

MAY 2023

Final New Syllabus

Roll No. Paper - 6 C
International Taxation

Total No. of Questions – 5

Total No. of Printed Pages – 31

Time Allowed – 4 Hours

Maximum Marks – 100

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Answers to questions are to be given only in English except in the case of candidates who have opted for Hindi Medium. If a candidate has not opted for Hindi Medium, his/her answers in Hindi will not be valued.

The Question Paper comprises **five** case study questions.

The candidate are required to answer any **four** case study questions out of **five**.

Answers in respect of Multiple-Choice Questions (MCQs) are to marked on the OMR Answer Sheet as given on the Cover Page of the answer book.

Answer to MCQs, if written anywhere other than the OMR Sheet on the cover page of the answer book, will not be evaluated.

Candidate should answer the Case Study Questions as selected by him/her in totality i.e., MCQ as well as descriptive Question of the same Case Study Question.

Candidates are not permitted to answer MCQs of one Case Study Question and the descriptive questions of another Case Study Question and vice-versa.

Candidates may use calculator.

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

Wherever necessary students can make the necessary assumptions for the Descriptive Questions and state the same clearly in their answers.



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CASE STUDY – 1 :**Mega Ltd., Delhi**

Mega Ltd. is a subsidiary of Lion Pte. of Singapore which has 60% of the share capital in Mega Ltd. Pacific Inc. of USA has 80% shareholding in Lion Pte. of Singapore. The Board of directors of Pacific Inc. decided to sell its entire shareholding in Lion Pte. to Dean Jones Inc. of USA. The book value of assets of all the companies always exceeded ₹ 100 crores.

For the financial year 2022-23, Mega Ltd. had to pay interest of ₹ 70 lakhs to Atlanta Inc. of Country Z for the rupee denominated bonds issued in February, 2019 and ₹ 80 lakhs by way of interest to Indiana Ltd. of Country W in respect of rupee denominated bonds issued in May, 2020. On both the occasions, Mega Ltd. issued rupee denominated bonds outside India after complying all the requirements of relevant laws / regulations.

Mega Ltd. required working capital assistance of ₹ 10 crores and solicited help from its buyer Mini Pte. of Canada. The total borrowings of Mega Ltd. was ₹ 20 crores before seeking assistance from Mini Pte. The goods manufactured by Mega Ltd. are sold by Mini Pte in African countries. In order to provide working capital assistance Mini Pte. deposited money in a bank account and based on that a bank guarantee was given to advance money to Mega Ltd. by SBI, Mumbai. The interest on loan was @ 9% per annum. In return for the guarantee, Mega Ltd. had to pay 0.5% of the loan annually to Mini Pte as guarantee fee. Similar such facility was offered by Super Inc. Canada at 0.2% of the loan as guarantee fee.

Mega Ltd. sold 50 lakhs units of Goods manufactured for ₹ 2,000 per unit to Mini Pte during the previous year 2022-23. Similar goods were sold to others in Canada for ₹ 2,100 per unit. Mega Ltd. allowed 3 months credit period to Mini Pte and whereas for other buyers it allowed 1 month credit period. Cost of capital may be taken as 8% per annum.

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The EBITDA of Mega Ltd. for the year ended 31.03.2023 was ₹12 crores. Interest paid to SBI for the loan was ₹ 95 lakhs and interest in respect of other borrowings from unrelated parties was ₹ 300 lakhs for the year ended 31.03.2023.

Mega Ltd. has been exporting its goods to Chat Ltd. of UK as per the agreement entered into by them. Every year, the exports exceeded ₹ 100 crores. Now due to increased demand of products of Mega Ltd. the terms of trade between Mega Ltd. and Chat Ltd. had to be revisited and accordingly a fresh agreement for 7 years was entered into on 10.09.2022. The Board of Directors of Mega Ltd. apprehend that the transfer price adjustment may be required in the light of the fresh agreement entered into by the parties. Based on the pending assessments and litigation before Assessing Officer and CIT (Appeals) they want to analyse the possibility of entering into advance pricing agreement with rollback benefits.

Laxman, Managing Director

Laxman, the Managing Director of Mega Ltd. is a resident of India. His brother Anand left India in 2015 for employment in USA and he is a non-resident. Both invested in Real Estate Investment Trust (REIT) in September, 2020. REIT received dividend of ₹ 120 lakhs from ABC Ltd., a special purpose vehicle in which the Business Trust has 90% shareholding. Both Laxman and Anand have 10% of the units in the Business Trust. ABC Ltd. has not opted for section 115BAA.

In December, 2018, Anand bought 600 Global Depository Receipts (GDRs) of Maxima Ltd., India. These GDRs were issued in accordance with the notified scheme of the Central Government against the company's initial issue of shares. Anand purchased GDRs in foreign currency through an approved intermediary. In October, 2022 Anand sold 400 GDRs outside India to Ramesh a citizen and resident of a country outside India and the balance 200 GDRs to Rajini, a resident and but not ordinarily resident in India.

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Ravinder, Marketing Manager of Mega Ltd.

Ravinder, Marketing Manager of Mega Ltd. (looking after business interests in Europe and America) is born and brought up in USA and is a citizen of USA. His parents and paternal grandparents were born and brought up in USA but his maternal grandparents were born in Dhaka, Bangladesh before 1930. He visited India every financial year from 1st November to 31st January.

Parthiv, CEO of Mega Ltd.

Parthiv a management graduate from Harvard University was employed in Tomato LLP of Country S since June, 2014. He came to India on 15.11.2022 and joined as CEO of Mega Ltd. Parthiv was in India before he left for overseas education in December, 2010 and was subsequently employed outside India. There is no income-tax on the salary income earned from Tomato LLP in Country S. He earned interest income of ₹ 2,40,000 (net) in Country Q and salary income of ₹ 9 lakhs up to the date of his return to India in the financial year 2022-23. Tomato LLP is wholly owned and managed by Deepak and his family who are residents and living in Mumbai. Salary income of Parthiv from Mega Ltd. up to 31.03.2023 was ₹ 13,50,000 (computed as per provisions of the Income-Tax Act.)

Parthiv acquired shares in listed companies which were sold in the financial year 2022-23, the details of which are given below :

Name of company	No. of shares	Date of acquisition	Cost of acquisition per share	Date of transfer	Sale price (per share)	FMV as on 31.01.2018
Mango Ltd.	200	30.10.2016	₹ 2,000	25.01.2023	₹ 5,000	₹ 4,000
Almond Ltd.	200	10.01.2018	₹ 3,000	10.03.2023	₹ 3,500	₹ 2,500
Walnut Ltd.	100	15.07.2017	₹ 2,000	22.03.2023	₹ 3,500	₹ 3,800

He has paid STT both at the time of purchase and at the time of sale.

Parthiv has opted for the provisions of section 115BAC.

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REQUIRED

Choose the most appropriate alternative for the following MCQs :

**5×2
=10**

- 1.1 For considering the taxability in India, which of the Double Taxation Avoidance Agreements would be preferred for deciding the taxability of the transfer of shares of Lion Pte. Singapore by Pacific Inc. of USA ?
- (A) India-Singapore DTAA
(B) Singapore-USA DTAA
(C) India-USA DTAA
(D) Both India-Singapore DTAA and India -USA DTAA
- 1.2 At what rate tax is deductible at source on the interest paid by Mega Ltd. in respect of rupee denominated bonds for the assessment year 2023-24 ?
- (A) Tax deductible at source @ 5% (Plus applicable surcharge and cess) in both the cases
(B) No tax is deductible at source in both the cases
(C) No tax is deductible at source for the interest paid to Atlanta Inc and TDS @ 5% (Plus applicable surcharge and cess) in respect of interest paid to Indiana Ltd.
(D) No tax is deductible at source for the interest paid to Indian Ltd. and TDS @ 5% (Plus applicable surcharge and cess) in respect of interest paid to Atlanta Inc.
- 1.3 At what rate tax is required to be deducted at source by REIT out of dividend received from ABC Ltd. distributed to Laxman and Anand ?
- (A) 10% for Laxman and 20% for Anand
(B) 0% for Laxman and 5% for Anand
(C) 30% for both Laxman and Anand
(D) 0% for both Laxman and Anand means TDS is not to be made on dividend distributed to Laxman and Anand.

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1.4 Which one of the following statements is correct in respect of "GDRs" sold

by Anand to Ramesh ?

(A) Profit from sale of 'GDRs' shall be charged under the Head "Income from other sources".

(B) Profit from sale of 'GDRs' shall be taxable under the Head "Capital Gain".

(C) Sale of 'GDRs' shall not be regarded as "transfer" for the purpose of "Capital Gain".

(D) Profit from sale of "GDRs" shall be charged under the head "Business Income".

1.5 What is the residential status of Ravinder for the assessment year 2023-24 under the Income-tax Act, 1961 ?

(A) Resident and ordinarily resident

(B) Resident but not ordinarily resident

(C) Non-resident

(D) Resident but could not be determined whether ordinarily resident with the given information

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DESCRIPTIVE QUESTIONS

You are required to answer the following Descriptive questions :

- 1.6 Determine the residential status of Parthiv as per the provisions of the Income-tax Act, 1961 and compute his total income for the assessment year 2023-24. **5**
- 1.7 Determine whether Mega Ltd. and Mini Pte are Associated Enterprises. Also, compute the adjustment, if any, to the total income of Mega Ltd. is required in respect of goods supplied to Mini Pte and the interest paid for the loan availed by Mega Ltd. You may also consider the impact of EBITA. **5**
- 1.8 As the International Tax Manager of Mega Ltd., advise the company regarding the possibility of entering into advance pricing agreement (including pre-filing consultation) and on the rollback benefits. **5**

CASE STUDY – 2 :

Autofit Limited

Resident of Country X, Autofit Limited (“Autofit”) is engaged in the business of manufacture and sale of automotive emission test equipment. The Company has established a wholly-owned subsidiary in India, AFL India, to help identify customers and carry out market research, as well as play a coordination role between the Parent company and the customers in India. It has an office in Pune India, which maintains stock of goods for storage, display as well as delivery to third party customers in India. The company considers this activity as preparatory in nature because all sales order and contracts are negotiated and executed by Autofit in Country X.

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The DTAA between India and Country X is in line with the OECD Model Convention.

AFL India

For the FY 2022-23, AFL India has reported revenue of INR 12,50,00,000 which entirely comprises of service revenue from Autofit Limited. AFL India has reported a net profit of INR 1,12,00,000 after debiting interest on various loans as detailed below, depreciation and amortization of INR 23,00,000 and tax of INR 52,00,000. Further, AFL India had a disallowed excess interest of INR 34,00,000 in the Assessment Year 2022-23, as per the EBITDA norms.

- Interest on a loan of INR 8 crores availed from AFL UK on 01 Sept 2022 at an interest rate of 6.6%. Autofit Limited holds 25% voting power in AFL UK and the rest being held by a unrelated joint venture partner. AFL India has no direct or indirect participation in the management, control or capital of AFL UK;
- Interest on a working capital loan of INR 10 crores availed from the India branch of MNC Bank of the UK, at an interest rate of 7.9%. The loan was provided by the Bank on 1 May 2022 against a corporate guarantee provided by Autofit;
- Interest on a loan of USD 2 million @5% issued by the New York branch of the Bank of USA, based on a back-to-back deposit made by Autofit of the same amount. For the FY 2022-23, AFL India paid an interest to the tune of INR 1,05,00,000 on this loan;

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- Interest on delayed payments @7% made to AFL China, amounting to INR 1,07,00,000 for the FY 2022-23. Autofit holds 25% voting power in AFL China. Autofit appoints more than half of the directors on the board of AFL China;

Mr. Bernard, an employee of Autofit Limited

During the FY 2022-23, Autofit Limited deputed one of its employees, Mr. Bernard, to India, to assist with installation of Autofit's products at one of its customers' premises. He came to India for the first time on 24 April 2022 and left India on 30 November 2022.

New manufacturing unit

Autofit Limited is setting up a new manufacturing unit under a new subsidiary in India – AFL Precision. It is intended that AFL Precision would avail new beneficial tax rate of 18% under section 115BAB of the Income Tax Act, 1961. For the set-up of the manufacturing facility, AFL Precision has awarded a composite contract to AFL Sweden, another wholly-owned subsidiary of Autofit Limited. The entire consideration of the contract is split between (i) design consultancy, (ii) offshore supply of equipment and (iii) local supplies and installation.

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REQUIRED

Choose the most appropriate alternative for the following MCQs :

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- 2.1 Which of the following statement is correct regarding Mr. Bernard's presence in India during the FY 2022-23 ? Assume that at present, Autofit does not have a fixed place PE in India and DTAA between India and country X is in line with OECD convention –
- (A) Mr. Bernard's presence in India, being less than 12 months, would not create Autofit's Permanent Establishment ('PE') in India
 - (B) Mr. Bernard's presence in India, being more than 183 days, would create Autofit's PE in India
 - (C) Mr. Bernard will be eligible for short stay exemption because his stay in India did not exceed 300 days
 - (D) Mr. Bernard will be eligible for short stay exemption only if Autofit declares that it has a PE and claims the salary expense as a deduction from the income offered for tax
- 2.2 Given the facts regarding Mr. Bernard and assuming that Autofit Limited does not have a Fixed place PE in India, how many minimum number of days of Mr. Bernard's presence in India during the previous year would constitute a PE, if the DTAA between India and Country X is in line with the UN Model Convention 2017 ?
- (A) 1 day
 - (B) 182 days
 - (C) 183 days
 - (D) 184 days

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2.3 Which of the following measures proposed under the Base Erosion and Profit Shifting (BEPS) initiative of the OECD may restrict Autofit in claiming exemption from Permanent Establishment as activities being preparatory or auxiliary in nature ?

- (A) Limitation of Benefit (LoB) rule
- (B) Anti-fragmentation rules
- (C) Controlled Foreign Company (CFC) rules
- (D) Principal Purpose Test (PPT) rule

2.4 In which of the following circumstance, in cases AFL India is constituent entity of 'Autofit' International Group, the provision of furnishing of report in respect of international group shall apply if the total consolidated group revenue.

- (A) In the accounting year exceeds ₹ 5,500 crores.
- (B) In the preceding accounting year exceeds ₹ 5,500 crores.
- (C) In the preceding accounting year exceeds ₹ 6,400 crores.
- (D) In the accounting year exceeds ₹ 6,400 crores.

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2.5 Autofit is considering obtaining an Advance Ruling in respect of some transactions it proposes to undertake in India and for seeking clarity on the aspect of PE in India. Which of the following statement is incorrect in regard to Advance Rulings ?

- (A) Autofit, if aggrieved by the ruling pronounced by the Board of Advance Ruling may appeal to the High Court within 60 days from the date of communication of that ruling
- (B) Autofit can withdraw the application within 30 days from the date of the application
- (C) Autofit can file application only in relation to Eligible transactions it has undertaken and not in relation to those it proposes to undertake
- (D) The ruling is binding on the Principal Commissioner and authorities subordinate to him.

DESCRIPTIVE QUESTIONS

You are required to answer the following descriptive questions :

2.6 Please advise Autofit Limited on whether maintenance of stock of goods solely for storage, display and delivery by AFL India would constitute Permanent Establishment in India. Would your answer be different, if India's DTAA with Country X was in line with the UN Model Convention, 2017 ?

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- 2.7 Based on the details provided in respect of interest paid by AFL India during the FY 2022-23, determine the amount of interest permissible as deductible while computing income under the head "Profits and gains of business or profession", as per the EBITDA norms. Provide brief reason for the treatment of each item of interest regarding the limitation of interest deduction computation. 7.5
- 2.8 Examine whether the Assessing Officer (AO) can challenge the allocation of composite price paid by AFL Precision to AFL Sweden, between various components (supply of designs, offshore supply of equipment and onsite supply and installation) under the GAAR provisions. Enumerate the conditions to be satisfied for the GAAR provisions to be invoked. Can the AO examine the arrangement under any Specific Anti-avoidance rules instead of GAAR ? 5

CASE STUDY – 3 :**Manish Ltd., Delhi**

Manish Ltd., Delhi is engaged in manufacturing of Men's apparel. It is a subsidiary of Skylark Inc. of Country N, which has 28% shareholding in it. For the year ended 31st March, 2022, Manish Ltd. declared dividend and the quantum of dividend eligible for its holding company Skylark Inc. of Country N was ₹ 2.10 crore. The DTAA between India and Country N provides for taxation rate of dividend @15%. Country N is an OECD Country since 1st April, 2012. The DTAA between India and Country N came in to force w.e.f. 1st January, 2017. Later on, India entered in to a DTAA with Country T which came into force w.e.f. 25th April, 2019 which provided for taxation of dividend @ 5%. Country T was a member of

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OECD since 1st January, 2018. On 25th October, 2022, Manish Ltd. celebrated its golden Jubilee and to add colour to the occasion invited Allan Wilson of Italy, a famous football player and Richie Rich a famous cricket umpire from Australia. The company paid ₹ 20 lakhs to Allan Wilson and ₹ 10 lakhs to Richie Rich. It was agreed that the company would bear their income tax liability in respect of those incomes.

Manish Ltd. has a subsidiary company in a low tax jurisdiction with 90% shareholding. It has made its investment in the subsidiary by way of share capital of ₹ 45 crores. The normal profit of the subsidiary company is 20% of capital employed. Manish Ltd. on 20th August, 2022 received 90% of the post-tax profits of the subsidiary company of the year ended 31st March, 2022 being ₹ 8.10 crore by way of interest-free loan.

Availing service from foreign companies

Donald, the Production Manager of Dolly GmbH of Germany, was sent to Manish Ltd. for doing some supervisory activities for quality control of goods manufactured in India by Manish Ltd. He was paid salary of ₹ 4,50,000 per month by Dolly GmbH. He stayed in India for 2 months during the financial year 2022-23. Donald had no other income in India except the said salary income. Dolly GmbH has no business activity in India and has sent Donald only for short stay in India.

Eagle Ltd. of Country S rendered some technical services to Manish Ltd. during the previous year 2022-23. The amount payable to Eagle Ltd. towards fee for technical services (FTS) amounts to ₹ 200 lakhs. The treaty between India and Country S provides for 10% as tax withholding rate on FTS. The agreement is not covered by any approval from Indian Government. The services were rendered for Manish Ltd. in India by the

personnel deputed by Eagle Ltd. (who are regular employees of Eagle Ltd.). The period of stay of employees was from 1.7.2022 to 30.11.2022. Salary of those employees for the period of stay aggregating to ₹ 60 lakhs was paid directly in India by Manish Ltd. However, the original employer of those employees viz; Eagle Ltd. paid them special allowance in to their bank account in Country S aggregating to ₹ 15 lakhs (converted in INR).

Jagdish, CEO of Manish Ltd.

Jagdish was Chief Executive Officer of Manish Ltd. for about 30 years and up to 31.07.2018. He had acquired an apartment in the financial year 2017-18 for ₹ 40 lakhs of which only 50% was disclosed in his ITR filed for assessment year 2018-19. Based on the information from the Enforcement Directorate vide its report dated 05.06.2021 it came to light that the apartment was acquired outside India by earning income in India which was not disclosed for income-tax purposes. Notice under section 10 of the Black Money Act was issued on 30th June, 2022. The fair market value of the apartment as on 01.04.2021 was ₹ 80 lakhs and as on 01.04.2022 ₹ 100 lakhs.

Ramesh, Director of Manish Ltd.

Ramesh is a director of Manish Ltd. who joined on 01.10.2022. His income in India for the previous year 2022-23 consisted of (i) salary income without deduction under section 16(ia) ₹ 21 lakhs (computed); (ii) received as unit holder of Real Estate Investment Trust (REIT) ₹ 2,84,400 being interest component received from Hyper Ltd. a special purpose vehicle who has opted for section 115BAA. His income outside India for the year ended 31.03.2023 consisted of (a) Gross rent from a property in Country X ₹ 5 lakhs; (ii) loss from rubber business in Country Y ₹ 3 lakhs; and (iii) agricultural income in

Country Z ₹ 2 lakhs. The rate of tax in Country X, Country Y and Country Z are 25%, 15% and 20% respectively. The DTAA between India and Country Z provides for income from agriculture being taxed in the source State and not taxable in the resident State. There is no agreement between India and Country X and between India and Country Y. Assume there is no basic exemption limit in foreign countries where he has earned income and that he has opted for section 115BAC of the Income-tax Act, 1961.

REQUIRED

Choose the correct alternative for the following MCQs :

5×2
=10

3.1 What is the income tax payable by Manish Ltd. for the payments made to Allan Wilson and Richie Rich respectively ?

- (A) ₹ 5.25 lakhs/ 4.29 lakhs
- (B) ₹ 4.53 lakhs / 4.29 lakhs
- (C) ₹ 5.25 lakhs / ₹ 4.53 lakhs
- (D) ₹ 5 lakhs / 4.53 lakhs

3.2 How much is the optimal tax liability of Donald in respect of his salary income in India for the assessment year 2023-24 ?

- (A) ₹ 85,800
- (B) ₹ 62,400
- (C) ₹ 54,600
- (D) ₹ Nil

3.3 What is the scope of section 192 for Manish Ltd. in respect of the salary paid by it to the employees of Eagle Ltd. in India and special allowance paid to them in USA by Eagle Ltd. ?

- (A) TDS U/s 192 would apply only in respect of salary paid to them in India by Manish Ltd.
- (B) TDS at the rate applicable for fee for technical services as per DTAA between India and USA or at the rate prescribed whichever is lower is deductible.
- (C) TDS U/s 192 would apply both for salary paid to them in India by Manish Ltd. and allowance paid by Eagle Ltd. in USA to those employees.
- (D) TDS at the rate applicable for fee for technical services as per DTAA between India and USA or at the rate prescribed rate whichever is higher.

3.4 Which of the BEPS action plan is intended to curb the act of Manish Ltd. obtaining its share of dividend in the guise of loan from the subsidiary company located in low tax jurisdiction ?

- (A) Action Plan 5 – Counter harmful tax practices
- (B) Action Plan 4 – Interest deductions and other financial payments
- (C) Action Plan 3 – Strengthen Controlled Foreign Company Rules
- (D) Action Plan 2 – Neutralise the effects of hybrid mismatch arrangements

3.5 How much would be the undisclosed foreign asset liable to tax under the Black Money (Undisclosed Foreign income and Assets) and Imposition of Tax Act, 2015 in the hands of Jagdish ?

- (A) ₹ 40 lakhs
- (B) ₹ 50 lakhs
- (C) ₹ 80 lakhs
- (D) ₹ 100 lakhs

DESCRIPTIVE QUESTIONS

You are required to answer the following questions :

- 3.6 (i) Examine whether as per UN Model Convention, Eagle Ltd. had PE in India in the previous year 2022-23 ? (ii) State the documents to be furnished by Eagle Ltd. to obtain treaty benefit in respect of its income by way of FTS. (iii) Would your answer be different, if the employees of Eagle Ltd. stay up to 10.01.2023, as per the OECD Model Convention ? 5
- 3.7 Compute the total income and tax liability of Ramesh for the assessment year 2023-24. [Tax rates may be calculated upto 2 decimal places] 4
- 3.8 Explain briefly what is meant by the 'Most Favoured Nation' clause in treaties and examine whether Skylark Inc. can seek concessional rate of tax in respect of its dividend income by invoking the said clause based on the DTAA between India and Country T. Assume that the protocol annexed to India's DTAA's with all the OECD member countries contain the tax parity clause. 6

CASE STUDY – 4 :**Rohan Ltd., Kolkata**

Rohan Ltd., Kolkata, an associated enterprise of Glamour Inc. of USA, is engaged in manufacturing activities besides software development. The following aspects/ information are made available to you:

(i) *Software development :*

During the financial year 2022-23, Glamour Inc. bid a contract for USD 500 million for software development meant for use in medical treatment. Rohan Ltd., Glamour Inc. and yet another group company were involved in developing the software contributing 40%, 30% and 30% respectively. The cost incurred by Rohan Ltd. was USD 50 million. The total profit earned by Glamour Inc. was USD 150 million. The Glamour Inc. shared revenue of USD 100 million to its Indian subsidiary Rohan Ltd.

(ii) *Royalty due to Mike Ltd. :*

Rohan Ltd. entered into an agreement in April, 2022 with Mike Ltd. of UK for use of technology owned by Mike Ltd. to develop software, being the patented product of Mike Ltd. The agreement was a regular agreement with neither the approval thereof from the Central Government, nor being covered in the Industrial Policy of the Central Government. As per the agreement, Rohan Ltd. had to pay ₹ 55 lakhs as royalty to Mike Ltd. for the year ended 31st March, 2023. The DTAA between India and UK provides for withholding tax @ 15%.

(iii) *Liability to additional income-tax :*

For the assessment year 2021-22, an addition of ₹ 205 lakhs due to ALP adjustment, was determined in the assessment of Rohan Ltd., which was completed on 31st December, 2022. The assessee had filed the ITR of assessment year 2021-22 in March, 2022 under section 139(4) and had decided to accept the addition to the ALP made by the Assessing Officer vide order dated 31st December, 2022. The additional income-tax and interest was paid, on 10th April, 2023. All the transactions of Rohan Ltd. were denominated in US dollars. The rate of interest applicable is @ 6-month LIBOR as on 30th September 2022 may be taken as 6%.

(iv) *Remittance of tax for own sources and seeking refund :*

In March, 2023, Rohan Ltd. had to pay ₹ 25 lakhs to McDermott Ltd. of Country N for availing certain services. As per agreement between the parties, tax deductible on such income under section 195 had to be borne by Rohan Ltd. The said services were rendered by McDermott Ltd. online and no personnel came to India for rendering the said service. Rohan Ltd. remitted on 31st March, 2023 the tax deductible under section 195. The DTAA between India and Country N provided for no tax in respect of such transaction. Rohan Ltd. now wants to invoke relevant provisions of the Income-tax Act, 1961 to seek refund of tax so remitted by it previously.

(v) *Tax consequence of one of the directors :*

Chatterjee (aged 65) is one of the directors of Rohan Ltd., whose residential status for the assessment year 2023-24 is non-resident. He received ₹ 3 lakhs being component of rental income distributed by a REIT in which he is a unit holder. He received ₹ 2 lakhs by way of dividend component distributed by the REIT and the company whose income was so distributed by the REIT had exercised option under section 115BAA. Chatterjee has to pay income-tax both on the aforesaid rental income and dividend income components in the country of which he is presently a resident, under appropriate heads of income there.

(vi) *Payment of fee for technical services :*

Rohan Ltd. had imported some machines from Blue Moon Ltd. of Country A. Since the machines did not operate at 100% efficiency, Rohan Ltd. solicited the services of the supplier who deputed its engineers to Rohan Ltd. The engineers came on 2nd June, 2022 and returned on 13th June, 2022. Again, the engineers came on 4th October, 2022 and returned on 28th March, 2023. It paid ₹ 50 lakhs to Blue Moon Ltd. on 28.3.2023 net of the withholding tax, as per the provisions of Income tax Act, 1961. The agreement for getting technical services and fee payable thereon is covered by approval from the Central Government.

(vii) *David & Co LLP, Singapore :*

David & Co LLP in Singapore is a non-resident entity in which Rohan Ltd. has 30% profit sharing rights. David & Co LLP is an e-commerce operator who sold goods of Rohan Ltd. The receipts of David & Co LLP for the financial year 2022-23 consisted of (i) ₹ 180 lakhs received for sale of goods from persons resident in India; and (ii) ₹ 66 lakhs received for sale of goods from persons who are not residents of India but residents in Europe. The said sum of ₹ 66 lakhs included receipt of ₹ 40 lakhs from persons who used internet protocol address located in India.

REQUIRED

Choose the most appropriate alternative for the following MCQs :

5×2
=10

- 4.1 What would be the additional income tax liability and interest (if any) payable by Rohan Ltd., when it makes payment on 10th April, 2023 ?
- (A) Additional income-tax liability ₹ 42,98,112 plus interest ₹ 1,05,981
 (B) Additional income tax liability ₹ 20,96,640 plus interest ₹ 53,134
 (C) Additional income tax liability ₹ 22,01,472 plus interest ₹ 54,283
 (D) Additional income tax liability ₹ 42,98,112 plus interest ₹ 1,07,041
- 4.2 Which of the following statement is correct in respect of tax liability of Mike Ltd. (In India) on the royalty paid by Rohan Ltd. ?
- (A) No tax Liability being non-resident.
 (B) Liability computed under normal provisions of Income Tax Act.
 (C) Liability as computed as per India-UK DTAA.
 (D) Liability as computed under the provisions of the Income Tax Act and as per India-UK DTAA whichever is lower.

4.3 Assuming that Chatterjee is liable to pay income-tax in India in respect of rental income and dividend income distributed by REIT and also has to pay tax in the country where he is presently a resident, it is an example of

- (A) Territorial double taxation
- (B) Economic double taxation
- (C) Juridical double taxation
- (D) Municipal double taxation

4.4 What should be the tax deducted at source by REIT in respect of payments made to Chatterjee ?

- (A) @ 30% on rental component of income distributed and @ 10% on dividend component of income distributed by the REIT.
- (B) @ 31.2% on rental component of income distributed and @ 10.4% on dividend component of income distributed by the REIT.
- (C) @ 31.2% on rental component of income distributed and @ 5.2% on dividend component of income distributed by the REIT.
- (D) @ 20% on rental component of income distributed and @ 5% on dividend component of income distributed by the REIT.

4.5 How much should be paid by David & Co LLP, Singapore as equalization levy for the sale of goods for the financial year 2022-23 ?

- (A) ₹ 14,76,000
- (B) ₹ 4,92,000
- (C) ₹ 13,20,000
- (D) ₹ 4,40,000

DESCRIPTIVE QUESTIONS

You are required to answer the following descriptive questions :

- 4.6 Determine the Arm's Length Price (ALP) adjustment in respect of the transaction between Rohan Ltd. and Glamour Inc. What would be the ALP adjustment in the hands of Rohan Ltd., if the Glamour Inc. group has a practice of marking a minimum return of 30% on cost incurred ? **5**
- 4.7 Briefly outline the procedure for Rohan Ltd. to claim refund of tax remitted by it in respect of the amounts paid to McDermott Ltd. as per the provisions of the Income-tax Act, 1961. **5**
- 4.8 Examine whether the permanent establishment of Blue Moon Ltd. is located in India as per the UN Model Convention. How much would be the amount of tax deductible in respect of the payment made towards fees for technical services ? Would your answer be the same, in case the DTAA between India and Country A is as per the OECD Model ? **5**

CASE STUDY – 5 :**Albert Ltd., Mumbai**

Albert Ltd., Mumbai is a subsidiary of Pele Ltd. of Country J. Albert Ltd. has been manufacturing semi-finished goods for supply to Pele Ltd. Also, it sold goods to unrelated parties, both in India and world-wide. The annual turnover of Albert Ltd. is ₹ 500 to ₹ 600 crores, while the annual turnover of Pele Ltd. was more than ₹ 7,000 crores. The accounting year of Country J is the same as that India that is 1st April to 31st March. Albert Ltd. is the notified resident constituent entity who furnished the CbC report for the year ended 31st March, 2022 on 9th April, 2023.

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Marks

Albert Ltd. has paid ₹ 3,00,000 to Hendricks Ltd., UK for procuring online advertisement space up to 31.10.2022 and had to pay ₹ 4,00,000 being the balance amount for the year ended 31.03.2023.

Albert Ltd. has been undertaking supply of goods to its associated enterprises in foreign jurisdictions. It has identified comparable enterprises who have undertaken similar transactions and the data set constructed with the comparable entities is given below for the year ended 31.03.2023 :

S. No	1	2	3	4	5	6	7
Company	A Co Ltd.	B Co Ltd.	C Co Ltd.	D Co Ltd.	E Co Ltd.	F Co Ltd.	G Co Ltd.
Values	3.2%	7%	9.2%	10%	11.10%	12.9%	13%

The Transfer price of the international transaction of Albert Ltd. is computed at 6.8%. The total transaction value by way of supply of goods to the AEs is ₹ 150 crores for the financial year 2022-23.

APA and rollback options

Albert Ltd. applied for Advance Pricing Agreement (APA) in June, 2022 and it was entered into on 1st September, 2022. It applied for rollback in November, 2022 and it was entered into on 20th January, 2023. For assessment year 2021-22, the ITR was filed under section 139(4) in March, 2022. For the assessment year 2020-21, there was some dispute about the ALP determination and it was contested before CIT (Appeals) who decided against the assessee in May 2022. For the assessment year 2019-20, against transfer pricing adjustment, appeal was made to the ITAT and it was decided against the assessee by the ITAT in November, 2022.

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P.T.O.

Pele Ltd., Country J

Pele Ltd. was already engaged in the supply of mobile handsets directly to customers throughout South East Asia except India. During the financial year 2022-23, it supplied mobile handsets to various customers in India directly, based on their orders procured through internet facility. For the financial year 2022-23, the total direct sale of mobile handsets to customers in India was ₹ 240 lakhs. It may be noted that the branch of Pele Ltd. at Chennai was not engaged in the supply of such type of mobile handsets in India. The gross profit mark-up was 20% in respect of mobile handsets directly sold by Pele Ltd. to the customers in India.

Kishore, CFO of Albert Ltd.

Kishore a Chartered Accountant joined Albert Ltd. as CFO on 01.11.2022 after remaining in employment as General Manager (Finance) of Brita Ltd. of Country K. He is originally a citizen of India who went on employment outside India in April, 2015 and had been visiting India for 40 days in every financial year up to the financial year 2021-22. He returned to India permanently on 1st July, 2022 but was appointed as CFO position by Albert Ltd. w.e.f. 1st November, 2022.

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Kishore gifted a vacant land at Jaipur to his sister Sujata (non-resident) residing in Singapore, on 05.03.2023. The circle rate (stamp duty valuation) of the vacant land on the date of gift was ₹ 25 lakhs. On 14th January, 2023, he made a cash gift of ₹ 9 lakhs through online transfer to his friend Hardik (non-resident) who resides in Dubai on the occasion of Hardik's 50th birthday.

Kishore has the following incomes for the financial year 2022-23:

- (i) Salary from Brita Ltd. up to 30.06.2022 at USD 12,000 per month.
- (ii) House property in Country K was let out throughout the financial year 2022-23 for USD 1,000 p.m. Assume that there is no deduction in Country K similar to section 24 of the Income-tax Act, 1961.
- (iii) Dividend from Indian companies (gross) ₹ 1,08,000. All the shares were acquired in April, 2014 when was resident in India.
- (iv) Dividend from companies in Country K (net) received USD 4,000 in March 2023. Assume the rate of TDS on dividend @20%.
- (v) Salary income (computed) from Albert Ltd. ₹ 15,00,000.

Note : TT buying rate on the date of receipt of dividend 1 USD = ₹ 81; on 28.02.2023 ₹ 80; and on 31.03.2023 1 USD = 82.

Kishore paid income-tax in Country K @ 20% and there is no basic exemption limit. He has opted for the provisions of section 115BAC in India,

There is no DTAA between India and Country K.

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P.T.O.

REQUIRED

Choose the most appropriate alternative for the following MCQs :

5×2
=10

5.1 What would be the quantum of penalty leviable on Albert Ltd. (being the reporting entity of international group by name Pele Ltd.) for the delay in filing the CbC report for the year ended 31st March, 2022 ?

(A) ₹ 45,000

(B) ₹ 1,35,000

(C) ₹ 50,000

(D) ₹ 40,000

5.2 How much is the amount liable towards tax deduction at source (TDS) or payable by way of equalization levy (EL) by Albert Ltd. for the online advertisement space obtained from Hendricks Ltd., UK ?

(A) EL ₹ 14,000

(B) TDS ₹ 72,800

(C) EL ₹ 42,000

(D) ₹ 19,600

5.3 How much of income is chargeable to tax in the hands of Chennai branch of Pele Ltd. in respect of mobile handsets directly supplied by Pele Ltd. from Country J to the customers in India ? Assume that there is DTAA between India and Country J as per UN Model Convention.

- (A) No income would be chargeable to tax in the hands of Chennai branch of Pele Ltd. since the supply was made directly from outside India and the branch had no role to play in such supply.
- (B) Since the goods supplied directly were not similar to those sold through the Chennai branch, the force of attraction rule would not apply. Therefore, no income arising thereon is chargeable to tax in India.
- (C) By applying Force of Attraction Rule the gross profit mark-up @20% on total supplies of ₹ 210 lakhs being ₹ 42 lakhs would be deemed to be the income of Pele Ltd. accruing in India and would be taxed in the hands of Chennai branch.
- (D) The overall gross profit ratio of Pele Ltd. would be adopted for the purpose of computing the income earned in respect of supplies made in India and it would be chargeable to tax as income of foreign company separately.

5.4 How much of the gift received by Sujata and Hardik from Kishore is chargeable to Income-tax in India ?

- (A) As both the recipients of gift are non-residents, no income would accrue in India.
- (B) Sujata being relative of Kishore, no income would accrue in India for the gift of vacant land at Jaipur. In the hands of Hardik, ₹ 9 lakhs would be chargeable to income-tax in India.
- (C) ₹ 25 lakhs is chargeable to tax as income in the hands of Sujata as the subject matter of gift viz. vacant land is located in India. The cash gift of ₹ 9 lakhs received by Hardik (from non-relative) is chargeable to tax in India.
- (D) ₹ 25 lakhs is chargeable to tax as income in the hands of Sujata as the subject matter of gift is located in India. The cash gift of ₹ 9 lakhs received by Hardik though from non-relative is not chargeable to tax as the amount was received through online transfer outside India.

5.5 How much will be added to the total income of Albert Ltd. after considering the comparables and data set constructed and furnished in the Case Study ?

- (A) ₹ 4.80 crores
- (B) ₹ 3.60 crores
- (C) ₹ 4.485 crores
- (D) No addition to the total income is required because of ALP adjustment

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Marks

DESCRIPTIVE QUESTIONS

You are required to answer the following descriptive questions :

- 5.6 Compute the total income of Kishore for the assessment year 2023-24 after determining his residential status. [Tax rate calculation may be made upto 2 decimal places] 6
- 5.7 State the legal position as to when Albert Ltd. is not obliged to furnish CbC report of the international group in India ? 5
- 5.8 Briefly state the assessment years for which APA and the rollback provisions would apply for Albert Ltd., indicating whether the roll back benefit can be availed for each of such years involved. 4

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