

MOCK TEST PAPER 1

FINAL (NEW) COURSE: GROUP II

ELECTIVE PAPER 6C: INTERNATIONAL TAXATION

Attempt any four out of five case study based questions.

Each case study carries 25 Marks.

Time Allowed – 4 Hours

Maximum Marks – 100

CASE STUDY - 1

Mr. Manan, a citizen of India, aged 48 years, for the first time, moved for employment purpose to Country "X", a country outside India, on 1st September, 2015. He was employed with a consulting firm in Country "X". Since then, he has visited India during the P.Y. 2015-16, 2016-17, 2017-18, 2018-19, 2019-20 for 30 days, 50 days, 50 days, 170 days and 150 days, respectively, for both personal and professional purposes. His family comprises of himself, his spouse, Mrs. Megha (aged 45 years); his mother, Mrs. Parvati (aged 81 years); and his two sons, Raghav and Krishan, aged 19 years and 15 years, respectively. In addition, Mr. Manan's unmarried sister Ms. Shweta, aged 42 years, is living with his family in Country "X" since September, 2015. Ms. Shweta and Mrs. Parvati have been visiting India during the P.Y. 2015-16, 2016-17, 2017-18, 2018-19, 2019-20 for 50 days, 50 days, 120 days, 150 days and 150 days, respectively.

In the year 2018-19, Mr. Manan resigned from his job and started his own consultancy in Country "X" for providing technical services. He entered into an agreement with TPO Ltd, an Indian company, on 01.06.2018 and pursuant to the agreement, Fees for Technical Services (FTS) of INR 10,00,000, is payable to Mr. Manan every year for a period of five years. The agreement is approved by the Central Government. Mr. Manan also entered into an agreement with the Government of Country "Y" for provision of technical services for a period of three years. The FTS payable to Mr. Manan every year for a period of three years under this agreement in foreign currency is equivalent to INR 15,00,000.

During the previous year 2018-19, Mr. Manan became partner in a partnership firm M/s Lily & Co., India and contributed INR 50 lakhs towards capital. He was paid interest @10% as interest on capital and profit share of INR 4 lakhs every year by the firm, as per the terms of the partnership deed.

His friend Mr. Fadnis, a citizen and resident of Country "X", borrowed money from Mr. Manan and invested the same in bonds issued by XYZ Ltd., an Indian Company in April, 2018. Mr. Fadnis visited India during the P.Y. 2019-20 for the period from 10th April, 2019 to 15th May, 2019. During the previous year 2019-20, interest on borrowings in foreign currency equivalent to INR 1,95,000 was paid by Mr. Fadnis to Mr. Manan in his bank account in Country "X".

Mr. Manan also earned income of foreign currency equivalent to INR 3,00,000 from his house property in Country 'X' deposited in an Indian Bank at Country 'X' and subsequently brought to India. Also, he had paid property tax of foreign currency equivalent to INR 3,000 on the said property. During the previous year 2019-20, the rental income earned was invested in deposits in India in the ratio of 30:20:50 in NRO savings account, 5 years fixed deposits and NRE savings account. Interest earned on such deposits is INR 4,000, 5,000 and 9,000, respectively.

On 30.06.2019, he sold shares of PR Pvt. Ltd., India for INR 12,00,000 and of HL Pvt. Ltd., India for INR 9,30,000 net of transfer expenses. These shares were purchased by him in convertible foreign currency on 01.12.2016 at a cost of INR 6,20,000 and on 01.01.2019 at a cost of INR 7,50,000 respectively. On 31.10.2019, he invested the sale proceeds of INR 10,50,000 in purchase of shares of CR Pvt. Ltd., India.

Further, on 01.12.2019, Mr. Manan sold 2000 shares of PQ Pvt. Ltd., India, for INR 15 each. 1500 of such shares were acquired on 01.10.2017 @ INR 10 each and 500 shares were acquired on 31.10.2018 @ INR 12 each.

In April, 2019, he had taken a loan of INR 50 lakhs @10% from SBI for construction of residential house in Pune. The construction is completed in May, 2020. He prepaid INR 3 lakhs in March, 2020 to the bank.

He had also purchased the following capital assets in April, 2019 and he transferred the same outside India to Mr. James, a resident of Country "X", in March, 2020 –

- Rupee Denominated Bonds of INR 1,00,000 of LMN Ltd., an Indian Company, issued outside India, for INR 2,00,000.
- Government Securities of INR 1,00,000 through an intermediary dealing in settlement of securities, for INR 1,50,000

Mr. James, a citizen of India, visits India for 100 days every year.

Mrs. Megha, a painter by profession, earned income of INR 3,00,000 from exhibition conducted in Mumbai. Raghav and Krishan are pursuing education in Country 'X'. Mr. Manan paid foreign currency equivalent to INR 60,000 to Cathedral School, Country 'X,' towards their annual tuition fees. Krishan won an excellence award of INR 25,000 at the Science Olympiad held in Delhi in February, 2020.

Mr. Manan paid foreign currency equivalent to INR 50,000 to an Insurance Company in Country 'X' towards life insurance premium to insure his life and life of Mrs. Megha. Mr. Manan has also paid INR 20,000 to New India Assurance Company, India, for health insurance of himself and Mrs. Megha, INR 35,000 to insure health of Mrs. Parvati and INR 25,000 to insure the health of Ms. Shweta.

In December, 2016, Ms. Shweta bought, in foreign currency, 500 Global Depository Receipts of PQR Ltd, an Indian Company, which were issued in accordance with the notified scheme of the Central Government. In January, 2020, she sold 300 GDRs outside India to Mr. Philip, a citizen and resident of Country 'X' and 200 GDRs to Mr. Karan, a resident but not ordinarily resident in India.

I. MULTIPLE CHOICE QUESTIONS

Write the most appropriate option to each of the following questions by choosing one of the four options given. Each question carries two marks.

1. Based on the above facts, Mr. Manan's residential status in India for P.Y.2019-20 and P.Y.2015-16 is -
 - (a) Non-resident for both the years
 - (b) Non-resident for P.Y.2019-20 and Resident but not ordinarily resident for P.Y.2015-16
 - (c) Resident but not ordinarily resident for P.Y.2019-20 and Resident and ordinarily resident for P.Y.2015-16
 - (d) Non-resident for P.Y.2019-20 and Resident and ordinarily resident for P.Y.2015-16.

(Note – Assume that the rules for determining residential status for A.Y.2016-17 were the same as it is for A.Y.2020-21)
2. Which of the following benefits are not allowable to Ms. Shweta, while computing her total income and tax liability for A.Y.2020-21 under the Income-tax Act, 1961?
 - (a) Deduction of 30% of gross annual value while computing her income from house property in Bangalore, India
 - (b) Tax rebate upto INR 12,500 from tax payable on her total income upto INR 5,00,000
 - (c) Deduction for donation made by her to Prime Minister's National Relief Fund

- (d) Deduction for interest earned by her on NRO savings account.
3. Unexhausted basic exemption limit, if any, of Mr. James, for A.Y.2020-21 can be adjusted against –
- Only LTCG taxable@20%
 - Only STCG taxable@15%
 - Both (a) and (b)
 - Neither (a) nor (b)
4. Comment on the tax consequences of sale transactions undertaken by Ms. Shweta during the P.Y. 2019-20 under the Income-tax Act, 1961 -
- Capital gains arising on sale of 500 GDRs shall be subject to tax @20% with indexation benefit in India
 - No capital gains would arise on sale of 500 GDRs in India, since the GDRs are purchased in foreign currency
 - No capital gains would arise on sale of 300 GDRs, but capital gains arising on sale of 200 GDRs shall be taxed in India @10% without indexation benefit
 - No capital gains would arise on sale of 300 GDRs, but capital gains arising on sale of 200 GDRs shall be taxed @20% with indexation benefit in India
5. Interest income earned by Mr. Fadnis during the P.Y.2019-20 on bonds, issued by XYZ Ltd., an Indian company, under a scheme notified by the Central Government, which were purchased by him in convertible foreign currency, is -
- taxable@10%
 - taxable@15%
 - taxable@20%
 - not taxable

(Note – The above tax rates are excluding cess and surcharge, if any)

II. DESCRIPTIVE QUESTIONS

- As a tax consultant for M/s Lilly & Co., India, you need to advise the firm regarding tax deduction at source on the payments (i.e. interest on capital and share of profit) made to Mr. Manan during the previous year 2019-20, considering that Mr. Manan is a resident of Country 'X', with which India has no DTAA. In case tax is not deductible at source, is there any other related requirement to be complied with by the firm? **(3 Marks)**
 - If India has a DTAA with Country 'X' providing for deduction of tax at 10%, then, what is the remedy available in case M/s Lilly & Co., India has deducted tax at the requisite rate provided under the Income-tax Act, 1961? **(2 Marks)**
- Using the information given in the facts of the case, compute Mr. Manan's total income and tax liability for the Assessment Year 2020-21, assuming that he is a resident of Country X, with which India has no DTAA and he opts for computing his income in accordance with the provisions of Chapter XII-A of the Income-tax Act, 1961. You may ignore the amount of advance tax and TDS credit appearing in Form 26AS. Also, ignore the effect of first proviso to section 48, wherever applicable. **(10 Marks)**

EXHIBIT
COST INFLATION INDICES

| Financial Year | Cost Inflation Index |
|-----------------------|-----------------------------|
| 2001-02 | 100 |
| 2002-03 | 105 |
| 2003-04 | 109 |
| 2004-05 | 113 |
| 2005-06 | 117 |
| 2006-07 | 122 |
| 2007-08 | 129 |
| 2008-09 | 137 |
| 2009-10 | 148 |
| 2010-11 | 167 |
| 2011-12 | 184 |
| 2012-13 | 200 |
| 2013-14 | 220 |
| 2014-15 | 240 |
| 2015-16 | 254 |
| 2016-17 | 264 |
| 2017-18 | 272 |
| 2018-19 | 280 |
| 2019-20 | 289 |

CASE STUDY - 2

You are practicing in the field of International Taxation. Horse Racing World Championship and Payer Ltd. Are two of your clients, who have approached you for your opinion on certain issues.

Horse Racing World Championship

Horse Racing World Championship ('HRWC'), a company incorporated under the laws of the United Kingdom, wishes to enter into an agreement with Horse Racing India Ltd. ('HRIL'). HRWC and HRIL are associate enterprises. By way of the agreement, HRIL will license all the commercial rights in the Championships for a period of 100 years to HRWC. A Concorde Agreement will also be entered into between HRWC and the participating teams through which HRWC will be given the exclusive commercial rights in relation to the Horse Racing Championship which it could exploit directly or through its affiliates. As per this Agreement, HRWC had the right to include the race courses in which races would take place. For the purpose of conducting the Horse Racing Event in India, HRWC will also enter into a Race Promotion Contract with Race Contractor International Ltd ('RCIL'), an Indian contractor, granting it the right to host, stage and promote the Horse Racing event in Mahalaxmi Race Course in India for a consideration of USD 40 million for a period of 5 years. HRWC and its employees will have full access to the Mahalaxmi Race Course and HRWC will be granted access for a period of 6 weeks at a time during each race and that the access will be for a period of 5 years. The duration of the Race Promotion Contract and RCIL's capacity to act will be extremely limited.

The Agreement, *inter alia*, included that the Circuit is required to be constructed in the form and manner prescribed by the HRWC. Further, HRWC shall be responsible for the inclusion of the Event in the Championship. Also, HRWC shall have full access to the pit, padlock buildings, etc. during the Access Period. The passes issued by the HRWC shall not be questioned by RCIL. RCIL shall not permit any recording of footage of the Event in the confines of the circuit or the land over which it has control. All intellectual property relating to the Event shall be irrevocable and unconditionally assigned to the HRWC. RCIL shall be mandated to engage a third party approved by the HRWC to carry out all service relating to the origination of international television feed.

In client's view, the duration of the event will only be 3 days, there will be limited grant of access which may not be sufficient to constitute the degree of permanence necessary to establish a PE. Also in client's opinion, construction of the track will be done by RCIL and hence HRWC will not have disposal over the track.

Payer Ltd.

Pride Inc, a company incorporated under the laws of USA. The value of its global assets are Rs.50 crores. The value of assets in India are Rs.25 crores. Its turnover during the P.Y. 2019-20 is US \$ equivalent to INR 90 crores. Out of 10 board meetings held during the F.Y.2019-20, only 4 meetings are held in India. The key management and commercial decisions for conduct of the company's business as a whole are, however, made by the directors located in India at the meetings held in India. Your client, Payer Ltd, an Indian company, wishes to remit an amount towards professional fees to Pride Inc. on which tax is required to be deducted in India.

Note: Assume that India-UK DTAA is in line with UN Model Convention, 2017

Based on the above facts, you are required to answer the following questions:

I. MULTIPLE CHOICE QUESTIONS

Write the most appropriate answer to each of the following questions by choosing one of the four options given. Each question carries two marks.

1. In the given case, subject matter is to decide which type of following PE under the India-UK DTAA:
 - (a) Fixed Place PE
 - (b) Construction PE
 - (c) Service PE
 - (d) All of the above
2. Is RCIL liable to deduct tax on payments to HRWC and, if so, under which section:
 - (a) Yes; under section 194BB
 - (b) Yes; under section 195
 - (c) Yes; under section 194J
 - (d) No; not liable to deduct tax at source
3. For A.Y.2020-21, under the provisions of the Income-tax Act, 1961, Pride Inc shall be:
 - (a) Resident in India
 - (b) Non-resident in India, since it is said to be engaged in active business outside India

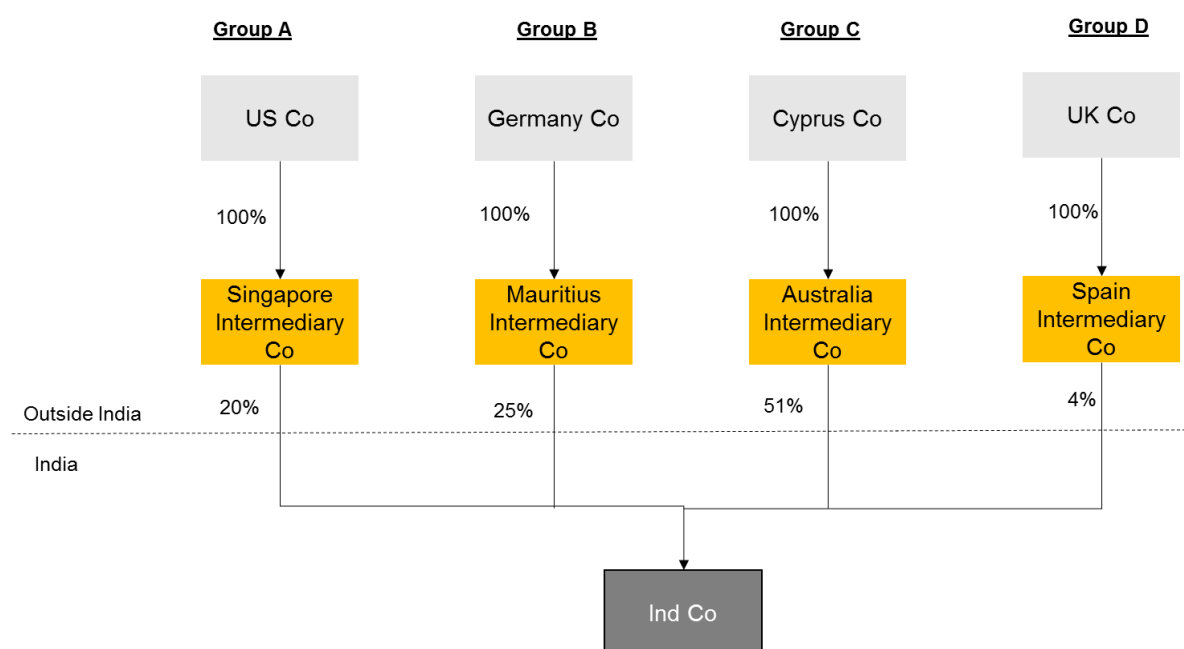
- (c) Non-resident in India, since majority board meetings are held outside India
 - (d) Non-resident in India, due to reasons stated in both (b) and (c) above.
4. Assuming that HRWC does not have a fixed place PE in India, it may constitute PE, if it sends its employees to India for rendering consultancy services in the P.Y.2019-20 for:
- (a) 182 days
 - (b) 183 days
 - (c) 184 days
 - (d) No PE is constituted irrespective of the number of days of stay of personnel in India.
5. Which of the following statements is true in the context of satisfaction or otherwise of the disposition test by HRWC?
- (a) Disposition test fails since HRWC has limited access to the race horses; the access is available only for 6 weeks' period each time the race is conducted.
 - (b) Disposition test fails, since construction of the track is by an Indian contractor, RCIL.
 - (c) Disposition test is satisfied, since HRWC had taken over and exercised control over the entire event.
 - (d) Disposition test is satisfied, only because HRWC and HRIL are AEs.

II. DESCRIPTIVE QUESTIONS

1. From the facts of the case, you are required to advise whether the agreement entered into by HRWC and its activities pursuant thereto constitute a permanent establishment (PE) in India. Justify your answer with reasoning and decided case law, if any. **(6 Marks)**
2. Advise RCIL whether it is required to withhold any tax on payments to HRWC. State reasons for your answer. **(3 Marks)**
3. Determine the residential status of Pride Inc. for A.Y.2020-21 under the Income-tax Act, 1961. Advise Payer Ltd as to whether tax on fees for professional services paid to Pride Inc. has to be deducted under section 194J or section 195. **(6 Marks)**

CASE STUDY - 3

Ind Co is an unlisted, private limited, Indian company incorporated under the Companies Act, 1956 and is engaged in the business of the manufacturing of automobile components. Ind Co is held by 4 groups of shareholders (Groups A, B, C and D) in different proportions. Groups A, B, C and D are headquartered in US, Germany, Cyprus and UK, respectively. However, these headquarter companies do not hold shares of Ind Co directly, but hold the shares through intermediary companies in Singapore, Mauritius, Australia, Spain, respectively, as depicted in the shareholding pattern below:



The date of acquisition of shares by each of the Groups is given below:

| Date of acquisition | | | |
|---|---|--|---|
| Group A | Group B | Group C | Group D |
| Date of acquisition by US Co in Singapore Intermediary Co - 1 April 2013 | Date of acquisition by Germany Co in Mauritius Intermediary Co - 1 April 2013 | Date of acquisition by Cyprus Co in Australia Intermediary Co - 1 April 2013 | Date of acquisition by UK Co in Spain Intermediary Co - 1 April 2013 |
| Date of acquisition by Singapore Intermediary Co in Ind Co - 1 March 2017 | Date of acquisition by Mauritius Intermediary Co in Ind Co - 1 April 2013 | Date of acquisition by Australia Intermediary Co in Ind Co - 1 April 2013 | Date of acquisition by Spain Intermediary Co in Ind Co - 1 April 2013 |

Each of the Groups are now proposing to restructure their shareholding in Ind Co. Alternatively, they are also considering the proposal of exiting from Ind Co by transferring their stake to a buyer to be identified. The restructuring/exit is proposed to be undertaken on 31 May 2019 by each of the Groups.

The last accounting year end (for the purpose of complying with the tax laws of the territory) for each of the entities and their respective book values of assets as on such date are provided below:

| Group A | Group B | Group C | Group D |
|--|---|--|---------------------------------------|
| US Co – 31 December 2018 | Germany Co – 31 March 2019 | Cyprus Co – 31 March 2019 | UK Co - 31 March 2019 |
| Book value – INR 500 crores | Book value – INR 200 crores | Book value – INR 100 crores | Book value – INR 100 crores |
| Singapore Intermediary Co – 30 June 2018 | Mauritius Intermediary – 31 December 2018 | Australia Intermediary Co – 31 December 2018 | Spain Intermediary Co - 31 March 2019 |
| Book value – INR 25 crores | Book value – INR 25 crores | Book value – INR 100 crores | Book value – INR 7 crores |

Ind Co follows 1 April - 31 March as the Financial Year and the book value of assets of Ind Co as on 31 March 2019 was INR 100 crores.

The book values of assets (after reduction of liabilities), fair market values of assets (after reduction of liabilities) and liabilities of some of the entities as on 31 May 2019 (i.e., date of transfer) is as below:

| Particulars | Book value (INR crores) | Fair market value (INR crores) | Liabilities (INR crores) |
|---------------------------|----------------------------|-----------------------------------|-----------------------------|
| Group A | | | |
| US Co | 550 | 1000 | 100 |
| Singapore Intermediary Co | 30 | 50 | 0 |
| Group B | | | |
| Germany Co | 200 | 500 | 50 |
| Mauritius Intermediary Co | 30 | 60 | 0 |
| Group C | | | |
| Cyprus Co | 100 | 400 | 0 |
| Australia Intermediary Co | 120 | 300 | 0 |
| Group D | | | |
| UK Co | 120 | 150 | 50 |
| Spain Intermediary Co | 7 | 12 | 0 |
| Ind Co | 110 | 180 | 20 |

Groups A, B, C and D hold no other shares or assets in India other than investment in shares of Ind Co.

Note: Assume the fair market value and liability of all the companies as on 31.3.2019 is same as it is on 31.05.2019.

I. MULTIPLE CHOICE QUESTIONS

Write the most appropriate option to each of the following questions by choosing one of the four options given. Each question carries two marks.

- Based on the facts in the case, where US Co proposes to transfer shares of Singapore Intermediary Co, which of the following Double Taxation Avoidance Agreements ('DTAA'), would be applicable for analysing the taxability in the hands of US Co in India -
 - US-Singapore DTAA
 - India-Singapore DTAA
 - India-US DTAA
 - Both (a) and (c)
- With respect to transfer of shares of Singapore Intermediary Co by US Co, which of the following would be the 'specified date' for the purpose of determining whether such shares derive its value substantially from assets located in India:
 - 30th June 2018
 - 31st December 2018
 - 31st March 2019
 - 31st May 2019

3. Ind Co is required to report details with respect to transfer of shares of Singapore Intermediary Co by US Co in which of the following forms-
 - (a) Form 3CEA
 - (b) Form 3CT
 - (c) Form 49D
 - (d) There is no reporting requirement on Ind Co and reporting requirement applies only on Singapore Intermediary Co
4. What is the timeline within which Ind Co is required to furnish information pertaining to transfer of shares of Mauritius Intermediary Co by Germany Co if the transaction has the effect of directly or indirectly transferring rights and management of Ind Co -
 - (a) Within the due date for filing return of income for the year in which the transfer has taken place
 - (b) Within 90 days from the date of the transaction
 - (c) Within 90 days from the end of the Financial Year in which such transfer has taken place
 - (d) There is no requirement on Ind Co to furnish information
5. The fair market value of an unlisted share, held directly or indirectly by a company or an entity registered or incorporated outside India, for the purposes of section 9(1)(i), shall be computed in accordance with which of the following methods -
 - (a) Net asset value, as certified by a Chartered Accountant
 - (b) Discounted Cash Flow method, as certified by a Chartered Accountant, as increased by liabilities, if any, considered in such valuation
 - (c) Any internationally accepted valuation methodology for valuation of shares on arm's length basis, as determined by a merchant banker or a Chartered Accountant, as increased by liabilities, if any, considered in such valuation
 - (d) Fair market value of all assets of the company computed on an arm's length basis, as certified by a Chartered Accountant

II. DESCRIPTIVE QUESTIONS

1. Examine the tax consequences of the following transactions under section 9(1)(i) of the Income-tax Act, 1961 and the applicable Double Taxation Avoidance Agreements -
 - (a) Transfer of shares of Singapore Intermediary Co by US Co to an unrelated Buyer. **(3 Marks)**
 - (b) Transfer of shares of Mauritius Intermediary Co by Germany Co to an unrelated Buyer **(3 Marks)**
 - (c) Transfer of shares of Australia Intermediary Co by Cyprus Co to an unrelated Buyer. **(2 Marks)**
 - (d) Transfer of shares of Spain Intermediary Co by UK Co to an unrelated Buyer **(2 Marks)**
2. Compute the capital gains chargeable to tax in India in the hands of US Co from transfer of shares of Singapore Intermediary Co to an unrelated buyer for INR 50 crores and the tax applicable on such capital gains. Consider that US Co had acquired shares of Singapore Intermediary Co for INR 10 crores. **(5 Marks)**

EXHIBIT

EXTRACTS OF ARTICLE ON CAPITAL GAINS FROM DOUBLE TAXATION AVOIDANCE AGREEMENTS

India-US DTAA

“ARTICLE 13 - GAINS

Except as provided in Article 8 (Shipping and Air Transport) of this Convention, each Contracting State may tax capital gains in accordance with the provisions of its domestic law.”

India- Singapore DTAA

“ARTICLE 13 – CAPITALGAINS

1. *Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in Article 6, and situated in the other Contracting State may be taxed in that other State.*
2. *Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State.*
3. *Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.*
- 4A. *Gains from the alienation of shares acquired before 1 April 2017 in a company which is a resident of a Contracting State shall be taxable only in the Contracting State in which the alienator is a resident.*
- 4B. *Gains from the alienation of shares acquired on or after 1 April 2017 in a company which is a resident of a Contracting State may be taxed in that State.*
- 4C. *However, the gains referred to in paragraph 4B of this Article which arise during the period beginning on 1 April 2017 and ending on 31 March 2019 may be taxed in the State of which the company whose shares are being alienated is a resident at a tax rate that shall not exceed 50% of the tax rate applicable on such gains in that State.*
5. *Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4A and 4B of this Article shall be taxable only in the Contracting State of which the alienator is a resident.”*

India-Germany DTAA

“ARTICLE 13 – CAPITAL GAINS

1. *Gains derived by a resident of a Contracting State from the alienation of immovable property situated in the other Contracting State may be taxed in that other State.*
2. *Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.*

3. *Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.*
4. *Gains from the alienation of shares in a company which is a resident of a Contracting State may be taxed in that State.*
5. *Gains from the alienation of any property other than that referred to in paragraphs 1 to 4 shall be taxable only in the Contracting State of which the alienator is a resident."*

India-Mauritius DTAA

"ARTICLE 13 – CAPITAL GAINS

1. *Gains from the alienation of immovable property, as defined in paragraph (2) of article 6, may be taxed in the Contracting State in which such property is situated.*
2. *Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in that other State.*
3. *Notwithstanding the provisions of paragraph (2) of this article, gains from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.*
- 3A. *Gains from the alienation of shares acquired on or after 1st April 2017 in a company which is resident of a Contracting State may be taxed in that State.*
- 3B. *However, the tax rate on the gains referred to in paragraph 3A of this Article and arising during the period beginning on 1st April, 2017 and ending on 31st March, 2019 shall not exceed 50% of the tax rate applicable on such gains in the State of residence of the company whose shares are being alienated;*
4. *Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 3A shall be taxable only in the Contracting State of which the alienator is a resident.*
5. *For the purposes of this article, the term "alienation" means the sale, exchange, transfer, or relinquishment of the property or the extinguishment of any rights therein or the compulsory acquisition thereof under any law in force in the respective Contracting States.*

India-Cyprus DTAA

"ARTICLE 13 – CAPITAL GAINS

1. *Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.*
2. *Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.*

3. *Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.*
4. *Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.*
5. *Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.*
6. *Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5, shall be taxable only in the Contracting State of which the alienator is a resident."*

India-UK DTAA

"Article 14- Capital Gains

1. *Except as provided in Article 8 (Air Transport) and 9 (Shipping) of this Convention, each Contracting State may tax capital gains in accordance with the provisions of its domestic law."*

India-Spain DTAA

"Article 14 – Capital Gains

1. *Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in Article 6, and situated in the other Contracting State may be taxed in that other State.*
2. *Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State.*
3. *Gains from the alienation of ships or aircraft operated in international traffic or of movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.*
4. *Gains from the alienation of shares of the capital stock of a company the property of which consists, directly or indirectly, principally of immovable property situated in a Contracting State may be taxed in that State.*
5. *Gains for the alienation of shares of the capital stock of a company forming part of a participation of at least 10 per cent in a company which is a resident of a Contracting State may be taxed in that Contracting State.*
6. *Gains from the alienation of any property other than that mentioned in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident."*

CASE STUDY – 4

Trikal Cement Ltd. (TCL) is an Indian company, having its head office at Vishakhapatnam. The company operates a special economic zone (SEZ) unit as well as several Domestic Tariff Area (DTA) units. TCL is the flagship company in the group and it has a wholly owned foreign subsidiary, D Inc.

You are the CFO with CA background, handling all taxation matters.

Meeting of the Board of Directors

An important Board meeting is scheduled on 25th May, 2020. In this meeting, important decisions are proposed to be taken, some of them having repercussions associated with Indian and international taxation.

Background of the business activities

TCL supplies goods to Shine Ltd. (SL), in Sri Lanka. The paid-up capital of SL in INR equivalent is Rs. 50 crores. TCL holds to the tune of Rs.14 crores in the same.

TCL supplies goods to GrewSolid Ltd. (GSL), in Singapore. The paid-up capital of GSL in INR equivalent is Rs.80 crores. TCL holds to the tune of Rs.18 crores in GSL.

The voting power in both the companies is directly proportional to the number of shares held.

Royalty receipts

D Inc., is currently paying a royalty of 2 million USD per annum (year ended 31-3-2020) to TCL for supply of know-how. For similar supply of know how to Epsilon LLC., a wholly owned Government Company in Japan, TCL receives annual royalty of USD 3 million. (1 USD = Rs. 70)

Export sales data

Export sales are made from the SEZ unit of TCL.

Manager of Exports Division has furnished the following data pertaining to export sales of identical goods made during the year ended 31-3-2020:

| Name of the party | Qty in MT | CIF rate per MT (Rs.) |
|-------------------|-----------|-----------------------|
| SL | 8,00,000 | 11,800 |
| GSL | 5,00,000 | 12,000 |
| XY Inc. | 3,00,000 | 11,900 |
| AB LLC. | 2,00,000 | 11,700 |

XY Inc and AB LLC are unrelated third parties, located in notified jurisdictional areas, namely, Country P and Q.

External borrowings

TCL has borrowed a sum of equivalent of Rs. 200 crores from Danubes Inc., Dubai on 1-4-2019. On this date, the assets position of TCL was as under:

| | (In Rs. Crores) | |
|-----------------------|-----------------|------------|
| Type of assets | Market value | Book value |
| Tangible fixed assets | 350 | 270 |
| Intangible assets | 30 | 25 |
| Other assets | 40 | 35 |

Danubes Inc., has charged interest at 8% and TCL has paid interest of Rs.16 crores for the year ended 31-3-2020. Though the normal lending rate of Danubes Inc. was 7% per annum to other parties, in view of the urgent requirement of funds and pressing financial commitments, TCL decided to borrow this amount then.

I. MULTIPLE CHOICE QUESTIONS

Write the most appropriate option to each of the following questions by choosing one of the four options given. Each question carries two marks.

1. Assume that TCL has entered into an Advance Pricing Agreement (APA) on 2nd Jan., 2020, covering transactions for the period starting from 1st April, 2019. The Annual Compliance Report for the assessment year 2020-21 shall be furnished within:
 - (a) 60 days from 2nd Jan.,2020
 - (b) 90 days from 31st March, 2020

- (c) 90 days from 2nd Jan., 2020
- (d) 30 days from 30th Nov., 2020
2. Which of the following are associated enterprises/deemed to be associated enterprises of TCL under section 92A for attracting transfer pricing provisions under the Income-tax Act, 1961?
- (i) SL
- (ii) GSL
- (iii) D Inc.
- (iv) Danubes Inc.
- The correct answer is -
- (a) (i) and (iii)
- (b) (i) and (iv)
- (c) (i), (iii) and (iv)
- (d) (i), (ii) and (iv)
3. Assume that TCL has entered into an agreement for sale of a product to Mr. Kashyap, a non-resident on 21-1-2020, who has a prior agreement with Deep Inc., of Singapore, in which TCL holds 40% of the share capital. For transfer pricing purposes, the transaction between TCL and Mr. Kashyap -
- (a) will be deemed to be an international transaction, if Mr. Kashyap is a non-resident.
- (b) will be deemed to be an international transaction, if Mr. Kashyap is a resident.
- (c) will be deemed to be an international transaction, whether Mr. Kashyap is a resident or non-resident.
- (d) will not be deemed to be international transaction at all.
4. Would transfer pricing provisions apply in respect of a transaction of TCL with XY Inc?
- (a) No; since they are unrelated parties
- (b) Yes, since the transaction is deemed to be an international transaction as per section 94A.
- (c) Yes, since the entities are deemed to be associated enterprises as per section 94A.
- (d) Yes, due to reasons stated in (b) and (c) above.
5. What is the permissible variation between the actual price charged by TCL from AB LLC in Country Q and the Arm's Length Price (ALP)?
- (a) 2%
- (b) 3%
- (c) 5%
- (d) Nil

II. DESCRIPTIVE QUESTIONS

1. "Where the total income of TCL is computed by the Assessing Officer applying the provisions of section 115JB, then, adjustments made on account of transfer pricing provisions will not have any impact while computing the book profits under section 115JB". Examine the correctness of this statement, assuming that TCL is a company which is not required to comply with the Indian Accounting Standards.

Would your answer change if TCL is required to comply with Ind AS?

(3 Marks)

2. The Board of Directors want to know the income likely to be computed by the Assessing Officer, taking note of the adjustments under transfer pricing provisions. The profits of TCL computed without taking note of said adjustments, as per the provisions of Chapter IV-D of the Act is Rs.32.2 crores. Assume that there is no Advance Pricing Agreement and TCL has opted not to be subjected to Safe Harbour Rules. You are required to examine the various transactions entered into by TCL and determine the applicability of transfer pricing provisions for each transaction. Ignore provisions of section 94B, if applicable, in this case. **(12 Marks)**

CASE STUDY – 5

Mr. Investor, an Indian citizen, aged 46 years, has passive incomes in India. He habitually resides in Canada but visits India every year. He stays in five star rated hotels in spite of owning a residential house in Mumbai, as the same is let out to Mr. Tenant for a yearly rent of Rs. 3,10,000. During the F.Y.2019-20, Mr. Investor repaid EMI of housing loan from HDFC amounting to Rs. 30,000, out of which Rs. 10,000 was towards interest. Mr. Investor paid Rs. 10,000 towards municipal taxes of the said let out property in March, 2020 during his stay in India from 2nd Feb 2020 to 31st May 2020.

Details of his other Incomes and Payments are as below:

1. Mr. Investor received dividend from Indian companies amounting to Rs.10,10,000.
2. Mr. Investor sold STT paid listed shares on 28.2.2020 amounting to Rs.3,00,000. The same were subscribed in convertible US \$ on 15.5.2009 for Rs. 2,00,000 on which STT was paid. The broker's ledger reflected a debit of Rs. 10,000 towards brokerage. Fair market value of these shares on 31.1.2018 was Rs. 1,80,000.

Cost Inflation Index:

F. Y.2009-10 - 148

F. Y.2019-20 – 289

The telegraphic transfer buying and selling rate of US dollars adopted by the State Bank of India is as follows :

| Date | Buying Rate (1 US \$) | Selling Rate (1 US \$) |
|-----------|-----------------------|------------------------|
| 15.5.2009 | 63 | 65 |
| 31.1.2018 | 68 | 70 |
| 28.2.2020 | 74 | 76 |

3. Mr. Investor had invested in debentures of an Indian Company amounting to Rs.6,25,000. Such investment was done out of remittances in convertible foreign exchange. Interest Income on the same was 12% p.a. Interest paid on money borrowed in India for investment in the debentures amounted to Rs. 25,000.
4. Mr. Investor received equivalent to Rs. 60,000 from his friend, a resident Indian in October, 2019. The same was paid by such resident from his bank account in Canada and was received by Mr. Investor in his bank account in Canada. The friend also gifted a Work of Art to Mr. Investor in Canada. Fair Market Value of Work of Art on the date of gift was Rs. 2,00,000.
5. Mr. Investor paid Rs. 5,000 by way of donation by A/c payee cheque to the Prime Minister's National Relief Fund and Rs. 10,000 by way of donation to PM's Drought Relief fund by crossed cheque.
6. Total tax deducted during F.Y.2019-20 was Rs. 20,000. Assume that all tax deductible at source has been duly deducted and remitted to the credit of Central Government on time.

Mr. Investor holds 26% of voting power in Canada Supply Inc, a company incorporated under the laws of Canada. For the purpose of expansion of business, the said company enters into an agreement with Bombay Buying Ltd., a company incorporated under the Indian laws. As per one of the clauses of the agreement, Canada Supply Inc has the power to appoint five directors of Bombay Buying Ltd. The Indian company has ten directors on the board. Further, total purchases by Bombay Buying Ltd. for the F.Y. 2019-20 is estimated to be Rs. 500 crores, out of which, Bombay Buying Ltd shall source purchases of Rs. 48 crores locally and the balance shall be supplied by Canada Supply Inc. The price for entire purchase has been agreed in the agreement and the conditions for supply are determined by Canada Supply Inc.

Based on the above facts, you are required to answer the following questions:

I. Multiple Choice Questions

Write the most appropriate answer to each of the following questions by choosing one of the four options given. Each question carries two marks:

1. For Assessment Year 2020-21, Mr. Investor shall be:
 - (a) Resident and Ordinarily Resident in India
 - (b) Resident but not Ordinarily Resident in India
 - (c) Non-resident in India
 - (d) Resident in India; not possible to determine whether ordinarily resident or not-ordinarily resident in India with the given information.
2. Dividend income received by Mr. Investor from Indian company would be:
 - (a) Taxable @20% due to special provisions being applicable to him.
 - (b) Rs. 10,000 is taxable @10% under section 115BBDA
 - (c) Either (a) or (b) at the option of Mr. Investor
 - (d) Exempt from income-tax
3. The taxability of capital gains on sale of shares by Mr. Investor during the F.Y. 2019-20, under the regular provisions of the Income-tax Act, 1961 is:
 - (a) Entire capital gains taxable @10%, without indexation benefit; brokerage allowable as deduction
 - (b) Entire capital gains taxable @10%, with indexation benefit; brokerage allowable as deduction
 - (c) Entire capital gains taxable at normal rates, without indexation benefit; brokerage allowable as deduction
 - (d) None of the above
4. With respect to donation to Prime Minister Relief Fund & Prime Minister Drought relief fund, Mr. Investor:
 - (a) Is not entitled to any deduction under the Income-tax Act, 1961.
 - (b) Is entitled to deduction of Rs. 5,000 under section 80G
 - (c) Is entitled to deduction of Rs. 10,000 under section 80G
 - (d) Is entitled to deduction of Rs. 15,000 under section 80G

5. Are the gifts received by Mr. Investor taxable in his hands under the Income-tax Act, 1961?
- (a) Yes; Rs. 2,60,000 would be taxable as Income from other sources.
 - (b) Partially; Rs. 60,000 received from resident would be taxable as Income from other sources.
 - (c) Partially; only Rs. 10,000 received from resident would be taxable as Income from other sources.
 - (d) No; Such gifts are not taxable in the hands of Mr. Investor under the Income-tax Act, 1961.

II. DESCRIPTIVE QUESTIONS

1. You are required to compute tax liability of Mr. Investor for Assessment Year 2020-21 under the regular provisions of the Income-tax Act, 1961 and the special provisions, if any, applicable to him under the said Act and advise him whether or not to opt for special provisions of the Act. **(10 Marks)**
2. Advise Mr. Investor as to whether Canada Supply Inc and Bombay Buying Ltd are Associated Enterprises, on the basis of the provisions of the Income-tax Act, 1961. **(5 Marks)**