be added back for computing adjusted total income.*		

© The Institute of Chartered Accountants of India

Head office expenses allowable u/s 44C = ₹ 8,85,000

Being the lower of -

(i) 5% of ₹ 1,77,00,000 = ₹ 8,85,000

(ii) Actual Head Office expenses allocated to the branch = ₹ 90,00,000

Income to be declared by the branch for A.Y.2021-22

Particulars	₹
Net profit of the branch	32,00,000
Add: Head office expenditure debited to profit and loss	90,00,000
	1,22,00,000
Less: Head office expenses allowable u/s 44C	8,85,000
Income to be declared by the branch	**1,13,15,000**

2. (a) Lambda Ltd. sells computers at the rate of ₹ 90,000 per unit to Theta Ltd. and at ₹ 95,000 per unit to Delta LLP, both of them being unrelated parties. Since the transactions can be considered as comparable uncontrolled transactions for the purpose of determining the arm's length price, Comparable Uncontrolled Price (CUP) method would be most appropriate method.

Since two prices are determined by the most appropriate method, and data set comprises of only two entries, the arm's length price shall be the arithmetical mean of both the values included in the dataset.

Accordingly, arm's length price would be ₹ 92,500 [(₹ 90,000 + ₹ 95,000)/2]. Since the deviation between the arm's length price and actual sale price of the equipment to Yuvan Inc. i.e., ₹ 74,000 per unit is 25%, which exceeds the maximum permissible deviation @3% of the price of the international transaction, the arm's length price would be ₹ 92,500 per unit and the total income would increase by ₹ 1.11 crores [i.e., ₹ 18,500 (₹ 92,500 – ₹ 74,000) x 600 computers]

(b) On account of the primary adjustment of ₹ 1.11 crores (₹ 18,500 x 600 units) made by the Assessing Officer, in the total income of Lambda Ltd. for A.Y.2021-22, secondary adjustment has to be made under section 92CE, since –

(1) The company has accepted the primary adjustment made by the Assessing Officer;

(2) The primary adjustment is in respect of A.Y.2021-22; and

(3) The primary adjustment exceeds ₹ 100 lakhs.

Accordingly, the excess money i.e.,1.11 crores, available with the Yuvan Inc. has to be repatriated to India within 90 days of the date of the order of the Assessing Officer.

© The Institute of Chartered Accountants of India

Alternatively, Lambda Ltd. can opt to pay additional income-tax @20.9664% (tax @18% *plus* surcharge @12% *plus* cess@4%) on ₹ 1.11 crores, which amounts to ₹ 23,27,270.

3. **Computation of total income of Mr. Rajan for A.Y.2021-22**

Particulars	₹	₹
Income from House Property [House situated in Country B]		
Gross Annual Value[1]	1,95,000	
Less: Municipal taxes paid in Country B	8,000	
Net Annual Value	1,87,000	
Less: Deduction under section 24 – 30% of NAV	56,100	1,30,900
Profits and Gains of Business or Profession		
Income from profession carried on in India	7,00,000	
Less: Business loss in Country B from proprietary business	42,000	
	6,58,000	
Royalty income[2] from a literary book from Country A (after deducting expenses of ₹ 80,000)	6,20,000	12,78,000
Income from Other Sources		
Agricultural income in Country A [Not exempt]	45,000	
Dividend income from a company in Country B	1,30,000	1,75,000
Gross Total Income		**15,83,900**
***Less:* Deduction under Chapter VI-A**		
Under section 80QQB – Royalty income of a resident from literary book allowable as deduction since the amount has been bought into India with six months from the end of the previous year		3,00,000
Total Income		**12,83,900**
Note – Since adjusted total income (i.e., ₹ 15,83,900) does not exceed ₹ 20 lakhs, AMT would not be attracted in this case.		

[1] *Rental income has been taken as GAV in the absence of other information relating to fair rent, municipal value etc.*

[2] *Alternatively, royalty income can be taxable under the head "Income from other sources".*

© The Institute of Chartered Accountants of India

Computation of tax liability of Mr. Rajan for A.Y.2021-22		
Tax on total income [30% of ₹ 2,83,900 + ₹ 1,10,000, since Mr. Rajan is a senior citizen, he is eligible for higher basic exemption limit of ₹ 3,00,000]		1,95,170
Add: Health and education cess @4%		7,807
		2,02,977
Less: Foreign Tax Credit (See Working Note below)		92,309
Tax Payable		**1,10,668**
Tax Payable (rounded off)		**1,10,670**

Working Note – Calculation of Foreign Tax Credit

Country A		
Particulars	**₹**	**₹**
Foreign tax paid in Country A on agricultural income of ₹ 45,000 *plus* net royalty income of ₹ 6,20,000@10% [Agricultural income is taxable in Country A and royalty income is also taxable in Country A after deduction of expenditure of ₹ 80,000 incurred thereon, since the same does not exceed 12% of royalty]	66,500[3]	
Income pertaining to Country A forming part of total income in India		
Agricultural income	45,000	
Royalty income	6,20,000	
	6,65,000	
Less: Deduction u/s 80QQB	3,00,000	
	3,65,000	
Average rate of tax in India [i.e., ₹ 2,02,977 / ₹ 12,83,900 x 100]	15.809%	
Tax payable in India on the income forming part of total income @15.809% on ₹ 3,65,000	57,703	
As per Rule 128, lower of tax paid in Country A and tax payable in India is allowable as deduction		57,703

[3] If a view is taken that foreign tax paid on such income chargeable to tax in India alone should be considered for the purpose of FTC, then, the resultant figure would be ₹36,500, being 10% of ₹3,65,000, which would be the FTC available in respect of tax paid in Country A, since the same is lower than ₹57,703. Total FTC in respect of Country A and B would be ₹71,106. Tax payable (rounded off) would be ₹1,31,870, if this view is taken.

© The Institute of Chartered Accountants of India

Country B		
Particulars	**₹**	**₹**
Foreign tax paid in Country B on Rental income of ₹ 1,95,000 *plus* Dividend income of ₹ 1,30,000@20% [Business loss is not allowable as deduction in Country B and no deduction is available in respect of municipal tax]	65,000[4]	
Income pertaining to Country B forming part of total income in India		
Income from house property	1,30,900	
Dividend	1,30,000	
	2,60,900	
Less: Loss from business set-off against other business income	42,000	
	2,18,900	
Average rate of tax in India [i.e.,₹ 2,02,977 / ₹ 12,83,900 x 100]	15.809%	
Tax payable in India on the income forming part of total income @15.809% on ₹ 2,18,900	34,606	
As per Rule 128, lower of tax paid in Country B and tax payable in India is allowable as deduction		34,606

***Note** – It would not be beneficial for Mr. Rajan to opt for section 115BAC, since he would not be able to avail deduction of ₹ 3 lakh under Chapter VI-A and higher basic exemption limit of ₹ 3 lakh for senior citizens.*

Solution to Case Study 2

Answer to MCQs

Q. No.	Answer
1.	(d)
2.	(d)
3.	(c)

[4] If a view is taken that foreign tax paid on such income chargeable to tax in India alone should be considered for the purpose of FTC, then, the resultant figure would be ₹43,780, being 20% of ₹2,18,900. However, FTC available would continue to be ₹34,606 arrived at by applying the average rate of tax in India, since it is the lower than ₹43,780.

4.	(a)
5.	(d)

Answers to Descriptive Questions

1. Himalayas Ltd, an Indian company and Alps Ltd., a Swiss company, are deemed to associated enterprises as per section 92A(2), since Alps Ltd. holds shares carrying 29% of the voting power (i.e., not less than 26% of voting power) in Himalayas Ltd. Further, the transaction of developing software and providing consultancy services (both onsite and offsite) fall within the meaning of "international transaction" under section 92B. Hence, transfer pricing provisions would be attracted in this case.

Computation of Arm's Length Price as per Cost Plus Method		
Gross Profit mark-up on cost in case of Vindyas Ltd. [an unrelated party]		50%
Less: Adjustments for functional and other differences		
- Value of technology support [Alps Ltd. provides technology support, but Vindyas Ltd. does not provide such support. Therefore, value of technology support shall be adjusted] [16% of 50%, being gross profit]	8%	
- Quantity discount to Alps Ltd. [Quantity discount is allowed to Alps Ltd. as it gives business in large volumes, but the same is not provided to Vindyas Ltd. Therefore, it shall be adjusted] [8% of 50%, being gross profit]	4%	
- Risk and cost associated with marketing [Himalayas Ltd. has to bear all the risk and costs associated with the marketing function in case of Vindyas Ltd., while there is no such risk in case of services to Alps Ltd. Therefore, market risk and cost shall be adjusted] [14% of 50%, being gross profit]	7%	19%
		31%
Add: Cost of credit to Alps Ltd. [Himalayas Ltd has provided credit of 1 month to Alps Ltd. but not to the unrelated party. Therefore, adjustment for the cost of such credit has to be carried out to arrive at the ALP] [(4% of 50%, being gross profit]		2%
Arm's length gross profit mark up to cost		**33%**

Particulars	**₹**
Cost incurred by Himalayas Ltd. for executing Alps Ltd.'s work	3,40,000
Add: Adjusted gross profit (₹ 3,40,000 x 33%)	1,12,200
Arm's length billed value	**4,52,200**
Less: Actual Billed Income from Alps Ltd. (₹ 2100 x 150 man hours)	3,15,000
Total Income of Himalayas Ltd to be increased by	**1,37,200**

© The Institute of Chartered Accountants of India

2. If an Indian company, being the borrower, incurs any expenditure by way of interest in respect of any debt issued by its non-resident associated enterprise and such interest exceeds ₹ 1 crore, then, the interest paid or payable by such Indian company in excess of 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA) or interest paid or payable to associated enterprise, whichever is lower, shall not be allowed as deduction as per section 94B.

Further, where the debt is issued by lender which is not associated enterprise but an associated enterprise provides an implicit or explicit guarantee to such lender, such debt shall be deemed to have been issued by an associated enterprise and limitation of interest deduction would be applicable.

In the present case, since Lima Inc., a US company, holds 28% share in Vindyas Ltd., an Indian company, i.e., more than 26% of voting power, Lima Inc. and Vindyas Ltd. are deemed to be associated enterprise.

Since loan of ₹ 100 crores taken by Vindyas Ltd., an Indian company from M. Ltd., a Country M company, is guaranteed by Lima Inc., an associated enterprise, such debt shall be deemed to have been issued by an associated enterprise and interest paid or payable to M. Ltd. shall be considered for the purpose of limitation of interest deduction under section 94B.

Computation of income under the head profits and gains of business or profession of Vindyas Ltd for A.Y. 2021-22

Particulars		Amount (in lakhs)
Interest allowable u/s 94B for A.Y. 2020-21		
Gross Profit		1,780
Less: Employee benefits expenses		430
EBITDA		**1,350**
Interest paid or payable to M. Ltd.		589
Lower of the following would be disallowed		
- Total interest paid or payable in excess of 30% of EBITDA [₹ 589 lakhs – ₹ 405 lakhs (i.e., 30% of ₹ 1,350 lakhs)]	₹ 184 lakhs	
- Interest paid or payable to M Ltd.	₹ 589 lakhs	
Interest to be disallowed as deduction for A.Y. 2020-21, which can be carried forward up to 8 assessment years		184
Interest allowable u/s 94B for A.Y. 2021-22		
Gross Profit		1,700
Less: Employee benefits expenses		451

© The Institute of Chartered Accountants of India

EBITDA		**1,249**
Interest paid or payable to M. Ltd.		238
Lower of the following would be disallowed		
- Total interest paid or payable in excess of 30% of EBITDA [₹ 238 lakhs – ₹ 374.70 lakhs (30% of ₹ 1249 lakhs)]	Nil	
- Interest paid or payable to M Ltd.	₹ 238 lakhs	
Interest to be disallowed as deduction for A.Y. 2021-22		Nil
Brought forward interest of A.Y. 2020-21 allowed as deduction against profits and gains of A.Y. 2021-22 to the extent of maximum allowable interest expenditure u/s 94B i.e., ₹ 136.7 lakhs [₹ 374.70 lakhs – ₹ 238 lakhs]		
Total interest allowed in A.Y. 2021-22 [₹ 238 lakhs + ₹ 136.70 lakhs)		**374.70**
Balance of amount of interest relating to A.Y. 2020-21 is eligible for carried forward i.e., ₹ 47.30 lakhs (₹ 184 lakhs minus ₹ 136.70 lakhs) to 7 more subsequent assessment years.		
Income under the head "Profit and gains of business or profession" of Vindyas Ltd. for A.Y. 2021-22		
EBITDA		1,249.00
Less: Interest (maximum interest allowable as deduction u/s 94B)		374.70
Depreciation (As per the Income-tax Act, 1961)		272.00
		602.30

3. Computation of total income of Mr. Ranjit for A.Y.2021-22

Since Mr. Ranjit is resident in India for the P.Y.2020-21, his global income would be subject to tax in India. Therefore, income earned by him in Country X and Country Y would be taxable in India. He would, however, be entitled to deduction under section 91, since India does not have a DTAA with Country X and Country Y, and all conditions under section 91 are satisfied.

Particulars	₹	₹
Profits and Gains of Business or Profession		
Income from business and profession in India		5,20,000
Royalty on books from Country Y	9,00,000	
Less: Expenses incurred	80,000	8,20,000

© The Institute of Chartered Accountants of India

Income from Other Sources		
Dividend from a company in Country X		1,70,000
Dividend from Indian company, Vindhyas Ltd.		20,000
Interest on saving account with ICICI Bank		12,000
Interest on fixed deposits		1,95,000
Gross Total Income		**17,37,000**
***Less:* Deduction under Chapter VI-A**		
Under section 80C – Deposits in PPF	1,50,000	
Under section 80QQB – Royalty income on books allowable to the extent of ₹ 3,00,000.	3,00,000	
Under section 80TTB – Deduction allowable in respect of interest on fixed deposits, since Mr. Ranjit is a senior citizen resident in India	50,000	5,00,000
Total Income		**12,37,000**

Note – Since adjusted total income (i.e., ₹ 15,37,000) does not exceed ₹ 20 lakhs, AMT would **not** be attracted in this case.

Computation of tax liability of Mr. Ranjit for A.Y.2021-22

Particulars	₹
Tax on total income [30% of ₹ 2,37,000 + ₹ 1,10,000, eligible for higher exemption limit of ₹ 3,00,000, since he is a senior citizen]	1,81,100
Add: Health and education cess @4%	7,244
	1,88,344
Less: Rebate under section 91 **(See Working Note below)**	51,884
Tax Payable	**1,36,460**

Calculation of Rebate under section 91:		₹
Average rate of tax in India [i.e., ₹ 1,88,344 / ₹ 12,37,000 x 100]	15.226%	
Average rate of tax in Country X [i.e., ₹ 34,000 / ₹ 1,70,000 x 100]	20%	
Doubly taxed income pertaining to Country X		
Dividend from a company in Country X	₹ 1,70,000	
Rebate u/s 91 on ₹ 1,70,000 @ 15.226% [being the lower of		25,884

© The Institute of Chartered Accountants of India

average Indian tax rate (15.226%) and Country X tax rate (20%)]		
Average rate of tax in Country Y [i.e., ₹ 45,000 / ₹ 9,00,000 x 100]	5%	
Doubly taxed income pertaining to Country Y		
Royalty (₹ 9,00,000 – ₹ 80,000 – ₹ 3,00,000)	₹ 5,20,000	
Rebate u/s 91 on ₹ 5,20,000 @5% [being the lower of average Indian tax rate (15.226%) and Country Y tax rate (5%)]		26,000
Total rebate under section 91		**51,884**

Note – It will **not** be beneficial for Ranjit to opt for section 115BAC, since he will lose the benefit of Chapter VI-A deduction of ₹ 5 lakh and higher basic exemption limit of ₹ 3 lakh.

Solution to Case Study 3

Answers to MCQs

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

Answers to Descriptive Questions

Answer to Q.1

	Computation of capital gains chargeable to tax in the hands of Kaushik for A.Y.2021-22	
	Particulars	**₹**
I	**Long-term capital gains on transfer of listed equity shares (STT paid) [since held for more than 12 months]**	
	Full value of consideration (4,000 shares x ₹ 800 per share)	32,00,000
	Less: Cost of acquisition (4,000 shares x ₹ 500 per share)	20,00,000
	Higher of -	

© The Institute of Chartered Accountants of India

	(i) Actual cost ₹ 300 per share **(and)** (ii) ₹ 500 per share, being the lower of - - ₹ 500 per share, being the FMV on 31.1.2018 - ₹ 800 per share, the actual sale price	
	LTCG u/s 112A (the amount in excess of ₹ 1 lakh chargeable to tax@10%)	**12,00,000**
	Note *– Indexation benefit and benefit of foreign currency conversion is not available in respect of LTCG computed u/s 112A*	
II	**Long-term capital gains on sale of vacant land (since held for more than 24 months)**	
	Sale consideration 45,00,000	
	Less: Indexed cost of acquisition [₹ 12,00,000 x 301/240] 15,05,000	
	LTCG u/s 112 (taxable@20%)	29,95,000
	Long-term capital gains	**41,95,000**
	Investment in capital gain bonds of Rural Electrification Corporation of India Mr. Kaushik can claim benefit of deduction u/s 54EC by investing the LTCG of ₹ 29.95 lakhs arising on sale of vacant land in bonds of Rural Electrification Corporation of India within six months from the date of sale, even though he is a non-resident. However, he cannot claim exemption u/s 54EC in respect of long-term capital gains of ₹ 11 lakh (i.e., the LTCG in excess of ₹ 1 lakh taxable u/s 112A). Such income would be taxable@10.4% (10% plus cess@4%). Hence, Mr. Kaushik's tax liability would be ₹ 1,14,400. Being a non-resident, he cannot adjust unexhausted basic exemption limit against long-term capital gains chargeable to tax u/s 112A.	

Answer to Q.2

ABC Ltd., being Indian constituent of international group, has to file CbC report, if the consolidated group revenue as reflected in the consolidated financial statement for the accounting year preceding such accounting year exceeds ₹ 6,400 crores.

ABC Ltd. would be required to furnish CbC report within 12 months from the end of the reporting accounting year to the Joint Director as may be designated by the Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems), if Country P, in which the parent entity PQR Inc. is a resident, is a country -

(1) in which PQR Inc. is not obligated to file report of the nature of CbC report;

(2) with which India does not have an arrangement for exchange of the CbC report; or

© The Institute of Chartered Accountants of India

(3) there has been a systemic failure of Country P i.e., such country is not exchanging information with India even though there is an agreement and this fact has been intimated to the entity by the prescribed authority.

However, in case there has been a systemic failure of Country P and the said failure has been intimated to ABC Ltd., the period for submission of the report would be six months from the end of the month in which said systemic failure has been intimated.

Answer to Q.3

Applicability of APA benefit for rollback years

P.Y./A.Y.	Whether roll back benefit would be available?	Reason
P.Y.2014-15 (A.Y.2015-16)	No	Roll back year means any previous year, falling within the period not exceeding four previous years, preceding P.Y.2019-20, being the first of the five consecutive previous years specified in the APA. Since P.Y.2014-15 falls beyond the said four year period, roll back benefit cannot be availed in respect of that year.
P.Y.2015-16 (A.Y.2016-17)	No	The return of income has been filed belatedly u/s 139(4) on 12.1.2017
P.Y.2016-17 (A.Y.2017-18)	Yes	The return of income was filed u/s 139(1) on 20.11.2017 i.e., before the due date, namely, 30.11.2017
P.Y.2017-18 (A.Y.2018-19)	Yes	The return of income was filed u/s 139(1) on 13.9.2018 i.e., before the due date, namely, 30.11.2018, and hence, the revised return filed u/s 139(5) on 30.3.2019 (i.e., before the end of the assessment year) would replace the original return filed u/s 139(1).
P.Y.2018-19 (A.Y.2019-20)	Yes	The return of income has been filed u/s 139(1) on 31.10.2019 i.e., before the due date, namely, 30.11.2019

Answer to Q.4

(i) As per clause 2(a) of Article 25 of the India-US DTAA, the company can claim deduction of the income-tax paid in US to the extent it does not exceed that part of the income-tax (as computed before the deduction is given) which is attributable to the income which may be taxed in US. Thus, full tax credit is available in this case.

© The Institute of Chartered Accountants of India

Accordingly, foreign tax credit (FTC) would be available in respect of such taxes paid in US, even though the entire income chargeable to tax under the Income-tax Act, 1961 is eligible for deduction u/s 10AA under the domestic tax laws.

However, as per Article 23(a) of the India-Canada DTAA, only the amount of Canadian tax paid by an Indian resident in respect of income which is subjected to tax both in India and Canada shall be allowed as credit against the Indian tax payable. Since the income qualifies for 100% deduction u/s 10AA in India, no part of such income would actually be subjected to tax in both the countries. Hence, the condition in Article 23(a) is not fulfilled. In this case, ordinary tax credit is available as per the treaty and not full tax credit.

Accordingly, FTC would **not** be available in respect of taxes paid in Canada.

Therefore, the action of the Assessing Officer is partly correct to the extent of denying FTC to ABC Ltd. in respect of tax paid in Canada, but not correct in denying FTC in respect of taxes paid in US.

Note – *The facts of the case are similar to the facts in Wipro Ltd v. Dy. CIT (2016) 382 ITR 179. The above answer is based on the Karnataka High Court ruling in the said case.*

(ii) Rule 128(4) provides that no foreign tax credit (FTC) would be available in respect of any amount of foreign tax which is disputed in any manner by the assessee. Since income-tax has not been paid in USA, treaty benefit as per clause 2(a) of Article 25 of the India-USA DTAA would not be available. Therefore, in case the company has not paid tax in the USA and a tax dispute in relation to such tax is pending on the date of tax assessment in India, then, the Assessing Officer would be correct in denying FTC in respect of tax payable in USA.

Solution to Case Study 4

Answers to MCQs

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

© The Institute of Chartered Accountants of India

Answers to Descriptive Questions

1. Section 9(1)(ii) provides that any income which falls under the head "Salaries" is deemed to accrue or arise in India, if it is earned in India. The *Explanation* thereto further clarifies that income payable for services rendered in India shall be regarded as income earned in India.

   Section 192(1) requires the person responsible for paying any income chargeable under the head "Salaries" to deduct income-tax, at the time of payment, at the average rate of income-tax computed on the basis of the rates in force for the financial year on the amount payable.

   Since the TDS provisions relating to payment of income chargeable under the head "Salaries" form an integrated code along with the charging and computation provisions under the Act, section 192(1) has to be read with section 9(1)(ii) and the *Explanation* thereto. Therefore, if any payment under the head "Salaries" falls within section 9(1)(ii), then TDS provisions under section 192 gets attracted. Consequently, the Indian tax deductor-assessee is duty bound to deduct, from the portion of salary paid by it, tax at source under section 192(1) on the entire salary paid to the employee, including special allowance paid abroad to the employee by the foreign company. It was so held in *CIT, New Delhi v. Eli Lilly & Co. (India) P. Ltd. (2009) 312 ITR 225 (SC).*

   In this case, all the employees are resident in India, since they have worked with Beta Ltd. throughout the previous year 2020-21. If the tax due on special allowance received from M/s. Bomo Inc. is paid by the recipient-employees, then Beta Ltd. would not be treated as an assessee-in-default under section 201(1), if these resident-employees have furnished a return of income under section 139 on or before the due date of filing return of income, disclosing such income, and have also furnished a certificate to this effect from an accountant in the prescribed form. However, interest under section 201(1A)@1% per month or part of month shall be payable by Beta Ltd. from the date on which such tax was deductible to the date of furnishing of return by such resident employee.

   In cases where the tax has not been paid by the recipient employee, the Assessing Officer can proceed under section 201(1) to recover the shortfall in payment of tax and interest thereon under section 201(1A) from Beta Ltd.

   However, no penalty under section 271C would be attracted, if Beta Ltd. was under the genuine and *bona fide* belief that it was not under any obligation to deduct tax at source from the special allowance paid by Bomo Inc. This is provided for under section 273B.

2. A transaction where one of the parties thereto is a person located in a notified jurisdictional area (NJA) would be deemed to be an international transaction and all parties to the transaction would be deemed as associated enterprises. Accordingly, all the provisions of transfer pricing would be attracted in case of such a transaction.

© The Institute of Chartered Accountants of India

Hence, the transactions between Beta Ltd, an Indian company and Lutyens Ltd., located in NJA, would be deemed to be international transactions between associated enterprises.

The transactions of Beta Ltd. with Andes Inc. of Columbia and Thames Ltd. of UK for sale of identical goods are comparable uncontrolled international transactions, since they are neither associated enterprises of Beta Ltd. nor are they situated in NJA. Hence, Comparable Uncontrolled Price (CUP) method can be used to determine ALP.

Where more than one price is determined by the most appropriate method, CUP method in this case, then, the arithmetic mean has to be taken in cases where the number of entries in the dataset is less than 6 (in this case it is only 2). However, the benefit of permissible variation between the ALP and the transfer price based on the rate notified by the Central Government (i.e., maximum of 3% of transaction price) would **not** be available in respect of such transaction.

Computation of ALP using CUP method

Particulars	**Andes Inc.**	**Thames Ltd.**
	₹ in crores	**₹ in crores**
Price charged by Beta Ltd. (on CIF basis)	11.50	12.00
Less: Ocean freight and insurance, has to be reduced since the price charged to Lutyens Ltd. is on FOB basis	0.20	0.20
	11.30	**11.80**
Less: Cost of after-sales support service (has to be reduced, since such services are being provided to Andes Inc. and Thames Ltd. but not to Lutyens Ltd.)	0.14	0.14
Arm's Length Price	**11.16**	**11.66**
Arithmetic mean of the above prices [(₹ 11.16 crores + ₹ 11.66 crores)/2]		**11.41**
Less: Price at which goods were sold to Lutyens Ltd.		10.50
Arm's length adjustment [increase in profit of Beta Ltd.]		**0.91**

© The Institute of Chartered Accountants of India

3. **On payment to MNO Inc.**

Equalisation levy would not be attracted where the non-resident service provider (MNO Inc., in this case) has a permanent establishment in India and the service is effectively connected to the permanent establishment in India. Therefore, the Beta Ltd. is not required to deduct equalisation levy on ₹ 5 lakhs, being the amount paid towards online advertisement services to MNO Inc, in this case.

However, tax has to be deducted by Beta Ltd. at the rates in force under section 195 in respect of such payment to MNO Inc. Non-deduction of tax at source under section 195 would attract disallowance under section 40(a)(i) of 100% of the amount paid while computing business income.

MNO Inc. is chargeable to income-tax in respect of ₹ 5 lakhs received from Beta Ltd. @40% and it can claim credit of tax deducted at source by Beta Ltd.

On payment to JKL Inc.

Equalisation levy of 6% is attracted in respect of the amount of consideration for, *inter alia*, online advertisement, received or receivable by a non-resident not having permanent establishment in India, from, *inter alia*, a resident in India, if such consideration exceeds ₹ 1 lakh.

In this case, Beta Ltd. is required to deduct equalisation levy of ₹ 42,000 i.e., @6% of ₹ 7 lakhs, being the amount paid towards online advertisement services provided by JKL Inc., a non-resident having no permanent establishment in India.

Non-deduction of equalisation levy would attract disallowance under section 40(a)(ib) of 100% of the amount paid while computing business income.

Section 10(50) provides that any income arising from providing any specified service on or after the date on which the provisions of Chapter VIII of the Finance Act, 2016 comes into force, and chargeable to equalisation levy under that Chapter would be exempt from income-tax. Therefore, ₹ 7 lakhs is exempt from income-tax in the hands of JKL Inc.

Solution to Case Study 5

Answers to MCQs

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

© The Institute of Chartered Accountants of India

Answers to Descriptive Questions

Answer to Q.1

Computation of value of undisclosed foreign asset chargeable to tax in the hands of Anoop under Black Money Law

The definition of “assessee” under the Black Money Law, *inter alia,* includes a person who, being a non-resident in the previous year when the undisclosed income came to the notice of the Assessing Officer, was resident in India in the previous year in which the undisclosed asset located outside India was acquired. Therefore, Anoop is an assessee under the Black Money Law since he was resident in India in the P.Y.2009-10, when the property was acquired, even though he is a non-resident in the P.Y.2018-19, when notice under Black Money Law was issued. Accordingly, the value of undisclosed asset located outside India of Anoop would be chargeable to be tax under the Black Money Law in the previous year in which such asset comes to the notice of the Assessing Officer i.e., P.Y 2018-19, even though he is a non-resident in India for that previous year.

Computation of value of undisclosed foreign asset

Particulars	USD	₹
Value of residential property in New York acquired on 1.7.2009 Value of residential property would be the fair market value, being the higher of - - Cost of acquisition USD 28,000 - Price that the property shall ordinarily fetch if sold in the open market on the valuation date, i.e., 1.4.2018 USD 33,000	33,000	
Converted into Indian currency taking the rate as on 1.4.2018	₹ 65/USD	21,45,000
Bank Deposits in a bank A/c in New York as on 1st April 2018 [the sum of all the deposits made in the account with the bank since the date of opening of the account would be the value of the bank deposits]	6,000	
Converted into Indian currency taking the rate as on 1.4.2018	₹ 65/USD	3,90,000
Total value of undisclosed foreign asset		**25,35,000**

Answer to Q.2

Ashwin and his wife Geetha would be non-resident in India for the P.Y. 2020-21, since they both are living in Malaysia since the year 2000. Though Geetha came on a visit to India in the P.Y.2020-21, her stay in India was only for 30 days.

© The Institute of Chartered Accountants of India

As per section 9(1)(viii), any income arising outside India, being any sum of money paid without consideration, by an Indian resident person to a non-resident on or after 5.7.2019 would be deemed to accrue or arise in India, if the same is chargeable to tax under section 56(2)(x) i.e., if the aggregate of such sum received by a non-resident exceeds ₹ 50,000.

Since Vallish had given cash gift of ₹ 10 lakhs (i.e., sum of money exceeding ₹ 50,000) to Ashwin on 14.2.2021**,** such sum would be deemed to accrue or arise in India and would thus, be chargeable to tax in India, even though such income accrues or arises to Ashwin outside India.

Gift of house property in Pune by Vallish to Geetha would be deemed to accrue or arise in India by virtue of section 9(1)(i), since such property is situated in India. As per section 2(24)(xviia), income includes sum of money or value of property referred under section 56(2)(x). Income would be chargeable to tax in India, where any person receives any immovable property without consideration from any person and the stamp duty value of the same exceeds ₹ 50,000. Hence, the value of ₹ 35,00,000**,** being the stamp duty value of house property received without consideration would be chargeable to tax in the hands of Geetha, since the value exceeds ₹ 50,000.

Vallish can be treated as agent of Ashwin and Geetha, since as per section 163, agent in relation to a non-resident includes *inter alia* any person in India from or through whom the non-resident is in receipt of any income, whether directly or indirectly.

As Ashwin and Geetha are non-residents who have received income in the form of cash gift and value of house property, respectively, from Vallish, he would be deemed to be agent in relation to both of them. However, an opportunity of being heard in this regard has to be given by the Assessing Officer before treating him as a non-resident.

Answer to Q.3

Dr. Aviral is a citizen of Country X but a person of Indian origin, since his grandfather was born in undivided India, who came on a visit to India during the previous year for 110 days. Since he stayed in India for less than 182 days[5] during the previous year 2020-21, he would be a **non-resident** in India.

Article 14 of UN Model Convention deals with "Independent personal services". As per Para 1 of Article 14, income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:

---

[5] Since his Indian Income of ₹ 6,20,000 in the P.Y.2020-21 does not exceed ₹15 lakh, therefore, the condition of stay in India for a minimum period of 120 days in the relevant previous year and 365 days in the four immediately preceding previous years for being treated as a resident would not apply in this case. In any case, his period of stay in India in the P.Y.2020-21 is only 110 days, which is less than 120 days.

© The Institute of Chartered Accountants of India

(a) If he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or

(b) If his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

The term "Professional Services" *inter alia* includes independent activities of physicians. Thus, the services rendered by Dr. Aviral would fall within the definition of "Professional Services".

Since he has no fixed place in India for his profession and he stayed in India only for 110 days, which is not exceeding 182 days during the previous year, the income of ₹ 6,20,000 earned by him during his stay in India in the previous year 2020-21 would not be chargeable to tax in India.

Answer to Q.4

Computation of Arm's Length Price of purchases made from AE, Alpha Ltd. and quantum of income adjustment in the hands of Beta (P) (Ltd.) by adopting TNMM

Particulars		₹
Step 1 – Computation of Net Profit Margin from International Transaction with AE, Alpha Ltd. (I)		
Sales price per clock		2,500
Less: Purchase price per clock	₹ 1,200	
Expenditure towards advertisement	₹ 500	
		1,700
Net profit		**800**
Net profit margin (as % of sales) [800 x 100/2500]		**32%**
Step 2 - Net profit margin realised from the clocks purchased from unrelated enterprise (II)		
Sales price per clock		3,000
Less: Purchase price per clock	₹ 1,500	
Expenditure towards advertisement	₹ 300	
		1,800
Net Profit		**1,200**
Net profit margin as a percentage of sale price		**40%**
[₹ 1,200 x 100/3,000] = 40%		

© The Institute of Chartered Accountants of India

Step 3 - Determination of arm's length purchase price	
Sale price of clocks purchased from AE, Alpha Ltd. of London	2,500
Less: Arm's length profit of related party transaction [40% of ₹ 2,500]	1,000
	1,500
Less: Advertisement expenses incurred	500
Arm's length purchase price of clocks	**1,000**
Actual purchase price of clocks from AE, Alpha Ltd., London	1,200
Arm's length adjustment to purchase price (per clock)	**200**
Income adjustment to be made on account of adjustment in purchase price (8,000 x ₹ 200)	**16,00,000**

© The Institute of Chartered Accountants of India