

MOCK TEST PAPER
PAPER 6C: INTERNATIONAL TAXATION

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

All questions relate to Assessment Year 2023-24, unless otherwise stated in the questions/case studies.

Case Study 1

M/s. Hari Krishna LLP, based at New Delhi, has four resident partners, Mr. Hari, Mr. Krishna, Mr. Vallish and Mr. Gautam. As per the partnership deed, the profits and losses are shared equally amongst partners. All partners are working partners and salary is paid to all partners as per the terms of the partnership deed.

One of the partners, Mr. Krishna sold listed equity shares of Bamco Ltd. (STT was paid both at the time of purchase and sale) on 9th March, 2023 for ₹ 5,40,000. The said shares were purchased by him on 7th December, 2017 for ₹ 5,50,000. The fair market value of such shares on 31st January, 2018 was ₹ 5,00,000. He sold land owned by him in Pune for ₹ 45 lakhs on 3rd March, 2023. The said land was purchased by him for ₹ 30 lakhs on 17th December, 2020.

The LLP provides direct taxes consultancy services. Over the few years, they are specialising in the area of international taxation. The assignments in international taxation relate to DTAA's, non-resident taxation, transfer pricing and other international taxation matters.

The details of some of the clients are as follows -

1. Nilgris Ltd.

Nilgris Ltd., an Indian company, has borrowed ₹ 60 crores from M/s. Mississippi Inc, a company incorporated in Country F, at an interest rate of 9% p.a. on 1-4-2022. The said loan is repayable over a period of 10 years. Further, loan is guaranteed by M/s Swiggy Inc incorporated in Country F. M/s. Kingston Inc, a non-resident, holds shares carrying 35% of voting power both in M/s Nilgris Ltd. and M/s Swiggy Inc. M/s Kingston Inc has also deposited ₹ 60 crores with M/s Mississippi Inc.

The net profit of M/s. Nilgris Ltd. for F.Y. 2022-23 was ₹ 6 crores after debiting the above interest, depreciation of ₹ 2 crores and income-tax of ₹ 3.20 crores. Nilgris Ltd. wants to know if interest is allowable as deduction under the head "Profits and gains of business or profession" and if so, to what extent.

2. Ms. Nidhi

Ms. Nidhi is a resident individual having income from the following sources:

- (i) Taxable income from a sole-proprietary concern in Pune ₹ 65 lakhs.
- (ii) Share of profit from a partnership firm in Ranchi ₹ 30 lakhs.
- (iii) Agricultural Income (Gross) from tea estate in Country G which has no DTAA with India, CGD 30000. Withholding tax on the above income CGD 6000
- (iv) Brought forward business loss of F.Y.2018-19 in Country G was CGD 12000 which is not permitted to be set off against other income as per the laws of that country.

Ms. Nidhi desires to know her total income and tax liability for the A.Y. 2023-24 (Assume 1 CGD = ₹ 60). [CGD stands for Country G Dollars which is the currency of Country G].

3. Aravalli Ltd.

Aravalli Ltd. is an Indian Company in which Andes Inc., a Country E company, holds 30% shareholding and voting power. During the previous year 2020-21, the Indian company supplied computers to the Country E based company @CED 900 per piece. The price of computer supplied to other unrelated parties in Country E is @CED 1200 per piece. During the course of assessment proceedings relating to A.Y.2021-22, the Assessing Officer carried out primary adjustments and added a sum of ₹ 168 lakhs, being the difference between actual price of computer and arm's length price for 800 pieces and it was duly accepted by the assessee. The Assessing Officer passed the order, in which the primary adjustments were made, on 31.5.2022. On account of this adjustment, the excess money of ₹ 168 lakhs is available with Andes Inc, Country E. In this context, Aravalli Ltd. wants to know the effect of this transaction for the A.Y. 2023-24 on the basis that it declared an income of ₹ 420 lakhs and the excess money is still lying with Andes Inc. till today. Assume the rate of exchange as 1 CED = ₹ 70 [CED stands for Country E Dollars, which is the currency of Country E]; six-month LIBOR as on 30.9.2022 is 8.75%.

Cost Inflation Index – P.Y. 2020-21: 301 and P.Y. 2022-23: 331

Based on the above facts, answer the following questions –

I. Multiple Choice Questions

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

1. In relation to the transaction of sale of shares and land by Mr. Krishna, which of the following statements are correct, in the context of the facts given in the case study and the provisions contained in the Income-tax Act, 1961 –
 - (a) Long-term capital loss (computed) on sale of listed equity shares by Mr. Krishna cannot be set-off against long-term capital gains on sale of land by him, since loss from an exempt source cannot be set-off against gains from a taxable source.
 - (b) Long-term capital loss (computed) on sale of listed equity shares by Mr. Krishna can be set-off against long-term capital gains on sale of land by him.
 - (c) Long-term capital gains (computed) on sale of listed equity shares by Mr. Krishna is includible in computation of total income but not taxable.
 - (d) Long-term capital gains (computed) on sale of listed equity shares by Mr. Krishna is exempt, and hence not includible while computing total income.
2. While computing total income of Ms. Nidhi under the Income-tax Act, 1961, brought forward business loss in Country G –
 - (i) can be set-off against her business income from sole-proprietorship in Pune.
 - (ii) cannot be set-off against her business income from sole-proprietorship in Pune since such set-off is not permitted as per the tax laws of Country G.
 - (iii) should not be deducted while computing doubly taxed income for the purpose of deduction under section 91.
 - (iv) has to be deducted while computing doubly taxed income for the purpose of deduction under section 91.

Which of the above statements are correct?

- (a) (i) and (iii)
- (b) (ii) and (iii)
- (c) (i) and (iv)
- (d) (ii) and (iv)

3. If Ms. Nidhi derived share income from a partnership firm in Country G which is taxable under the laws of Country G, then, assuming that the shares of the partners are not specified in the instrument evidencing partnership since the same is not a requirement as per the laws of Country G, which of the following statements would be correct?

- (i) Share income of Ms. Nidhi from the partnership firm would be taxable under the Income-tax Act, 1961.
- (ii) Share income of Ms. Nidhi from the partnership firm would be exempt under section 10(2A) of the Income-tax Act, 1961.
- (iii) Share income of Ms. Nidhi from the partnership firm would be included in “doubly taxed income” for the purpose of deduction under section 91.
- (iv) Share income of Ms. Nidhi from the partnership firm would not be included in “doubly taxed income” for the purpose of deduction under section 91.

The correct answer is –

- (a) (i) and (iii)
- (b) (i) and (iv)
- (c) (ii) and (iii)
- (d) (ii) and (iv)

4. Would the total income of A.Y.2023-24 of Aravalli Ltd. (i.e., ₹ 420 lakhs) undergo a change

- (i) if the primary adjustment made was ₹ 90 lakhs instead of ₹ 168 lakhs;
- (ii) if the primary adjustment of ₹ 168 lakhs pertained to P.Y.2019-20 instead of P.Y. 2020-21?

Assume that the Assessment Order was passed on the same date as mentioned in the facts of the case study.

The correct answer is -

- (a) No, the total income of A.Y.2023-24 would not undergo any change due to the reasons stated in either (i) or (ii) above.
- (b) Yes, the total income of A.Y.2023-24 would undergo a change due to the reason stated in (i) but not due to the reason stated in (ii) above.
- (c) Yes, the total income of A.Y.2023-24 would undergo a change due to the reason stated in (ii) but not due to the reason stated in (i) above.
- (d) Yes, the total income would undergo a change due to the reasons stated in both (i) and (ii) above.

5. Interest payable by Nilgris Ltd. to Mississippi Inc. would be subject to limitation of interest deduction because –

- (i) M/s. Kingston Inc. holds shares carrying 35% voting power in Nilgris Ltd.

- (ii) M/s. Kingston Inc. holds shares carrying 35% voting power both in Nilgris Ltd. and M/s. Swiggy Inc.
- (iii) M/s. Swiggy Inc. guarantees the loan taken by Nilgris Ltd. from M/s. Mississippi Inc.
- (iv) M/s. Kingston Inc. has deposited ₹ 60 crores with M/s. Mississippi Inc.

The most appropriate answer is -

- (a) (i) and (iv) above
- (b) (ii) and (iii) above
- (c) (i) and (iii) above
- (d) Either (a) or (b)

II. Descriptive Questions

1. Compute the total income and net tax liability of Ms. Nidhi for A.Y.2023-24, after providing for deduction under section 91, assuming that she does not opt for section 115BAC. **(7 Marks)**
2. (a) Aravalli Ltd. wants to know the effect of the transaction of supply of computers to Andes Inc. (in respect of which the Assessing Officer carried out primary adjustment) in computing the total income for A.Y.2023-24, considering that the excess money is still lying with Andes Inc. **(4 Marks)**
 - (b) Is the interest payable by Nilgris Ltd. to M/s. Mississippi Inc. allowable as deduction while computing the total income of Nilgris Ltd.? If so, to what extent? **(4 Marks)**

Case Study 2

PQR Ltd., Mumbai, is engaged in redistribution of air conditioners in India which are manufactured by its Associate Enterprise, LMN Inc., New York. It is also engaged in redistribution of air conditioners in India manufactured by XYZ Ltd. of UK which is an unrelated party. During the F.Y. 2022-23, PQR Ltd. sold 70,000 air conditioners of LMN Inc. and 30,000 air conditioners of XYZ Ltd. The gross profit margin was 12% of sales in the case of LMN Inc. and 18% of sales in the case of XYZ Ltd.

LMN Inc. is an internationally recognized brand and industry estimates peg the benefit of the brand value at 2% of sales. XYZ Ltd. extended 3 months credit period and whereas LMN Inc. extended a credit period of only 1 month. The cost of capital was 12% per annum. There are no other differences between the transaction with related party and unrelated party. Total sales made by PQR Ltd. in the financial year 2022-23 in respect of redistribution of goods of LMN Inc., was ₹ 75 crores and whereas it was ₹ 25 crores in respect of XYZ Ltd. Assume that the sales were spread out uniformly throughout the year.

Due to the significant increase in the volume of business and to mitigate the risks of a transfer pricing litigation, PQR Ltd. made an application for an Advance Pricing Agreement (APA) in October 2021 and the same was concluded in January 2022. The APA which was signed also included a rollback provision.

In the course of its business, PQR Ltd. entered into an agreement for technical consultancy services with McWinpey GmbH, Germany. As per the agreement, McWinpey GmbH, Germany was required to send its consultant(s) for conducting a work place improvement and productivity enhancement study at PQR facilities. The consultants were required to study certain process and practices of PQR Ltd. at various places where it operated and suggest areas of improvement. The consultant(s) were required to be present at the facilities of PQR Ltd. for specified time to complete the ground work as agreed in the agreement.

McWinpey GmbH sent an expert in air conditioner industry, Dr. Smith, to India. Dr. Smith was an employee of McWinpey and had resigned a year before coming to India. However, Dr. Smith was working for McWinpey as a consultant and was sent to India for this special project. PQR Ltd. is required to pay ₹ 90 lakhs to McWinpey GmbH for the technical consultancy services including those furnished by Dr. Smith who came on their behalf and stayed in India.

McWinpey GmbH's tax advisors have advised them to file an application for advance ruling to obtain certainty on the tax treatment of the receipts from PQR Ltd. in its hands.

Nano Digital Services Pte Ltd. is a company registered in Malaysia. Nano Digital owns, operates and manages a digital platform for online sale of air conditioners. Nano Digital operates the platform 'coolac.com' which facilitates sale of air conditioners owned by companies which are registered as sellers on its platform. LMN Inc, New York, entered into an agreement with Nano Digital to register itself as a seller on the platform. LMN Inc wanted to sell certain high-end air conditioners which were not currently marketed by PQR Ltd. Nano Digital facilitated sale of air conditioners of LMN Inc to customers in India during the F.Y. 2022-23. During the said year, LMN Inc was able to sell additional air conditioners worth ₹ 3 crores through the coolac.com platform to customers in India directly.

LMN Inc. New York besides supplying goods to PQR Ltd. and selling its high-end air conditioners on the digital platform was also engaged in systematic and continuous solicitation of business activities with users in India. LMN Inc wanted to get a better understanding of the market and users in India to be able to expand its operations. During the financial year 2022-23, LMN Inc had its own website and was also using third party companies to engage in interaction with users directly. As per the last count, LMN Inc had 2,95,000 users in India (i.e., who had IP address in India). Separately, LMN Inc also paid \$ 80,000 to NZ Research Limited, New Zealand for purchase of data relating to preferences of users residing in India. NZ Research Limited obtained the data from A Ltd., an Indian company.

In February, 2022, Memphis Depay, a famous Netherlands football player, was signed up as a brand ambassador by LMN Inc for all its products around the world. In July 2022, PQR Ltd. was planning the inauguration of a new retail outlet in Delhi which would also sell LMN air conditioners.

In June 2022, Memphis Depay came to India and participated in football tournaments in India. He was paid ₹ 18 lakhs as participation fee. He incurred ₹ 3 lakhs towards his travel and stay expenses. PQR Ltd. agreed to pay ₹ 20 lakhs to Memphis Depay if he attended the inauguration of the new retail outlet since it would be a great advertisement given that he was the brand ambassador. Memphis Depay extended his stay and attended the inauguration and earned the advertising fee of ₹ 20 lakhs. While here in India, Memphis Depay participated in a TV game show and won ₹ 5 lakhs as prize money. His total period of stay in India is 58 days in the F.Y.2022-23.

Based on the above facts, answer the following questions –

I. Multiple Choice Questions

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

1. From which financial year would the APA be valid? Also, for which of the financial years, PQR Ltd. can avail rollback benefit on the assumption that it has satisfied all other conditions contained in the Income-tax Act, 1961?
 - (a) From F.Y.2021-22; Roll back benefit can be availed for F.Y.2017-18 to F.Y.2020-21
 - (b) From F.Y.2021-22; Roll back benefit can be availed for F.Y.2016-17 to F.Y.2020-21
 - (c) From F.Y.2022-23; Roll back benefit can be availed for F.Y.2017-18 to F.Y.2021-22
 - (d) From F.Y.2022-23; Roll back benefit can be availed for F.Y.2018-19 to F.Y.2021-22

2. Let us presume that PQR Ltd. had a dispute on the covered transaction under the APA for F.Y. 2018-19 and the Appellate Tribunal has passed an order disposing such appeal as on the date of signing the APA. Also, the return of income for A.Y.2020-21 (F.Y.2019-20) which was filed on 31.10.2020 was revised and the revised return u/s 139(5) was filed on 31.12.2020. What would be the years of rollback under such a scenario?
 - (a) F.Y.2017-18 and F.Y.2020-21
 - (b) F.Y.2020-21 and F.Y.2021-22
 - (c) F.Y.2019-20, F.Y.2020-21 and F.Y.2021-22
 - (d) F.Y.2018-19, F.Y.2019-20, F.Y.2020-21 and F.Y.2021-22
3. How much is the amount of equalization levy payable for the sales facilitated by Nano Digital through coolac.com for sale of goods of LMN Inc, New York?
 - (a) ₹ 6 lakhs payable by Nano Digital, Malaysia
 - (b) ₹ 6 lakhs payable by LMN Inc, New York
 - (c) ₹ 18 lakhs payable by Nano Digital, Malaysia
 - (d) ₹ 18 lakhs to be deducted and paid by PQR Ltd.
4. If McWinpey GmbH obtains an advance ruling in respect of the taxability of the receipts from the technical consultancy agreement with PQR -
 - (a) Such ruling shall be binding on McWinpey GmbH.
 - (b) Such ruling shall be binding on McWinpey in India and the Jurisdictional Assessing Officer of McWinpey.
 - (c) Such ruling would not be binding on either McWinpey or the Jurisdictional Assessing Officer of McWinpey. An appeal can be filed before the Appellate Tribunal within 60 days of the date of communication of the ruling.
 - (d) Such ruling would not be binding on either McWinpey or the Jurisdictional Assessing Officer of McWinpey. An appeal can be filed before the High Court within 60 days of the date of communication of the ruling.
5. Assuming that the DTAA between India and Germany is as per UN Model, what is the minimum number of days of stay of Dr. Smith in India in a fiscal year to constitute a PE of McWinpey GmbH in India?
 - (a) 182 days
 - (b) 183 days
 - (c) 184 days
 - (d) Dr. Smith' stay in India does not create a PE of McWinpey GmbH

II. Descriptive Questions

1. Examine whether LMN Inc, New York, being engaged in systematic and continuous soliciting of business with users in India would lead to having a business connection in India. Also examine whether income from sale of data by NZ Research Ltd., New Zealand, to LMN Inc. would be taxable in India. **(4 Marks)**
2. Compute the total income and tax liability of Memphis Depay for the A.Y.2023-24. Comment on whether Memphis Depay is required to file return of income for the A.Y.2023-24. **(6 Marks)**

3. Determine the arm's length price of the transaction between PQR Ltd. and LMN Inc. using the most appropriate method. What would be the arm's length adjustment required in the hands of PQR Ltd.?

(5 Marks)

Case Study: 3

Mr. Raghav and his brother Mr. Shyam are citizens of India who are non-resident in India. They are ordinarily residing in Country A. Mr. Raghav holds 38% of voting power in Andes Inc, a company incorporated under the law of Country A. For the purpose of expansion of business, Andes Inc. enters into an agreement with HIG Ltd., a company incorporated under the Indian laws. Andes Inc does not hold shares in HIG Ltd. but only enters into a 'preferred distributor' agreement. As per the agreement, Andes Inc has the power to appoint 8 directors out of the 15 directors on the Board of HIG Ltd. Mr. Raghav is appointed as one of the Directors of the Indian company, HIG Ltd. to exercise control over the operations of HIG Ltd. and to ensure that interests of Andes Inc are protected and that HIG Ltd. does not enter into any agreement or business relationship with competitors of Andes Inc.

The total purchase by HIG Ltd. for the F.Y. 2022-23 is estimated to be ₹ 400 crores, out of which purchase of ₹ 40 crores would be sourced locally and the balance is to be supplied by Andes Inc. The price for entire purchase has been fixed in the agreement and the conditions for supply are determined by Andes Inc.

HIG Ltd. would need to expand its operations to cater to the demands of Andes Inc and proposes to borrow ₹ 120 crores from Indian Bank. Since the borrowing is for the purposes of operations of Andes Inc, 100% of the loan was guaranteed by Andes Inc. This is the first time that Andes Inc has given guarantee to an unrelated company. The total borrowings of HIG Ltd. is ₹ 800 crores (including borrowings from Indian Bank).

HIG Ltd. buys smart phones from Andes Inc. The smart phones are branded for which royalty of ₹ 250 per smart phone sold is paid to Andes Inc. Similar smart phones are sold to other customers in India by Andes Inc directly. The credit period offered to HIG Ltd. is 3 months, whereas other customers pay immediately. During the F.Y.2022-23, 20 lakh smart phones were bought for an aggregate sum of ₹ 3200 crores from Andes Inc. Assume the royalty is included in ₹ 3200 crores. The entire purchases of HIG Ltd. were sold in the F.Y. 2022-23. HIG Ltd. failed to report Andes Inc as an Associated Enterprise and transactions with them were not reported as 'international transactions'. HIG Ltd. has received a notice from the Income-tax department in this regard. HIG Ltd. is now considering the option of filing Form 3CEB and TP study/documentation relating to determination of Arm's Length Price.

During the financial year 2022-23, HIG Ltd. entered into an agreement with Infotec Company, a company registered and incorporated in Country K (India does not have a DTAA with Country K). The agreement was for provision of certain data analytics services which would amount to fees for technical services under the Income-tax Act, 1961. The agreement required an advance payment of USD 75,000. The payment being made by a resident company (i.e., HIG Ltd.), taxes were required to be withheld at source under section 195 of the Act and net amount was to be remitted to Infotec Company. Infotec Company has drawn the attention of HIG Ltd. to a clause in the agreement which requires HIG Ltd. to pay the agreed amounts to Infotec Company in full and that HIG Ltd. needs to bear the taxes in India, if applicable. Accordingly, the said advance of USD 75,000 has been paid to Infotec Company on March 31, 2023.

Maxim Inc, a company headquartered in Country A manufacturing electric vehicles, is owned by Mr. Raghav. Mr. Donald is citizen and resident of Country A since 2006 and has been working in Maxim Inc. Mr. Donald is appointed as Head of South Asia - Operations in April 2022 to understand the prospects in South Asian market and preparation of a plan for selling vehicles in the South Asian market. Presently, Raghav's enterprises is not engaged in any business in South Asia.

Donald travels to India in April 2022 and stays in a hotel in Mumbai for 12 days. Thereafter, Donald travels extensively in India, Sri Lanka, Singapore, etc. to meet prospective dealers, automobile experts, etc. Donald

also gives interviews in various auto magazines and automobile shows on TV about the plans of Maxim Inc. Donald's job requires him to visit his head office in Country A every month for reporting purposes. When Donald visits the headquarters in June 2022, he discusses the possibility of importing one Electric car of Maxim Inc. He feels that display of the car in India to prospective customers would increase the interest in the company's products. Raghav approves the plan and one electric car is sent to India to be placed at the Mumbai airport for display. The car is imported in accordance with the Customs law. Mumbai Airport Limited, the operator of the airport, charges rent of ₹ 4 lakh per month from Maxim Inc for space for displaying the car. Many prospective customers reach out to Donald wanting to place orders for the car. Donald informs that he is not authorised to obtain orders and the orders, if any, have to be placed directly on Maxim Inc and the cars have to be imported directly by those who are interested. Given the increased interest, Mr. Donald also meets prospective businessmen who could be appointed as dealers. It is decided that Maxim Inc would appoint dealers in India and start selling their cars from April 2023. Donald concludes the financial year 2022 - 23 with a clear plan for India. He ends up spending about 89 days in India in the financial year.

Based on the above facts, answer the following questions –

I. Multiple Choice Questions

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

1. In respect of transfer pricing provisions, which of the following statement is not true?
 - (a) Where in respect of an international transaction, the assessee has not furnished the report under section 92E and such transaction comes to the notice of the TPO during the course of proceeding before him, the transfer pricing provisions shall apply as if such transaction is referred to the TPO by the Assessing Officer.
 - (b) Where any other international transaction, other than those reported by the assessee, come to the notice of the TPO, he cannot apply the transfer pricing provisions on such transactions.
 - (c) The order of the TPO determining the arm's length price of an international transaction is binding on the Assessing Officer and the Assessing Officer shall proceed to compute the total income in conformity with the arm's length price determined by the TPO.
 - (d) The TPO has power to rectify his order under section 154 if any mistake apparent from the record is noticed. If such rectification is made, the Assessing Officer has to rectify the assessment order to bring it in conformity with the same.
2. Which of the following statements are false?
 - (a) Penalty@2% of value of international transaction is leviable u/s 271AA for failure to report the international transaction which is required to be reported.
 - (b) Penalty of ₹ 2 lakhs is leviable u/s 271BA for failure to furnish the report from an accountant as required under section 92E.
 - (c) The penalty u/s 271AA shall be in addition and not in substitution of penalty u/s 271BA.
 - (d) Failure to report any international transaction would be considered as misreporting of income under section 270A and penalty would be 200% of the tax payable on underreported income.
3. Which is the most appropriate method for determining the arm's length price of the transaction of purchase of smart phones by HIG Ltd. from Andes Inc?
 - (a) Cost Plus Method

- (b) Profit Split Method
 - (c) Resale Price Method
 - (d) Comparable Uncontrolled Price Method
4. Which of the following benefits are not allowable to Mr. Shyam, while computing his total income and tax liability for A.Y.2023-24 under the Income-tax Act, 1961, assuming that he does not opt for section 115BAC?
- (a) Deduction of 30% of gross annual value while computing his income from house property in Mumbai, India
 - (b) Tax rebate upto ₹ 12,500 from tax payable on his total income upto ₹ 5,00,000
 - (c) Deduction for donation made by him to Prime Minister's National Relief Fund
 - (d) Concessional rate of tax@15% under section 111A in respect of short-term capital gains on transfer of listed equity shares.
5. For A.Y.2023-24, unexhausted basic exemption limit of Mr. Shyam –
- (a) can be adjusted against only LTCG taxable u/s 112 and STCG taxable u/s 111A
 - (b) can be adjusted against only LTCG taxable u/s 112 and LTCG taxable u/s 112A
 - (c) can be adjusted against LTCG taxable u/s 112, LTCG taxable u/s 112A and STCT taxable u/s 111A
 - (d) cannot be adjusted against LTCG or STCG taxable at special rates.

II. Descriptive Questions:

1. Mention the different circumstances which can independently lead to the conclusion that Andes Inc and HIG Ltd. are associated enterprises. **(4 Marks)**
2. Assuming that the India-Country A DTAA is in line with the UN Model Tax Convention, 2017, examine whether Maxim Inc. has a Permanent Establishment in India. **(4 Marks)**
3. In respect of the payment of USD 75,000 made to Infotec Company on March 31, 2023, advise on the following:
 - (a) HIG Ltd. has not complied with the TDS provisions till 30th May, 2023. What is the amount to be remitted if taxes are to be grossed up assuming a TDS rate of 10% (plus cess@4%)? Determine the amount to be deposited on 30th May, 2023 with applicable interest. (Assume applicable exchange rate to be 1 USD = 80 INR). **(3 Marks)**
 - (b) No work has commenced on the project as on date. HIG Ltd. is contemplating cancellation of the contract. If the contract is cancelled after the TDS is remitted, would the amount remitted be refundable? If yes, who can claim that refund and what is the process? **(4 Marks)**

Case Study 4

Omega LLP, a firm of Chartered Accountants specializing in audit and tax, also has an International Taxation division. The partners of M/s. Kaushik and Co, a CA firm, have sought the opinion of Omega LLP in respect of certain matters of their clients for giving reply to the tax authorities relating to the show cause notice issued to tax the income earned by each of the following clients and opinion on other matters so raised by them under the provisions of the Income-tax Act, 1961:-

- (I) Himalaya Ltd. is an Indian Company located in Special Economic Zone (SEZ) in which Randell Inc., a Country C company is holding 30% shares and voting power. Following transactions were effected between these two companies during the year 2022-23:-
- (i) Himalaya Ltd. sold 70,000 pieces of shirts at \$ 7 per shirt to Randell Inc. Identical shirts were sold by Himalaya Ltd. to an unrelated party, namely, Ganga Inc. in Country C at \$ 11 per shirt.
 - (ii) Himalaya Ltd. borrowed loan of \$ 4,25,000 from a Country C lender on the strength of guarantee given by Randell Inc. and for the purpose of giving guarantee, Himalaya Ltd. paid \$ 21,000 as guarantee fee to Randell Inc. However, for the same amount of loan taken by an unrelated party in India, Randell Inc. had charged guarantee fees of \$ 16,000.
 - (iii) Himalaya Ltd. paid \$ 32,000 to Randell Inc. for getting the details of various potential customers to improve its business outside India in global market. Randell Inc. provided the same services and details to an unrelated party in India for \$ 28,000.
- (II) Mr. Pratyoosh, a Country T citizen, stayed in India for 45 days during P.Y.2022-23. He had acquired a house property located in Country T in September 2013 for ₹ 120 lakh. Out of the investment of ₹ 120 lakh, ₹ 80 lakh was assessed to tax in the total income of the P.Y.2013-14 and P.Y.2012-13, when he was resident in India. The remaining income has not been assessed to tax in any year. This asset comes to the notice of the Assessing Officer in March 2023. Notice under section 10 of the Black Money Act was issued on 20.3.2023. The value of the house property on 1.4.2022 was ₹ 180 lakh.
- (III) Mr. Sridhar, a citizen of Country L, stays in India during the months of April to July and in Country L during the months August to March every year. As per the domestic laws of Country L, an individual has to stay in Country L for 240 days to be treated as a resident of that country. India has a DTAA with Country L in line with UN Model Convention, 2017. Sridhar, his parents and grand parents were born in Country L.
- Sridhar owns immovable properties (including residential house) in both India and Country L. He earned income of ₹ 85 lakhs from rubber estates in Country L during the financial year 2022-23. He does not have any business in India; nor does he have any permanent establishment in India. He sold a house property situated in Country L which had resulted in short-term capital gain of ₹ 22 lakhs during the year to him and was subject to tax in Country L. He also has a residential house at Nagpur which is used by him for his stay when he visits India.
- (IV) Electra Inc, a Country A company whose place of effective management (POEM) is also in Country A, entered into an agreement with Power Back Ltd., India, for the execution of electrical work in India. Separate payments, termed as “Engineering Fee”, were made towards drawings and designs by Power Back Ltd. to the Country A Company, which does not have any permanent establishment (PE) in India for doing the business and operates only from Country A.
- (V) Epsilon Ltd, a Country B company whose POEM is outside India, entered into a collaboration agreement on 22.08.2022 with Rho Ltd., an Indian Company. The Country B Company was issued debentures by Rho Ltd. for ₹ 80 lakhs on 1.09.2022 bearing interest @12% p.a. in consideration for providing the technical know-how to Rho Ltd. Rho Ltd. also remitted the interest on debentures to Epsilon Ltd. which was due for the relevant period ended on 31.03.2023.

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

I. Multiple Choice Questions

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

1. What is the value of undisclosed asset (house property located in Country T) in the hands of Mr. Pratyosh for the purpose of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and in which year would the same be chargeable to tax?
 - (a) The same is not chargeable to tax since Mr. Pratyosh is a non-resident for A.Y.2023-24, having stayed in India only for 45 days in the P.Y.2022-23; Therefore, there is no need to determine its value.
 - (b) ₹ 120 lakh chargeable to tax in the hands of Mr. Pratyosh for A.Y.2023-24
 - (c) ₹ 40 lakh chargeable to tax in the hands of Mr. Pratyosh for A.Y.2014-15
 - (d) ₹ 60 lakh chargeable to tax in the hands of Mr. Pratyosh for A.Y.2023-24.
2. Assuming that, for the purpose of this MCQ, the tax benefit arising in respect of transactions/ arrangement between Himalaya Ltd. and Randell Inc is ₹ 1.75 crore to Himalaya Ltd. and ₹ 1.25 crore to Randell Inc. for A.Y.2023-24, can the department invoke GAAR provisions in respect of such transactions?
 - (a) No, it cannot, since the tax benefit arising to Himalaya Ltd. does not exceed the specified threshold.
 - (b) No, it cannot, since the tax benefit arising to Himalaya Ltd. and Randell Inc. does not exceed the specified threshold
 - (c) Yes, it can, since the tax benefit arising to Himalaya Ltd. exceeds the specified threshold.
 - (d) Yes, it can, since the tax benefit arising to Himalaya Ltd. and Randell Inc. exceeds the specified threshold.
3. Engineering Fee paid outside India to Electra Inc., Country A company, in the P.Y.2022-23, is:
 - (a) not chargeable to tax in its hands under the provisions of the Income-tax Act, 1961, since it is a foreign company which does not have a permanent establishment in India.
 - (b) not chargeable to tax in its hands under the provisions of the Income-tax Act, 1961, since it is a foreign company which is not resident in India on account of its POEM being outside India .
 - (c) not chargeable to tax in its hands under the provisions of the Income-tax Act, 1961, since it is non-resident in India and the said income is neither received in India nor is it deemed to accrue or arise in India.
 - (d) chargeable to tax in its hands in India under the provisions of the Income-tax Act, 1961
4. Fees for technical services and interest income accruing to Epsilon Ltd. for P.Y.2022-23 on debentures issued by Rho Ltd., which was received by Epsilon Ltd. in Country B, is:-
 - (a) chargeable to tax in India under the provisions of the Income-tax Act, 1961.
 - (b) not chargeable to tax in the hands of Epsilon Ltd. under the provisions of the Income-tax Act, 1961, since it is a non-resident, on account of its POEM being outside India
 - (c) not chargeable to tax in the hands of Epsilon Ltd. under the provisions of the Income-tax Act, 1961, since it is neither received in India nor is it deemed to accrue or arise in India

- (d) not chargeable to tax under the provisions of the Income-tax Act, 1961, due to reasons stated in both (b) and (c) above.
5. Would your answer to 3. and 4. above change, if Electra Inc. had a PE in India during the P.Y.2022-23 and Epsilon Ltd.'s POEM was in India during the P.Y.2022-23?
- (a) Yes, the answer would change for both 3. and 4.
- (b) No, the answer would not change for either 3. or 4.
- (c) Answer would change for 3. but not for 4.
- (d) Answer would change for 4. but not for 3.

II. Descriptive Questions

1. Determine the residential status of Mr. Sridhar for A.Y.2023-24 and examine with reasons as to whether the business income arising in Country L from the rubber estate and the capital gains in respect of sale of the property situated in Country L can be taxed in India in the hands of Mr. Sridhar during the A.Y. 2023-24. **(8 Marks)**
2. Examine the relationship of the companies Himalaya Ltd. and Randell Inc. of Country C and the nature of various transactions entered into between them during the previous year 2022-23.
- (i) What are the adjustments, if any, required to be made to the total income of Himalaya Ltd. under transfer pricing provisions. One Country C dollar may be taken as ₹ 70.
- (ii) If the said adjustments are made by the Assessing Officer, can Himalaya Ltd. claim deduction under section 10AA in respect of the enhanced income? **(7 Marks)**

Case Study 5

Alpha Ltd., Trivandrum, is a company engaged in trading activities. It is an associate of Sun Inc. of USA. The annual consolidated group revenue of Sun Inc. is USD 500 million for the accounting year 2022-23 (TT buying rate on the last day of the accounting year is 1 USD = ₹ 80). Alpha Ltd. is one of the constituent entities of Sun Inc Group, being an international group. The annual turnover of Alpha Ltd. always exceeded ₹ 500 crores which included ₹ 120 crores being the volume of transactions with associated enterprises outside India.

During the F.Y. 2022-23, some of the significant transactions entered into by Alpha Ltd. are:

- (1) Alpha Ltd. has 30% equity shareholding in Mc Vell LCC of USA. It received dividend of ₹ 110 lakhs on 13th January, 2023. It declared interim dividend of ₹ 60 lakhs on 7th December, 2022. In addition, it has income under the head 'Profits and gains from business or profession' (computed) ₹ 109 lakhs for the A.Y.2023-24 and has opted for section 115BAA.
- (2) In order to expand its reach, Alpha Ltd. decided to digitally advertise its products. In this connection, it entered into agreement with Theta Pte of Bangkok on January 1, 2023. Theta Bangkok could organize digital advertising space for Alpha Ltd. and Alpha Ltd. paid ₹ 6 lakhs on 12th February, 2023 towards online advertisement of its products to Theta Pte of Bangkok. Alpha Ltd. was not aware of the provisions of Equalisation Levy and accordingly had not remitted the same at the time of payment. An internal audit conducted in April, 2023 highlighted this lapse. It remitted the equalization levy amount on 22nd April, 2023 as soon as the findings of the internal audit were known.
- (3) Alpha Ltd. had certain infrastructure project. In order to monetize the same, it contributed those into 'Alpha InvIT' and listed the same in accordance with the SEBI guidelines. Alpha InvIT is eligible to be treated as a 'business trust' (registered as an infrastructure trust under SEBI Regulations 2014) for the purposes of the Income-tax Act, 1961. Alpha InvIT distributed interest of ₹ 20 lakhs to a non-resident investor out of the interest income received by it from a SPV.

- (4) Alpha Ltd. acquired a ready to use software from Bush Inc. of USA for ₹ 18 lakhs. As per the meaning assigned in India's DTAA with USA, "royalty" means payment of any kind received as consideration for the use of, or the right to use, any copyright of a literary, artistic or scientific work. In India's DTAA with USA, there is no provision akin to *Explanation 4* to section 9(1)(vi) of the Income-tax Act, 1961.

Alpha Ltd. also solicited the services of Barsells Co. Ltd., Bengaluru to add some features in the software so purchased to make it perfectly usable for its business, for which ₹ 4 lakhs is payable to Barsells Co. Ltd.

Also, Alpha Ltd. imported raw materials from its associated enterprise located in Malaysia in the previous year 2021-22. The ALP determination by applying the most appropriate method resulted in upward revision of its income by ₹ 220 lakhs. Alpha Ltd. has not contested the variation and does not want to do secondary adjustment.

Ganesh joined as Business Development Head of Alpha Ltd. in December, 2022. He was in Country 'P' for 10 years and used to visit India every financial year for a stay of 100 days. He returned to India permanently on 1st April, 2022. During the previous year 2022-23, he has been in India throughout. He has income both in India and Country P. There is no DTAA between India and Country P. The following are the details of the income (in INR) for the year ended 31st March, 2023:

Salary from Alpha Ltd. (computed)	32,00,000
Consultancy income in India (computed)	8,00,000
Income from property in Country 'P' (converted in Indian currency)	5,00,000
Agricultural income in Country 'P' (converted in Indian currency)	3,50,000
Business loss in Country 'P' (converted in Indian currency)	(2,80,000)
Dividend from companies in Country 'P' (converted in Indian currency)	3,00,000
Rate of tax in Country P (without any basic exemption limit)	15%

Note: Income in Country P converted in INR. Income earned in Country P was received in Country P.

Delta (P) Ltd., Mumbai is a related party of Alpha Ltd. It is engaged in manufacture of medical diagnostic equipments. Delta (P) Ltd. has accumulated reserves and surplus exceeding ₹ 100 crores. Its holding company (i.e., Phi Co Ltd.) located in Country Z has working capital crunch. The Board of Directors of Delta (P) Ltd. have drawn a plan of action to pump money in Phi Co Ltd. and the plan is as under:

Incorporate a company by name Gamma Co Ltd. in Country W (which is a low tax jurisdiction) with Delta (P) Ltd. having 10% share capital and Phi Co Ltd. to have the balance 90% of equity. The company Gamma Co Ltd. would have no business activity. It was decided that Phi Co Ltd. would transfer fraction of its shares in Gamma Co Ltd. as and when it requires money to Delta (P) Ltd. at 50 times to 100 times more than its cost of acquisition. The capital gain is tax-free in both Country Z and Country W as per domestic laws.

Based on the above facts, answer the following questions –

I. Multiple Choice Questions

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

- How much is payable by way of penalty by Alpha Ltd. for the delay in remittance of equalization levy?
(a) ₹ 47,000
(b) ₹ 46,000

- (c) ₹ 36,000
(d) ₹ 69,000
2. How much is the withholding of income-tax to be made by Alpha Ltd. for the software acquired from Bush Inc. and how much income-tax is deductible at source on the amount payable to Barsells Co. Ltd.?
- (a) 41.6% on ₹ 18 lakhs and Nil on ₹ 4 lakhs
(b) 10% on ₹ 18 lakhs and 20% on ₹ 4 lakhs
(c) 20.8% on ₹ 18 lakhs and 10% on ₹ 4 lakhs
(d) Nil on ₹ 18 lakhs and 10% on ₹ 4 lakhs
3. How much is the amount of tax payable by Alpha Ltd. on dividend income received from Mc Vell LLC of USA?
- (a) ₹ 7,80,000
(b) ₹ 8,58,000
(c) ₹ 11,44,000
(d) ₹ 12,58,400
4. Compute the amount of tax payable by Alpha Ltd. as a consequence of primary adjustment in respect of its transactions with its associated enterprise in Malaysia to get relief from making secondary adjustment.
- (a) ₹ 41,18,400
(b) ₹ 44,06,688
(c) ₹ 46,12,608
(d) ₹ 47,40,736
5. At what rate is Alpha InvIT required to deduct tax at source on the interest income distribution to non-resident?
- (a) 41.6%
(b) 31.2%
(c) 10.4%
(d) 5.2%

II. Descriptive questions

1. Determine the total income and tax liability of Ganesh for the A.Y. 2023-24, assuming that he has not opted for section 115BAC. **(6 Marks)**
2. Is Alpha Ltd. required to keep and maintain information and documents as a constituent entity of the international group? Also, examine whether it has to furnish any report in this regard. If so, what is the due date for furnishing such report? **(5 Marks)**
3. Evaluate the proposed plan of action of Board of Directors of Delta (P) Ltd. in the light of its permissibility under the Income-tax Act, 1961. **(4 Marks)**