

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 2022-23, unless otherwise stated in the questions/case studies

Time Allowed – 4 Hours

Maximum Marks – 100

CASE STUDY - 1

ABC Co. Ltd., Cochin is engaged in diverse business operations. The income tax assessment of ABC Co. Ltd. under section 143(3) was pending before the Assessing Officer for the assessment year 2018-19 as on 01-04-2020. The Assessing Officer made a reference to the Transfer Pricing Officer (TPO) on 11-06-2020 for determination of arm's length price with regard to the transactions made with its associated enterprises. Upon receipt of the TPO's order dated 01-01-2021, the Assessing Officer forwarded a draft assessment order to ABC Co. Ltd. on 30-01-2021. The assessee filed his objections on 15-02-2021 against the draft assessment order with the Dispute Resolution Panel and the Assessing Officer. The Dispute Resolution Panel gave its directions on 01-09-2021. The Assessing Officer passed the final assessment order on 28-09-2021 in accordance with the directions of the Dispute Resolution Panel. ABC Co. Ltd. deducted tax at source on certain payments made during the previous year 2021-22 to M/s. PQR Inc. of USA at 20% as per the Income-tax Act, 1961. Tax is borne by ABC Co. Ltd. The Double Tax Avoidance Agreement (DTAA) between India and USA provides for tax deduction at source at 15% on such payments.

ABC Co. Ltd. is also engaged in the business of extraction of mineral oils in various river beds of India after obtaining due permission from the Central and State Government authorities. It obtained plant and machinery on hire from Ribe Co. Ltd., Sweden, who is engaged in the business of supplying plant and machinery on hire used in the extraction of mineral oils and paid ₹ 850 lakhs for the year ended 31-03-2022. ABC Co. Ltd. wants to know whether it is liable to withhold tax on this payment under section 194J or under any other provision. Ribe Co. Ltd. wants to know how this income would be chargeable to tax in India.

The tax assessment status of ABC Co. Ltd. for the preceding assessment years are given below:

Assessment Year	Transfer Pricing adjustment	Date of filing the return of income	Details
2019-20	₹ 135 lakhs	15-09-2019	The Transfer Pricing adjustment to the Arm's Length Price (ALP) was made consequent to order of the TPO. ABC Co. Ltd. did not agree with the adjustment so made in assessment and took the matter in appeal. However, the Income Tax Appellate Tribunal (ITAT), vide order dated 20-04-2022, upheld the addition made towards ALP. ABC Co. Ltd. has chosen to not file an appeal to the High Court against the order of the ITAT.
2020-21	₹ 205 lakhs	25-01-2021	Upon reference to TPO, an adjustment to the ALP was made and thus added to the income vide assessment order under section 143(3) dated 20-12-2021. This adjustment was accepted by ABC Co. Ltd.
2021-22	₹ 182 lakhs	11-10-2021	Suo Motu admitted by way of adjustment of the income by ABC Co. Ltd. while filing its return of income.

The assessee, ABC Co. Ltd., has not made any secondary adjustment in the books of account for the above said years.

LMN Co. Ltd. of London is the holding company of ABC Co Ltd. LMN Co. Ltd. became a resident of India during the previous year 2021-22 for the first time due to POEM. LMN Co. Ltd. commenced processing/refining of edible oil and marketing the same in India by opening a branch at Chennai. It paid on 1-06-2021, ₹ 15 lakhs towards cost of ready to use computer software purchased from Excel (P) Ltd. of Bengaluru. LMN Co. Ltd. (through its branch) wants to deduct tax at source on the said payment.

Mr. Rajesh, a director of ABC Co. Ltd., is an industrialist and person of Indian origin settled in United Kingdom. During the previous year 2021-22, he purchased and sold shares of Indian companies and earned ₹ 305 lakhs by way of short-term capital gain (STT paid). He has no other income which accrued in India during the previous year 2021-22.

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

I. Multiple Choice Questions

Write the most appropriate answer to the following questions by choosing one of the four options given: (2 x 5 = 10 Marks)

1. If ABC Co. Ltd. does not file its objection before DRP against the draft Assessment Order within the stipulated time limit, does it have recourse to any other remedy at a later point of time?
 - (a) No, it does not have any other remedy.
 - (b) Yes, it can file an appeal before CIT (Appeals) later on against the final order passed by the Assessing Officer.
 - (c) Yes, it can file an appeal before Appellate Tribunal later on against the final order passed by the Assessing Officer.
 - (d) Yes, it can file an appeal before CIT (Appeals) later on against the final order passed by the Assessing Officer, even if it has filed its objections against the draft assessment order before DRP within the stipulated time limit.
2. How much is the tax liability of Mr. Rajesh for the A.Y.2022-23?
 - (a) ₹ 54,71,700
 - (b) ₹ 53,33,800
 - (c) ₹ 59,47,500
 - (d) ₹ 47,58,000
3. What is the percentage of tax that ABC Co. Ltd. can seek by way of refund of excess tax deducted at source on payments made to M/s PQR Inc. USA, assuming that it would not have any further transactions with M/s PQR Inc. USA?
 - (a) NIL
 - (b) 5%
 - (c) 15%
 - (d) 20%

4. What would be the rate of tax applicable for LMN Co. Ltd. in India (excluding surcharge and cess) for the assessment year 2022-23?
- (a) 40%
 - (b) 30%
 - (c) 25%
 - (d) 22%
5. What would be the additional income-tax payable by ABC Co. Ltd. in lieu of repatriation of excess money arising from the transfer pricing adjustment in relation to assessment year 2020-21?
- (a) ₹ 44,17,504
 - (b) ₹ 42,98,112
 - (c) ₹ 38,37,600
 - (d) ₹ 36,90,000

II. DESCRIPTIVE QUESTIONS

6. Examine whether the amount paid by LMN Co. Ltd. towards cost of ready to use computer software is liable for tax deduction at source. Also, state the circumstances, if any, when such payments would not be liable for tax deduction at source. Your answer has to be on the basis of the provisions of the Income-tax Act, 1961. **(3 Marks)**
7. On the basis of the details of transfer pricing adjustments made to the arm's length price of ABC Co. Ltd. for various years as given in the case study, you have to advise the Board of Directors of ABC Co. Ltd. as regards the time limits for repatriation of excess money, and the consequences of non-repatriation. **(3 Marks)**
8. Examine whether the assessment made by the Assessing Officer on ABC Co. Ltd. as per the directions of DRP is barred by limitation. Also, state the appellate authority before whom the assessee should file an appeal against such assessment order. **(4 Marks)**
9. Advise ABC Co. Ltd. as regards its liability to deduct tax at source on the hire charges paid to Ribe Co. Ltd., Sweden and also state briefly how the income of Ribe Co. Ltd. would be assessed to tax in India. Your answer should be on the basis of the provisions of the Income-tax Act, 1961, ignoring the DTAA between India and Sweden. **(5 Marks)**

CASE STUDY - 2

Alpha Banking Corporation Ltd., London

Alpha Banking Corporation Ltd. incorporated in London is one of the subsidiaries of Phi Inc., London, a multinational business conglomerate with activities ranging from manufacture of mobile phones to banking and trade in textiles. Alpha Banking Corporation Ltd., London, opened four branches in India during the financial year 2019-20. Each branch was given a rupee denominated loan of ₹ 100 crores by the head office for initial business purposes i.e., for advancing loan to borrowers.

Other initial expenses for establishing the branches were incurred by the head office directly and accounted in the head office books. Each branch has to pay interest@6% per annum on the advance of ₹ 100 crore each given by the head office. The branches made book entries and have not paid interest for the year ended 31-03-2022.

XYZ (P) Ltd., Baroda

Phi Inc. has a subsidiary by name Rhine Inc. in Zurich, Switzerland which is engaged in import of textile goods from Asia and retail distribution through outlets in Europe. During the previous year relevant to the assessment year 2020-21, XYZ (P) Ltd., Baroda, a subsidiary of Rhine Inc. exported goods for ₹ 800 crores to Rhine Inc. Also, XYZ (P) Ltd. exported goods for ₹ 650 crores to various other unrelated parties in Malaysia.

XYZ (P) Ltd. filed its return of income for the assessment year 2020-21 in November, 2020 and it was selected for scrutiny in August, 2021. The Assessing Officer referred the case to Transfer Pricing Officer (TPO) in October, 2021 for determination of arm's length price. The assessee did not maintain information and documents relating to sale of goods to buyers in Malaysia for a value of ₹ 20 crores which was sought by the TPO:

The TPO based on the information given by the assessee, for the assessment year 2020-21, wants to re-determine arm's length price for the earlier assessment years viz. 2017-18, 2018-19 and 2019-20 also. It may be noted that the tax assessments were already completed as per the order of the TPO for those years.

Mr. Ram Mohan, Former Director of XYZ (P) Ltd.

Mr. Ram Mohan (age 72) was the director of XYZ (P) Ltd. at Baroda. He retired in June, 2009 and left India permanently in August, 2009. It came to the notice of the Joint Director of Income-tax (Investigation) in April, 2021 that Mr. Ram Mohan had accumulated assets of the value of ₹ 600 lakhs outside India (consisting of residential apartments and deposits in banks) during the previous year 2008-09 which were not disclosed for income-tax purposes up to the assessment year 2010-11 for which the return of income was filed in India. Mr. Ram Mohan was served with a notice under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 in May, 2021.

Mr. Ram Mohan is of the opinion that since ten years have elapsed from the last assessment year in which he was assessed in India, no proceedings could be initiated against him under the Income-tax Act, 1961 and the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

Mr. Ram Mohan is a non-resident for the assessment year 2022-23. He has become citizen of London since December, 2019. He regularly invested in derivatives (Futures & Options) in India. He is not a Foreign Portfolio Investor (FPI). He earned ₹ 6.10 crores during the previous year 2021-22 from the transfer of derivatives in India.

Arnav, nephew of Ram Mohan

Arnav (age 29) nephew of Ram Mohan went to Country Z for higher studies in business management in the financial year 2011-12. He visited India every year and his residential status under the Income-tax Act, 1961 for the assessment year 2022-23 is that of resident and ordinarily resident. He settled in Country Z where he pursued higher education and became its national. His residential status as per the domestic law of Country Z is also resident. He has permanent home and business establishments in both India and foreign country. The India- Country Z DTAA is in line with UN Model convention.

Ms. Kaushalya, sister of Mr. Ram Mohan

Ms. Kaushalya, sister of Mr. Ram Mohan, came to India on 22nd April, 2021 along with her husband Dr. Narayan who came to India in connection with a co-operative technical assistance program under an agreement between the Government of India and the USA. Both stayed in India for the remainder of the year.

Dr. Narayan was paid salary of USD 7,000 every month by the US Government. He has business in USA where his income was USD 38,000 for the year ended 31-03-2022. Ms. Kaushalya has rental income in USA of USD 14,000 for the year ended 31-03-2022. Both these incomes are taxable in USA and were credited to their bank account in USA and later transferred to their bank account held in India.

The TT buying rates of 1 USD as on	01-04-2021	31-03-2022
	₹ 72	₹ 75

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

I. Multiple Choice Questions

Write the most appropriate answer to the following questions by choosing one of the four options given: (2 x 5 = 10 Marks)

- Determine the tax liability of Mr. Ram Mohan for the A.Y. 2022-23 in respect of the income earned by transfer of derivatives in India, assuming that he does not opt for section 115BAC.
 - ₹ 2,58,06,690
 - ₹ 2,16,62,550
 - ₹ 2,58,03,130
 - ₹ 2,18,86,800
- What is the time limit for issue of show cause notice for levy of penalty on Mr. Ram Mohan under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 in respect of undisclosed foreign asset?
 - Show cause notice has to be issued during the pendency of proceeding under the Black Money Act.
 - 30.11.2022
 - 31.3.2023
 - 31.3.2024
- How much is the amount of penalty which the Assessing Officer can direct Mr. Ram Mohan to pay, in addition to tax, if the undisclosed asset under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, is determined at ₹ 420 lakhs?
 - ₹ 126 lakhs
 - ₹ 252 lakhs
 - ₹ 378 lakhs
 - Nil
- For which of the previous years, can the TPO re-determine ALP in addition to the previous year for which a reference was made by the Assessing Officer in the case of XYZ (P) Ltd.?
 - Previous years 2016-17 to 2018-19
 - Previous year 2018-19 only
 - Previous years 2017-18 and 2018-19 only
 - Not empowered to re-determine the ALP of earlier year which was previously determined by him.

5. What is the quantum of penalty that can be levied on XYZ (P) Ltd. for the failure to keep and maintain any documents and information which was sought by the TPO with regard to export of goods to customers in Malaysia?
 - (a) ₹ 1 lakh
 - (b) ₹ 2 lakhs
 - (c) ₹ 40 lakhs
 - (d) Nil

II. DESCRIPTIVE QUESTIONS

6. List the steps involved in determination of the residential status of Arnav, when he is a resident in both the Contracting States. What would be your conclusion as to his residential status? Your answer must be with reference to the UN Model Tax Convention. **(3 Marks)**
7. Determine the taxability or otherwise of income earned by Dr. Narayan and his wife Ms. Kaushalya for the A.Y.2022-23 as per the provisions of the Income-tax Act, 1961. Ignore DTAA between India and USA. **(3 Marks)**
8. Examine whether the branches of Alpha Banking Corporation Ltd. are required to deduct tax at source on the interest payable to the head office under the Income-tax Act, 1961. **(5 Marks)**
9. What would be the liability of Mr. Ram Mohan under the Black Money Act? Examine the procedure and methodology for determination of the value of undisclosed asset outside India in the case of Ram Mohan after evaluating the validity of the contentions raised by him? **(4 Marks)**

CASE STUDY - 3

Earth (P) Ltd., Nagpur

Earth (P) Ltd., Nagpur is engaged in trading of electronic goods such as washing machines, refrigerators, television sets and air-conditioners. It purchases from its associated enterprise Sun Pte. Ltd., Singapore and also from unrelated party Raindrops Ltd., Bangkok. For the financial year 2021-22, the gross profit margin was 14% on the sale of goods of Sun Pte. Ltd. and whereas it was 18% in the case of Raindrops Ltd. After-sales warranty of 6 months was provided by Sun Pte. Ltd. and whereas Raindrops Ltd. gave after sales warranty of 12 months. The cost of warranty may be taken as 2% of the sale price. The Sun Pte. Ltd. brand value is internationally known and the benefit of brand value can be taken as 1% of sale price. During the financial year 2021-22, it sold goods of Sun Pte. Ltd. for ₹ 18 crores and of Raindrops Ltd. for ₹ 12 crores. There was no difference as regards transport cost of the goods purchased between related and unrelated party. In the assessment of Earth (P) Ltd. for the assessment year 2022-23, the TPO selected comparables based on functional comparability.

During the previous year 2021-22, Earth (P) Ltd. borrowed ₹ 20 crores from Prime Ltd. located in Country 'P'. The loan is eligible for interest @ 8% per annum. Interest payable for the financial year 2021-22 is ₹ 140 lakhs. Total asset value of Earth (P) Ltd. on the date of loan is ₹ 38 crores and there is no other borrowing made by it except the said loan. There is no DTAA between India and Country 'P'.

Himalaya Co Ltd., Baroda

Himalaya Co Ltd., Baroda, which is the holding company of Earth (P) Ltd., is engaged in manufacture of electronic goods. Babylon Co. Ltd., New York has 60% shareholding in Himalaya Co Ltd. The paid up share capital of Himalaya Co Ltd. is ₹ 20 crores as on 31st March 2021. Babylon Co Ltd. transferred half its shareholding in Himalaya Co Ltd. to MNO Inc., California, for ₹ 18.04 crores (USD 2.2 million) on 30th November 2021, and retained the remaining half of its shareholding in Himalaya Co Ltd. The book value of

assets of Himalaya Co Ltd. as on 31st March 2021 was ₹ 20 crores and on 30th November 2021, it was ₹ 22 crores. The aforesaid 60% shareholding in Himalaya Co Ltd, was acquired by Babylon Co Ltd. on 1st October 2015 at the time of incorporation of Himalaya Co Ltd. for USD 2.15 million. Himalaya Co Ltd. applied for Advance Pricing Agreement (APA) in January, 2022 and the APA was signed on 10th March 2022.

Nilgris Co Ltd., a subsidiary of Himalayas Co Ltd., admitted gross profit margin of 11% on turnover of ₹ 100 crores while filing its return of income for the A.Y.2021-22. At that time, the data relating to comparable entities were not available. However, at the time of assessment, data of 3 comparable entities are available for the same assessment year. The average gross profit of the other entities was 16%, 18% and 14%, respectively (after necessary adjustments).

Himalaya Co. Ltd. entered into an agreement for import of electronic components from Andes Inc of Columbia. The agreement envisaged that the electronic components imported would be assembled in the warehouse owned by Himalaya Co Ltd. by the employees of Andes Inc. who visited India on deputation basis. Himalaya Co Ltd. filed an application for advance ruling in April, 2021 to know the tax consequences of the transaction in the hands of Andes Inc.

Rahul, nephew of Managing Director of Himalaya Co. Ltd.

Rahul (citizen of India) is the nephew of Managing Director of Himalaya Co Ltd. He is born and brought up in India who left India for employment in Country N on 5th June 2013. He regularly visited India and stayed for 60 days in every previous year since the previous year 2014-15. In the financial year 2021-22, Rahul came to India on 1st May 2021 and remained in India till 31st August 2021. His salary was ₹ 3 lakhs per month which he earned for 8 months during the previous year 2021-22, which was credited to his bank account in Country N. He also has income from a house property in Pune (computed) ₹ 22 lakhs. He does not pay income tax in Country N where he is employed as there is no income-tax law in that country.

Alpha Ltd., Country P

Alpha Ltd. is a reputed digital advertiser in Country P which has global reach. It has a branch in Kolkata to campaign and procure advertisements from Indian companies for the purpose of digital advertisement. Himalaya Co Ltd. paid ₹ 7 lakhs to the branch of Alpha Ltd. for advertising its goods in digital advertisement platform to have global reach. The DTAA between India and country X provides withholding tax of 15% on the fee for technical services and royalty.

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

I. Multiple Choice Questions

Write the most appropriate answer to the following questions by choosing one of the four options given: (2 x 5 = 10 Marks)

1. Would the advance ruling pronounced on 30.9.2021 on the basis of application filed by Himalaya Co Ltd. be binding on Himalaya Co Ltd. and Andes Inc? If not, is there any remedy available if the applicant is aggrieved by such advance ruling?
 - (a) Yes, it would be binding on Himalaya Co Ltd. and Andes Inc.
 - (b) It would not be binding on Himalaya Co Ltd., though it would be binding on Andes Inc. Himalaya Co. Ltd. can file an appeal before Commissioner (Appeals) if it is aggrieved by the advance ruling pronounced.
 - (c) It would not be binding on Andes Inc, though it would be binding on Himalaya Co. Ltd. An appeal can be filed before the Appellate Tribunal, if it is aggrieved by the advance ruling pronounced.

- (d) No, the ruling would not be binding on Himalaya Co Ltd. or Andes Inc. An appeal can be filed before the High Court by Himalaya Co Ltd., if it is aggrieved by the advance ruling pronounced.
2. Is Himalaya Co Ltd. required to deduct income-tax/equalisation levy at source in respect of the payment made by it to Alpha Ltd.? If so, at what rate?
- (a) Yes, Equalisation levy of 6%
- (b) No, but Alpha Ltd. has to pay Equalisation levy@2%
- (c) Yes, TDS@41.6% under the Income-tax Act, 1961
- (d) Yes, TDS@15%, being the concessional rate provided under the DTAA between India and Country P
3. What would be the transfer pricing adjustment in the hands of Nilgris Co. Ltd. for the assessment year 2021-22 on the reported turnover of ₹ 100 crores taking note of the gross profit ratio of comparable entities?
- (a) ₹ 200 lakhs
- (b) ₹ 300 lakhs
- (c) ₹ 500 lakhs
- (d) NIL
4. What is the time limit for Himalaya Co. Ltd. for the purpose of furnishing Annual Compliance Report for the year ended 31st March, 2022?
- (a) 30th November, 2022
- (b) 8th June, 2022
- (c) 28th February, 2023
- (d) 30th December, 2022
5. How much is the amount of tax deductible at source on the interest paid to Prime Ltd. by Earth (P) Ltd.?
- (a) ₹ 61,15,200
- (b) ₹ 59,40,480
- (c) ₹ 44,55,360
- (d) ₹ 29,70,240

II. DESCRIPTIVE QUESTIONS

6. (i) Compute the amount of capital gains chargeable to tax in the hands of Babylon Co. Ltd. and the tax liability for the A.Y.2022-23, if the shares of Himalaya Co. Ltd. are unlisted.
- (ii) In case the shares of Himalaya Co Ltd. are listed in a recognized stock exchange and the fair market value of the shares of Himalaya Co Ltd. held by Babylon Co. Ltd. as on 31st January 2018 was ₹ 1340 lakhs, how much would be the capital gains chargeable to tax and resultant tax liability in the hands of Babylon Co Ltd., New York.
- Note:** SBI TTBR on 1.10.2015 - 1 USD = ₹ 60, on 30.11.2021 - 1 USD = ₹ 82. **(5 Marks)**
7. Determine the residential status of Rahul and compute his total income for the A.Y.2022-23. Would your answer change, if Rahul pays income tax@15% in Country N? Examine. **(5 Marks)**

8. Examine which method of ALP determination would be the most appropriate method and compute the ALP of the transaction between Earth (P) Ltd. and Sun Pte. Ltd., Singapore. (5 Marks)

CASE STUDY - 4

Pacific Inc. of Country Z

Pacific Inc. of Country Z has a branch at Hyderabad. The branch invested in shares of XYZ Ltd., Ahmedabad. It received interim dividend in December, 2021 of ₹ 12 lakhs. Pacific Inc. became resident because of POEM for the assessment year 2022-23. The total business income of Pacific Inc. is ₹ 320 lakhs for the year ended 31st March 2022 which includes business income of the branch of ₹ 200 lakhs. The total turnover of the company in India was ₹ 370 crores for the previous year 2018-19 and ₹ 405 crores for the previous year 2019-20. The branch on 13 March 2022 acquired a vacant land from Welfare Trust, Vijayawada (registered under section 12AB of the Act) for ₹ 300 lakhs when the circle rate (guideline value) was ₹ 400 lakhs. The branch of Pacific Inc. sold a building at Hyderabad on 01-03-2022 for ₹ 210 lakhs to Phi Ltd., Trivandrum when the circle rate was ₹ 240 lakhs. The building was acquired by the branch of Pacific Inc. on 10th April, 2020 for ₹ 182 lakhs. The company wants to opt for section 115BAA of the Act.

Dr. Frank, resident of UK

Dr. Frank a reputed neurosurgeon is a partner in Delphi LLP, United Kingdom. He came to India on 1st December 2021 and performed surgery for Aarav, CEO of Vindyas (P) Ltd. at Ahmedabad. The surgeon fee was paid directly by Vindyas (P) Ltd. to Delphi LLP, United Kingdom. Dr. Frank did not receive any payment directly from Aarav. He remained in India for only 10 days and all his expenses were met by Delphi LLP directly. Dr. Joe, another neurosurgeon who is also a partner in Delphi LLP was present in India for 3 months to render services to patients in India. Here again, the surgeon fee was paid by the patients directly to Delphi LLP.

Epsilon SpA, Country Y

Epsilon SpA, Country Y is an e-commerce operator engaged in sale of goods in India through electronic facility by matching suppliers throughout India against the orders placed by Indian customers. During the previous year 2021-22, it made a turnover of ₹ 15 crores from India. It may be noted that Epsilon SpA has no branch in India. It had a dedicated office for rendering the service to customers in India and earned net income of ₹ 60 lakhs for the year ended 31st March, 2022.

Vindyas (P) Ltd. is a constituent of World Well Inc. of Country 'X' where there is no legal requirement for filing a report similar to CbC report. The parent company World Well Inc. has designated Fire Ltd. of UK as designated entity for filing the CbC report in UK for the year ended 31st December, 2021 as per the relevant law applicable in UK. It may be noted that there is an agreement between Indian and UK tax authorities for exchange of information between them. The consolidated annual turnover of World Well Inc. is ₹ 8,000 crores to ₹ 8,500 crores for each of the last 3 financial years.

Vindyas (P) Ltd., Ahmedabad

Vindyas (P) Ltd., Ahmedabad is subsidiary of World Well Inc. of Country X. It entered into an agreement with Pacific Inc. of Country Z on 05th December, 2021 for export of garments manufactured by it. The agreement stipulates that Pacific Inc. would arrange for raw materials and consumables required for the manufacture of said garments. The agreement provides for export by Vindyas (P) Ltd. to Pacific Inc. of supply of finished garments of the value of ₹ 120 crores for every financial year for 5 years w.e.f. 1st April 2022. Vindyas (P) Ltd. entered into a transaction contemplated in pursuance of the agreement with Pacific Inc. Vindyas (P) Ltd. borrowed ₹ 100 crore on 1st June 2021 as interest-free loan from its parent company, World Well Inc. Similar loan from an unrelated party would cost 8% per annum. There was no other transaction between Vindyas (P) Ltd. and World Well Inc. during the financial year 2021-22.

James ex-CEO of Vindyas (P) Ltd.

James a citizen of USA acted as CEO of Vindyas (P) Ltd. from 10th April, 2011 and up to 31st March, 2018, for which he came to India for the first time on 1st April, 2011. He returned to USA in April, 2018 to rejoin Red Inc, USA. On finding that he had accumulated the following undisclosed assets, the Assessing Officer issued notice under the Black Money Act, 2015 in July, 2021 -

- (i) shares of listed companies in USA acquired on 10th December, 2010;
- (ii) one apartment in London on 20th April, 2013; and
- (iii) leather goods manufacturing factory established in Singapore on 15th April, 2018.

The Assessing Officer obtained directions from Joint Commissioner under section 144A for completion of assessment.

Based on the above facts and the Extracts of articles of India-UK DTAA given, you are required to answer the following questions -

I. Multiple Choice Questions

Write the most appropriate answer to the following questions by choosing one of the four options given: (2 x 5 = 10 Marks)

1. Which article of the India-UK DTAA would apply for determining the taxability of income for services rendered by Dr. Frank in India?
 - (a) Article 7
 - (b) Article 15
 - (c) Article 16
 - (d) Article 23
2. Assuming that Delphi LLP is located in Country L whose DTAA with India is in line with OECD Model Convention, what would be the answer to Q.1?
 - (a) Article 7
 - (b) Article 14
 - (c) Article 15
 - (d) Article 21
3. Can Pacific Inc. opt for section 115BAA in the P.Y. 2021-22?
 - (a) Yes, since it is a resident in India in the P.Y. 2021-22
 - (b) Yes, since it has a PE in India
 - (c) Yes, due to the reasons mentioned in (a) and (b)
 - (d) No, it cannot opt for section 115BAA
4. How much of the interest on loan taken from World Well Inc. would be adjusted by way of adjustment of arm's length price in determination of total income of Vindyas (P) Ltd. for the assessment year 2022-23?
 - (a) ₹ 8 crores
 - (b) ₹ 7 crores

- (c) ₹ 6.67 crores
- (d) Nil
5. How much of the amount is payable by Epsilon SpA by way of income-tax and/or as equalization levy for the year ended 31st March 2022?
- (a) No income is chargeable to tax in India and also no equalization levy is payable.
- (b) The income is not chargeable to tax in India but it has to pay equalization levy@6% on the income of ₹ 60 lakhs.
- (c) The income earned by the Indian office from service provided to customers is chargeable to income-tax in India. Also, Epsilon SpA has to pay equalization levy@2% on ₹ 15 crores.
- (d) Income is chargeable to tax in India since the source is in India and no equalization levy is payable by it.

II. DESCRIPTIVE QUESTIONS

6. Examine whether Vindyas (P) Ltd., is required to furnish a CbC report in India. If not, why and what are the conditions to be satisfied in this regard. **(5 Marks)**
7. Compute the total income and tax liability of Pacific Inc. for the assessment year 2022-23 under the Income-tax Act, 1961. **(5 Marks)**
8. Examine the following in the context of the provisions of Black Money (Undisclosed Foreign Income and Assets) Imposition of Tax Act, 2015 -
- (a) Is the notice issued by the Assessing Officer on James tenable in law?
- (b) Is the Joint Commissioner empowered in law to give directions to the Assessing Officer for assessment of James under the Black Money Law?
- (c) What is the time limit for completion of assessment? **(5 Marks)**

Extracts of India-UK Double Taxation Avoidance Agreement

ARTICLE 7

BUSINESS PROFITS

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

ARTICLE 15

INDEPENDENT PERSONAL SERVICES

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

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

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

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

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

ARTICLE 16

DEPENDENT PERSONAL SERVICES

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

ARTICLE 23

OTHER INCOME

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

CASE STUDY – 5

Aroma (P) Ltd., Bhuavaneshwar

Aroma (P) Ltd., Bhuavaneshwar is the subsidiary of Dafodills Ltd. of Melbourne, Australia. It is engaged in import and redistribution of essential oils and perfumes in the brand name "Jones" from Dafodills Ltd. Aroma (P) Ltd. was authorized to advertise in television channels for the purpose of marketing the brand in India. During the previous year 2021-22, Aroma (P) Ltd. incurred ₹ 8 crores towards advertisement expenses. The advertisement in television channels in India facilitated Dafodills Ltd. to reach markets of Middle East and South East Asian nations. In the assessment of Aroma (P) Ltd., the TPO applied Bright Line Test for disallowing advertisement expenditure to the extent of ₹ 2 crores. Aroma (P) Ltd. was also engaged in manufacture of apparel in India meant for 100% export to its Associated Enterprise in UK. The amount of expenditure incurred by way of wages to new employees (computed) was ₹ 800 lakhs. Aroma (P) Ltd. was also engaged in software development for its Associated Enterprise in U.S.A. which is eligible for deduction under section 10AA.

The income of Aroma (P) Ltd. before deduction in respect of additional new employees cost (relating to apparel division) and disallowance of expenditures (relating to software division) consisted of (i) income from sale of essential oils and perfumes ₹ 720 lakhs; (ii) income from apparel unit ₹ 400 lakhs and (iii) income from software development division (eligible for deduction@100% under section 10AA) ₹ 700 lakhs. As regards software development division, the TPO found certain expenses for which no evidences were available and hence, disallowed to the extent of ₹ 80 lakhs.

The tax authorities of Country X solicited the services of Indian tax authorities for recovery of income-tax due from Steve who migrated to India in the year 2017-18 and became director of Aroma (P) Ltd. and Moon (P) Ltd. There is a DTAA between India and Country X.

For the assessment year 2021-22, the following details are furnished by Moon (P) Ltd. (i) EBITDA (computed) ₹ 500 lakhs; (ii) interest paid to non-resident associated enterprise ₹ 250 lakhs; and (iii) Arm's length interest determined suo motu applying CUP Method ₹ 210 lakhs. There is no other interest payment during the P.Y.2020-21.

Ranjit, ex-MD of Aroma (P) Ltd.

Ranjit ex-MD of Aroma (P) Ltd. is a resident and ordinarily resident in India who accumulated assets outside India by understating his income for the purpose of income-tax in India. Consequently, the proceedings under the Black Money Act were initiated against him. In the proceedings under the Black Money Act, 2015, he contended that 40% of the fair market value of the assets accumulated outside India were met by his daughter who is a resident in the said foreign country. The Assessing Officer rejected the contention of Ranjit and completed the assessment under Black Money Act with tax of ₹ 55 lakhs and interest of ₹ 5 lakhs. The penalty proceedings under the Black Money Act are underway as on date.

Roshan, Brother of Ranjit

Roshan, a resident Indian aged 81 years, is Ranjit's brother. He authored a book on Psychology which was published in Country P. He earned royalty income of ₹ 5.20 lakhs during the previous year 2021-22. His expenditure for earning the royalty income was ₹ 20,000. He paid tax@10% on the gross royalty income in Country P. The entire royalty income was received in convertible foreign exchange by 31st March, 2022. There is no DTAA between India and Country P. His other income by way of interest on bank deposits in India is ₹ 3,50,000. Roshan does not opt for the provisions of section 115BAC.

Gopinath, Director of Aroma (P) Ltd.

Gopinath (aged 37 years), a citizen of India, joined Aroma (P) Ltd. as its Director on 1st March 2022 after remaining outside India for 10 years. He has following incomes for the year ended 31st March 2022:

Particulars	₹
Salary from Aroma (P) Ltd.	1,70,000
Long-term capital gain on sale of shares in listed companies (acquired in foreign currency) - STT paid	3,30,000
Income from debentures in Indian public limited companies (₹ 35,000 pertains to debentures purchased in foreign currency)	60,000
Premium on life insurance policy - on self	1,50,000
Medical insurance premium [paid by way of electronic transfer]	32,000
Income from house property at Hyderabad (computed)	75,000
Donation to registered political parties in India by account payee cheque	60,000

Gopinath is regularly assessed to income-tax even when he remained outside India.

Delta Corporation, Japan

Delta Corporation, Japan is a subsidiary of Dafodills Ltd. Delta Corporation is engaged in manufacture of electronic goods. It wanted to gain foothold in Indian markets. It sold its products to Electra Ltd. in Delhi and earned 15% on total sales of ₹ 300 lakhs in the P.Y.2021-22. Beta Corporation, Japan, another subsidiary of Dafodills Ltd., also sold goods to Electra Ltd. for the first time in the P.Y.2021-22, by making use of the data obtained from Mars Ltd, an Indian company in Bangalore, and earned 20% mark up the same. Total sale to Electra Ltd. in the F.Y.2021-22 was ₹ 190 lakhs.

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

I. Multiple Choice Questions

Write the most appropriate answer to the following questions by choosing one of the four options given: (2 x 5 = 10 Marks)

- How much amount of demand must be paid by Ranjit before filing appeal against the order of assessment under the Black Money Act made by the Assessing Officer?
 - ₹ 24,00,000
 - ₹ 33,00,000
 - ₹ 36,00,000
 - ₹ 60,00,000
- What is the excess interest to be disallowed under section 94B and carried forward to subsequent years by Moon (P) Ltd.?
 - ₹ 40 lakhs
 - ₹ 60 lakhs
 - ₹ 100 lakhs
 - ₹ 150 lakhs
- Is Moon (P) Ltd. required to make secondary adjustment? If so, what is the quantum of secondary adjustment?
 - Yes, Moon (P) Ltd. is required to make secondary adjustment for ₹ 40 lakhs.
 - Yes, Moon (P) Ltd. is required to make secondary adjustment for ₹ 100 lakhs

- (c) Yes, Moon (P) Ltd. is required to make secondary adjustment for ₹ 150 lakhs
- (d) No, Moon (P) Ltd. need not make any secondary adjustment.
4. When will the provisions of Multi-lateral instrument become operational between India and Country X?
- (i) It will apply if Country X is also a signatory to the MLI
- (ii) It will apply if India has notified DTAA with Country X as a covered tax agreement.
- (iii) It will apply if Country X has notified DTAA with India as a covered tax agreement
- (iv) It will apply only if both India and Country X have notified the DTAA between them as a covered tax agreement.
- Which of the above statements are correct?
- (a) Only (i)
- (b) (i) and (ii)
- (c) (i) and (iii)
- (d) (i) and (iv)
5. How much would be the net tax liability of Roshan for the assessment year 2022-23?
- (a) Nil
- (b) ₹ 14,900
- (c) ₹ 17,550
- (d) ₹ 23,400

II. DESCRIPTIVE QUESTIONS

6. Compute the total income of Aroma (P) Ltd. for the A.Y.2022-23 in the light of the disallowances proposed by the TPO. Assume that it does not opt for section 115BAA. Also, discuss whether disallowance of advertisement expenditure by applying Bright Line Test is tenable in law. **(5 Marks)**
7. Examine how the total income of Gopinath would be subjected to tax in India after he returned to India on permanent basis. Compute his total income and tax liability for the A.Y.2022-23. **(5 Marks)**
8. Is the income earned by Delta Corporation and Beta Corporation from sale of electronic goods to Electra Ltd. in India chargeable to tax in India? Discuss with reference to the relevant provisions of the Income-tax Act, 1961. Ignore DTAA between India and Japan. **(3 Marks)**
9. State whether the provisions of the Income-tax Act, 1961 enable the income-tax authorities to help tax authorities of Country X to make tax recovery from Steve under their domestic law. **(2 Marks)**