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FOR CA FINAL EXAM PREPARATION

CA Final 2020 Question Paper · Paper 6C International Taxation

EXAM
CA Final

YEAR
2020

TYPE
Question Paper

SUBJECT
Paper 6C International Taxation

DATE
November 2020

NOV 2020

Roll No. .....

Final New Syllabus
Paper - 6 C
International Taxation

Total No. of Questions – **5** Total No. of Printed Pages – **32**

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 who has not opted for Hindi Medium, his/her answers in Hindi will not be valued.

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

Answers in respect of Multiple Choice Questions are to be marked on the OMR Answer Sheet only.

Answers to other questions are to be written on the descriptive type answer book.

Answers to Multiple Choice Questions, if written in the descriptive type answer book will not be evaluated.

Candidates may use calculator.

All questions relate to **Assessment Year 2020-21**, unless otherwise stated in the questions / case studies

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CASE STUDY – 1

Banerjee Co. Ltd., Kolkata

Banerjee Co. Ltd., Kolkata is engaged in various business activities. The income tax assessment of Banerjee Co. Ltd. under section 143(3) was pending before the Assessing Officer for the assessment year 2016-17 as on 01-04-2018. The Assessing Officer made a reference to the Transfer Pricing Officer (TPO) on

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11-06-2018 for determination of arm's length price with regard to the transactions made with its associated enterprises. Upon receipt of the TPO's order dated 01-01-2019, the Assessing Officer issued a draft assessment order to Banerjee Co. Ltd. on 30-01-2019. The assessee filed his objections on 15-02-2019 against the draft assessment order with the Dispute Resolution Panel and the Assessing Officer. The Dispute Resolution Panel gave its directions on 01-09-2019. The Assessing Officer passed the final assessment order on 28-09-2019 in accordance with the directions of the Dispute Resolution Panel. Banerjee Co. Ltd., deducted tax at source on certain payments made during the previous year 2019-20 to M/s. Filibuster Inc. of USA at 20% as per the Income-tax Act, 1961. The Double Tax Avoidance Agreement (DTAA) between India and USA provides for tax deduction at source at 10% on such payments.

Mr. Bharat Vinayak, a director of Banerjee Co. Ltd. is an industrialist and person of Indian origin settled in London. During the previous year 2019-20, he purchased and sold shares of Indian companies and earned ₹ 220 lakhs by way of short-term capital gain (STT paid). He has no other income which accrued in India during the previous year 2019-20.

Banerjee Co. Ltd. is also engaged in the business of extraction of mineral oils in various river beds of India after obtaining due permission from the Central and State Government authorities. It obtained plant and machinery on hire from Mike Co. Ltd., Copenhagen, Denmark and paid ₹ 700 lakhs for the year ended 31-03-2020. Banerjee Co. Ltd. wants to know whether it is liable to withhold tax on this payment under section 194J or under any other provision. Mike Co. Ltd. wants to know how this income would be chargeable to tax in India.

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The tax assessment status of Banerjee Co. Ltd. for the preceding 3 assessment years are given below :

Assessment Year	Transfer Pricing adjustment	Date of filing the return of income	Remarks
2017-18	₹ 110 lakhs	15-09-2017	The Transfer Pricing adjustment to the Arm's Length Price (ALP) was made consequent to order of the TPO. Banerjee Co. Ltd. did not agree with the adjustment so made in assessment and took the matter in appeal. However, the Income Tax Appellate Tribunal (ITAT) vide order dated 20-04-2020 upheld the addition made towards ALP. Banerjee Co. Ltd. has chosen to not file an appeal to the High Court against the order of the ITAT
2018-19	₹ 170 lakhs	25-01-2019	Upon reference to TPO, an adjustment to the ALP was made and thus added to the income vide assessment order under section 143(3) dated 20-12-2019. This adjustment was accepted by Banerjee Co. Ltd.
2019-20	₹ 140 lakhs	11-10-2019	Suo Motu admitted by way of adjustment of the income by Banerjee Co. Ltd. while filing its return of income.

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

Crowe Co. Ltd., UK

Crowe Co. Ltd. of UK is the holding company of Banerjee Co Ltd. Crowe Co. Ltd. became a resident of India during the previous year 2019-20 for the first time due to POEM. Crowe Co. Ltd. commenced processing / refining of edible oil and marketing the same in India by opening a branch at Chennai. It paid on 01-06-2019, ₹ 15 lakhs towards cost of ready to use computer software purchased from Quik (P) Ltd. of Bengaluru. Crowe Co. Ltd. (through its branch) wants to deduct tax at source on the said payment.

Choose the correct alternative for the following MCQs : **2×5 =10**

1.1 In the case of Banerjee Co. Ltd., the Assessing Officer made a reference to TPO. Subsequently, the Assessing Officer passed a draft assessment order in accordance with the order of the TPO. In which of the following situations could the Assessing Officer have validly passed a draft assessment order ?

(A) If Banerjee Co. Ltd. has preferred safe harbour rules

(B) If Banerjee Co. Ltd. is a foreign company

(C) If Banerjee Co. Ltd. has entered into APA.

(D) If the arm's length price of international transactions of Banerjee Co. Ltd. was accepted by TPO and no variations were made.

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1.2 What would be the additional income-tax payable by Banerjee Co. Ltd. for the assessment year 2018-19 in case it cannot get any excess money arising from the transfer pricing adjustment repatriated to it ?

(A) ₹ 53,04,000

(B) ₹ 35,64,288

(C) ₹ 27,68,480

(D) ₹ 18,87,600

1.3 What would be the rate of tax applicable for Crowe Co. Ltd. in India (excluding surcharge and cess) for the assessment year 2020-21 ?

(A) 40%

(B) 25%

(C) 22%

(D) 30%

1.4 What is the percentage of tax that Banerjee Co. Ltd. can seek by way of refund of excess tax deducted at source on payments made to M/s Filibuster Inc. USA ?

(A) NIL

(B) 20%

(C) 30%

(D) 10%

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1.5 How much is the tax liability of Mr. Bharat Vinayak for the assessment year 2020-21 including applicable surcharge and cess ?

(A) ₹ 39,46,800 (B) ₹ 28,60,000

(C) ₹ 42,90,000 (D) ₹ 47,01,840

You are required to answer the following issues :

1.6 Is the assessment made by the Assessing Officer on Banerjee Co. Ltd. as per the directions of DRP barred by limitation ? Before whom should the assessee file an appeal against such assessment order ? Will your answer be different as regards the authority before whom the appeal should be filed, if the assessment order is not in accordance with the directions of the DRP ? **4**

1.7 Is the amount paid by Crowe Co. Ltd. towards cost of ready to use computer software liable for tax deduction at source ? Are there any circumstances when such payments would not be liable for tax deduction at source ? **3**

1.8 Advise Banerjee Co. Ltd. as regards its liability to deduct tax at source on the hire charges paid to Mike Co. Ltd., Copenhagen, Denmark and also state briefly how the income of Mike Co. Ltd. would be assessed to tax in India ? For the purposes of this question, assume that there is no DTAA between India and Denmark. **5**

1.9 You have been given the status details of primary transfer pricing adjustments made to the ALP of Banerjee Co. Ltd. for various years as on 20-03-2020. You have to advise the Board of Directors of Banerjee Co. Ltd. as regards the time limits for repatriation of excess money, and the consequences of non-repatriation. **3**

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CASE STUDY – 2

Ashok (P) Ltd. exporting goods to Flamingo Inc. Germany

Elixir Inc. of UK is a multinational business conglomerate with activities ranging from manufacture of mobile phones to banking and trade in textiles. It has a subsidiary by name Flamingo Inc. in Frankfurt, Germany which is engaged in import of textile goods from Asia and retail distribution through outlets in Europe. During the previous year relevant to the assessment year 2018-19, Ashok (P) Ltd., Surat, a subsidiary of Flamingo Inc. exported goods for ₹ 600 crores to Flamingo Inc. Also, Ashok (P) Ltd. exported goods for ₹ 500 crores to various other unrelated parties in South East Asia such as Singapore, Malaysia and Thailand.

Ashok (P) Ltd. filed its return of income for the assessment year 2018-19 in November, 2018 and it was selected for scrutiny in August, 2019. The Assessing Officer referred the case to Transfer Pricing Officer (TPO) in October, 2019 for determination of arm's length price. The assessee did not maintain information and documents relating to sale of goods to buyers in Singapore for a value of ₹ 15 crores which was sought by the TPO.

The TPO based on the information given by the assessee for the assessment year 2018-19, wants to re-determine arm's length price for the earlier assessment years viz. 2015-16, 2016-17 and 2017-18 also. It may be noted that the tax assessments were already completed as per the order of the TPO for those years.

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XYZ Banking Corporation Ltd., UK

XYZ Banking Corporation Ltd. incorporated in UK is one of the subsidiaries of Elixir Inc., referred above. It opened four branches in India during the financial year 2017-18. Each branch was given a rupee denominated loan of ₹ 100 crores by the head office for initial business purposes i.e. for advancing loan to borrowers.

Other initial expenses for establishing the branches were incurred by the head office directly and accounted in the head office books. Each branch has to pay interest @ 6% per annum on the advance of ₹ 100 crore each given by the head office. The branches made book entries and have not paid interest for the year ended 31-03-2020.

Mr. Piloo, Ex-Managing Director of Ashok (P) Ltd.

Mr. Piloo (age 72) was the managing director of Ashok (P) Ltd. at Surat. He retired in June, 2008 and left India permanently in January, 2012. It came to the notice of the Joint Director of Income-tax (Investigation) in June, 2019 that Mr. Piloo had accumulated assets during the previous year 2007-08 exceeding ₹ 500 lakhs outside India (consisting of residential apartments and deposits in banks) which were not disclosed for income-tax purposes up to the assessment year 2012-13 for which the return of income was filed in India. Mr. Piloo was served with a notice under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 in January, 2020.

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Mr. Piloo is of the opinion that since 6 years have elapsed from the last assessment year in which he was assessed in India, no proceedings could be initiated against him under the Income-tax Act, 1961 and the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

Mr. Piloo is a non-resident for the assessment year 2020-21. He has become citizen of UK since January, 2018. He regularly invested in derivatives (Futures & Options) in India. He is not a Foreign Portfolio Investor (FPI). He earned ₹ 5.60 crores during the previous year 2019-20 from the transfer of derivatives in India.

Ms. Rekha, daughter of Mr. Piloo

Ms. Rekha daughter of Mr. Piloo, came to India on 05-04-2019 along with her husband Dr. Vignesh who came to India in connection with a co-operative technical assistance program under an agreement between the Government of India and the USA. Both stayed in India for the remainder of the year. Dr. Vignesh was paid salary of USD 5,000 every month by the US Government. He has business in USA where his income was USD 20,000 for the year ended 31-03-2020. Ms. Rekha has rental income in USA of USD 18,000 for the year ended 31-03-2020. Both these incomes are taxable in USA and were credited to their bank account in USA and later transferred to their bank account held in India.

The TT buying rates of 1 USD as on	01-04-2019	31-03-2020
	₹ 69	₹ 70

For the purposes of this situation, ignore the DTAA between India and USA.

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Prakash, son of Piloo

Prakash (age 33) son of Piloo went to a foreign country for higher studies in business management in the financial year 2009-10. He visited India every year and his residential status under the Income-tax Act, 1961 for the assessment year 2020-21 is that of resident and ordinarily resident. He settled in the foreign country where he pursued higher education and became its national. His residential status as per the domestic law of that country is also resident and ordinarily resident. He has permanent home and business establishments in both India and foreign country. Both India and the foreign country in which Prakash has settled have DTAA in line with UN Model convention.

Choose the most appropriate alternative for the following MCQs : **2×5 =10**

2.1 How much is the quantum of penalty that can be levied on Ashok (P) Ltd. for the failure to keep and maintain any documents and information which was sought by the TPO with regard to export of goods to customers in Singapore ?

(A) ₹ 1 lakh

(B) ₹ 2 lakhs

(C) ₹ 30 lakhs

(D) NIL

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2.2 Compute the tax liability of Mr. Piloo for the assessment year 2020-21 in respect of the income earned by transfer of derivatives in India.

(A) ₹ 2,36,69,490

(B) ₹ 2,15,96,250

(C) ₹ 1,98,53,600

(D) ₹ 1,98,68,550

2.3 How much is the amount of penalty payable by Mr. Piloo if the undisclosed income / asset under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, is determined at ₹ 350 lakhs ?

(A) ₹ 105 lakhs

(B) ₹ 210 lakhs

(C) ₹ 315 lakhs

(D) Nil

2.4 For which of the previous years, can the TPO re-determine ALP in addition to the previous year for which a reference was made by the Assessing Officer in the case of Ashok (P) Ltd. ?

(A) Previous year 2015-16 to 2017-18

(B) Previous year 2017-18 only

(C) Previous year 2016-17 and 2017-18 only

(D) Not empowered to re-determine the ALP of earlier year which was previously determined by him.

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2.5 What is the time limit for issue of show cause notice for levy of penalty on Mr. Piloo under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 in respect of undisclosed foreign asset / income ?

(A) Before the end of the financial year in which the assessment was completed under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

(B) Within one year from the end of the financial year in which the assessment was completed under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

(C) Within 2 years from the end of the financial year in which the notice under section 10 was issued for assessment under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

(D) During the pendency of any proceeding under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

You are required to answer the following issues :

2.6 Are the branches of XYZ Banking Corporation Ltd. required to deduct tax at source on the interest paid to the head office under the Income-tax Act, 1961 ? **5**

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

Clause 2(a) of Article 25 which is the relevant one reads as under:

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

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

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

Vijay Co. Ltd. paid tax in India on its income after claiming a deduction under section 10AA in respect of its income from SEZ units. As a result, its income derived from SEZ units was fully tax-free. The assessee claimed tax credit for the tax paid outside India i.e. in Canada and USA even though no tax was payable in India for those incomes as the units are located in SEZ. The Assessing Officer denied the tax credit claimed by the assessee in the assessment. (Assume that Minimum Alternate Tax under section 115JB does not apply).

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2.7 Discuss the liability of Mr. Piloo under the Black Money Act and state the procedure and methodology for determination of the value of undisclosed asset outside India in the case of Piloo after evaluating the validity of the contentions raised by him ? 4

2.8 Compute the taxable income in the hands of Dr. Vignesh and his wife Ms. Rekha for the assessment year 2020-21. Ignore DTAA between India and USA. Your answer must be with reference to the provisions of the Income-tax Act, 1961. 3

2.9 Briefly state the steps involved in determination of the residential status of Prakash, when he is a resident in both the Contracting States and the conclusion as regards his residential status 3

Your answer must be with reference to the UN Model of DTAA ?

CASE STUDY – 3

Vijay Co Ltd., Mysore

Vijay Co Ltd., Mysore is a constituent entity of a multinational group of which the parent entity Jefferson Inc. is located in country X. Jefferson Inc. is a business conglomerate with a presence in various countries across the world. Vijay Co. Ltd. is engaged in development of computer software. It has units in Domestic Tariff Area (DTA) and in Special Economic Zone (SEZ). The units in SEZ are eligible for section 10AA benefit @ 100% of income being tax free. It carried out development of software and performed onsite services outside India with countries such as Canada and USA with whom India has a DTAA.

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Vijay Co. Ltd. entered into an APA for the international transactions effected w.e.f 01-04-2018 with rollback benefit. The finalized APA after approval by the Central Government was signed on 31-05-2018. The assessment of the assessment year 2014-15 was completed under section 143(3) and the ALP determined by the TPO was upheld by the tribunal vide its order dated 31-05-2018. The return of income of the assessment year 2015-16 was filed on 15-01-2016. The return of income for the assessment year 2016-17 was filed on 11-11-2016.

Reassessment proceedings were initiated by issuing notice under section 148 in December, 2017 for the assessment year 2016-17. The reassessment proceeding of assessment year 2016-17 was pending as on 01-04-2018. The return of income for the assessment year 2017-18 was filed on 28-09-2017 and it was revised on 28-03-2018. The assessee is contemplating to file modified returns for rollback years wherever it is eligible to do so. The return of income of the assessment year 2018-19 was filed on 30-05-2018.

From 01-04-2020, Vijay Co. Ltd. proposes to export goods to Godwin Ltd. of Italy (who is also a subsidiary of Jefferson Inc.). The value of goods to be exported (i.e. international transaction) would exceed ₹ 100 crores but would be less than ₹ 200 crores for the financial year 2020-21. It also apprehends that the transaction may be treated as impermissible avoidance arrangement.

Vijay Co Ltd. borrowed a foreign currency (USD) loan of USD 5,00,000 from Giant Inc. of Russia on 01-04-2010. The loan is eligible for interest @ 6% per annum. For the year, previous year 2019-20 interest is due and payable for which accounting entries were made in the books of account on 31-03-2020.

[**Note :** TT buying rate on 31-03-2020 is 1 USD = ₹ 72; On 25-04-2020 is 1 USD = ₹ 71]

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Chandan, ex-Director of Vijay Co. Ltd.

Chandan Director of Vijay Co. Ltd. left India on 15-07-2018 for the purpose of employment in Singapore. He had acquired 10,000 equity shares (STT paid) of MCA Ltd., Delhi @ ₹ 200 per share on 07-01-2015. He sold 5000 shares of MCA Ltd. on 17-03-2020 @ ₹ 700 per share through recognized stock exchange. The Fair Market Value of the shares (FMV) on 31-01-2018 was ₹ 450 per share. He also sold a vacant land located in Delhi on 01-02-2020 for ₹ 36 lakhs which was acquired in October, 2014 for ₹ 10 lakhs.

Cost inflation index : F.Y. 2014-15 = 240; F.Y. 2017-18 = 272;

F.Y. 2018-19 = 280; F.Y. 2019-20 = 289

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

07-01-2015 = ₹ 51 ; 15-07-2018 = ₹ 50 ;

17-03-2020 = ₹ 52 ; 31-03-2020 = ₹ 52.50

Acharya, Director of Vijay Co. Ltd.

Acharya is a director of Vijay Co. Ltd. He had accumulated assets outside India during the previous year 2014-15 and proceedings under the Black Money Act, 2015 for assessment of undisclosed foreign asset and income were initiated and completed in December, 2018.

During the course of assessment Acharya failed to produce certain evidences and documents in response to the summons issued under section 8 of the Black Money Act which were required to be submitted by 16-10-2016. The undisclosed foreign asset of Acharya was assessed at ₹ 182 lakhs.

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Jefferson Inc. in country X

Jefferson Inc. located in country X became resident due to POEM in India for year ended 31st March, 2020. It followed calendar year as its accounting year. The company prepared profit and loss account and balance sheet for the period 01-01-2019 to 31-03-2019. It also prepared profit and loss account and balance sheet for the period 01-04-2019 to 31-03-2020. It has unabsorbed depreciation of ₹ 30 lakhs and business loss of ₹ 50 lakhs for the period from 01-01-2019 to 31-03-2019. It has unabsorbed depreciation of ₹ 80 lakhs and business loss of ₹ 120 lakhs for the 12-months period ended 31-03-2020. The return of income of the assessment year 2020-21 would be filed before the 'due date' specified in section 139(1).

Choose the most appropriate alternative for the following MCQs : **2×5 =10**

3.1 What is the time limit for issue of show cause notice for levy of penalty on Acharya for failure to produce certain evidences and documents in the proceedings under the Black Money Act, 2015 ?

(A) 31-03-2017

(B) 31-03-2018

(C) 31-03-2020

(D) No penalty could be imposed as the assessment under the Black Money Act has already been completed.

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3.2 Compute the amount of unabsorbed depreciation and business loss which are eligible for carry forward by Jefferson Inc. to subsequent assessment years under the Income-tax Act, 1961.

(A) ₹ 110 lakhs

(B) ₹ 224 lakhs

(C) ₹ 280 lakhs

(D) ₹ 170 lakhs

3.3 What would be the amount of fee payable by Vijay Co. Ltd. for seeking ruling from AAR ? Also, state whether it can seek ruling in respect of impermissible avoidance arrangement ?

(A) Fee payable ₹ 5 lakhs and it can seek advance ruling to know whether the transaction proposed to be undertaken is an impermissible avoidance arrangement.

(B) Fee payable ₹ 2 lakhs and it can seek advance ruling only in respect of the transactions already undertaken to know whether the transaction is an impermissible avoidance arrangement.

(C) Fee payable ₹ 5 lakhs and it cannot seek advance ruling to know whether the transaction proposed to be undertaken is an impermissible avoidance arrangement.

(D) Fee payable ₹ 2 lakhs and it can seek advance ruling to know whether the transaction proposed to be undertaken is an impermissible avoidance arrangement.

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3.4 Vijay Co. Ltd. is a constituent of the international group Jefferson Inc. of country X. In an appeal proceeding, the CIT (Appeals) seeks details of ownership structure of the enterprise and profile of the multinational group. Is the CIT (Appeals) empowered to seek those details ? And, what is the time limit for furnishing the same by Vijay Co. Ltd. ?

(A) CIT (Appeals) cannot seek details. Therefore, the question of time limit does not arise

(B) CIT (Appeals) can seek details. The time limit is 30 days from the date of receipt of notice by Vijay Co. Ltd.

(C) CIT (Appeals) can seek details. The time limit is 60 days from the date of issue of notice by CIT (Appeals), the assessee Vijay Co. Ltd. must furnish details.

(D) CIT (Appeals) cannot seek details. The assessee however must have voluntarily furnish the same at the time of filing the appeal.

3.5 When Vijay Co. Ltd. pays interest on foreign currency loan to Giant Inc., Russia, how much of interest is liable for tax deduction at source if the interest is paid on 25-04-2020 ?

(A) ₹ 4,49,280

(B) ₹ 4,58,266

(C) ₹ 4,43,040

(D) ₹ 4,34,520

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You are required to answer the following issues :

3.6 Is the action of the Assessing Officer is denying foreign tax credit to Vijay Co. Ltd. tenable in law ? What would be your answer in case, the assessee has not paid tax in the USA and a tax dispute in relation to such tax is pending on the date of tax assessment in India ? **4**

3.7 Compute the capital gain chargeable to tax in the hands of Chandan for the assessment year 2020-21. Will his capital gains liability change if he invests the sale proceeds in capital gain bonds issued by the National Highway Authority of India ? **4**

3.8 Determine the availability of rollback benefit to Vijay Co. Ltd. for each of the years given in the question (with brief reasons for your answer). **4**

3.9 In case, Vijay Co. Ltd. is designated as the reporting entity of the international group in India, list the instances as to when it is obligated to file the CbC report ? **3**

CASE STUDY – 4

Apropos (P) Ltd., Chennai

Apropos (P) Ltd., Chennai is engaged in purchase and sale of watches from an unrelated party – Trinity Inc. Japan. The product was marketed in India in the brand name "Richards". During the previous year 2019-20, each watch was purchased for ₹ 1,000 and the company incurred additional advertisement expenditure in India of ₹ 200 per watch and sold at ₹ 2,000 per watch.

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Apropos (P) Ltd. also purchased similar watches from its holding company Yemen Ltd. of UK. It was purchased at ₹ 700 per watch and incurred additional expenditure towards advertisement of ₹ 400 per watch and sold the same at ₹ 1,500 per watch. During the previous year 2019-20, Apropos (P) Ltd. purchased and sold 9,000 watches from Trinity Inc. Japan and 10,000 watches from Yemen Ltd. of UK. During the previous year 2019-20, Apropos (P) Ltd. paid interest of ₹ 30 lakhs to Martin, a resident in Cyprus. The rate of tax under the India-Cyprus DTAA on interest is 10%

The assessment of Apropos (P) Ltd. for the assessment year 2017-18 was completed in December, 2019. It reported ₹ 210 crore as international transactions for the assessment year 2017-18 and the Transfer Pricing Officer (TPO) determined the ALP of the international transaction at ₹ 250 crores. The assessee furnished all the information and documents sought by the TPO and there was no failure in maintenance of information and documents or in furnishing the same to TPO.

Apropos (P) Ltd. availed digital advertising space from Shangai Inc. of Hong Kong during October, 2019 to December 2019 and paid ₹ 1 lakh per month. It remitted the equalization levy for the month of October, 2019 within time and omitted to remit the balance amount of equalization levy till date.

There is a tax dispute pending before the appellate tribunal for the assessment year 2015-16 with regard to export of goods to Steve Inc., Australia (unrelated party). There is a tax treaty between India and Australia. Apropos (P) Ltd. wants to avail Most Favoured Nation (MFN) clause contained in the tax treaty.

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Ramesh, Managing Director of Apropos (P) Ltd.

Ramesh (age 75) is Managing Director of Apropos (P) Ltd. He is resident of India. He gave a gift of ₹ 13 lakhs on 17-03-2020 to his friend Suresh (age 62) who has been living in Malaysia since 1995. The amount was remitted through banking channels. Also, he gifted an immovable property in Chennai (stamp duty value ₹ 20 lakhs) on 15-05-2019 to Usha, the wife of Suresh who is also an NRI residing in Malaysia when she came to India by means of registered gift settlement deed.

Deepak, son of Ramesh

Deepak, age 45 (an Indian citizen) son of Ramesh has settled in California, USA since 2013. He had acquired a residential property in California on 25-06-2008 for USD 20,000. He kept bank deposit of USD 10,000 in a bank account in New York since 15-04-2009.

Notice under Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 was issued on 20-10-2017. The fair market value of residential property as on 01-04-2016 was USD 20,000; on 01-04-2017 USD 25,000 and 20-10-2017 USD 30,000. The bank deposit with accrued interest thereon was USD 12,000 on 01-04-2016; USD 12,500 on 01-04-2017 and USD 12,700 on 20-10-2017.

Note : USD = United States Dollar

The exchange rate of Indian currency per 1 USD as per the reference rate of the RBI on the various dates are;

01-04-2016 = ₹ 70; 01-04-2017 = ₹ 71; 20-10-2017 = ₹ 72

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Income earned by Dr. Rajesh

Dr. Rajesh is a US citizen and the son of Suresh (born and brought up in Malaysia). Dr. Rajesh is grandson of Ramji, who was born in the year 1934 at Dhaka presently in Bangladesh. Dr. Rajesh is a renowned surgeon. Every year he visited India during October and stayed for about 90 to 100 days. During his stay in India, he used to perform professional service viz. performing surgery on solicitation of such service by reputed hospitals in India and thereby earned some income. He does not have any fixed place regularly available in India for his profession. During the previous year 2019-20, Dr. Rajesh earned ₹ 7,70,000 during his stay in India.

Choose the most appropriate alternative for the following MCQs : **2×5 =10**

4.1 What is the time limit for completion of assessment of Deepak under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 ?

(A) 31-03-2018 (B) 31-03-2019

(C) 31-03-2020 (D) 31-03-2021

4.2 At what rate Apropos (P) Ltd. must deduct tax at source on interest paid to Martin of Cyprus assuming that the interest does not qualify under section 194LC or section 194LD ? Ignore surcharge and cess.

(A) 20% (B) 30%

(C) 10% (D) 40%

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4.3 Compute the amount of penalty Apropos (P) Ltd. has to pay for the assessment year 2017-18 due to increase in income consequent to ALP determined by the TPO ? Assume the rate of tax applicable for the assessment year 2017-18 as 25% and ignore surcharge and cess.

(A) ₹ 5 crores (B) ₹ 20 crores

(C) ₹ 1.50 lakhs (D) NIL

4.4 What is the "due date" before which Apropos (P) Ltd. must file the statement in respect of services chargeable to equalization levy ? And, what would be the maximum amount of penalty for failure to remit equalization levy ?

(A) 31-03-2020 / ₹ 10,000

(B) 30-06-2020 / ₹ 12,000

(C) 30-11-2020 / ₹ 1,000

(D) 31-07-2019 / ₹ 2,00,000

4.5 Apropos (P) Ltd. wants to avail Most Favoured Nation clause if contained in the tax treaty between India and Australia for export of goods to Steve Inc. Normally, where would you find the Most Favoured Nation clause in the tax treaty entered into by two countries ?

(A) Preamble

(B) Protocol

(C) Mutual agreement procedure.

(D) Tax Information Exchange Agreements [TIEAs].

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You are required to answer the following issues :

4.6 What would be the tax consequences of the gifts made by Ramesh ? Can the Assessing Officer treat Ramesh as agent of the non-residents Suresh and Usha for the purpose of tax recovery ? **4**

4.7 Compute the arm's length price of the purchases made from Yemen Ltd. and the quantum of income to be adjusted in the hands of Apropos (P) Ltd. by adopting Transactional Net Margin Method (TNMM). **5**

4.8 Compute the value of undisclosed foreign asset chargeable to tax in the hands of Deepak as per Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 ? Give brief reasons to support your computation. **3**

4.9 Determine the residential status of Dr. Rajesh and the income chargeable to tax in India as per UN Model. Ignore DTAA between India and USA. **3**

CASE STUDY – 5

Udupi Petrochemicals Ltd.

Udupi Petrochemicals Ltd. (UPL) is an Indian company with its headquarters at Jaipur. It undertakes contract manufacturing as well as trading activities with its associated enterprises around the world

Agreement with Cracker Limited (CL), London

UPL has a separate division, which is engaged in the business of manufacture and sale of turbochargers. UPL purchases turbocharger components directly from third parties in UK and US; in relation to such purchases, Cracker Limited (CL), London provides supply management services vide Material Suppliers Management Service Agreement (MSMSA). CL does not have any PE in India.

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As per the agreement, UPL pays to CL, supply management service fees calculated at 5% of the base prices from the suppliers.

Under the agreement, CL is responsible for the following :

- Finalization of supplier prices from UK and US suppliers and ensuring market- competitive pricing from suppliers;
- Ensuring that the approved suppliers have the necessary manufacturing capacities and infrastructure to provide for the raw material requirements;
- Assisting in ensuring on-time delivery of components by the suppliers to UPL, as well as resolution of delivery performance issues with suppliers, if any.

Assignment of an employee to Germany

One of the employees of UPL – Mr. E, had left India on assignment to work in Germany. During the year ended 31-3-2019, he was in India for 30 days only and for 120 days during the last 10 years. Salary was received by the assignee E in India, but the services were rendered in Germany only.

Undisclosed foreign assets

The Indian Income-tax department has received reliable information on 10-03-2020 that Mr. E has undisclosed assets purchased in Mauritius. The immovable properties were purchased on 10-02-2017 for 1 million Euro (1 Euro = INR 80). The market value of these assets as on 10-3-2020 is ₹ 900 lakhs and as on 01-04-2019 is ₹ 850 lakhs.

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Mr. Kollier, the managing director of UPL is a non-resident for the PY 2019-20. He was a non-resident during the earlier year also and prior to that, resident in India. On 12-03-2020, information was received by the Assessing Officer that Mr. Kollier may be the owner of a building in Singapore. The building as well as income from the building were not disclosed in the tax returns filed by him.

Promotional Payments by UPL

During the previous year 2019-20, UPL made certain payments to two foreign entities i.e. Cable Plc Ltd. (of UK) and Corfu Ltd. (of Greece) towards displaying promotional information about the turbochargers manufactured by UPL on their respective websites, both of which are highly popular and attract several thousand visitors every day. The amounts paid during the year were as under :

To Cable Plc Ltd. – ₹ 7,85,000

To Corfu Ltd. – ₹ 8,00,000

Proposed sale of UPL shares

Regina Singapore Pte Ltd. is a Singapore company which owns 40% of the shares of UPL since 2010. Regina Global Inc., a company incorporated in the US owns 100% of Regina Singapore Pte Ltd. and had infused the necessary capital in Regina Pte Ltd. to enable it to acquire shares in UPL. The Regina group is now considering a sale of the 40% stake in UPL to a Private Equity fund based in Canada.

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Exhibit 1

(Applicable to this Case Study only)

Article 13(4) of the India-UK treaty defines FTS as :

".....the term 'fees for technical services' means payments of any kind of any person in consideration for the rendering of any technical or consultancy services (including the provision of services of a technical or other personnel) which:

(a) *are ancillary and subsidiary of the application or enjoyment of the right, property or information for which a payment described in paragraph 3(a) of this article is received; or*

(b) *are ancillary and subsidiary to the enjoyment of the property for which a payment described in paragraph 3(b) of this Article is received; or*

(c) ***make available*** *technical knowledge, experience, skill know- how or processes, or consist of the development and transfer of a technical plan or technical design."*

Paragraph 3(a) and 3(b) of Article 13 defining royalty are reproduced below :

"3. For the purposes of this Article, the term "royalties" mean:

(a) *payments of any kind received as a consideration for the use of, or the right to use, any copyright of a literary, artistic or scientific work, including cinematography films or work on films, tape or other means of reproduction for use in cinematography films or work on films, tape or other means of reproduction for use in connection with radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial commercial or scientific experience; and*

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(b) *payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial or scientific equipment, other than income derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic."*

This DTAA was entered into on 10-1-2002. Notification assigning meaning to terms was issued on 22-1-2002; the same was published in the official gazette on 29-1-2002.

Exhibit 2

(Applicable to this Case Study only)

Article 15 of the India-Germany DTAA reads as under :

"1.....salaries, wages and such other remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable in the other Contracting State only if the employment is exercised there.

2..... remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

(a) *the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned,*

(b) .....

(c) ....."

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Choose the most appropriate alternative for the following MCQs : **2×5 =10**

5.1 In respect of remuneration received by Mr. E from UPL, which of the following statements is correct :

(A) Since the same was received in India, it is taxable in India and UPL is required to deduct tax at source;

(B) Such salary is not chargeable to tax in India and UPL is not required to deduct tax at source.

(C) Such salary is taxable in India and E can clam foreign tax credit for the tax paid in India.

(D) Such salary is taxable in India and hence E cannot claim foreign tax credit for the tax paid in India.

5.2 In respect of the contract manufacturing activities being undertaken by UPL for its associated enterprises, which out of the methods set out below would be the most appropriate for determining the ALP :

(A) CUP Method (B) Cost Plus Method

(C) Profit Split Method (D) Resale Price Method

5.3 In respect of the undisclosed foreign assets of Mr. E, the amount of undisclosed foreign income which is assessable in his hands the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 ["the BM Act"] is

(A) 800 lakhs (B) 850 lakhs

(C) 900 lakhs (D) Nil

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5.4 As regards the trading operations of UPL with its AEs, the maximum tolerance limit comparing the actual international transaction price and the ALP that will be accepted by the Department is:

(A) 1% of the ALP

(B) 3% of the international transaction

(C) 1% of the international transaction

(D) 1% of the ALP

5.5 The Assessing Officer of Mr. Kollier wishes to initiate a request under the Tax Information Exchange Agreement with Singapore (through the competent authority) seeking information about the ownership of the immovable property believed to be owned by Mr. Kollier. Which of the following statements is correct ? Assume that the TIEA Model Agreement applies

(A) TIEA applies only to financial information held by banks

(B) TIEAs can be used to seek any kinds of information from a foreign country, even if it is not relevant for the administration and enforcement of domestic laws.

(C) TIEAs apply only for seeking information that is related to grant of DTAA benefits.

(D) TIEAs apply even if the conduct being investigated is not a crime in the other country.

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You are required to answer the following issues :

5.6 (i) Can the fee paid by UPL to CL be regarded as "fees for technical services" or "royalties" in terms of the Income-tax Act as well as under the India-UK treaty (See Exhibit 1) ? **4**

(ii) If CL does not have a PE in India in terms of Article 5 of the India-UK treaty, examine whether the payments received by CL are chargeable to tax in India. **1**

(iii) Is there any need to deduct tax at source under section 195 from the payments made by UPL to CL ? **1**

5.7 Discuss the obligations and quantify the liability (if any) of UPL in respect of the payments made by it to Cable Plc Ltd. and Corfu Ltd., assuming that only Corfu Ltd. has a permanent establishment in India. What are the tax implications in the hands of Cable Plc. Ltd. and Corfu Ltd. ? Can Cable Plc Ltd. or Corfu Ltd. avail of the benefits of the applicable DTAA ? Assume that such DTAA is on the same lines as the UN Model Convention. **5**

5.8 Advise the Board of Directors of Regina Singapore Pte Ltd. and Regina Global Inc. about the availability of treaty benefits on gains arising from the sale of shares in UPL. Specifically consider the potential impact of treaty anti-abuse measures considered under the BEPS regime, assuming that capital gains earned by a resident of Singapore is not taxable in Singapore. **4**

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