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CA Final 2022 Suggested Answers · Paper 6C International Taxation (Old Scheme)

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

Case Study 1

Socrates Ltd., Mumbai

Socrates Ltd. is engaged in redistribution of air coolers in India which are manufactured by its AE Aristotle Inc., USA. It is also engaged in redistribution of air coolers in India manufactured by Walters Ltd. of UK which is an unrelated party. During the financial year 2021-22, Socrates Ltd. sold 1.8 lakh air coolers of Aristotle Inc. and 60,000 air coolers of Walters Ltd. The gross profit margin was 10% of sales in the case of Aristotle Inc. and 20% of sales in the case of Walters Ltd.

Aristotle Inc. is an internationally recognized brand and industry estimates peg the benefit of the brand value at 1% of sales. Walters Ltd. extended 3 months credit period and whereas Aristotle 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 Socrates Ltd. in the financial year 2021-22 in respect of redistribution of goods of Aristotle Inc., was ₹90 crores and whereas it was ₹36 crores in respect of Walters Ltd.

In light of the significant increase in the volume of business and to mitigate the risks of a transfer pricing litigation, Socrates Ltd. filed for an Advance Pricing Agreement and concluded the same in January 2021. It was valid for financial years beginning 2020-21. The APA which was signed also included a rollback provision.

During the course of its business, Socrates Ltd. entered into an agreement for management consultancy services from McKolsey GmbH, Germany. As per the agreement, McKolsey GmbH, Germany was required to send its consultant{s) for conducting a work place improvement and productivity enhancement study at Socrates facilities. The said consultants were required to study certain process and practices of Socrates Ltd. at different locations where it operated and suggest areas of improvement. The consultant(s) were required to be present at the facilities of Socrates for specified time limit to complete the ground work as agreed in the agreement.

McKolsey GmbH sent an expert in air cooler industry, Dr. Richards, to India. Dr. Richards was an employee of McKolsey and had resigned a few months before coming to India. However, Dr. Richards was working for McKolsey as a consultant and was sent to India for this special project. Socrates Ltd. is required to pay ₹ 150 lakhs to McKolsey GmbH for the management consultancy services including those furnished by Dr. Richards who came on their behalf and stayed in India.

The Suggested Answers for Final Paper 6C: International Taxation, in so far as they relate to questions involving application of the provisions of Indian tax laws, are based on the provisions of direct tax laws as amended by the Finance Act, 2021.

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

Additional advertising efforts including digital marketing

Vivi Digital Services Pte Ltd. is a company registered in Singapore. Vivi Digital owns, operates and manages a digital platform for online sale of air coolers. Vivi Digital operates the platform 'buycoolers.com' which facilitates sale of air coolers owned by companies which are registered as sellers on its platform. Aristotle Inc, USA, entered into an agreement with Vivi Digital to register itself as a seller on the platform. Aristotle Inc wanted to sell certain high-end air coolers which were not currently marketed by Socrates Ltd. Vivi Digital facilitated sale of goods of Aristotle Inc to customers in India during the financial year 2021-22. During the said year, Aristotle was able to sell additional air coolers worth ₹ 5.60 crores through the buycooler.com platform to customers in India directly.

Aristotle Inc, USA

Aristotle Inc. USA besides supplying goods to Socrates Ltd. and selling its high-end air coolers on the digital platform was also engaged in systematic and continuous solicitation of business activities with users in India. Aristotle wanted to get a better understanding of the market and users in India to be able to expand its operations. During the financial year 2021-22, Aristotle Inc had its own website and was also using third party companies to engage in interaction with users directly. As per the last count, Aristotle had 2,50,000 users in India (i.e., who had IP address in India). Separately, Aristotle also paid $ 100,000 to Kiwi Research Limited, New Zealand for purchase of data relating to preferences of users residing in India.

Brand ambassador - Mike Pluto

In early 2021, Mike Pluto, a famous football player, was signed up as a brand ambassador by Aristotle for all its products around the world. In July 2021, Socrates Ltd. was planning the inauguration of a new retail outlet in Delhi which would also sell Aristotle air coolers.

In June 2021, Mike Pluto came to India and participated in a local football tournament organized by RAPTO Co Ltd. in India. He was paid ₹ 10 lakhs as participation fee. He incurred ₹ 4 lakhs towards his travel and stay expenses. Socrates Ltd. agreed to pay ₹ 15 lakhs to Mike Pluto if he attended the inauguration of the new retail outlet since it would be a great advertisement given that he was the brand ambassador. Socrates also agreed to bear the taxes applicable on the said ₹ 15 lakhs, if any.

Mike Pluto extended his stay and attended the inauguration and earned the advertising fee of ₹ 15 lakhs (net of tax applicable). While here in India, Mike Pluto participated in a game show on television and won ₹ 10 lakhs as prize money for winning the game.

Choose the correct alternative for the following MCQs: (5 x 2 = 10 Marks)

1.1 How much is the amount of equalization levy payable for the sales facilitated by Vivi Digital through buycoolers.com for sale of goods of Aristotle Inc, USA?

(A) @2% being ₹ 11.20 lakhs payable by Vivi Digital, Singapore

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(B) *@2% being ₹11.20 lakhs payable by Aristotle Inc, USA*

(C) *NIL*

(D) *@6% being ₹33.60 lakhs payable by Socrates Ltd.*

1.2 *Assuming that the DTAA between India and Germany is as per UN Model, how many days of stay of Dr. Richards in India would lead to existence of PE of McKolsey GmbH in India?*

(A) *90 days in total*

(B) *183 days in the fiscal year*

(C) *183 days in total*

(D) *Dr. Richards' stay in India does not create a PE of McKolsey GmbH since he is not an employee.*

1.3 *For which of the financial years, Socrates Ltd. can avail rollback benefit on the assumption that it has satisfied all other conditions contained in the Income-tax Act, 1961?*

(A) *Financial year 2016-17 to financial year 2019-20*

(B) *Financial year 2015-16 to financial year 2019-20*

(C) *Financial year 2017-18 to financial year 2020-21*

(D) *Financial year 2016-17 to financial year 2020-21*

1.4 *Socrates Ltd. had a dispute on the covered transaction under the APA for financial year 2017-18 and the ITAT has passed an order disposing such appeal as on the date of signing the APA. What would be the years of rollback under such a scenario?*

(A) *Socrates Ltd. can choose the years it wants to apply for rollback and it need not chose all applicable years.*

(B) *Rollback applies to all applicable years and Socrates Ltd. cannot choose. Hence, rollback doesn't apply for any year.*

(C) *Rollback applies to applicable years other than FY 2017-18.*

(D) *Rollback applies to all applicable years including FY 2017-18 and the ITAT order is not to be considered.*

1.5 *If McKolsey GmbH obtains an advance ruling in respect of the taxability of the receipts from the management consultancy agreement with Socrates, such ruling shall be binding on:*

(A) *McKolsey GmbH, in relation to the above receipt.*

(B) *For all similar income streams of McKolsey in India during this year.*

(C) *The Jurisdictional Assessing Officer of McKolsey GmbH in respect of all receipts of McKolsey.*

(D) *McKolsey and the Jurisdictional Assessing Officer of McKolsey in respect of the Socrates Agreement.*

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You are required to answer the following issues:

1.6 Compute the arm's length price of the transaction between Socrates Ltd. and Aristotle Inc. using the most appropriate method and state the amount of income liable for adjustment in the hands of Socrates Ltd., if any. ***(5 Marks)***

1.7 What is the total income and total tax liability of Mike Pluto for the A.Y.2022-23? How much is the amount of income tax liability for Socrates Ltd. in respect of the amount paid to Mike Pluto? Is Mike Pluto required to file ITR for the A.Y.2022-23? ***(6 Marks)***

1.8 State whether Aristotle Inc, USA, being engaged in systematic and continuous soliciting of business with users in India and/or incurring expenditure for obtaining data from KIWI Research Limited, New Zealand would lead to either Aristotle or KIWI Research Limited having a business connection in India? State the tax consequence, if any arising out of such actions for both companies. ***(4 Marks)***

Solution to Case Study 1

Answer to Q.1.1 to 1.5

Q No.	Correct Option
1.1	A
1.2	-[1]
1.3	A
1.4	C
1.5	D[2]

Answer to Q.1.6

As per section 92B, the transactions entered into between Socrates Ltd., an Indian company, and Aristotle Inc., USA, being associated enterprises, for redistribution of air coolers would be international transactions. As Socrates Ltd. purchased air coolers from Aristotle Inc., being an associated enterprise, for redistribution to independent parties and Socrates Ltd. does not add substantial value to such goods, **resale price method** would be the most appropriate method to determine the ALP of the transactions between associated enterprises. Since Socrates Ltd. purchased similar air coolers from Walters Ltd., UK, an unrelated entity, and sold the same to unrelated parties, this transaction can be considered as uncontrolled transaction and the gross profit margin of 20% earned on sale of such air coolers can be considered for the purpose of determining the arm's length price of the transactions between Socrates Ltd. and Aristotle Inc.

[1] *None of the options are correct*

[2] *It is assumed that the advance ruling was pronounced before 1.9.2021 by the Authority for Advance Rulings*

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However, functional adjustments need to be given effect to in arriving at the ALP.

Computation of ALP of transaction between Socrates Ltd. and Aristotle Inc.	
Particulars	**Amount (in ₹)**
Resale price of goods purchased from Aristotle Inc.	90,00,00,000
Less: Profit margin with reference to uncontrolled transaction between Socrates Ltd. and Walters Ltd. (20% on sale)	18,00,00,000
	72,00,00,000
Functional adjustments	
Adjustment for benefit of brand value of Aristotle Inc. [Aristotle Inc. has its brand value internationally. Therefore, adjustment of benefit of brand value has to be carried out to arrive at ALP (1% of sale price)]	90,00,000
Adjustment for credit period [Aristotle Inc. provides credit period of 1 month whereas unrelated party, Walters Ltd. provides credit period of 3 months. Therefore, adjustment for the credit period has to be carried out to arrive at arm's length price (1% x 2 months x ₹ 72,00,00,000)]	(1,44,00,000)
Arm's length Price	**71,46,00,000**

Amount of arm's length adjustment

Particulars	Amount (in ₹)
Resale price of goods purchased from Aristotle Inc.	90,00,00,000
Less: Profit margin (10% on sale)	9,00,00,000
Cost of goods purchased from Aristotle Inc. for redistribution	81,00,00,000
Arm's length purchase price (computed above)	71,46,00,000
Arm's length adjustment	**9,54,00,000**

Answer to Q.1.7

(i) Mike Pluto is a non-resident sportsman deriving income from participation in football tournaments in India and advertisement. Hence the provisions of section 115BBA would apply in this case.

Computation of total income and tax liability of Mike Pluto for A.Y.2022-23

Particulars	₹	₹
Income taxable under section 115BBA		
Income from participation in football tournament in India	10,00,000	
[No deduction is allowable for travel and stay expenses of ₹ 4 lakh]		

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Advertisement [15,00,000 x 100/79.2] (Gross)	18,93,939	
	28,93,939	
Income taxable under section 115BB		
Income from game show on television	10,00,000	
Total income	**38,93,939**	
Tax@ 20% under section 115BBA on ₹ 28,93,939		5,78,788
Tax@ 30% under section 115BB on income of ₹ 10,00,000 from television game show		3,00,000
		8,78,788
Add: Health and Education cess@4%		35,152
Total tax liability of Mike Pluto for the A.Y.2022-23		**9,13,940**

(ii) Amount of TDS borne by Socrates Ltd. in respect of amount paid to Mike Pluto

Amount payable to Mike Pluto (net of taxes) = ₹ 15,00,000

Applicable tax rate = 20% + HEC@4% = 20.8%

Therefore, if ₹ 15,00,000 represents 79.2% (i.e., 100% - TDS 20.8%), then, gross amount would be ₹ 15,00,000 x 100/79.2 = ₹ 18,93,939.

TDS borne by Socrates Ltd. = ₹ 18,93,939 – ₹ 15,00,000 = ₹ 3,93,939

(iii) Requirement for filing ITR for A.Y.2022-23

Section 115BBA provides that if the total income of the non-resident sportsman comprises of only income referred to in that section and tax deductible at source has been fully deducted, it shall not be necessary for him to file his return of income. However, in this case, Mr. Mike Pluto has income from television game show as well. Therefore, he cannot avail the benefit of exemption from filing of return of income as contained in section 115BBA. Hence, he would be liable to file his return of income for A.Y.2022-23.

Answer to Q.1.8

As per section 9(1)(i), business profits of a non-resident/foreign company would be deemed to accrue or arise in India, if such income accrues or arises through or from any business connection in India. In such a case, such income would be taxable in the hands of the non-resident/foreign company in India.

Explanation 2A to section 9(1)(i) provides that significant economic presence of a non-resident in India would also constitute business connection in India. In case of systematic and continuous soliciting of business activities or engaging in interaction with users in India, significant economic presence would be established if the number of users is atleast 3 lakhs.

Since Aristotle Inc., a foreign company based in USA, had only 2,50,000 users in India, business connection is **not** constituted through significant economic presence in India.

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Hence, no income would be deemed to accrue or arise in India in the hands of Aristotle Inc. for the F.Y.2021-22.

Explanation 3A to section 9(1)(i) provides that income attributable to operations in India for establishing business connection would include income from, *inter alia,* sale of data collected from a person who resides in India or from a person who uses internet protocol address located in India.

Income arising to Kiwi Research Limited, a foreign company based in New Zealand, from sale of data to Aristotle Inc. would be deemed to accrue or arise in India through business connection, only if the data is collected from a person who resides in India or from a person who uses internet protocol address located in India. Otherwise, it would not be taxable in India.

Case Study: 2

Edison Ltd., Cochin

Edison Ltd., Cochin, is a company engaged in trading activities. It is an associate of Moon Inc. of USA. The annual consolidated group revenue of Moon Inc. is USD 2,000 million for the accounting year 2021-2022 (TT buying rate on the last day of the accounting year is 1 USD = ₹ 75). Edison Ltd. is one of the constituent entities of Moon Inc Group. (being an international group). The annual turnover of Edison Ltd. always exceeded ₹ 600 crores which included ₹ 100 crores being the volume of transactions with associated enterprises outside India.

During the financial year 2021-2022, some of the significant transactions entered into by Edison Ltd. are:

(1) ***Dividend received:*** *Edison Ltd. has 27 percent equity shareholding in Mc Dermott LCC of USA. It received dividend of ₹ 90 lakhs on 5th February, 2022. It declared Interim dividend of ₹ 40 lakhs on 5th October, 2021. It has income only under the head 'Profits and gains from business or profession' (computed) ₹ 125 lakhs for the assessment year 2022-23 and has opted for section 115BAA.*

(2) ***Transfer Pricing adjustment:*** *Edison Ltd. imported raw materials from its associated enterprise located in Sri Lanka in the previous year 2019-20. The ALP determination by applying the most appropriate method resulted in upward revision of its income by ₹ 140 lakhs. Edison Ltd. has not contested the variation and does not want to do secondary adjustment.*

(3) ***Digital advertising:*** *In order to attract new age customers, Edison Ltd. decided to use digital advertisements for its products. In this connection, it entered into agreement with Tatla Pte of Singapore on January 1, 2022. Tatla Singapore could organize digital advertising space for Edison and Edison paid f 6 lakhs on 5th February, 2022 towards online advertisement of its products to Tatla Pte of Singapore. Edison 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 highlighted this lapse. It remitted the*

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equalization levy amount on 30th April, 2022 as soon as the findings of the Internal audit were known.

(4) ***Business Trust:*** *Edison Ltd. had certain infrastructure project. In order to monetize the same, it contributed those into 'Edison InvIT' and listed the same in accordance with the SEBI guidelines. Edison 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. Edison InvIT paid interest of ₹15 lakhs to a non-resident investor out of the interest income received by it from a SPV.*

(5) ***Purchase of Software:*** *Edison Ltd. acquired a ready to use software from Clinton Inc. of USA for ₹15 lakhs. It also solicited the services of Bimsys Co Ltd., Bengaluru to add some features in the software so purchased to make it perfectly usable for its business. It paid ₹5 lakhs to Bimsys Co Ltd.*

Tripathi, General Manager, Edison Ltd.

Tripathi joined as General Manager of Edison Ltd. in December, 2021. He was in Country 'P' for 10 years and used to visit India in every financial year for a stay of 100 days. He returned to India permanently in March, 2021. During the previous year 2021-2022, 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, 2022:

Salary from Edison Ltd. (after standard deduction)	*24,00,000*
Consultancy income in India (computed)	*5,00,000*
Income from property in Country 'P'	*3,00,000*
Agricultural income in Country 'P'	*2,00,000*
Business loss in Country 'P' (converted in Indian currency)	*(4,00,000)*
Dividend from companies in Country 'P'	*5,00,000*
Rate of tax in Country P (without any basic exemption limit)	*15%*

Note: *Income in Country P converted in INR.*

Ashok (P) Ltd., Mumbai

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

Incorporate a company by name AB Co Ltd. in Country W (which is a low tax jurisdiction) with Ashok (P) Ltd. having 10% share capital and Bimal Co Ltd. to have the balance 90% of equity. The company AB Co Ltd. would have no business activity. It was decided that Bimal Co Ltd. would transfer fraction of its shares in AB Co Ltd. as and when it requires money to Ashok (P)

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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.

Choose the correct alternative for the following MCQs**: **(5 x 2 = 10 Marks)

2.1 How much is the amount of tax payable by Edison Ltd. on dividend income received from Mc Dermott LLC of USA?

(A) ₹ 15,02,280

(B) ₹ 14,32,080

(C) ₹ 8,34,600

(D) ₹ 7,80,000

2.2 Compute the amount of tax payable by Edison Ltd. as a consequence of primary adjustment in respect of its transactions with its associated enterprise in Sri Lanka to get relief from making secondary adjustment.

(A) ₹ 29,35,296

(B) ₹ 26,20,800

(C) ₹ 24,46,080

(D) ₹ 21,84,000

2.3 How much is payable by way of penalty by Edison Ltd. for the delay in remittance of equalization levy?

(A) ₹ 54,000

(B) ₹ 53,000

(C) ₹ 36,000

(D) ₹ 10,000

2.4 At what rate is Edison 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%

2.5 How much is the withholding of tax to be made by Edison Ltd. for the software acquired from Clinton Inc. and how much is deductible at source on the payment made to Bimsys Co Ltd.?

(A) 41.6% on ₹ 15 lakhs and 10% on ₹ 5 lakhs

(B) 10% on ₹ 15 lakhs and Nil on ₹ 5 lakhs

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(C) 20.8% on ₹ 15 lakhs and 20.8% on ₹ 5 lakhs

(D) Nil on ₹ 15 lakhs and 10% on ₹ 5 lakhs

You are required to answer the following issues:

2.6 Is Edison Ltd. required to keep and maintain information and documents as a constituent entity of the international group? Also, state whether it has to furnish any report in this regard. If yes, which report and by which due date? ***(5 Marks)***

2.7 As the Tax Manager of Ashok (P) Ltd., you have to evaluate the proposed plan of action in the light of its permissibility under the Income-tax Act,1961. ***(4 Marks)***

2.8 Compute the tax liability of Tripathi for the assessment year 2022-23. ***(6 Marks)***

Note: *Assume he has not opted for section 115BAC.*

Solution to Case Study 2

Answer to Q.2.1 to 2.5

Q No.	Correct Option
2.1	- [3]
2.2	A
2.3	C
2.4	D
2.5	A or D

Note – The first part of MCQ 2.5 requires how much tax is to be withheld by Edison Ltd., an Indian company for software acquired from Clinton Inc, a US company. The facts of the case given in page 9 simply states that Edison Ltd. acquired a ready to use software from Clinton Inc of USA. The rate of TDS would be 41.6% as per the provisions of the Income-tax Act, 1961, since the question does not mention that the agreement is approved by the Central Government.

The question does not contain the terms of the agreement to decide about the applicability or otherwise of the Supreme Court ruling in *Engineering Analysis Centre of Excellence P. Ltd. v. CIT and Another*. If this ruling is applicable to the case on hand, the correct answer would be Nil for the first part of the question.

Accordingly, either A or D can be chosen as the correct answer, depending on whether or not the Supreme Court ruling is applicable to the case on hand.

[3] *None of the options are correct*

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Answer to Q.2.6

As per section 92D(1)(ii), every person, being constituent entity of an international group, has to keep and maintain the prescribed information and document in respect of the international group.

Rule 10DA provides that every person, being a constituent entity of an international group shall–

(i) if the consolidated group revenue of the international group, of which such person is a constituent entity, as reflected in the consolidated financial statement of the international group for the accounting year, exceeds ₹ 500 crore; and

(ii) the aggregate value of international transactions –

(A) during the accounting year, as per the books of accounts, exceeds ₹ 50 crore, or

(B) in respect of purchase, sale, transfer, lease or use of intangible property during the accounting year, as per the books of accounts, exceeds ₹ 10 crore

keep and maintain information and documents of the international group.

The rate of exchange for the calculation of the value in rupees of the consolidated group revenue in foreign currency would be the TTBR of such currency on the last day of the accounting year.

In the given case, Edison, being the constituent entity, is required to keep and maintain information and documents since the consolidated group revenue for the accounting year 2021-22 exceeds the threshold of ₹ 500 crores (i.e., ₹ 15,000 crore, in this case) and the aggregate value of international transaction of Edison Ltd. during the accounting year exceeds ₹ 50 crore (i.e., it is ₹ 100 crore, in this case).

Yes, it has to furnish report in Form No. 3CEAA to the Joint Director as may be designated by PDGIT (Systems) or DGIT (Systems) and it shall be furnished on or before the due date for furnishing the return of income specified under section 139(1) i.e., 30th November, 2022.

Where there is more than one constituent entity of an international group require to file the information and documents under sub-rule (2) of Rule 10DA, Form 3CEAA may be furnished by –

i) any one constituent entity which has been designated for this purpose; and

ii) the information has to be conveyed to the Joint Director as may be designated by PGIT (Systems) or DGIT (Systems) as the case may be in Form 3CEAB atleast 30 days before the due date of furnishing return under section 139(1), i.e., before 31st October, 2022.

Answer to Q.2.7

The arrangement of routing money through AB Co Ltd. results in a tax benefit. Since there is no business purpose in incorporating AB Co Ltd. in Country W, which is a Low tax jurisdiction, it can be said that the main purpose of the arrangement is to obtain a tax benefit on account of capital gains being tax free in both Country Z and Country W as per the domestic laws of these countries. The alternate course available in this case is direct advance given by Ashok (P) Ltd.

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to Bimal Co. Ltd. However, in that case, it would be deemed as dividend under section 2(22)(e) and would be chargeable to tax in the hands of Bimal Co. Ltd.

As per section 96, impermissible avoidance arrangement means an arrangement where the main purpose is to obtain tax benefit and it -

i. creates rights or obligations, which are not ordinarily created between persons dealing at arm's length;

ii. results directly or indirectly, in the misuse or abuse, of the provisions of the Act; or

iii. lacks commercial substance or is deemed to lack commercial substance under section 97, in whole or in part; or

iv. is entered into or carried out, by means of, or in aa manner, which are not ordinarily employed for *bona fide* purposes.

Hence, the arrangement may be deemed to lack commercial substance, GAAR may be invoked.

However, if the tax benefit in the relevant assessment year arising, in aggregate, to all the parties to the arrangement does not exceed ₹ 3 crore, then, GAAR provisions would not be invoked.

Answer to Q.2.8

Tripathi would be a resident in India for A.Y. 2022-23 since he has stayed in India throughout the year and satisfied the basic condition of stay in India for 182 days or more during the P.Y. 2021-22.

Tripathi would be resident and ordinarily resident for A.Y. 2022-23 if -

- he has during the 7 previous years preceding the relevant previous year been in India for a period of 730 days or more; and
- he has been resident in India at least 2 out of the 10 previous years preceding the relevant previous year

Both the conditions have to be satisfied for being a Resident and Ordinarily Resident. Since Tripathi does not satisfy the above mentioned conditions cumulatively, he would be resident but not ordinarily resident (RNOR) in India for A.Y. 2022-23.

As per section 5(1), in case of a resident but nor ordinarily resident,

- income which accrues or arises or which is deemed to accrue or arise to him in India or
- income which is received or is deemed to be received in India or
- income which accrues or arises to him outside India from a business controlled in or profession set up in India

would be includible in his total income.

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Computation of tax liability of Tripathi for A.Y. 2022-23

Particulars	Amount (₹)
Salary from Edison Ltd. (computed) [accrues and arises in India]	24,00,000
Consultancy income in India (computed) [accrues and arises in India]	5,00,000
Income from Property in Country "P" [neither accrues or arises nor is received in India]	-
Agricultural income in Country "P" [neither accrues or arises nor is received in India]	-
Business loss in Country "P" [neither accrues or arises nor is received in India]	-
Dividend from companies in Country "P" [neither accrues or arises nor is received in India]	-
Total Income	**29,00,000**
Computation of tax liability	
Tax on ₹ 19,00,000 [₹ 29,00,000 – ₹ 10,00,000] x 30% *plus* ₹ 1,12,500	6,82,500
Add: Health and education cess@4%	27,300
Tax Liability	**7,09,800**

Note – *In the facts (given in page 10 of the question paper) relating to Mr. Tripathi, it is not mentioned that whether the income accrued or arisen in Country "P" is received in India or not. Since Mr. Tripathi is a resident but not resident in India for A.Y. 2022-23, income accrued or arisen in Country "P" would be taxable in India only if it is received in India. In the absence of relevant information, the main solution has been worked out assuming income of Country "P" has not been received in India and hence, not taxable in India in the hands of Tripathi.*

However, if it is assumed that income of Country "P" is received in India and hence, would be subject to tax in India, tax liability of Tripathi would be as given below –

Computation of tax liability of Tripathi for A.Y. 2022-23

Particulars		Amount (₹)
Salary from Edison Ltd. (computed) [accrues and arises in India]		24,00,000
Income from property in Country "P" [Assumed to be received in India]		3,00,000
Consultancy income in India (computed) [accrues and arises in India]	5,00,000	
Less: Set off of business loss in Country "P"	4,00,000	1,00,000
Agricultural income in Country "P" [Assumed to be received in India]		2,00,000
Dividend from companies in Country "P" [Assumed to be received in India]		5,00,000
Total Income		**35,00,000**

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Computation of tax liability	₹
Tax on ₹ 25,00,000 [₹ 35 lakhs – ₹ 10 lakhs] x 30% *plus* ₹ 1,12,500	8,62,500
Add: Health and education cess@4%	34,500
Tax Liability	**8,97,000**
Average rate of tax in India [₹ 8,97,000/ ₹ 35,00,000 x 100] = 25.628%	
Tax rate in Country P = 15%	
Doubly taxed income = ₹ 3,00,000, being income from property + ₹ 2,00,000, being agricultural income + ₹ 5,00,000, being dividend – ₹ 4,00,000, being business loss = ₹ 6,00,000	
Relief under section 91 [Doubly taxed income x rate of tax in Country P or average rate of tax in India, whichever is lower (₹ 6,00,000 x 15%)]	90,000
Tax payable	**8,07,000**

Note – *In the facts (given in page 10 of the question paper), income from property in Country "P" is given as ₹ 3,00,000. It is not mentioned whether it is computed after giving deduction of 30% u/s 24(a) or it is the rental income. The above solution has been worked assuming it is the income computed from property after providing deduction of 30%. However, if it is assumed that the same is rental income, deduction of 30% has to be provided. In such a case, total income of Tripathi would be ₹ 34,10,000 and tax liability (before relief) would be ₹ 8,68,920. Doubly taxed income and relief u/s 91 would be ₹ 5,10,000 and ₹ 76,500, respectively. The tax payable by Tripathi would be ₹ 7,92,420.*

Case Study: 3

Mr. Ram is a citizen of India who has been a Non-resident for Indian tax and exchange control purposes. Ram holds 40% of voting power in ACo Inc, a company incorporated under the law of Country A. For the purpose of expansion of business, the said company enters into an agreement with MinMax Ltd., a company incorporated under the Indian laws. ACo Inc does not hold shares in MinMax Ltd. but only enters into a 'preferred distributor' agreement.

Business activities of MinMax Ltd.

As per one of the clauses of the above agreement, A Co Inc has the power to appoint 7 directors out of the 12 directors on the Board of MinMax Ltd. Mr. Ram is appointed as one of the Directors of the Indian company, MinMax Ltd. This is to exercise control over the operations of MinMax Ltd. and to ensure that interests of A Co Inc are protected and that MinMax does not enter into any agreement or business relationship with competitors of ACo Inc.

The total purchase by MinMax Ltd. for the F.Y. 2021-22 is estimated to be ₹ 500 Crores, out of which, purchase of ₹ 50 Crores would be sourced locally and the balance is to be supplied by ACo Inc. The price for entire purchase has been fixed in the agreement and the conditions for supply are determined by ACo Inc.

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MinMax Ltd. would need to expand its operations to cater to the demands of ACo Inc and proposes to borrow ₹200 Crores from State Bank of India (SBI). Since the borrowing is for the purposes of operations of ACo Inc, 100% of the guarantees required by the Bank are provided by ACo Inc. This is the first time that ACo Inc has given guarantees to an unrelated company. The total borrowings of MinMax Ltd. is ₹1000 Crores.

MinMax Ltd. buys mobile phones from ACo Inc. The mobile phones are branded for which royalty of ₹100 per mobile phone sold is paid to ACo Inc. Similar mobile phones are sold to other customers in India by ACo Inc directly. The credit period offered to MinMax Ltd. is 2 months, whereas other customers pay immediately. During the F.Y.2021-22, 10 lakh mobile phones were bought for an aggregate sum of ₹2600 Crores from ACo Inc. Assume the royalty is included in ₹2600 Crores. The entire purchase of MinMax Ltd. were sold in the F.Y. 2021-22. MinMax Ltd. failed to report ACo Inc as an Associated Enterprise and transactions with them were not reported as 'international transactions'. MinMax Ltd. has received a notice from the Income Tax department in this regard. MinMax Ltd. is now considering the option of filing Form 3CEB and TP study/documentation relating to determination of Arm's Length Price.

Contract with BigData Company

During the financial year 2020-2021, MinMax Ltd. entered into an agreement with BigData 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. The agreement required an advance payment of USD 100,000. The payment being made by a resident company (i.e., MinMax Ltd.), taxes were required to be withheld at source under section 195 of the Act and net amount was to be remitted to BigData Company. BigData Company has drawn the attention of MinMax to a clause in the agreement which requires MinMax to pay the agreed amounts to BigData Company in full and that MinMax needs to bear the taxes in India, if applicable. Accordingly, the said advance of USD 100,000 has been paid to BigData Company on March 31, 2022.

Nesla Inc owned by Ram

Nesla Inc, a company manufacturing Electric vehicles. Nesla Inc is owned by Mr. Ram and is a company headquartered in Country A. Mr. Jeff is citizen and resident of Country A since 2005 and has been working in Nesla. Mr. Jeff is appointed as Head of South Asia - Operations in April 2021 to understand the prospects in South Asian market and preparation of a plan for selling vehicles in the South Asian market. Presently Ram's enterprises are not engaged in any business in South Asia.

Jeff travels to India in April 2021 and stays in a hotel in New Delhi for ten days. Thereafter, Jeff travels extensively in India, Sri Lanka, Singapore, etc. to meet prospective dealers, automobile experts, etc. Jeff also gives interviews in various auto magazines and automobile shows on TV about the plans of Nesla. Jeff's job requires him to visit his head office in Country A every 25 days for reporting purposes. When Jeff visits the headquarters in June 2021, he discusses the possibility of importing one Model-N Electric vehicle of Nesla Inc. He feels that display of the car in India to prospective customers would increase the interest in the company's products.

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Ram approves the plan and one Model-N 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 of ₹ 5,00,000·per month rent to Nesla Inc for space for displaying the car. Many prospective customers reach out to Jeff wanting to place orders for the car. Jeff informs that he is not autorised to obtain orders and the orders, if any, have to be placed directly on Nesla and the cars have to be imported directly by those who are interested. Given the increased interest, Mr. Jeff also meets prospective businessmen who could be appointed as dealers. It is decided that Nesla would appoint dealers in India and start selling their cars from April 2022. Jeff concludes the financial year 2021-2022 with a clear plan for India. He ends up spending about 80 days in India in the financial year.

Choose the correct alternative from the following MCQs: ***(5 x 2 = 10 Marks)***

3.1 As regards the requirement for Mr. Ram to obtain a Permanent Account Number (PAN) in India, which of the below statements are true?

(A) Ram is required to obtain a PAN if he has taxable income in India

(B) Ram is required to obtain a PAN since he is a director of an Indian company

(C) Ram is required to obtain a PAN since he is a director and has taxable Income

(D) Ram is not required to obtain a PAN in India

3.2 In respect of transfer pricing provisions, which of the following statement is NOT true?

(A) The Assessing Officer has powers to determine arm's length price if information and documents relating to an international transaction has not been maintained by the taxpayer.

(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) Where in respect of any international transaction, the assessee has not furnished the report u/s 92E, the TPO can apply the transfer pricing provisions on the same.

(D) The Assessing Officer will proceed for the assessment in conformity with the ALP as determined by the TPO.

3.3 Which of the below statement is False?

(A) 2% penalty is to be levied if the persons fail to report the international transaction which is required to be reported.

(B) The penalty of ₹ 2 lakhs shall be payable if the persons fail to file the report of an accountant.

(C) The penalty u/s 271AA shall be in addition and not in substitution of penalty u/s 271BA.

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(D) *Failure to report any international transaction would be considered as misreporting of income and 200% of the tax payable on underreported Income.*

3.4 *In respect of taxability of Mr. Jeff's salary (resident of Country A - India has a DTAA following UN Model), which statement is true?*

(A) *Salary is taxable for 80 days because he has rendered services in India.*

(B) *Salary is taxable, but he can claim short stay exemption because his stay is less than 90 days in India.*

(C) *Salary is not taxable, because the foreign enterprise is not engaged in any business or trade in India.*

(D) *Salary is not taxable because the remuneration is not liable to be deducted from the income of the employer chargeable under Income Tax Act, 1961.*

3.5 *Which is the most appropriate method for determining the arm's length price of the transaction of purchase of mobile phones by MinMax Ltd. from ACo Inc:*

(A) *Comparable Uncontrolled Price Method*

(B) *Resale Price Method*

(C) *Profit Split Method*

(D) *Cost Plus Method*

You are required to answer the following issues:

3.6 *Are ACo Inc and MinMax Ltd. 'associated enterprises'? If they are, list all the circumstances which lead to the conclusion that they are associated enterprises.* ***(4 Marks)***

3.7 *You are a practising Chartered Accountant specializing in International taxation and Nesla Inc approaches you to advise them on India tax implications of their presence in India. What would your advice be on presence of a Permanent Establishment, filing of returns or compliances, if any, for the F.Y. 2021-22.* ***(5 Marks)***

3.8 *In respect of the payment of USD 100,000 made to BigData Company on March 31, 2022, you are required to advise on the following:*

(a) *MinMax Ltd. has not complied with the TDS provisions until date. What is the amount to be remitted if taxes are to be grossed up assuming a TDS rate of 10%? And what amount needs to be deposited today with applicable interest? (Assume applicable exchange rate to be 1 USD = 75.60 INR)* ***(3 Marks)***

(b) *No work has commenced on the project as on date. MinMax Ltd. is contemplating cancelation 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?* ***(3 Marks)***

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Solution to Case Study 3

Answer to Q.3.1 to 3.5

Q No.	Correct Option
3.1	B
3.2	B
3.3	B
3.4	-[4]
3.5	A

Answer to Q.3.6

Yes, Minimax Ltd., an Indian company, and A Co. Inc., a Country A company, are deemed to be associated enterprises, if they fall under any one or more of the situations contained in section 92A(2). In this case, they fulfill the following three conditions in section 92A(2) –

	Condition for Deemed Associated Enterprise (AE)	Fulfilment of condition in this case	
(i)	One enterprise appoints more than half of the Board of Directors of the other enterprise	A Co has the power to appoint 7 directors out of the 12 directors on the Board of MinMax Ltd, which is more than half.	If this power is exercised by A Co, then, MinMax Ltd. and A Co. would be deemed AEs.
(ii)	90% or more of raw materials/ consumables required for manufacturing by one enterprise are supplied by the other enterprise, and the prices and other conditions relating to the supply are influenced by such other enterprise	90% of purchases of MinMax Ltd. are from A Co. Inc. (i.e., ₹ 450 crores out of total ₹ 500 crores). The price for purchases is fixed in the agreement and conditions for supply are determined by A Inc.	Due to fulfillment of this condition, MinMax Ltd. and A Co. would be deemed AEs
(iii)	One enterprise guarantees 10% or more of the total borrowings of the other enterprise.	A Co. guarantees 20% of the total borrowings of MinMax Ltd. (i.e., ₹ 200 crores out of ₹ 1,000 crores).	Due to fulfillment of this condition, MinMax Ltd. and A Co. would be deemed AEs

[4] *None of the options are correct*

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Answer to Q.3.7

Nesla Inc is incorporated in Country A, which has a DTAA with India in line with UN Model Convention. Accordingly, the relevant clauses of Article 5 of UN Model Convention have to be examined to determine whether a PE is constituted in India.

Relevant Clause of Article 5		Satisfaction or otherwise of condition for A.Y.2022-23
Article 5(3)	Furnishing of services through an employee engaged by the enterprise would constitute a PE, if activities of that nature continue in the other Contracting State for a period of more than 183 days in a fiscal year.	PE is **not** constituted, since Jeff spends only 80 days in India in the P.Y.2021-22.
Article 5(4)	PE shall be deemed not to include use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise.	PE is **not** constituted since facilities of airport space is used solely for display of Model N car.
Article 5(5)	PE shall be constituted by an enterprise, where a person is acting in a Contracting State on behalf of an enterprise, and that person habitually concludes contracts or plays the principal role in conclusion of contracts that are routinely concluded without material modification by the enterprise.	PE is **not** constituted, since Jeff neither concludes contracts nor plays the principal role in conclusion of contracts on behalf of Nesla Inc.

Nesla Inc need not file return of income for A.Y.2022-23

Though no PE is constituted for Nesla Inc for A.Y.2022-23, TDS provisions under section 194-I would be attracted on airport charges payable by Nesla Inc to Mumbai Airport Ltd., since the same exceeds ₹ 2,40,000 p.a. Accordingly, it has to apply for Tax deduction account number (TAN) and file quarterly TDS statements before the prescribed due dates (31st July, 31st October, 31st January and 31st May, respectively, for the different quarters). It has to remit the tax deducted in the month of March on or before 30th April and in case of other months, on or before 7 days from the end of the month of deduction.

Answer to Q.3.8

		₹
(a)	Tax to be deducted u/s 195 = 10% + cess@4% = 10.4%	
	Fee for technical services (net) = USD 1,00,000 x ₹ 75.60 = ₹ 75,60,000	
	Fee for technical services (gross) = ₹ 75,60,000 x 100/89.6 = ₹ 84,37,500	
	TDS = 10.4% of ₹ 84,37,500	8,77,500

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	Interest@1.5% per month on ₹ 8,77,500 (for delay in deposit of TDS) for 2 months (from 31st March, 2022 to 25th May, 2022)	26,325
	Total amount to be deposited (including interest)	**9,03,825**
(b)	Yes, the amount of TDS remitted is refundable, if contract is cancelled. Since MiniMax Ltd. has borne the TDS, it can claim refund CBDT Circular No.7/2007 dated 23.10.2007 lays down the procedure for refund of TDS u/s 195 to the person deducting tax at source from the payment to a non-resident. The said Circular allows refund to the person making payment under section 195, after deposit of TDS u/s 195 to the Government account. The amount can be refunded subject to prior approval of the Chief Commissioner of Income-tax or the Director General of Income-tax concerned, to the person who deducted it from the payment to the non-resident, under section 195. In a case where remittance is made to the non-resident, but contract is cancelled, the remitted amount would be returned to the person responsible for deducting tax at source. A refund in terms of this Circular should be granted only after obtaining an undertaking that no certificate under section 203 has been issued to the non-resident. The amount deducted as tax and paid to the credit of the Government, therefore, belongs to the deductor. In this case, the deductor, MiniMax Ltd. has itself borne the TDS u/s 195, therefore, refund can be claimed by MiniMax Ltd.	

Case Study 4

Business International Ltd. (BI) is a multinational Group with interests in multiple businesses. The consolidated group revenue of BI Group is more than ₹1000 Crores[5]. A-XI Ltd., an Indian company successfully bid for Indian Cricket League (ICL). A-XI Ltd. is a part of the BI Group. The company selected 15 players cricket team. As per ICL mandate, the team composition would be mixed Indian and Foreign players. A-XI Ltd. selected foreign players from South Africa, Australia, Kenya and Bangladesh. A-XI Ltd. has to pay franchisee fees $ 10 MN to International Cricket Control Board (ICCB). As per the agreement, A-XI Ltd. will get share of 5% in revenue generated through selling of match telecast right and 5% revenue for the sale of tickets. The worldwide telecast rights for the event have been awarded to Sumito Satellite, Japan. For the promotion of the team, A-XI Ltd. hired David Bothom, Ex-Australian Cricketer. A-XI Ltd. also entered into an agreement with Albert Advertising, a Singapore company for online advertisement of match promos. All the foreign players will get $1MN as match fees.

[5] *To be read as ₹ 10,000 Crores*

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More details about each of the parties with whom A-XI Ltd. transacts and details of the transactions are as under:

1. ***Peter, Player from South Africa.***

In the financial year 2021-22, Peter was in India for a test series for 60 days and after 20 days rest period in India, he played ICL for another 60 days.

His income from India is as below:

Particulars	Amount	Remarks
Test match fee	$ 0.5 MN	
ICL Match Fees	$ 1.0 MN	
Advertisement for an automobile company headquartered in US	$ 0.25 MN	The shooting was held in India. The payer company is from US.
Article writing fee (Articles on ICL)	$ 0.10 MN	The article was published in newspaper widely circulated in India.
Participation fees charged in live TV show in India.	$ 0.25 MN	
Article writing fee for an online platform. (Articles on Motivation etc. of Sportsmen)	$ 0.25 MN	Published in leading sports portal accessible worldwide.
Auction of his Cricket bat	$1.00 MN	Which is donated to a, charitable Institution in India (approved under section 80G).

2. ***Shiv Paul, Player from Kenya.***

He was in India in FY 2021-22 for 90 days only. His father was citizen of India, settled in Kenya. His father has a residential house in Jaipur (Rajasthan) which is rented to an Individual and the monthly rental income ₹ 2 lakhs. Rent is paid by the tenant to a Private Trust created by his father where Shiv Paul is the sole beneficiary, and the trust is registered in Cayman Island. The private trust is non-discretionary, specific, irrevocable trust. The bank account of the trust is in Kenya and rent is remitted to Kenya Bank Account. Apart from ICL match fees, he also participated in advertisement of fashion wear and income from such advertisement shoot is ₹ 10 lakhs.

3. ***Albert Advertising, Singapore.***

Albert Advertising is a company based in Singapore and Sumio Satelite, a company based in Japan, is one of the largest shareholders with 40% of the shares being held by them. A-XI Ltd. also holds 65% equity in Sumito Satellite. Mr. Raghvendra is CEO of Albert Advertising, and he is also Director (Marketing) of A-XI Ltd. The total contract value of

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A-XI Ltd. and Albert Advertising is for $ 50 MN and the entire amount has been paid in advance by A-XI Ltd. Albert Advertising has entered into similar type of agreement with other companies. The contract values are an average of about $ 45 MN. In those later agreements, the terms are different and importantly, the companies are permitted to pay the fees over a 3 month period. Mr. Raghvendra does not hold any equity in A-XI Ltd. A-XI Ltd. has given the corporate guarantee to Singapore Bank for a loan of $ 2 Million obtained by Albert Advertising. Albert Advertising's total borrowings are about $ 30 million.

4. ***Raghavendra, CEO of Albert Advertising***

Raghavendra is the CEO of Albert Advertising since January 2019. He has been a part of the senior management of the BI Group for many decades. Raghavendra was with Sumito Satellite Japan as Manager marketing from January 2008 to December 2014. He relocated to India in January 2015 accepting the role of Director Marketing at A-XI Ltd. He was in India from January 2015 to December 2018 and relocated to Singapore from 2019. He has been a non-resident since P.Y. 2019-2020. In March 2022, the income tax department came to know of a residential property acquired by Raghavendra in Japan in 2016. A notice under section 10 of the Black Money Act, 2015 has been issued.

Raghavendra says he bought the house for $ 5,00,000 in 2016. The fair value of the house as determined valuer recognised by the Govt of Japan as on 31st March, 2022 is $ 1.5 million.

5. ***Sumito Satellite, Japan***

The company got the live telecast right of ICL matches and the contract value is $ 200 Mn. The said amount is payable to ICCB. Sumito Satellite expects to earn about $ 400 Mn by selling timeslot for advertisement during the tournament. To carry on the activities in India, the company has set up a project office in Delhi. The Company has deputed two technicians, who would be staying in India for a total period of 100 days to manage uninterrupted relay of live telecast of ICL matches. The salary of technician A and Technician B would be $ 5000 per month. Since Sumito Satellite needs more staff; they propose to hire some staff from A-XI Ltd. who will work under the supervision of technician A and B. For hiring of staff from A-XI Ltd., Sumito Satellite would pay $ 1 Lakh.

6. ***David Bothom, Ex Australian Cricketer.***

He is resident of Australia, stayed in India in the P.Y.2021-22 for 65 days, he will get ₹ 25 lakhs for promotion of matches. Apart from this, he wrote some article in newspaper and his fees for writing articles is ₹ 5 lakh and he has also become the visiting faculty for coaching in Indian Cricket Academy and his fees for the same is ₹ 10 lakh.

Choose the correct alternative from the following MCQs: (5 x 2 = 10 Marks)

4.1 What is the due date for filing Country by country reporting by A-XI Ltd.?

(A) On or before the due date of furnishing the return of income.

(B) One month before the specified date of filing of Income tax return.

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(C) *Within the end of twelve months from the end of the accounting period of the reporting entity.*

(D) *On or before the end 30th November of the Assessment year.*

4.2 *Is the tenant of the Jaipur house required to deduct tax at source while remitting the rent, if the rent is taxable in India?*

(A) *No, because individual assessee is not required to deduct TDS unless the Turnover in the preceding years from business exceeds ₹ 1 Crore.*

(B) *No, because the house is being used for residential purpose and not for business purpose.*

(C) *Yes, because TDS is applicable while making payment to Non-resident and the sum is chargeable to tax in India.*

(D) *Yes, because the rent payment is more than ₹ 2.40 lakhs.*

4.3 *Raghavendra wants to argue that the notice issued to him under section 10 of the Black Money Act, 2015 is invalid since he is a non-resident in 2021-2022 and that he had acquired the property out of his tax paid income in Japan while he was a non-resident. What would you advise?*

(A) *The notice is invalid since he is a non-resident in the year of issue of notice.*

(B) *The notice is invalid since the assets have been acquired out of income earned while he was a non-resident.*

(C) *The notice is valid since the property was acquired in the year when he was a resident.*

(D) *The notice is valid even if he was a non-resident in all the years in question.*

4.4 *As a Transfer Pricing consultant, please advise whether A-XI Ltd. and Albert Advertising is Associated Enterprise or not?*

(A) *Yes, because one enterprise participates directly in the shares carrying not less than twenty six percent of the voting power in the other enterprise.*

(B) *Yes, because one enterprise participates indirectly in the shares carrying not less than twenty six percent of the voting power in the other enterprise.*

(C) *Yes, because Mr. Raghvendra is the common director in both the companies.*

(D) *Yes, because one enterprise guarantees loan exceeding the prescribed percent of the total borrowings of the other enterprise.*

4.5 *Whether employees of Sumito Satellite will create Permanent Establishment in India?*

(A) *Yes, because employees stay in India is more than ninety days.*

(B) *No, because project does not last more than six months.*

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(C) No, because PE cannot be created because of the stay of employees in India.

(D) Yes, because the foreign company has a project office in India.

You are required to answer the following issues:

4.6 Give a brief note on the taxability of each source of income of Peter, the South African player. (Assume exchange rate for computing income to be 1 USD = 75 INR) ***(7 Marks)***

4.7 If the house property in Japan is held to be an undisclosed foreign asset under the Black Money Act, what is the maximum tax and interest liability that Raghavendra could have? You need not comment on other penal implications. (Assume exchange rate for computing income to be 1 USD = 75 INR) ***(3 Marks)***

4.8 Give a brief note on the total income and tax liability of Shiv Paul, Kenya Player. Whether your answer would be different if there is no trust, and the payment of rent is made directly to the account of Shiv Paul outside India? ***(5 Marks)***

Solution to Case Study 4

Answer to Q.4.1 to 4.5

Q No.	Correct Option
4.1	C
4.2	C
4.3	C
4.4	B
4.5	B or C

Note - MCQ 4.5 requires candidates to examine whether the employees of Sumito Satellite, Japan will create PE in India. Since it is not mentioned whether India's DTAA with Japan is based on OECD Model Convention or UN Model Convention, the question can be answered on the basis that India's DTAA with Japan is based on OECD Model Convention or the UN Model Convention. Option (B) would be the correct option as per UN Model Tax Convention and Option (C) would be correct option as per OECD Model Convention, since there is no concept of service PE in OECD Model Convention.

Answer to Q.4.6

Peter, being a foreign national, would be non-resident in India for the A.Y. 2022-23 since his stay in India is for only 140 days during the previous year 2021-22. His stay in India is less than 182 days in the P.Y.2021-22. Also, he does not satisfy the condition of minimum 60 days in the P.Y.2021-22 and 365 days in the four immediately preceding previous years, since the question does not mention about his stay in India in the earlier previous years.

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In case of non-resident, income which accrues or arises in India, income which is received in India and income which is deemed to accrue or arise in India would alone be taxable in India.

As per section 115BBA, income received or receivable by a non-resident sportsman (including an athlete) by way of *inter alia* participation in any game or sport in India; or advertisement; or contribution of articles relating to any game or sport in India in newspapers, magazines or journals would be chargeable to tax @20% *plus* surcharge, where applicable, *plus* health and education cess@4%. Accordingly, his income from India would be taxable in the following manner:

Test match fee [$ 0.5 MN x ₹ 75] x 10/100 = ₹ 3.75 crores – taxable @20% under section 115BBA, since it is for participation in a sport in India.

ICL Match fees [($ 1.0 MN x ₹ 75) x10/100 = ₹ 7.50 crores - taxable @20% under section 115BBA, since it is for participation in a sport in India.

Advertisement for an automobile company headquartered in US [$ 0.25 MN x ₹ 75] x 10/100 = ₹ 1.875 crores - is deemed to accrue or arise in India since the shooting is in India Thus, such income would be taxable in India @20% u/s 115BBA, though the payer company is from US.

Article writing fees (Articles on ICL) [$ 0.10 MN x ₹ 75] x10/100 = 0.75 crores (or ₹ 75 lakhs), taxable @20% under section 115BBA, since it for an article in respect of sports and published in newspaper.

Participation fees charged in live TV show in India, [($ 0.25 MN x ₹ 75) x10/100] = ₹ 1.875 crores would be taxable in India as per the normal rates of tax and not as per section 115BBA, since participation fee is not in respect of any game or sport in India.

Article writing fee for an online platform [($ 0.25 MN x ₹ 75) x10/100] = ₹ 1.875 crores would be taxable in India as per the normal rates, since these articles are not written in newspapers, magazines or journals.

Auction of his cricket bat [($ 1.0 MN x 75) x10/100] = ₹ 7.5 crores would be taxable in India as per the normal rates of tax not as per section 115BBA, since it is not in respect of participation in matches, or advertisement or article writing in newspapers, magazines or journals. Deduction u/s 80G would be allowable for amount donated to an approved charitable institution to the extent of 50% of (lower of amount donated or 10% of adjusted total income).

Answer to Q. 4.7

As per section 3(1) of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, every assessee would be liable to tax@30% in respect of his undisclosed foreign income and asset of the previous year.

Accordingly, Raghvendra is liable to pay tax @30% in respect of value of undisclosed foreign asset during the previous year 2021-22, the year in which such assets came to the notice of the Assessing Officer.

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The relevant date for determination of the value of undisclosed assets would be the first day of April of the previous year (1st April, 2021, in this case) in which the undisclosed asset located outside India comes to the notice of the Assessing Officer. The value of residential apartment would be the higher of -

(i) its cost of acquisition (5 lakh USD x ₹ 75 = ₹ 3.75 crore); and

(ii) the price that the property shall ordinarily fetch if sold in the open market on the valuation date (Fair value as on 1.4.2021)

As per section 40 of the Black Money Law, he is also liable to pay interest under section 234A of the Income-tax Act, 1961 for failure to disclose income from a source outside India in the return filed under section 139(1) and interest under sections 234B and 234C of the Income-tax Act, 1961 for failure to pay advance tax on undisclosed income from a source outside India.

Note - Computation of tax on undisclosed foreign asset has not been given in the above solution since the fair value of the house as on 1.4.2021 is required, whereas the question mentions the fair value on 31.3.2022. If it is assumed that the fair value of the house as on 1.4.2021 is the same as on 31.3.2022, then, the tax liability would be 30% of 15 lakh USD (fair value, since the same is higher than the cost of 5 lakh USD) x ₹ 75 = ₹ 3,37,50,000.

Answer to Q.4.8

Mr. Shiv Paul, player from Kenya, would be non-resident in India, since his stay in India during the previous year 2021-22 is only for 90 days[6]. Accordingly, income which accrues or arises in India, income which is received in India and income which is deemed to accrue or arise in India would be taxable in his hands in India for the P.Y.2021-22.

As per section 115BBA, income received or receivable by a non-resident sportsman (including an athlete) by way of *inter alia* participation in any game or sport in India would be chargeable to tax@20% plus surcharge, if applicable plus health and education cess@4%.

(i) As per section 60 of the Income-tax Act, 1961 rental income in respect of Jaipur house which is transferred to the Private trust would be taxable in the hands of father of Mr. Shiv Paul though Mr. Shiv Paul is the sole beneficiary of the trust, since such income is transferred to the Private trust without actual transfer of the asset.

Accordingly, Mr. Shiv Paul's total income would comprise of match fees of ₹ 7.50 crores (1 million USD x ₹ 75 x 10/100) and income from advertisement of ₹ 10 lakhs, totalling ₹ 7.60 crores taxable@28.496% (i.e., 20% *plus* surcharge@37% and cess@4%) as per section 115BBA. The tax liability would be 28.496% of ₹ 7.60 crores = ₹ 2.1657 crores or ₹ 216.57 lakhs.

(ii) The total income and tax liability of Shiv Paul would not change even if there is no trust and the payment of rent is made directly to the account of Shiv Paul, since such income is transferred without actual transfer of the asset.

[6] *and there is no information regarding his stay in India in the four immediately preceding previous years*

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Case Study: 5

Megastar Ltd., Delhi

Megastar Ltd. is a company with businesses across multiple sectors both in India and abroad. It wanted to expand its manufacturing capacity by importing machinery from its associated enterprise located outside India with offshore supply of spares and contract for installation in its premises. It apprehends some dispute because of some complexities in the terms of contract. It proposes to obtain an advance ruling in this regard.

Megastar Ltd. recruited one mechanical engineer and one software specialist. The details are given below:

	Mechanical Engg.	***Software Specialist***
Name	*Robert*	*Vishnu*
Place of residence before joining for employment	*UK*	*India*
Period of stay in India in preceding 4 years	*90 days*	*Since birth*
Nationality	*Indian Origin*	*Indian citizen*
Date of joining (assume for counting period of stay)	*29.10.2021*	*01.11.2021*
Place of posting	*New Delhi*	*Country Z*
Salary income (computed)	*25,00,000*	*25,00,000*
Other income by way of rent outside India	*6,00,000*	*Nil*
Tax payable in the place of posting	*As per IT Act*	*No Income-tax*

Transfer Pricing disputes

Megastar Ltd. has a subsidiary, Ministar SA, in Country J and there has been supply of finished goods by Megastar Ltd. to Ministar SA. Ministar SA has onward sold those goods as a sole distributor for certain countries including Country J. There is a DTAA between India and Country J. For the assessment year 2019-20, there are some disputes with regard to arm's length price of the supply of finished goods and the TPO had proposed an upward adjustment to the revenue earned from Ministar SA. The company has contested the order and currently an appeal against the order is pending before the ITAT.

For the immediately preceding assessment year (i.e., A.Y.2018-19), the Income-tax officer passing an order in conformity with the order of the TPO had made an upward adjustment to the price of the goods sold to Ministar SA by adopting a different method of determining arm's length price. Megastar had challenged the order before the ITAT (subsequent to being unsuccessful before the DRP). The ITAT heard the matter and disposed off the appeal by setting aside the order of the TPO directing them to consider afresh with full discretion. The remand proceedings are currently being undertaken by the TPO.

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Megastar Ltd. proposes to enter into an agreement with its associated enterprise Mike SPA of Belgium for supply of goods for ₹ 150 crores in the financial year 2022-23. The agreement is in the proposal stage and not yet finalized. It is contemplating to go in for Advance Pricing Agreement.

Other transactions

Megastar has a subsidiary in Country J. The DTAA between India and Country J provides for taxation of dividend @ 20% in respect of dividends received by shareholders of a company in Country J. The DTAA between India and Country K provides for concessional rate of tax@10% in respect of dividend.

Megastar Ltd. entered into a contract with Mano Pte, Singapore for ₹ 5 crore in the financial year 2021-22. Mano Pte Ltd. designed and developed an online platform to facilitate online sale of goods worldwide by Megastar Ltd. The said payment was for the design and development services and also include fees for maintenance and support for one year after the installation of such a platform. There is no PE of Mano Pte Ltd. in India. The payment does not amount to Royalty under India-Singapore DTAA.

Proceedings against Robert

While conducting the background check for the employment of Robert, it was found that Robert was resident in India till the assessment year 2014-15, when he left for employment in June, 2015. He acquired a property in July 2017 out of unaccounted money kept in a bank account outside India. These amounts were accumulated when he was resident in India and were not disclosed for income-tax in India. Notice under section 10 of the Black Money Act, 2015 was issued in December, 2020.

Choose the correct alternative for the following MCQs: (5 x 2 = 10 Marks)

5.1 How much is the fee payable for the APA by Megastar Ltd. in respect of the agreement for supply of goods to its associated enterprise Mike SPA of Belgium?

(A) ₹ 5 lakhs

(B) ₹ 10 lakhs

(C) ₹ 15 lakhs

(D) ₹ 20 lakhs

5.2 What is the time limit for completion of assessment of Robert under the Black Money Act, 2015?

(A) 31.03.2021

(B) 31.03.2022

(C) 31.03.2023

(D) 31.12.2022

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5.3 What is the monetary limit applicable for Megastar Ltd. who is a resident when it wants to get a ruling about its tax liability from the Board for Advance Rulings for the transaction it is proposing to undertake for import of machinery with offshore supply of spares and contract for installation in its premises?

(A) ₹ 100 crores in aggregate

(B) ₹ 300 crores in aggregate

(C) ₹ 100 crores per annum

(D) No monetary limit

5.4 Which of the following action of Megastar Ltd. in respect of payment made to Mano Pte would be a proper compliance of law?

(A) Deduct tax at source @10% on the payment of ₹ 5 crores.

(B) It is neither royalty nor Equalization levy. Hence, no need to withhold tax on the payment made to Mano Pte.

(C) Deduct @6% as Equalization Levy

(D) Deduct @2% as equalization Levy

5.5 Insertion of which clause in the DTAA between India and Country J would enable taxation of dividend@10% instead of 20%?

(A) Non-discrimination clause

(B) Most Favoured Nation Clause

(C) Limitation of benefit clause

(D) Tax Parity Clause

You are required to answer the following issues:

5.6 You are the tax consultant for Megastar Ltd. The Board of directors want you to give a brief outline about the option of preferring MAP in respect of dispute relating to arm's length price of the supply of goods. Please comment on the issues eligible for MAP, procedure for resolution by Competent Authorities, time limit for its resolution and time limit for acceptance/non-acceptance of the resolution. ***(5 Marks)***

5.7 If Megastar were to file a request for APA beginning financial year 2022-2023 covering the transactions relating to Ministar, SA,

(a) Can the current outstanding disputes of A.Y. 2018-19 and A.Y. 2019-20 be addressed and resolved using the roll back clause? ***(3 Marks)***

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(b) *What would be the significant differences for Megstar (in timing, certainty etc) between selecting MAP remedy against the roll back clause for resolving the dispute of the earlier years?* ***(3 Marks)***

5.8 *Based on the facts given above Robert and Vishnu, you are required to determine their residential status and their total income for the assessment year 2022-23. Ignore DTAA.*

(4 Marks)

Solution to Case Study 5

Answer to Q.5.1 to 5.5

Q No.	Correct Option
5.1	C
5.2	C
5.3	A
5.4	-[7]
5.5	B or D[8]

Answer to Q.5.6

The Mutual Agreement Procedure (MAP) is an alternate dispute resolution mechanism available to taxpayers under the DTAAs for resolving disputes giving rise to double taxation or taxation not in accordance with DTAAs.

Brief Outline: Megastar may prefer MAP, in respect of dispute for the A.Y. 2019-20 for which appeal is pending before the ITAT, since MAP and domestic remedy proceedings can be availed by the taxpayers simultaneously, there could be instances where the ITAT in India passes an order in respect of the same disputes that are also being examined under MAP. However, the Competent Authority in India shall not deviate from the orders of the ITAT for the relevant year where the dispute is decided on merits.

In respect of A.Y. 2018-19, since order of the ITAT does not resolve the disputes but only sets them aside to be adjudicated afresh, then, access to MAP would be provided again after the fresh adjudication by tax authorities, if requested for by the relevant taxpayers.

Issues eligible for MAP: India provides access to MAP in respect of, *inter-alia*, the following types of cases/situations, if they result in taxation not in accordance with the relevant DTAAs:

a) Transfer Pricing adjustments;

b) Determination of existence of a Permanent Establishment;

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[7] *None of the options are correct*

[8] *It is assumed that both Country J and K are OECD members.*

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c) Attribution of profits to Permanent Establishments, whether admitted or not by the taxpayer;

d) Characterisation or re-characterisation of an item of expense or payment as a taxable expense or payment (like Royalty or Fee for Technical Services (FTS) or Interest); and

e) Characterisation or re-characterisation of an item of receipt as a taxable income (like Royalty or Fee for Technical Services (FTS) or Interest).

A taxpayer can request for assistance under MAP regardless of the remedies provided under the Indian domestic law.

Procedure for resolution: A taxpayer resident in India can make an application to the Competent Authority of India having jurisdiction over the case (depending on the location of treaty partner) if it considers that the actions of the tax authorities of the treaty partner resulted or will result in taxation not in accordance with the relevant tax treaty.

The MAP application in Form No. 34F or the copy of the MAP application filed before the Competent Authorities of other countries or specified territories (treaty partners) must be submitted to the Competent Authority of India having jurisdiction over the case.

Once a MAP application is accepted by the Competent Authority of India having jurisdiction over the case, the said Authority shall intimate the Competent Authority of the relevant treaty partner about such acceptance through a written communication.

If both the Competent Authorities successfully resolve a MAP case, they would formalise a mutual agreement amongst themselves at the earliest possible. The Competent Authority of India having jurisdiction over the case would intimate the Indian taxpayer who had applied for MAP about the terms and conditions of the resolution.

Acceptance or rejection of the MAP resolution is the prerogative of the Indian taxpayer but in either situation, the MAP case would be closed by both the Competent Authorities as resolved.

Time limit for resolution: The Competent Authority in India should endeavour to resolve MAP cases within an average time period of 24 months.

Time limit for acceptance or otherwise of MAP: The assessee has to communicate his acceptance or non-acceptance of the resolution in writing to the Competent Authority in India within 30 days of receipt of the communication. In case of communication of acceptance, it has to submit withdrawal of domestic appeals.

Answer to Q.5.7

(a) (i) In respect of A.Y. 2018-19, since ITAT has not decided the matter and has only set aside the order for fresh consideration of the matter by the lower authorities with full discretion at their disposal, the matter shall not be treated as one having reached finality and hence, benefit of rollback can still be given.

(ii) In respect of A.Y. 2019-20, since an appeal has been filed by Megastar which is pending before the Appellate Tribunal for a rollback year, on the issue which is the

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subject matter of the rollback provision for that year, the dispute can be resolved using the roll back clause only if the said appeal is withdrawn by the applicant (to the extent of the subject covered under the agreement) before furnishing the modified return for the said year.

(b) A.Y. 2018-19

- **Roll Back**: Megastar can take the benefit of rollback, since ITAT has not decided the matter and has only set aside the order for fresh consideration.
- **MAP:** Access to MAP would be provided again after the fresh adjudication by tax authorities, if requested for by the relevant taxpayers.

A.Y. 2019-20

- **Roll Back**: Megastar has to withdraw the appeal pending before the ITAT to the extent of the subject covered under the roll back agreement.
- **MAP:** MAP and domestic remedy proceedings can, however, be availed by the taxpayers simultaneously. If the MAP resolution is communicated to the company, when the appeal is still pending, the company has to withdraw the appeal while communicating its acceptance of MAP resolution.

Answer to Q.5.8

Residential Status of Robert and his Total Income

Mr. Robert's stay in India is for 154 days in the P.Y.2021-22 and for 90 days in the four immediately preceding previous years. Therefore, he neither the fulfills the condition of stay in India for 182 days in the P.Y.2021-22; nor the condition of stay in India for 60 days in the P.Y.2021-22 and for 365 days in the 4 immediately preceding previous years. Hence, he would be non-resident in India for the A.Y. 2022-23.

In case of non-residents, income which accrues or arises in India, income which is received in India and income which is deemed to accrue or arise in India would alone be taxable. As per section 9(1)(ii), salary income for rendering services in India would be deemed to accrue or arise in India. Accordingly, his total income would comprise of only salary income and other income by way of rent outside India would not be taxable in his hands in India, since he is a non-resident. Hence, his total income would be ₹ 25,00,000.

Residential Status of Vishnu and his Total Income

Mr. Vishnu left India during the P.Y. 2021-22 for employment and he stayed in India for 182 days or more i.e., 215 days in the P.Y.2021-22, he would be resident in India for the A.Y. 2022-23. Further, since he is in India since birth, he would be resident and ordinarily resident in India. In case of resident and ordinarily resident in India, global income would be taxable.

Accordingly, salary income which accrues or arises outside India would also be taxable in his hands. Hence, his total income would be ₹ 25,00,000.

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