

PAPER 6C: INTERNATIONAL TAXATION

The question paper comprises **five** case study questions. The candidates are required to answer any **four** case study questions out of **five**.

All questions relate to Assessment Year 2021-22, unless otherwise stated in the questions/case studies

Time Allowed – 4 Hours

Maximum Marks – 100

Case Study 1

Rho Inc., a company incorporated in Country T, is engaged in manufacturing of computer hardware parts. It also owns an online social networking site, Campfire. It exports its products globally including India for which it owns a warehouse in Nagpur. Lambda Ltd., an Indian Company, imports computer hardware parts from Rho Inc. During the previous year 2020-21, Lambda Ltd. did not import any computer hardware parts from Rho Inc. but paid ₹ 8,20,000 on 17th June, 2020 to Rho Inc. for advertising its business on the platform of Campfire. However, Lambda Ltd. neither deducted tax at source nor equalisation levy from such payment.

On 1-4-2020, Lambda Ltd. advanced a loan of ₹ 2 crores to Yuvan Inc., a company resident in Malaysia. As on the date of loan, the book value of total assets in the books of Yuvan Inc. was ₹ 3.92 crores. Out of the ten directors of Yuvan Inc., five are appointed by Lambda Ltd. Yuvan Inc. repaid the entire loan along with interest thereon on 31st March, 2021. During the Financial Year 2020-21, Lambda Ltd. also entered into an agreement with Yuvan Inc. to provide 600 computers (with pre-installed MS Office) at a cost of ₹ 74,000 per unit. Lambda Ltd. also sold similar computers (with pre-installed MS Office) at the rate of ₹ 90,000 per unit to Theta Ltd. and at the rate of ₹ 95,000 per unit to Delta LLP. Both Theta Ltd. and Delta LLP are unrelated parties.

The net result of the business carried on by the branch of Yuvan Inc. in India for the financial year ended 31.03.2021 was a profit of ₹ 32 lakhs after charge of the following expenses:

- (a) Depreciation for the year 2020-21 of ₹ 12 lakhs.
- (b) Expenditure incurred for scientific research ₹ 8 lakhs.
- (c) Unabsorbed depreciation brought forward from F.Y.2019-20 ₹ 14 lakhs.
- (d) Business loss of P.Y.2019-20 brought forward ₹ 19 lakhs.
- (e) Deductions under Chapter VI-A of ₹ 17 lakhs.
- (f) Capital Expenditure incurred for promoting family planning amongst its employees of ₹ 5 lakhs, being one fifth of the total expenditure of ₹ 25 lakhs incurred.
- (g) Head Office expenses of ₹ 90 lakhs allocated to the branch.

Mr. Ravi, a shareholder of Lambda Ltd., received the draft order from the Assessing Officer as per section 144C of the Income-tax Act, 1961 due to variations determined by the Transfer Pricing Officer in the arm's length price. However, Mr. Ravi does not prefer to file the objection against the draft order before the Dispute Resolution Panel; Instead, he wants to file an appeal before the CIT (Appeals) under section 246A against the final order received from the Assessing Officer.

Mr. Ravi's brother Mr. Rajan, an individual resident in India aged 61 years, furnishes you the following particulars of income earned in India, Country A and Country B for the previous year 2020-21. India has a DTAA with Country A and Country B.

Particulars	₹
Income from profession carried on in India	7,00,000
Agricultural income in Country A (gross)	45,000
Dividend from a company incorporated in Country B (gross)	1,30,000
Royalty income from a literary book from Country A (gross)	7,00,000
Expenses incurred for earning royalty	80,000
Business loss in Country B (Proprietary business)	42,000
Rent from a house situated in Country B (gross)	1,95,000
Municipal tax paid by Mr. Rajan in respect of the above house in Country B (not allowed as deduction in Country B)	8,000

Agricultural income and Royalty income are taxable in Country A. Expenses for earning such income are allowable as deduction in Country A subject to a maximum of 12% of royalty. Business loss in Country B not eligible for set off against other incomes as per law of that country. Royalty income is brought into India in June, 2021. The rates of tax in Country A and Country B are 10% and 20%, respectively. It may be assumed that the same are in line with the DTAA's.

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

I MULTIPLE CHOICE QUESTIONS

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

- In respect of payment made by Lambda Ltd. for advertising services provided by Rho Inc. to Lambda Ltd., which of the following statements are correct?
 - Equalisation levy is not attracted
 - Tax is deductible at source u/s 195 by Lambda Ltd.
 - Both (a) and (b)
 - Equalization levy of ₹ 49,200 is deductible by Lambda Ltd.

- 2 If Lambda Ltd. had imported computer hardware parts from Rho Inc. for the same payment (i.e., ₹ 8,20,000), which of the following statements are correct?
- (a) Equalisation levy of ₹ 49,200 is deductible by Lambda Ltd. on payment to Rho Inc.
 - (b) Equalisation levy of ₹ 16,400 is deductible by Lambda Ltd. on payment to Rho Inc.
 - (c) Equalisation levy of ₹ 16,400 is payable by Rho Inc.
 - (d) Equalisation levy is not attracted
- 3 What would be the penalty leviable on Lambda Ltd. for non-deduction of equalization levy in case 1 (MCQ 1) and non-deduction/non-payment, as the case may be, of equalization levy in case 2 (MCQ 2) above?
- (a) ₹ 49,200, in both cases
 - (b) ₹ 49,200 / Nil, since equalization levy is not attracted in case 2
 - (c) ₹ 49,200 / ₹ 16,400
 - (d) Nil, in both cases, since equalization levy is not attracted in both cases.
- 4 Are Lambda Ltd. and Yuvan Inc. associated enterprises? If so, why?
- (a) Yes, since loan advanced by Lambda Ltd. to Yuvan Inc. is not less than 51% of the book value of total assets of Yuvan Inc.
 - (b) Yes, since not less than 50% of the directors of Yuvan Inc. are appointed by Lambda Ltd.
 - (c) Yes, due to either (a) or (b) above.
 - (d) No, Lambda Ltd. and Yuvan Inc. are not associated enterprises, since the loan has been repaid before the end of the previous year i.e., before 31.3.2021.
- 5 Which of the following statements are correct, in relation to the remedies available to Mr. Ravi under the Income-tax Act, 1961, if he is not satisfied with the draft order passed by the Assessing Officer?
- (a) He can file an objection before the Dispute Resolution Panel against the draft assessment order
 - (b) He can file an appeal before CIT (Appeals) after getting the final assessment order
 - (c) Either (a) or (b)
 - (d) Both (a) and (b)

II DESCRIPTIVE QUESTIONS

1. Compute the income to be declared by the branch of Yuvan Inc. in its return for the A.Y. 2021-22. **(5 Marks)**
2. Determine the arm's length price of computers sold by Lambda Ltd. to Yuvan Inc., assuming that they are associated enterprises (irrespective of the answer to MCQ 4 above) and the consequent increase in total income. What are the consequences if the Assessing Officer makes the primary adjustment in respect of the arm's length price so determined, if Lambda Ltd. accepts such transfer price? **(4 Marks)**
3. Compute total income and tax payable by Mr. Rajan in India for the A.Y.2021-22, considering the foreign tax credit available under Rule 128. **(6 Marks)**

Case Study 2

Alps Ltd., Switzerland holds 29% shares in Himalayas Ltd., India. Himalayas Ltd. develops software and does both onsite and offsite consultancy services for the customers. During the previous year 2020-21, Himalayas Ltd. billed Alps Ltd. Switzerland for 150 man-hours at the rate of ₹ 2,100 per man hour. The total cost (direct and indirect) for executing this work amounted to ₹ 3,40,000.

However, Himalayas Ltd. billed Vindyas Ltd., India at the rate of ₹ 3,200 per man hour for the similar level of manpower and earned a Gross Profit of 50% on its cost.

The transactions of Himalayas Ltd. with Alps Ltd. and Vindyas Ltd. are comparable, subject to the following differences:

- *While Himalayas Ltd. derives technology assistance from the Alps Ltd., there is no such assistance from Vindyas Ltd. The value of technology assistance received from Alps Ltd. may be valued at 16% of normal gross profits.*
- *As Alps Ltd. gives business in large volumes, Himalayas Ltd. offered to Alps Ltd., a quantity discount which may be valued at 8% of normal gross profits.*
- *In the case of rendering services to Alps Ltd., Himalayas Ltd. neither runs any risk nor incurs any marketing costs. On the other hand, in the case of services to Vindyas Ltd., Himalayas Ltd. has to assume all the risk and costs associated with the marketing function which may be estimated at 14% of the normal gross profits.*
- *Himalayas Ltd. offered one month credit to Alps Ltd. The cost of providing such credit may be valued at 4% of the gross profits. No such credit was given to Vindyas Ltd.*

Michael, one of the shareholders of Alps Ltd., is a Swiss national who came to India as a member of Swiss hockey team in the year ended 31st March, 2021. He stayed in India for 55 days. He received ₹ 6 lakhs for participation in matches in India. He also received ₹ 1 lakh for an advertisement of a product on TV. He contributed articles in newspaper for which he received ₹ 10,000. When he stayed in India, he also won a prize of ₹ 50,000 from horse racing in Mumbai. He has no other income in India during the year.

Vindyas Ltd. holds 55% of shares in Capstone Ltd., a company incorporated in Sharjah. Capstone Ltd. has its offices in India also.

Details relating to Capstone Ltd. for year ended March 2021 are as stated below:

(Amt in ₹ crores)

Particulars	India	Sharjah
• Fixed Assets after considering depreciation for tax purposes	1500	650
• Intangible Assets	225	1075
• Other Assets (value as per books of account)	800	1900
• Income from trading operations	730	1370
The above figure includes:		
a. Income from transactions where sales are to AE	20	40
b. Income from transactions where purchases are from AE	30	55
c. Income from transactions where sales/purchases are to/from AE	45	80
• Interest and dividend from investments	560	320
• Number of employees	70	90
• Payroll expenses on employees	940	1250
• Number of Board Meetings held	2	3

On 2nd April, 2019, Vindyas Ltd. borrowed ₹ 100 crores from M. Ltd., a company incorporated in Country M. The said loan is repayable over a period of 6 years. This loan is guaranteed by Lima Inc, a company incorporated in U.S.A. Lima Inc. holds 28% shares in Vindyas Ltd. Vindyas Ltd. provides you the following information with respect to its profit and loss account.

₹ in lakhs

Particulars	For the F.Y. 2019-20	For the F.Y. 2020-21	Particulars	For the F.Y. 2019-20	For the F.Y. 2020-21
Administrative and staff welfare expenses (the entire expenses are allowable under the Income-tax Act, 1961)	430	451	Gross Profit	1780	1700
Interest paid to M. Ltd.	589	238			
Depreciation as per Income-tax Rules, 1962	270	272			
Income-tax	261	223			

Profit transferred to Reserves	230	516		
	1780	1700	1780	1700

Mr. Ranjit, a shareholder of Vindhya Ltd., aged 61 years resident of India derived the following income for the financial year 2020-21:

(1) Income from business and profession in India	5,20,000
(2) Dividend (gross) from a company in Country X (Tax paid in Country X ₹34,000)	1,70,000
(3) Royalty from Country Y in respect of a literary book	9,00,000
(4) Income from Other Sources:	
• Interest on savings bank account with ICICI Bank	12,000
• Interest on fixed deposits	1,95,000
• Dividend income from Vindhya Ltd.	20,000

Out of royalty of ₹9,00,000, ₹8,20,000 has been received in India on 30-06-2020 and tax of ₹45,000 has been deducted in Country Y. The remaining amount has not been remitted till date. Mr. Ranjit incurred expenses to the tune of ₹80,000 on earning such royalty, which is not allowable as deduction in Country Y.

Mr. Ranjit has also deposited ₹1,50,000 in his PPF Account during the year.

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

I. MULTIPLE CHOICE QUESTIONS

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

- What would be the tax liability of Michael for A.Y.2021-22?
 - ₹ 67,080
 - ₹ 72,280
 - ₹ 1,58,080
 - ₹ 1,63,280
- Is Michael required to file his return of income for A.Y.2021-22?
 - He is not required to file his return of income u/s 139, if tax deductible at source has been fully deducted
 - He is not required to file his return of income u/s 139, if he has paid the taxes in full before leaving India.

- (c) He is not required to file his return of income u/s 139, if either of the conditions mentioned in (a) or (b) has been fulfilled.
- (d) He is required to file his return of income u/s 139 even if tax deductible at source has been fully deducted.
- 3 If Michael had been a match referee instead of a hockey player, would your answer to MCQs 1 and 2 undergo a change?
- (a) Yes, answers to both MCQ 1 and 2 would undergo a change
- (b) No, answers to both MCQ 1 and 2 would not undergo a change.
- (c) Answer to MCQ 1 would undergo a change but answer to MCQ 2 would not undergo a change.
- (d) Answer to MCQ 2 would undergo a change but answer to MCQ 1 would not undergo a change.
- 4 Which of the following statements are correct in relation to Capstone Ltd. for A.Y.2021-22?
- (a) The company has passed the Active Business Outside India test, since it fulfills all the four conditions cumulatively
- (b) The company has passed the Active Business Outside India test, since it fulfills one of the stipulated four conditions.
- (c) The company has not passed the ABOI test since it does not fulfill the four conditions cumulatively
- (d) The company has not passed the ABOI test since it does not fulfill any of the four conditions.
- 5 What is the residential status of Capstone Ltd. for A.Y.2021-22?
- (a) The company is resident in India, since it has not passed the ABOI test and its POEM is in India during the P.Y.2020-21
- (b) The company is non-resident in India, since it is a foreign company
- (c) The company is non-resident in India, since its POEM is not in India during the P.Y.2020-21
- (d) The company is non-resident in India during the P.Y.2020-21, due to reasons stated in (b) and (c)

II. DESCRIPTIVE QUESTIONS

1. Determine the Arm's Length Price of services rendered by Himalayas Ltd. to Alps Ltd. alongwith income to be increased under the Cost Plus Method. **(5 Marks)**

2. Compute the income under the head "Profits and Gains from business and profession" of Vindyas Ltd. for the A.Y. 2021-22, after giving effect to the provisions of section 94B. (5 Marks)
3. Compute the total income and tax payable by Mr. Ranjit for the A.Y. 2021-22 in a manner most beneficial to him, after allowing deduction under section 91, assuming that India does not have DTAA with Country X and Country Y. (5 Marks)

Case Study 3**PQR Inc., Country P**

PQR Inc., located in Country P, is a business conglomerate with a presence in many countries across the world. PQR Inc is the parent entity of a multinational group and it has designated ABC Ltd., India, as the constituent entity of the multinational group. PQR Inc. followed calendar year as its accounting year. PQR Inc. became resident in India due to POEM being in India first time, for year ended 31st March, 2021. PQR Inc. is assessed to tax in Country P. The company prepared profit and loss account and balance sheet for the period 01-01-2019 to 31-12-2019; and consequent to its POEM being in India for the P.Y.2020-21, it also prepared profit and loss account and balance sheet for the period 01-01-2020 to 31-03-2020.

Particulars	As per books of account	As per tax records
<u>As on 31.12.2019:</u>		
Brought forward business loss	₹ 120 lakhs	₹ 100 lakhs
Unabsorbed depreciation	₹ 60 lakhs	₹ 80 lakhs
<u>For the three-month period from 1.1.2020 to 31.3.2020:</u>		
Business loss	₹ 15 lakhs	₹ 20 lakhs
Depreciation	₹ 5 lakhs	₹ 10 lakhs

It proposes to file its return of income of the assessment year 2021-22 before the 'due date' specified in section 139(1).

ABC Ltd., India

ABC Ltd. is engaged in development of computer software. It has units in Domestic Tariff Area (DTA) and in Special Economic Zone (SEZ). It carried out development of software and performed onsite services outside India with countries such as Canada and USA with whom India has a DTAA.

Article 25 of the India-US DTAA deals with relief from double taxation.

Clause 2(a) of Article 25 of the said DTAA reads as under:

"Where a resident of India derives income which, in accordance with the provisions of this Convention, may be taxed in the United States, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in the United States, whether directly or by deduction. Such deduction shall not, however, 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 the United States."

Article 23 of the India-Canada DTAA deals with Elimination of double taxation. In the case of India, it provides that double taxation should be eliminated as follows:

"(a) The amount .of Canadian tax paid, under the laws of Canada and in accordance with the provisions of the Agreement, whether directly or by deduction, by a resident of India, in respect of income from sources within Canada which has been subjected to tax both in India and Canada shall be allowed as a credit against the Indian tax payable in respect of such income but in an amount not exceeding that proportion of Indian tax, which such income bears to the entire income chargeable to Indian tax."

ABC Ltd. paid tax in India on its income after claiming deduction under section 10AA in respect of its income from SEZ units. As a result, its income derived from SEZ units was fully tax-free. The company claimed tax credit for the tax paid outside India i.e., in Canada and USA, even though no tax was payable in India for those incomes as the units are located in SEZ. The Assessing Officer denied the tax credit claimed by ABC Ltd. in the assessment.

ABC Ltd. entered into an advance pricing agreement (APA) for the international transactions effected w.e.f. 01-04-2019 with rollback benefit. The finalized APA after approval by the Central Government was signed on 31-05-2019. The assessment for the A.Y. 2015-16 was completed under section 143(3) and the ALP determined by the TPO was upheld by the Tribunal vide its order dated 31-05-2019. The return of income of the A.Y. 2016-17 was filed on 12-01-2017. The return of income for the A.Y. 2017-18 was filed on 20-11-2017.

The return of income for the assessment year 2018-19 was filed on 13-09-2018 and it was revised on 30-03-2019. The assessee is contemplating filing modified returns for rollback years wherever it is eligible to do so. The return of income of the assessment year 2019-20 was filed on 31-10-2019.

From 01-04-2021, ABC Ltd. proposes to export goods to MNO Inc. of Italy (which is also a subsidiary of PQR Inc.). The value of goods to be exported (i.e. international transaction) is ₹ 180 crores for the financial year 2021-22. It also apprehends that the transaction may be treated as an impermissible avoidance arrangement.

ABC Ltd. borrowed a foreign currency (USD) loan of USD 7,00,000 from XYZ Inc. of USA on 01-4-2018. Interest@8% p.a. is payable on 31st March every year. For the previous year 2020-21, interest is due and payable for which accounting entries were made in the books of account on 31-3-2021. The interest was, however, paid on 30-4-2021.

[Note: TT buying rate on 31-03-2021 is 1 USD = ₹73; On 30-04-2021 is 1 USD = ₹74]

Shashank, CFO of ABC Ltd.

Shashank is the CFO of ABC Ltd. He had accumulated assets outside India during the previous year 2015-16 and proceedings under the Black Money Act, 2015 for assessment of undisclosed foreign asset and income were initiated and completed in December, 2019.

During the course of assessment, Shashank failed to produce certain books of account and documents in response to the summons issued under section 8 of the Black Money Act which were required to be submitted by 16-10-2018. The undisclosed foreign asset of Shashank was assessed at ₹ 220 lakhs.

Kaushik, ex-employee of ABC. Ltd.

Kaushik, a former employee of ABC. Ltd., left India on 15-07-2018 for the purpose of employment in Singapore. He had acquired 8,000 equity shares (STT paid) of Alpha Ltd., Kolkata @ ₹ 300 per share on 24-12-2014. He sold 4000 shares of Alpha Ltd. on 26-03-2021 @ ₹ 800 per share through recognized stock exchange. The Fair Market Value (FMV) of the shares on 31-01-2018 was ₹ 500 per share. He also sold a vacant land located in Jaipur on 12-03-2021 for ₹ 45 lakhs which was acquired in August, 2014 for ₹ 12 lakhs.

Cost inflation index:

F.Y. 2014-15: 240; F.Y. 2017-18: 272;

F.Y. 2018-19: 280 F.Y. 2020-21: 301

The average telegraphic buying and selling rates of 1 Singapore Dollar on various dates are given below:

24-12-2014 - ₹ 48;

15-07-2018 - ₹ 50;

26-03-2021 - ₹ 54;

31-03-2021 - ₹ 55

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

I. MULTIPLE CHOICE QUESTIONS

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

1. ABC Ltd. is a constituent of the international group PQR Inc. of Country P. In an appeal proceeding, the CIT (Appeals) seeks details of ownership structure of the enterprise and profile of the multinational group. Is the CIT (Appeals) empowered to seek those details? If so, what is the time limit within which ABC Ltd. should furnish the same?
 - (a) CIT (Appeals) cannot seek details. Therefore, the question of time limit does not arise.

- (b) CIT (Appeals) can seek details. The time limit is 30 days from the date of receipt of notice by ABC Ltd.
- (c) CIT (Appeals) can seek details. The time limit is 90 days from the date of issue of notice by CIT (Appeals).
- (d) CIT (Appeals) cannot seek details. ABC Ltd. should, however, voluntarily furnish the same at the time of filing the appeal.
2. What would be the amount of fee payable by ABC Ltd. for seeking ruling from AAR? Also, can ABC Ltd. seek ruling on whether the proposed transaction is an impermissible avoidance arrangement?
- (a) Fee payable ₹ 5 lakhs; ABC Ltd. can seek advance ruling to know whether the transaction proposed to be undertaken is an impermissible avoidance arrangement.
- (b) Fee payable ₹ 2 lakhs; ABC Ltd. can seek advance ruling only in respect of the transactions already undertaken to know whether the transaction is an impermissible avoidance arrangement.
- (c) Fee payable ₹ 10 lakhs; ABC Ltd. cannot seek advance ruling to know whether the transaction proposed to be undertaken is an impermissible avoidance arrangement.
- (d) Fee payable ₹ 2 lakhs; ABC Ltd. can seek advance ruling to know whether the transaction proposed to be undertaken is an impermissible avoidance arrangement.
3. When ABC Ltd. pays interest on foreign currency loan to XYZ Inc., USA, what is the amount of tax to be deducted at source on such interest, which is paid on 30-04-2021, as per the provisions of the Income-tax Act, 1961?
- (a) ₹ 8,50,304
- (b) ₹ 8,61,952
- (c) ₹ 8,17,600
- (d) ₹ 8,28,800
4. What is the amount of brought forward business loss and unabsorbed depreciation which PQR Inc. is eligible to carry forward to A.Y.2021-22 for set-off against its income chargeable to tax in India on account of it becoming resident in India due to application of POEM?
- (a) ₹ 135 lakhs and ₹ 65 lakhs, respectively
- (b) ₹ 100 lakhs and ₹ 80 lakhs, respectively
- (c) ₹ 120 lakhs and ₹ 90 lakhs, respectively
- (d) ₹ 120 lakhs and ₹ 60 lakhs, respectively

5. What is the time limit for issue of show cause notice for levy of penalty on Shashank for failure to produce certain books of account and documents in the proceedings under the Black Money Act, 2015?
- (a) 31-03-2020
 (b) 31-03-2021
 (c) 31-03-2022
 (d) No penalty could be imposed as the assessment under the Black Money Act has already been completed.

II. DESCRIPTIVE QUESTIONS

1. Compute the capital gain chargeable to tax in the hands of Kaushik for the A.Y. 2021-22 under the regular provisions of the Income-tax Act, 1961. Can he claim exemption u/s 54EC by investing the capital gains in bonds issued by the Rural Electrification Corporation of India? Examine. What would be the resultant tax liability, in such a case, assuming that this is his only source of income for A.Y.2021-22? **(5 Marks)**
2. List the instances as to when ABC Ltd. is obligated to file the CbC report. **(3 Marks)**
3. Determine the availability of rollback benefit to ABC Ltd. for each of the years given in the question (with brief reasons for your answer). **(3 Marks)**
4. (i) Is the action of the Assessing Officer in denying foreign tax credit to ABC Ltd. tenable in law? Ignore MAT.
 (ii) What would be your answer in case the assessee 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? **(4 Marks)**

Case Study 4

Apoch Inc., a company incorporated in Germany, is engaged in development of infrastructure and providing consultancy in the same field. During the F.Y. 2020-21, its shareholders met in India for three times. The first two meetings were held to discuss the modification of rights attached to various classes of shares and the third meeting was held to discuss and decide about sale of companies' assets situated in India. The meetings of Board of Directors are held in Germany, where management and commercial decisions necessary for conduct of the company's business are taken. The following information of Apoch Inc. pertain to Financial Year 2020-21:

- (i) *Dividend declared by Bomo Inc., a German Company: ₹ 38,000 [Bomo Inc. holds 60% of its total assets in India].*
- (ii) *Fees for technical services (gross) from Government of India: ₹ 2,28,000. The Government of India utilised such technical services for a development project carried out by it in Bhutan.*

- (iii) Interest (gross) from M/s. Phi, a unit located in IFSC, in respect of monies borrowed by M/s. Phi: ₹ 22,300 on 23-5-2020.
- (iv) On 9.11.2020, APOCH Inc. sold 3,000 equity shares held by it in an Indian Company, XYZ Ltd. for ₹ 92 per share. These shares were bought by APOCH Inc. on 15th April, 2011 for ₹ 55 per share. Both the purchase and sale of shares were effected through a recognized stock exchange in India and STT is paid on purchase and sale. Fair Market Value of these shares on 31-01-2018 was ₹ 81 per share.

CII for F.Y.2011-12 – 182; F.Y.2020-21 – 301.

M/s Bomo Inc. seconded some employees to its collaborator Beta Ltd., an Indian company, for working on a turnkey project for setting up a factory. These employees worked with Beta Ltd. throughout the P.Y. 2020-21. The employees were in receipt of salary from Beta Ltd. They were also in receipt of special allowance directly from M/s Bomo Inc. in foreign currency outside India. Beta Ltd. deducted tax under section 192, on the component of salary paid by it, without taking into account the special allowance paid abroad by M/s Bomo Inc. in foreign currency to these employees.

Beta Ltd. sold goods on 12.01.2021 to Lutyens Ltd., located in notified jurisdictional area (NJA), for ₹ 10.50 crores. During the financial year 2020-21, Beta Ltd. charged ₹ 11.50 crores from Andes Inc of Columbia and ₹ 12 crores from Thames Ltd. of UK for sale of identical goods. Both Andes Inc. and Thames Ltd. are neither associated enterprise of Beta Ltd. nor are they situated in any NJA. While sales to Andes Inc. and Thames Ltd. were on CIF basis, the sale to Lutyens Ltd., was on FOB basis, which paid ocean freight and insurance amounting to ₹ 20 lakhs on purchases from Beta Ltd.

India has a Double Taxation Avoidance Agreement with the Columbia and U.K. Beta Ltd. has a policy of providing after sales support service to the tune of ₹ 14 lakhs to all customers except Lutyens Ltd. which procured the same locally at a cost of ₹ 18 lakhs.

In order to expand its overseas sales/exports, Beta Ltd. launched a massive advertisement campaign of its products. For the purpose of online advertisement, it utilized the services of MNO Inc., a London based company and JKL Inc., an Australian company. MNO Inc. has a permanent establishment in India, and the service is effectively connected to the permanent establishment in India. JKL Inc. has no permanent establishment in India. During the previous year 2020-21, Beta Ltd. paid ₹ 5 lakhs to MNO Inc. and ₹ 7 lakhs to JKL Inc. for such services.

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

I. MULTIPLE CHOICE QUESTIONS

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

1. For the A.Y.2021-22, Apoch Inc. -
 - (a) is resident in India, since its POEM is in India on account of all its shareholders meetings, wherein decisions typically affecting the existence of the company and rights of shareholders, being held in India
 - (b) is non-resident in India since it is a foreign company
 - (c) is non-resident in India since its POEM is outside India
 - (d) is non-resident in India, due to reasons stated in (b) and (c) above
2. Which of the following statements are correct in relation to taxability of dividend declared by Bomo Inc and received by Apoch Inc?
 - (a) Not taxable in the hands of Apoch Inc., since it is a foreign company not resident in India and the dividend is neither received in India nor does it accrue or arise in India nor is it deemed to be income accruing or arising in India
 - (b) Taxable in India, since though it is a foreign company, it is resident in India on account of its POEM being in India and global income is taxable in case of a resident
 - (c) Taxable in India even though it is non-resident, since the said income is deemed to accrue or arise in India as it represents income from shares which derive their value substantially from assets located in India.
 - (d) None of the above
3. Fees for technical services of ₹ 2,28,000 earned by Apoch Inc. is -
 - (a) not taxable in India, since Apoch Inc. is a non-resident
 - (b) not taxable in India, since it is utilized for a project carried on outside India
 - (c) not taxable in India, due to reasons stated in (a) and (b)
 - (d) taxable in India, since it is deemed to accrue or arise in India
4. Interest of ₹ 22,300 earned by Apoch Inc. is -
 - (a) includible in its total income and taxable in India, since global income is taxable in the case of a resident.
 - (b) includible in its total income and taxable in India even though Apoch Inc is non-resident, since it is deemed to accrue or arise in India

- (c) not taxable in India, since Apoch Inc. is non-resident and the said income is not deemed to accrue or arise in India nor is it stated to be received in India
- (d) exempt u/s 10
5. Compute the amount of long-term capital gains arising to Apoch Inc. on transfer of listed shares of XYZ Ltd. What would be the tax treatment of such capital gains under the Income-tax Act, 1961?
- (a) ₹ 33,000. The same would be taxable@10% u/s 112A
- (b) ₹ 33,000. However, the said amount would not be subject to any tax.
- (c) ₹ 3,115; The same would be exempt u/s 10.
- (d) ₹ 3,115; The same would be taxable@20% u/s 112, since benefit of concessional rate @10%u/s 112A will not be available to a foreign company

II. DESCRIPTIVE QUESTIONS

1. The Revenue authorities treated Beta Ltd. as an 'assessee-in-default' under section 201 for non-deduction of tax at source under section 192 on the "special allowance" component of salary paid by M/s Bomo Inc. and levied interest and penalty. Is such treatment by the Revenue Authorities and the consequent levy of interest and penalty justified? Examine. **(4 Marks)**
2. Determine the arm's length price of the sales made by Beta Ltd. to Lutyens Ltd., and the amount of consequent increase, if any, in the profit of Beta Ltd. **(5 Marks)**
3. Discuss the tax implications/TDS implications of payments by Beta Ltd. to MNO Inc. and JKL Inc. **(6 Marks)**

Case Study - 5

Beta (P) Ltd., Pune is engaged in purchase and sale of clocks from an unrelated party – Chay Inc. Tokyo. The product was marketed in India under the brand name "Alexa". During the previous year 2020-21, each clock was purchased for ₹ 1,500 and the company incurred additional advertisement expenditure in India of ₹ 300 per clock and sold at ₹ 3,000 per clock.

Beta (P) Ltd. also purchased similar clocks from its holding company Alpha Ltd. of London at ₹ 1,200 per clock and incurred additional expenditure of ₹ 500 per clock towards advertisement; and sold the clocks at ₹ 2,500 per clock. During the P.Y. 2020-21, Beta (P) Ltd. purchased and sold 7,000 clocks from Chay Inc. Tokyo and 8,000 clocks from Alpha Ltd. of London.

During the P.Y.2020-21, Beta (P) Ltd. paid interest of ₹ 22 lakhs to Alex, a resident in Cyprus. The rate of tax on interest under the India-Cyprus DTAA is 10%

The assessment of Beta (P) Ltd. for the A.Y. 2018-19 was completed in December, 2020. It reported ₹ 120 crore as international transactions for the A.Y. 2018-19 and the Transfer Pricing Officer (TPO) determined the ALP of the international transaction at ₹ 180 crores.

Beta (P) Ltd. furnished all the information and documents sought by the TPO and there was no failure in maintenance of information and documents or in furnishing the same to TPO.

Beta (P) Ltd. availed digital advertising space from Kaula Inc. of Malaysia during October, 2020 to December 2020 and paid ₹ 1 lakh per month. It remitted the equalization levy for the months of October, 2020 and November, 2020 within time, but omitted to remit the equalization levy for December, 2020, which remains unpaid upto 31.3.2021.

Vallish (age 68) is the Chief Operating Officer of Beta (P) Ltd. He is resident of India. He gave a gift of ₹ 10 lakhs on 14-02-2021 to his friend Ashwin (age 71) who has been living in Malaysia since the year 2000. The amount was remitted through banking channels. Also, he gifted a house property in Pune (stamp duty value ₹ 35 lakhs) on 21-05-2020 by means of registered gift settlement deed to Ashwin's wife Geetha, residing in Malaysia, when she came to India on a visit for 30 days.

Anoop, aged 38, is the son of Vallish. Anoop is a citizen of India who has settled in New York, USA since 2014. Prior to that, he has always been in India. He had acquired a residential property in New York on 1-07-2009 for USD 28,000. He kept bank deposit of USD 6,000 in a bank account in New York since 1-05-2010.

Notice under Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 was issued on 18-10-2018. The fair market value of residential property as on 01-04-2017 was USD 30,000; on 01-04-2018 USD 33,000 and 18-10-2018 USD 35,000. The bank deposit with accrued interest thereon was USD 8,000 on 01-04-2017; USD 9,000 on 01-04-2018 and USD 10,500 on 18-10-2018.

The exchange rate of Indian currency per 1 USD (US dollar) on the various dates are:

01-04-2017 = ₹ 64;

01-04-2018 = ₹ 65;

18-10-2018 = ₹ 73

Dr. Aviral is a citizen of Country X and the son of Ashwin (born and brought up in Malaysia). Dr. Aviral is grandson of Dr. Sundar, who was born in the year 1934 at Dhaka presently in Bangladesh. Dr. Aviral is a renowned surgeon. Every year he visited India in December and stayed for 110 days. During his stay in India, he used to perform professional service viz. performing surgery on solicitation of such service by reputed hospitals in India and thereby earned some income. He does not have any fixed place regularly available in India for his profession. During the P.Y. 2020-21, Dr. Aviral earned ₹ 6,20,000 during his stay in India.

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

I. MULTIPLE CHOICE QUESTIONS

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

1. What is the amount of penalty that Beta (P) Ltd. has to pay due to increase in income of the A.Y.2018-19 consequent to ALP determined by the TPO? Assume the rate of tax applicable for the A.Y. 2018-19 as 30% and ignore surcharge and cess.
 - (a) ₹ 9 crores
 - (b) ₹ 36-crores
 - (c) ₹ 1.50 lakhs
 - (d) Nil
2. What would be the maximum amount of penalty leviable on Beta (P) Ltd. for failure to remit equalization levy?
 - (a) ₹ 1,000
 - (b) ₹ 6,000
 - (c) ₹ 12,000
 - (d) ₹ 84,000
3. What is the "due date" before which Beta (P) Ltd. must file the statement in respect of services chargeable to equalization levy?
 - (a) 31-03-2021
 - (b) 30-06-2021
 - (c) 31-07-2021
 - (d) 30-11-2021
4. At what rate Beta (P) Ltd. must deduct tax at source on interest paid to Alex of Cyprus, assuming that the interest does not qualify under section 194LC or section 194LD?
 - (a) 10%
 - (b) 10.4%
 - (c) 20.8%
 - (d) 31.2%
5. What is the time limit for completion of assessment of Anoop under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015?
 - (a) 31-03-2019

- (b) 31-03-2020
- (c) 31-03-2021
- (d) 31-03-2022

II. DESCRIPTIVE QUESTIONS

1. What would be the value of undisclosed foreign asset chargeable to tax in the hands of Anoop as per Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015? Support your computation with brief reasons. **(3 Marks)**
2. What would be the tax consequences of the gifts made by Vallish? Can the Assessing Officer treat Vallish as agent of the non-residents Ashwin and Geetha for the purpose of tax recovery? **(4 Marks)**
3. Determine the residential status of Dr. Aviral. What would be his income chargeable to tax in India assuming that India has a DTAA with Country X in line with the UN Model Convention? **(3 Marks)**
4. Compute the arm's length price of the purchases made from Alpha Ltd. and the quantum of income to be adjusted in the hands of Beta (P) Ltd. by adopting Transactional Net Margin Method (TNMM). **(5 Marks)**