

Final New Syllabus

Paper - 6 C

Roll No. **International Taxation**

DEC 2021

Total No. of Case Study Questions – **5**

Total No. of Printed Pages – **31**

Time Allowed – **4 Hours**

Maximum Marks – **100**

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

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

Answer in respect of Multiple-Choice Questions (MCQs) are to be marked on the OMR Answer Sheet as given on the cover page of the answer book.

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

Candidates should answer the Case Study Questions as selected by them in totality i.e., MCQ as well as descriptive Question of the same Case Study Question.

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

Candidates may use Calculator.

All questions relate to **Assessment Year (AY) 2021-22**, unless stated otherwise in the questions / case studies.

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CASE STUDY 1

Triveni (P) Ltd., Bhilwara, Rajasthan

Triveni (P) Ltd. (the 'Company') is engaged in manufacture of garments. Various kinds of garments were sold to Toho Inc. of New York, USA (who has 30% voting power in Triveni (P) Ltd.) and to other unrelated parties. The Company sold 3 lakh units of shirt @ USD 5 per unit to Toho Inc. Identical shirts were sold to other unrelated parties @ USD 6 per unit. (Assume the rate of exchange as 1 USD = ₹ 70). However, the terms of sales to Toho Inc. included provision of guarantee by Toho Inc. to SBI, on a loan of ₹ 25 crores availed by the Company from SBI; and providing the Company access to Toho Inc's database on market trends in Europe. The interest paid by Triveni (P) Ltd. on the SBI loan for the financial year ended March 31st 2021 (FY 2020-21) amounts to ₹ 200 lakhs. Triveni (P) Ltd. paid a fee @1% to Toho Inc. for providing the guarantee on the loan from SBI. The market rate for availing guarantee for a similar transaction is 2%. Triveni (P) Ltd. also paid ₹ 5 lakhs to Toho Inc. towards the cost incurred in providing access to its database. If the Company had obtained similar database from an unrelated party, the cost would have been ₹ 15 lakhs.

Toho Inc. markets apparels globally under its brand name. It sells in many countries including India through e-commerce operators at a price, which is generally marked-up at 50% on its cost of purchase. During the FY 2020-21, its sales in India was ₹ 20 crores through e-commerce operator viz., Talc e-Com Ltd., United Kingdom, in which Toho Inc. has 40% voting power.

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Leveraging their combined knowledge and experience, Triveni (P) Ltd. and Toho Inc. provided their know-how on the supply chain of textile industry to an unrelated party viz., Trueman Inc., USA, a new company manufacturing garments from recycled plastics.

Triveni (P) Ltd. bought a plant from Marshal Pte. Ltd., Singapore, on lease for an annual payment of ₹ 100 lakhs. The plant if imported would have costed ₹ 5 crores.

The DTAA between India and Singapore provides for withholding tax @ 15% on royalty paid. For the AY 2021-22, the POEM of Marshal Pte. Ltd. is in India.

The EBITDA of Triveni (P) Ltd. for the AY 2021-22 amounts to ₹ 440 lakhs and profit after tax (computed) is at ₹ 144.36 lakhs (tax rate 27.82%).

For the AY 2018-19, the total income of Triveni (P) Ltd. was enhanced by ₹ 210 lakhs by the Assessing Officer ('AO'), in conformity with the Arm's Length Price ('ALP') determined by the Transfer Pricing Officer ('TPO'). The assessment order is dated 15.11.2020. The Company decided to accept the adjustment made in the assessment order.

Dr. Richards - Ex-director of Triveni (P) Ltd.

Dr. Richards was Director (Research and Development) of Triveni (P) Ltd. up to 31.03.2016. He authored a book on textile technology, which was published by a reputed book publishing company in India. The first edition was written in the year 2010 when he was employed at Triveni (P) Ltd.. He left India and went back to his home country in April, 2016. He visits India every year for giving final touches to the revised edition of the book and stays in India for 45 days. In the

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FY 2020-21, he earned royalty income of Rs 12 lakhs and incurred expenditure of ₹ 3 lakhs towards travel and stay in India. He used to retain 50 percent of the gross royalty due to him at the publisher, on which he earned interest @12 percent per annum. His interest income on the cumulative balance with the publisher for the AY 2021-22 amounts to ₹ 5 lakhs. He donated ₹ 50,000 to PM CARES Fund in August 2020.

Choose the correct alternative for the following MCQs :

2×5
=10

1.1 At what rate Triveni (P) Ltd. would withhold tax on the amount paid to Marshal Pte. Ltd., Singapore ?

- (A) 40%
- (B) 15%
- (C) 10%
- (D) 30%

1.2 What would be the most appropriate method for determination of ALP in respect of the transactions between Triveni (P) Ltd. and Toho Inc., who together undertook market research for Trueman Inc. of USA ?

- (A) Comparable Uncontrolled Price method
- (B) Transaction Net Margin Method
- (C) Profit Split Method
- (D) Cost Plus method

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- 1.3 How much is the total income of Triveni (P) Ltd. after ALP adjustment for the supplies made to Toho Inc and interest paid to SBI based on the guarantee provided by Toho Inc. ?
- (A) ₹ 319.36 lakhs
(B) ₹ 375 lakhs
(C) ₹ 402.5 lakhs
(D) ₹ 410 lakhs
- 1.4 For the AY 2018-19, in case Triveni (P) Ltd. is not able to repatriate the excess money from Toho Inc., what is the additional income-tax it should pay, so that there is no secondary adjustment ?
- (A) 58,28,659
(B) 37,80,000
(C) 39,31,200
(D) 44,02,944
- 1.5 What is the 'due date' by which Triveni (P) Ltd. must receive the excess money consequent to ALP adjustment made in the assessment order for AY 2018-19 ?
- (A) 31.12.2020
(B) 28.02.2021
(C) 13.02.2021
(D) 31.03.2021

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Based on the information provided, you are required to answer the following issues :

- 1.6 Compute the transfer pricing adjustments (primary and secondary) to be made to the transfer price in respect of goods supplied by Triveni (P) Ltd. to Toho Inc. for the AY 2021-22. **5**
- 1.7 Compute the total income and tax liability of Dr. Richards under the Income-tax Act, 1961, on the assumption that there is no DTAA between India and his home country. Determine the amount of tax deductible at source by the publisher from the royalty and interest paid / payable to Dr. Richards. Is Dr. Richards required to file his income tax return (ITR) in India ? **5**
- 1.8 What is the tax liability to Toho Inc in India on sale of goods in India through the e-commerce operator ? In case Toho Inc. makes direct supply of goods by obtaining the data from Talc e-Com Ltd., United Kingdom, what would be your answer ? Will your answer be different if Talc e-Com Ltd. is an Indian company located in Mumbai ? Do consider the provision relating to significant economic presence of a non-resident in India in your answer. **5**

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CASE STUDY 2

Smart Advisors LLP is a boutique tax advisory firm. You are a Partner in the international tax consultancy division of the firm and are requested to advise on the following client issues :

Sanjeev (P) Ltd., Baroda

Sanjeev (P) Ltd., Baroda has been supplying goods to its Associate Enterprise (AE) in foreign country and the report in respect of its international transactions with AE has been furnished for all years. It has applied for Advance Pricing Agreement ('APA') in respect of the transactions with its AE. The application for APA was filed on 15th March, 2020 and the APA was signed on 2nd June, 2020. It applied for APA rollback in July, 2020 which was signed on 20th November, 2020. The details of the status of open income tax assessments are as follows :

- Assessment Year (AY) 2014-15 - reassessment under section (u/s) 148 of the Income-tax Act ('Act') is pending and it is in respect of the ALP determination, which was alleged by Revenue as wrongly computed in the original assessment;
- AY 2015-16 - the matter is pending before High Court with regard to acquisition of a company by the assessee and the dispute is about set off of loss of the erstwhile company;
- AYs 2016-17 and 2017-18 - there is no dispute and the assessments have been completed;
- AY 2018-19 - notice u/s 143(2) of the Act was issued and the assessment is pending;
- AY 2019-20 - the income tax return ('ITR') was filed on 20th March, 2020; and
- AY 2020-21 - the ITR was filed on 20th September, 2020.

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Dexter (P) Ltd., Kanpur

Harish, the ex-CEO of Dexter (P) Ltd. was in India up to 31st March, 2014. He received secret commission from the overseas suppliers to the extent of USD 5,00,000 in a bank account outside India. Out of the said amount, he acquired an apartment in Singapore in June, 2013 for USD 3,00,000 and spent the balance amount in a destination wedding in Mauritius, for his daughter in August, 2018. Based on the documents recovered in a search in the premises of Dexter (P) Ltd. in July 2019, proceedings under Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 ('Black Money Act' or 'BM Act') and Income-tax Act ('IT Act') were initiated. Notice under the BM Act and IT Act was issued to Harish on 20th September, 2019, The fair market value of the Singapore apartment as on 01.04.2019 was USD 5,00,000 and as on 01.04.2020, it was USD 5,10,000.

Dexter (P) Ltd. availed certain technical services from Delta Co Ltd. of Country 'L' for USD 1 (one) lakh. India and Country 'L' signed Multi-Lateral Instrument ('MLI') on 25.07.2020 and both submitted the instrument of ratification to OECD depository on 27th August, 2020.

Martin SPA of Belgium has 12% shareholding in Dexter (P) Ltd.. Martin SPA is engaged in manufacture of glass utensils and portable power generators. It has a branch office at Kolkata for sale and service of its generators (manufactured in Germany). Martin SPA wants to do direct sale of glass utensils (manufactured in Belgium) to a large retail chain in India.

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Vijay

Vijay (age 40 years) was employed as marketing manager at Dexter (P) Ltd. He resigned his job on 10th November, 2020 and joined a foreign company headquartered in Sharjah, UAE, as General Manager (Marketing) on 1st December, 2020, at a salary of USD 10,000 per month. The salary of every month is due on the 1st day of the next calendar month. There is no income tax in the country where he is employed outside India. In India, Vijay paid interest on housing loan amounting to ₹ 3,00,000; repaid housing loan principal of ₹ 6,00,000; and paid life insurance premium of ₹ 1,20,000. His income in India consists of (i) salary income in India ₹ 21,00,000 (computed after standard deduction) up to 10th November, 2020; and (ii) Bank fixed deposit interest ₹ 1,50,000. His family resides in the own house, for which he has paid the interest and principal mentioned above.

Ajay brother of Vijay is employed at a US branch office of a software company, which has its headquarters located in Bengaluru, India. The software company has 15 branches in various countries and all the branches are controlled from India. Ajay has never visited India during the last 10 years and came to India on 20th November, 2020 and stayed in India till 15th April, 2021. He inherited a commercial building of his parents which yielded annual income of ₹ 25 lakhs (computed). Vijay was his power of attorney holder till he left for employment outside India in November, 2020. Salary income of Ajay up to November, 2020

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amounts to ₹ 36 lakhs (computed) and he worked from home when he was in India and his salary income from December, 2020 to March, 2021 was ₹ 28 lakhs (computed).

The TT buying rates of 1 USD on various dates are as under :

April 1, 2019 to 30th November, 2020 = Rs 70; and on 1st December, 2020 to 1st April 2021 = ₹ 71.

Choose the correct alternative for the following MCQs :

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=10**

2.1 What is the time limit for completion of assessment in the case of Harish under the Black Money Act ?

- (A) 31.03.2021
- (B) 31.03.2022
- (C) 31.03.2023
- (D) 30.09.2020

2.2 What is the date of entry into force of MLI between India and Country 'L' ?

- (A) 01.04.2021
- (B) 01.01.2021
- (C) 01.12.2020
- (D) 27.11.2020

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2.3 Which of the following statement is valid under the UN Model Convention in respect of Martin SPA for the income earned by it ?

- (A) Both the profits earned by direct supply and through the branch are taxable by applying Force of Attraction Rule.
- (B) Only profit of the branch is taxable. Profit from direct supply is not taxable as Force of Attraction Rule would not apply.
- (C) Both the profits are not taxable as the company's activities are preparatory in nature and actual operations are carried outside India.
- (D) Both the profits earned are exempt by applying Bright Line Test

2.4 What is the residential status of Ajay for the AY 2021-22 ? Ignore relaxations given for Covid-19.

- (A) Resident and ordinarily resident
- (B) Resident but not ordinarily resident
- (C) Non-resident
- (D) Deemed Resident

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2.5 In which of the following cases, the sale of goods by Martin SPA in India would not be taxable under UN Model ?

- (A) By appointing Mr. Suresh, a relative of the Promoters of Dexter (P) Ltd., as a part-time agent in India for sale of goods
- (B) By appointing an exclusive agent (unrelated) in India, who secures order mainly for it.
- (C) By establishing a liaison office for storage and delivery of goods
- (D) By opening a liaison office just to secure and process customers' orders and supplying goods directly from Belgium

Based on the information provided, you are required to answer the following issues :

2.6 Discuss briefly the applicability of rollback agreement for various assessment years to Sanjeev (P) Ltd.. Further, briefly state about the applicability of annual compliance audit for all the years covered by the APA signed. **6**

2.7 Decide the validity of notice issued under Black Money Act, 2015 and Income-tax Act, 1961 for taxation of undisclosed asset and income in the hands of Harish. Further, determine the tax liability, if any under the Black Money Act and Income tax Act. **4**

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- 2.8 Determine the residential status and compute total income of Vijay for the Asst. Year 2021-22. What would be the impact if his salary payable outside India is credited directly to his bank account in Mumbai ? What would be your answer in case the business outside India is owned by an Indian resident and controlled from India in both the above said situations ? **5**

CASE STUDY 3

Jones Ltd., Jaipur

Jones Ltd., Jaipur is engaged in manufacture of electrical cables. 60% of its shareholding are held by Jupiter Ltd., UK. 40% of Jupiter Ltd. is in turn held by Lewis Inc., of USA. Based on the guarantee of Lewis Inc., Bank of Abu Dhabi, UAE advanced ₹ 150 crores to Jones Ltd. For the FY 2020-21, the EBITDA of Jones Ltd. is ₹ 21 crores and interest payable on the said loan amounts to ₹ 7.4 crores.

Jones Ltd. along with Lewis Inc. is bidding for a large Government EPC contract in India. Jones Ltd. wants to obtain an advance ruling regarding the tax liability arising from the transactions with Lewis Inc.

Jones Ltd. is contemplating an agreement with Motors Corp. of South Korea. The agreement would give exclusive distribution right throughout India to Jones Ltd. for the goods manufactured and supplied by Motors Corp. Jones Ltd. would leverage on its existing sales network to sell the goods supplied by Motors Corp., without any value addition or rebranding.

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Jones Ltd. started online advertising of its products on the portal EVonline.com, Japan, from 01.06.2020. During the FY 2020-21, Jones Ltd. paid ₹ 6 lakhs to EVOnline.Com towards online advertisements.

Jones Ltd. declared dividend in January 2021. Henry LLC, a company incorporated in Country X and a minority shareholder in Jones Ltd., is to receive dividend of ₹ 5,50,000. The protocol to the tax treaty ('DTAA') between India and Country X contains the Most Favored Nation (MFN) clause. As per the DTAA between India and Country X, the rate of tax on the dividend income in the source country is 20%. In a subsequent DTAA between India and Country Y, the rate of tax on dividend is provided at @10%.

Mr. Mahesh, an expat on deputation to Jones Ltd.

Jones Ltd. has obtained technology to manufacture cables for the defense industry from Sun LLC of United States and acquired machineries for manufacture from Randall Pte. Ltd., Singapore ('Randall'). The agreement with Randall envisaged that it would depute its staff for any difficulty in operation / production encountered by Jones Ltd.. Jones Ltd. could not get output as per its standard of quality specifications and therefore sought technical assistance from Randall, who deputed Mr. Mahesh (VP-Operations) to provide the necessary expertise in operating the machineries.

Mahesh came to India on 30th November, 2020 and immediately got to work at the factory of Jones Ltd. from 1st December, 2020. As per agreement, the salary of Mahesh during his stay in India had to be borne by Jones Ltd.. Mahesh's salary is USD 10,000 per month and is to be paid on the first day of next calendar month. The salary has to be credited directly to his bank account held outside India.

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The TT buying rates of 1 USD in Indian Rupee are given below :

30.11.2020 = ₹ 69	31.12.2020 = ₹ 70
31.01.2021 = ₹ 71	28.02.2021 = ₹ 72
31.03.2021 = ₹ 73	30.04.2021 = ₹ 74

Ravinder, MD, Jones Ltd.

Jones Ltd. is associated enterprise of Moon Ltd. of Country 'Z'. Ravinder, a person of Indian origin and citizen of Country 'Z', is employed at Moon Ltd.. As his parents living in India are getting old and unwell, Ravinder wished to come and stay in India with them. As Ravinder was a high performing employee of the international group, he was appointed as Managing Director of Jones Ltd. in the year 2018 for a period of 3 years (to end by 30.06.2021). During this period, he resides with his parents in India and regularly visits Country Z, where his family (wife and kids) continue to reside. His salary income from Jones Ltd. for the FY 2020-21 is ₹ 48 lakhs. Ravinder owns house property both in India and Country 'Z', both of which are self-occupied by him and his family. Ravinder has a passion towards farming and has income from an organic farm owned by him in Country 'Z'. He plans to retire in 5 years and do farming. As per the domestic law of India and Country 'Z' the residential status of Ravinder is resident in the respective countries.

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Choose the correct alternative for the following MCQs : 2×5
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- 3.1 How much of interest paid to Bank of Abu Dhabi based on the guarantee provided by Lewis Inc., is liable for disallowance under section 94B ?
- (A) ₹ 7.40 crores
(B) Nil as interest is not paid to AE
(C) ₹ 1.10 crores
(D) Nil as the loan provided cannot be deemed to be issued by an AE
- 3.2 What would you call when the dividend declared by Jones Ltd. is taxable both in India and in the foreign State of which Henry LLC is a resident (i.e. Country X) ?
- (A) Economic double taxation
(B) Juridical double taxation
(C) Non-exclusive single taxation
(D) Mutual double taxation
- 3.3 At what rate Henry LLC by virtue of MFN clause is liable to pay tax on the dividend received from Jones Ltd. ?
- (A) 20%
(B) 10%
(C) At the regular rate applicable to foreign companies
(D) 10% plus applicable surcharge and education cess

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3.4 The AAR ruling on the application of Jones Ltd. in respect of the transactions with Lewis Inc., may be binding on which of the following ?

- (i) Applicant i.e. Jones Ltd.;
- (ii) Lewis Inc., USA;
- (iii) Transaction in respect of which it is sought;
- (iv) PCIT or CIT in respect of said transaction;
- (v) The Appellate Tribunal for forming an opinion.

The options are as under :

- (A) (i), (ii), (iii) and (iv)
- (B) (i), (iii), (iv) and (v)
- (C) (i), (iii) and (iv)
- (D) (i), (ii), (iv) and (v)

3.5 Assuming, Motors Corp is deemed to be an AE of Jones Ltd., which would be the most appropriate method for determination of ALP in respect of goods purchased from Motors Corp by Jones Ltd. for distribution in India ?

- (A) Cost Plus method
- (B) Resale Price method
- (C) Profit Split method
- (D) Comparable Uncontrolled Price method

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You are required to answer the following issues :

- 3.6 Analyse the chargeability and determine the quantum of tax deductible at source on salary payment made to Mahesh. Assume, the salary is paid by Randall outside India by direct credit to his bank account in Singapore and later adjusted between Jones Ltd. and Randall in their business transactions. Would such arrangement have any tax consequences for Mahesh ? (Assume, the relevant article of India-Singapore DTAA is based on the UN Model Convention) **5**
- 3.7 Discuss briefly the provisions relating to determination of the residential status of Ravinder. Assume the DTAA between India and Country 'Z' provides for tie-breaker rule. Will your answer be different if Ravinder's appointment in India is not with specific timelines, and his wife has shifted to India and the organic farm is in Malaysia. **5**
- 3.8 Determine whether Jones Ltd. is liable for equalization levy for the payments made to EVOnline.Com. Will your answer be different, if EVOnline.com has a branch office in Bengaluru for its India business ? What are the tax implications in India on the payment for online advertisement made by Moon Ltd., U.K to EVOnline.com, Japan ? **5**

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CASE STUDY 4

Emsun Ltd.

Emsun Ltd. engaged in manufacture of semi-finished goods and exporting the same to its parent company Apollo Inc. of Australia. It also completes the full process of manufacturing and exports the finished goods in its brand name to European countries. The tax assessment of Emsun Ltd. for assessment year 2019-20 is pending as at 31.03.2021, as the Assessing Officer made reference to Transfer Pricing Officer (TPO) in September, 2020.

For the year ended 31.03.2021, the net income of Emsun Ltd. is computed by the assessee at ₹ 500 lakhs after adjusting for the following :

- (i) Depreciation of ₹ 260 lakhs;
- (ii) Interest on moneys borrowed is ₹ 850 lakhs. The interest includes ₹ 600 lakhs paid to parent company Apollo Inc. The assessee while determining the ALP in respect of interest on loan from parent company, suo motto added back ₹ 105 lakhs to its total income;
- (iii) amortization of preliminary expenses under section 35D of ₹ 60 lakhs (on the capital employed of ₹ 50 crores).

Emsun Ltd. bought shares for ₹ 30 crores from a Foreign Institutional Investor (FII). All the shares are listed in recognized stock exchanges in India. The purchase of shares resulted in long-term capital gain of ₹ 2 crores (computed) and short-term capital gain of ₹ 5 crores (computed) to the FII.

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Emsun Ltd. carried out certain transactions with its parent company Apollo Inc. during the FY 2020-21 which the Assessing Officer considers necessary to declare as impermissible arrangement lacking commercial substance. He made reference to the Commissioner and it was subsequently referred to Approving Panel on 23.09.2020 and the reference was received by the Approving Panel on 03.10.2020.

Mr. Rajesh, NRI, living in Singapore

Apollo Inc. Australia besides investment in Emsun Ltd. is engaged in manufacture of toys and dolls. Apollo Inc. solicited the services of Mr. Rajesh a NRI presently living in Singapore. Rajesh visited India every year during Durga Pooja to Diwali (say from September to November) and secured orders from Indian buyers for supply of toys and dolls by Apollo Inc.

The functional responsibility of Mr. Rajesh included timely dispatch of goods by Apollo Inc., and safe receipt of delivery by Indian customers and remittance of amounts by Indian customers to Apollo Inc. Apollo Inc. decides the itinerary of Mr. Rajesh as regards date, time and place to be visited by him. He usually stayed for more than 120 days during every previous year. For the previous year 2020-21, Rajesh was paid ₹ 15 lakhs (equivalent in US dollars) as commission by Apollo Inc. by crediting directly his bank account in Singapore. The total amount of purchases made by Indian customers from Apollo Inc. by placing orders through Rajesh amounted to ₹ 300 lakhs. The normal profit that would have been earned by Apollo Inc. is @ 10% on sale price.

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Mr. Anand (age 40 years), brother of Mr. Rajesh is a non-resident Indian based out of UK. He left India for the first time on 10.04.2012 for employment outside India. Wife of Mr. Anand is a physician (doctor) running a hospital as a partnership firm along with group of doctors in UK. She visited India on behalf of the firm to treat the patients in various hospitals in India and stayed for 180 days during the previous year 2020-21. The income arising from her services were paid to the bank account of the firm in UK.

Mr. Anand gives you the following information for the year ended 31.03.2021 :

- (i) Dividend from foreign companies credited to his bank account in India is ₹ 3,61,000.
- (ii) Anand sold shares of Ellora Pharma Ltd. (Listed) which were subscribed in convertible foreign exchange. Cost of acquisition on 30.04.2015 was ₹ 4 lakhs and sold on 11.08.2020 for ₹ 7 lakhs. STT @0.1% paid on acquisition and sale of shares.

Bonus shares were issued by Ellora Pharma Ltd. in December 2017, which were also sold in October 2020 for ₹ 3,50,000.

The fair market value of Ellora Pharma Ltd. as on 31.01.2018 was ₹ 5,40,000 for original shares and ₹ 2,10,000 for bonus shares.

- (iii) Anand had acquired 100 shares in an unlisted company on 10.07.2010 for ₹ 1,67,000. These shares were sold on 25.02.2021 for ₹ 6,40,000.
- (iv) He made investment of ₹ 6,00,000 by way of deposit in an Indian company on 05.03.2021.
- (v) He paid ₹ 40,000 towards health insurance premium of his father being a senior citizen and non-resident Indian.

The Cost Inflation Index is as follows : F.Y. 2010-11 = 167; F.Y 2015-16 = 254,
FY 2020-21= 301

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

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- 4.1 What would be the most appropriate method applicable for determination of ALP for Emsun Ltd. for manufacturing and supplying semi-finished goods to Apollo Inc. ?
- (A) Cost Plus Method
 (B) Profit Split Method
 (C) Resale Price Method
 (D) Comparable Uncontrolled Price Method
- 4.2 If the payment made by Apollo Inc. to Mr. Rajesh is not covered by any of the specific clauses of UN Model of convention, in which country the commission income would be taxed ? (Ignore DTAA between India and Singapore)
- (A) In the State of residence i.e. Singapore
 (B) In the State of source i.e. India
 (C) In both the countries
 (D) In neither countries. It is tax-free
- 4.3 How much Emsun Ltd. should deduct tax at source out of the payments made to FII for the purchase of listed shares ?
- (A) ₹ 98.80 lakhs
 (B) ₹ 72.80 lakhs
 (C) ₹ 180.336 lakhs
 (D) NIL

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4.4 When wife of Mr. Anand came to India and rendered services on behalf of the partnership firm running a hospital in UK, the income so earned is covered by which article of the tax treaty as per UN Model ?

- (A) Business profit - Article 7
- (B) Fees for technical services - Article 12A
- (C) Independent personal services - Article 14.
- (D) Dependent personal services - Article 15

4.5 What is the time limit within which the Approving Panel must give direction to the Commissioner as regards invoking or otherwise of GAAR provisions in the assessment of Emsun Ltd. ?

- (A) 30.04.2021
- (B) 31.03.2021
- (C) 28.02.2021
- (D) 31.03.2022

You are required to answer the following issues :

4.6 Compute the amount of interest liable for disallowance for the AY 2021-22 **4**
and time limit for repatriation of excess interest by Apollo Inc. Also, state the impact of secondary adjustment in the hands of Emsun Ltd. as regards interest deduction and carry forward to future assessment years.

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- 4.7 Is the commission income of Mr. Rajesh, chargeable to income-tax in India ? Can the Assessing Officer issue notice for taxing the income earned in India by Apollo Inc., from selling goods in India ? **5**
- 4.8 Compute the total income and tax liability of Mr. Anand for the AY 2021-22 with brief reasons for treatment of each item. **6**

CASE STUDY – 5

Silver Ltd., Kolkata

Silver Ltd. is a constituent of Bradman Ltd. of UK. Silver Ltd. is engaged in manufacture of perfumes with the brand “Gold Silver”. It contested the tax assessment of the AY 2018-19. The disputes relates to certain clauses of DTAA between India and foreign country which resulted in enhancement of income and consequent tax liability. The tax head of Group consulted a legal counsel in UK viz., Mr. Simon for advise. Mr. Simon cited some UK court decisions for interpretation of DTAA and which could be used to benefit of the assessee in appeal. He also opined that any term not defined in the Indian tax law but defined subsequently could be used for interpreting the DTAA and that would benefit the assessee.

Silver Ltd. paid ₹ 3.50 lakhs for online digital advertisement space to Diggy Corp of Malaysia in the FY 2020-21. Diggy Corp has no permanent establishment in India. A further sum of ₹ 2.30 lakhs is payable for the year to Diggy Corp for the digital advertisement space used by Silver Ltd.

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Marks

Silver Ltd. entered into a contractual agreement with VK Ltd. of Country 'M' for availing project installation services in India. The term of the contract would span more than 12 months. To avoid constituting a PE in India, VK Ltd. resorted to splitting the contract into 3 contracts of shorter duration. Further, VK Ltd. wants to route the contract through its subsidiary in Country N. The DTAA between India and Country N provides a period of 12 months for an installation project to constitute a PE. Since Country N has a low tax rate, VK Ltd. wants to assume key risks in its subsidiary there, so that significant residual profits are allocated to Country N.

Silver Ltd. had to pay royalty to Jasmine GmbH of Germany for using the brand name owned by the foreign company. As per agreement the India tax liability on royalty payable to Jasmine GmbH had to be borne by Silver Ltd.. The DTAA between India and Germany provides for withholding tax @10%. Silver Ltd. however had deducted tax @20% on the royalty of ₹ 400 lakhs payable to Jasmine GmbH.

Alfred (P) Ltd., Cochin is subsidiary of Silver Ltd.. It is engaged in the activity of manufacture and sale of electronic components to Sumitzu Corp. of Japan. It expects some interpretational disputes in certain articles of the DTAA between India and Japan.

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Narain, CEO of Silver Ltd.

Narain (Age 50 years) is the CEO of Silver Ltd. since 01.04.2016. His income in India consists of salary (before standard deduction) of ₹ 23 lakhs; loss from self-occupied property ₹ 3 lakhs and interest on bank deposits ₹ 1,60,000. He was outside India in Country 'P' from 01.04.2004 to 31.03.2015 and has the following incomes for the year ended 31st March, 2021. (i) Income from business in Country P = USD 25,000; (ii) Dividend from shares held in Country 'P' where dividend was declared and paid in March, 2021 = USD 10,000; (iii) Capital gain of USD 5,000 on sale of shares of companies registered in Country 'P' and sale proceeds were credited in bank account outside India on 28.03.2021.

India has DTAA with Country 'P' and the tax paid in Country 'P' is eligible for tax credit in India. The fiscal year for income-tax is the same both in India and Country 'P'. Rate of tax is 20% in Country 'P' in respect of all incomes. Income-tax was paid in Country 'P' by Narain on 25.05.2021 for the incomes of the year ended 31st March, 2021.

Ravi and Prem are brothers of Narain. Ravi is a US citizen but resident in India for the AY 2021-22. Prem is also a foreign national and non-resident for the AY 2021-22.

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Lotus Inc., USA

Lotus Inc. of USA is one of the constituents of Bradman Ltd. of UK.

Lotus Inc. USA has 55 lakh equity shares in Rose Inc. Canada who has PE in India. Lotus Inc. sold 11 lakh equity shares in Rose Inc. to Jasmine Pte. Ltd. of Singapore for USD 22 lakh on 25th November, 2020. The entire shareholding in Rose Inc. was acquired by Lotus Inc. in one instalment for USD 50 lakhs on 25.04.2011.

The details of assets and liabilities of Rose Inc. are as under :

	Canada		India	
	31.03.2021	31.10.2021	31.03.2021	31.10.2021
	₹ in crores			
Fair market value of assets	4.00	8.00	20.00	24.00
Book value of assets	3.00	7.00	18.00	22.00
Liabilities	3.00	4.00	10.00	15.00

Note :

The TT buying rate of 1USD on various dates : 25.04.2011 = ₹ 60; 31.03.2020 = ₹ 70; 31.10.2020 - ₹ 71; 25.11.2020 = ₹ 72; 28.02.2021 = ₹ 70; 28.03.2021 = ₹ 70.50; 31.03.2021 = ₹ 71; 30.04.2021 = ₹ 72; and 25.05.2021 = ₹ 73.

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(28)

CQG

Marks

Choose the correct alternative for the following MCQs :

2×5
=10

5.1 Can Silver Ltd. claim refund of tax excessively deducted by it on royalty paid to Jasmine GmbH ?

- (A) No. Silver Ltd. cannot claim refund therefore the amount eligible for refund does not arise.
- (B) Jasmine GmbH can only claim refund of excess 10% deducted being ₹ 47.47lakhs.
- (C) Jasmine GmbH cannot claim refund as the tax deducted is far less than 40% payable on its income in the capacity of foreign company
- (D) Yes, Silver Ltd. can claim refund.

5.2 Which of the following would help Alfred (P) Ltd. in resolving the interpretational disputes in certain articles of the DTAA between India and Japan ?

- (A) Dispute Resolution Panel
- (B) Mutual Agreement Procedure
- (C) Multi-Lateral Instrument
- (D) Advance Pricing Agreement

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CQG

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5.3 Which of the BEPS Action Plan ('AP') is intended to curb the approaches being adopted by VK Ltd. to reduce the tax liability in India ?

(A) AP-5, AP-6, AP-7, and AP-8-10.

(B) AP-5, AP-6, and AP-7

(C) AP-2, AP-3, AP-5, and AP-6.

(D) AP-3, AP-5, AP-6, and AP-7.

5.4 Assuming Narain, Ravi and Prem have similar and equal source of some income in India, which of the following statement is valid as per Article 24 of the UN Model ?

(A) All the three of them are taxable equally and there is no room for discrimination in charging income-tax for the same income among them.

(B) Narain and Ravi are the same (i.e. resident) but not Prem who is a non-resident. Therefore, tax on Prem could be more than the tax on Narain and Ravi.

(C) Ravi and Prem are same since they are foreign nationals but not Narain who is an Indian national. Therefore, tax on Ravi and Prem could be more than the tax chargeable on Narain's income as Narain is both a resident and Indian national.

(D) Narain and Prem are same but not Ravi who is a foreign national. Therefore, tax on Ravi could be more than tax levied on Narain and Prem.

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P.T.O.

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CQG

Marks

5.5 How much is payable by Silver Ltd. by way of equalization levy for the digital advertisement space used from Diggy Corp ?

(A) ₹ 35,496

(B) ₹ 21,000

(C) ₹ 34,800

(D) ₹ 46,800

You are required to answer the following issues :

5.6 Discuss briefly the tax consequence of the sale of shares of Rose Inc. by Lotus Inc. and compute tax liability in India, if any arising from sale of shares in the hands of Lotus Inc. 6

5.7 Compute the total income of Narain for the AY 2021-22 with final tax liability after deduction of foreign tax credit. Will your answer be different, if there is no DTAA between India and Country P, as regards the net tax liability of Narain for the AY 2021-22. 6

Note : Narain opts for tax under section 115BAC.

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5.8 Do you agree with the approach suggested by Mr. Simon, legal counsel in UK, of defending the case in appeal in India by citing UK court decisions ?
Further, is it valid to interpret DTAA entered by India (based on OECD MC) by adopting ambulatory approach ?
