

Roll No. ....

**Final New Syllabus  
Paper - 6 C**

**MAY 2019**

Total No. of Case Study Questions – 3

**International Taxation** 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.

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

Answer in respect of Multiple Choice Questions are to be indicated in capital letters i.e. A or B or C or D as the case may be.

“Working notes should form part of the answer”. **However in answers to objective type questions : (MCQs carrying two marks each), working notes are not necessary.**

All questions relate to **Assessment Year 2019-20**, unless stated otherwise in the questions / case studies.

**Marks**

**Case Study 1 :**

**Good Day Inc of USA and its associates :**

Good Day Inc of USA is engaged in multiple trading and manufacturing activities throughout the world. It has a liaison office at Mumbai meant for sourcing raw materials in India for the purpose of carrying out manufacturing activity at USA. It also provided plant and machinery on hire to be used for extraction of mineral oils in India. During the previous year 2018-19, it received mobilization advance of ₹ 2 crores from an Indian company for movement of rigs from a foreign

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country to an offshore site at Mumbai and subsequently they were put to use (i.e.) for extraction of mineral oil. It also received ₹ 5 crores by way of hire towards provision of plant and machinery for the previous year 2018-19 in India. Good Day Inc. has a subsidiary company by name Kite Inc. at Portugal which is engaged in supply of electronic goods worldwide.

Good Day Inc. also has another subsidiary by name Becker Inc. at Germany. On 01.04.2018, Becker Inc. advanced ₹ 2 crores to Manna Dey (P) Ltd. of Mumbai by remitting the amount directly from Germany to the bank account of Manna Dey (P) Ltd. For the previous year 2018-19, interest is receivable from Manna Dey (P) Ltd @ 9%. For the Assessment Year 2019-20. Becker Inc. having significant activities in India became resident assessee because of POEM.

On 01.07.2018, Manna Dey (P) Ltd borrowed Rs.10 crores from Jimmy Connors Ltd, United Kingdom for which interest is payable at 9% per annum. The pre-tax profit of Manna Dey (P) Ltd. was ₹ 160 lakhs before deducting depreciation of ₹ 40 lakhs and interest on moneys borrowed by it. The total borrowing of Manna Dey (P) Ltd is ₹ 12 crores which is 80% of its total assets.

**Democrat (P) Ltd, Chennai**

Democrat (P) Ltd is a subsidiary of Giant Trade Ltd of UK. It is engaged in manufacturing and trading of consumer durables both by import and export. It is also engaged in executing turnkey projects. It had 4 directors viz. Ashok Chatterjee, Mithun Banerjee, Dr Deepak Mitra and Meenakshi Jain. The director Ashok Chatterjee sold 30% of the shares owned by him to his son Santhosh Chatterjee in June 2015 and resigned from the directorship of the company. The whereabouts Ashok Chatterjee are not known to the company.

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Democrat (P) Ltd. gave loan of ₹ 6 crores on 01.07.2018 to its associated concern in Australia without charging interest. For giving the said advance, Democrat (P) Ltd. mobilized funds by issuing 8% Debentures on 01.06. 2018.

Kite Inc. of Portugal entered into an agreement for supply of electronic goods to Democrat (P) Ltd. of Chennai on regular basis. As per agreement, it supplied goods worth ₹ 10 crore every month from April, 2018 onwards and the supply is to be made for 42 months continuously.

Democrat (P) Ltd. permitted yet another of its associated enterprise by name Maxwell (P) Ltd. registered in South Africa to use the hired machineries for exploration of mineral oil in Kenya. Democrat (P) Ltd. paid ₹ 5 crores to Dusseldorf Inc. of Germany towards hire charges of plant and machinery for the previous year 2018-19. The usage of Maxwell (P) Ltd. is equal to 55% of the total hire charges paid and the balance was for the use by Democrat (P) Ltd. Maxwell (P) Ltd. did not share or pay any hire charges and the entire amount was paid by Democrat (P) Ltd.

During the Previous Year 2018-19, Democrat (P) Ltd. sponsored a football tournament in India. Mr. Dickie Bird citizen of UK but resident of India (for Assessment Year 2019-20) a famous international referee received ₹ 4,50,000 for acting as referee in the tournament from Democrat (P) Ltd.

**Income-tax assessment of Democrat (P) Ltd.**

The income-tax return of the Assessment Year 2018-19 was filed by Democrat (P) Ltd on 20.12.2018 declaring total income of ₹ 52.50 crores. The assessee obtained report in respect of international transactions from the 'Accountant' (as mentioned in the Explanation below section 288(2)) and the report contained information about the international transactions of the assessee. The Assessing

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Officer referred the international transactions to Transfer Pricing Officer (TPO) for determination of arm's length price without providing an opportunity of hearing to Democrat (P) Ltd. The TPO wanted the documents and information in respect of the international transactions and the assessee could not furnish information and documents for the transactions of the value of ₹ 4.50 crores. The Assessing Officer passed the order of assessment based on the TPO report subsequently. (Note : The law as regards scope of work and power of TPO are the same for the Assessment Years 2018-19 and 2019-20. There is no change in legal provision.)

**Proposed joint venture between Democrat (P) Ltd and Good Day Inc.**

The Democrat (P) Ltd jointly with Good Day Inc. bid for a turnkey project worth ₹ 500 crores in India. It was Democrat (P) Ltd who solicited the association of Good Day Inc. in executing the turnkey project. The parties have agreed to enter into an agreement to specifically allot the scope of work between them and to bear the profits and losses arising thereon respectively. There would be no common risk sharing in the arrangement between the companies. However, they apprehend that they could be assessed as an AOP during the income-tax assessment.

**Whereabouts of Ashok Chatterjee**

Ashok Chatterjee one of the directors of Democrat (P) left India on 05.06.2015 and his whereabouts were unknown. There is Income-tax arrears of ₹ 40 lakhs relating to his personal assessment of the Assessment Years 2012-13 to 2015-16. Only in December, 2018 it came to light that Ashok Chatterjee has settled in Canada. He has properties in Canada and one vacant land at Siliguri, West Bengal whose value as per State stamp valuation authority is ₹ 10 lakhs.

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**Purchase of land from non-resident**

Democrat (P) Ltd acquired a vacant site at Mysore from Ms. Kousalya a non-resident settled in Germany for expansion of its manufacturing activity. The land was acquired by Ms. Kousalya in April, 2005 when she was a resident of India. Now, Democrat (P) Ltd acquired the said land for ₹ 48 lakhs on 10<sup>th</sup> March, 2019. Ms. Kousalya does not have permanent account number and has also not furnished tax residency certificate. The tax was deducted at source out of the purchase price and was remitted to the exchequer on 20<sup>th</sup> March, 2019. The balance amount of purchase price has not yet been remitted to Ms. Kousalya as the approval for remittance is pending from RBI.

**Activity profile of Dr. Deepak Mitra**

Dr. Deepak Mitra (age 50) yet another director of Democrat (P) Ltd residing at Palghat, Kerala earned royalty income of ₹ 50 lakhs from Gobar Gas Inc. of Canada for the year ended 31.03.2019. However, he received only ₹ 20 lakhs during the previous year 2018-19, and the balance is outstanding as on 31.03.2019. Dr. Deepak Mitra maintains cash system of accounting of royalty income and hence admitted only ₹ 20 lakhs for the assessment year 2019-20. The DTAA between India and Canada provides for tax @ 15% in Canada without prejudice to taxation of the same income in India. The other income of Dr. Deepak Mitra is by way of income from house property (computed) ₹ 4.5 lakhs and dividend income from Democrat (P) Ltd of ₹ 8 lakhs. He paid premium to LIC of India of ₹ 1.5 lakhs in respect of a life insurance policy of his son who is studying in Australia.

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**Rajesh Mitra son of Dr. Deepak Mitra, shareholder in Democrat (P) Ltd**

Rajesh Mitra son of Dr. Deepak Mitra born and brought up in India acquired 10,000 equity shares of Democrat (P) Ltd on 10.06.2010 for ₹ 9 lakhs. He left India for employment in USA in January, 2011 and settled there. He has never visited India subsequently. His entire shareholdings in Democrat (P) Ltd were sold for ₹ 28.80 lakhs on 10.01.2019. The amounts were repatriated to his bank account in USA subsequently.

**The exchange rates are given below :**

On 10.06.2010      1\$ = ₹ 45;      On 10.01.2019      1\$ = ₹ 72.

Cost inflation index P.Y.2010-11 = 167;      P.Y. 2018-19 = 280.

Fair Market Value (FMV) of each equity share as on 31.01.2018 = ₹ 300

**Activity profile of director Mithun Banerjee**

Director Mithun Banerjee is a renowned technocrat and is one of the directors of the company Democrat (P) Ltd since 01.06.2014. He is a partner in Lilly LLP, New York. A notice for assessment of his income under Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 was served on 01.05.2018 for the alleged undisclosed income / assets held in USA. The initial capital contribution in the firm was made in the previous year 2005-06 was his only contribution and the accumulations are by way of profits which were not disclosed by him for income-tax assessment, in India. He has not withdrawn any amount from the firm at any time.

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The Balance Sheet of Lilly LLP is given below :

Assets	01.04.2018	01.10.2018	31.03.2019
	In US\$		
Cash on hand (as per books)	10,000	12,000	15,000
Cash at Bank (as per books)	20,000	18,000	15,000
Stock in trade (as per books)	30,000	30,000	30,000
Vacant site FMV as on 01.04.2018 \$ 40,000	20,000	50,000 (FMV)	60,000 (FMV)
Plant and machinery	75,000 (As per books)	50,000 (FMV)	40,000 (FMV)
Bullion FMV as on 01.04.2018 \$ 25,000	15,000	30,000 (FMV)	35,000 (FMV)
	<b>1,90,000</b>	<b>1,90,000</b>	<b>1,95,000</b>
<b>Liabilities</b>			
Sundry Creditors (as per books)	50,000	55,000	60,000
<u>Partners' Capital</u>			
Mithun Banerjee (25%)	30,000	No fresh capital introduction.	
Bimal (50%)	50,000	No fresh capital introduction.	
Senthil (25%)	60,000	No fresh capital introduction.	
	<b>1,90,000</b>		

The partnership agreement provides that in the event of dissolution, the net worth exceeding the capital of the partners is to be shared in the profit sharing ratio.

The reference rate of RBI of 1 US \$ as against Indian Rupee on various dates are as under :

01.04.2018 = ₹ 65;      01.05.2018 = ₹ 68 ;      31.03.2019 = ₹ 72

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**Celebrity for annual function of the company**

Democrat (P) Ltd celebrated its anniversary by inviting Mr. Ricky Ronting a famous Australian cricketer who is not a citizen of India. He came to India for the first time in April, 2018 on the invitation of Democrat (P) Ltd. He was paid ₹ 25 lakhs for his presence in the anniversary celebrations of Democrat (P) Ltd.

**Choose the most appropriate alternative for the following MCQs :**

**2×10  
=20**

1.1 What is the 'due date' within which the liaison office of Good Day Inc. has to submit the annual statement to the Income-tax authority for the year ended 31<sup>st</sup> March, 2019 ?

(A) 30-05-2019

(B) 31-07-2019

(C) 30-09-2019

(D) 31-03-2020

1.2 Compute the amount of capital gain/loss in the hands of Rajesh Mitra on sale of shares of Democrat (P) Ltd.

(A) Long-term capital loss ₹ 1,20,000

(B) Long-term capital gain ₹ 13,71,020

(C) Long-term capital gain ₹ 19,80,000

(D) Long-term capital gain ₹ 2,70,000

1.3 Under what section tax is deductible at source on the payments made to Mr. Dickie Bird who acted as referee in the football tournament for the amounts received from Democrat (P) Ltd ?

(A) under section 194E

(B) under section 194J

(C) under section 115BBA

(D) under section 195

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1.4 Kite Inc of Portugal in December, 2018 after the monthly supply of goods applied for advance ruling. How much, fee would it need to pay for obtaining the advance ruling ?

(A) ₹ 10 lakhs

(B) ₹ 5 lakhs

(C) ₹ 2 lakhs

(D) ₹ 10,000

1.5 At what rate Democrat (P) Ltd must deduct tax at source on the amount paid to Ms. Kousalya for purchase of vacant land ?

(A) 20.8%

(B) 31.2%

(C) 30.9%

(D) 20.6%

1.6 For Democrat (P) Ltd, the GAAR provisions will apply as the value of transactions made with two of its associated enterprises was

(A) ₹ 11 crores in aggregate

(B) ₹ 3.11 crores in aggregate

(C) ₹ 2.75 crore in respect of transaction with Maxwell P Ltd.

(D) ₹ 36 lakhs by way of interest from associate concern in Australia

1.7 How much is the penalty payable by Democrat (P) Ltd for non-maintenance of documents and information relating to international transaction ?

(A) ₹ 1,00,000

(B) ₹ 9,00,000

(C) ₹ 22,50,000

(D) ₹ 1,50,000

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1.8 For the assessment year 2019-20, at what rate and under what section, tax is deductible at source on the interest payment made by Manna Dey (P) Ltd to Becker Inc ?

(A) At 10% under section 194A

(B) At 20% under section 195

(C) At 30% under section 195

(D) None of the above

1.9 How much of interest paid by Manna Dey (P) Ltd to its associated enterprise Jimmy Connors Ltd of United Kingdom is liable for disallowance taking note of its income from business ?

(A) ₹ 108 lakhs

(B) ₹ 90 lakhs

(C) ₹ 31.50 lakhs

(D) ₹ 49.50 lakhs

1.10. The time limit for assessment of Mithun Banerjee under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 is

(A) 31.03.2019

(B) 31.3.2020

(C) 31.12.2020

(D) 31.03.2021

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**You are required to answer the following issues :**

- 1.11 Compute the income of Good Day Inc. in respect of providing plant and machinery on hire for extraction of mineral oils as per the applicable presumptive provisions of the Income-tax Act, 1961. **3**
- 1.12 Will your answer be different if the Good Day Inc. spent only ₹ 1.50 crore out of ₹ 2 crore mobilization advance received for movement of rigs to offshore site at Mumbai ? **2**
- 1.13 State the legal correctness of the action of the Assessing Officer as regards making reference to the Transfer Pricing Officer without providing an opportunity of hearing to the assessee i.e Democrat (P) Ltd. **3**
- 1.14 Is the passing of assessment order by the Assessing Officer based on TPO's report without passing draft assessment order, tenable in law ? **3**
- 1.15 As Chartered Accountant what would be your advise as regards of joint venture between Good Day Inc. and Democrat (P) Ltd with specific allocation of work between them and the possibility of assessment as AOP. **3**
- 1.16 State the procedure to be followed by the Tax Recovery Officer for recovery of tax arrears of non-resident Ashok Chatterjee. **2**
- 1.17 Can the Assessing Officer treat Democrat (P) Ltd as agent of non-resident Ms. Kousalya if there are any tax arrears pending against her name? Will your answer be different, if Ms. Kousalya opts for Chapter XII-A of the Act ? **3**

- 1.18 Compute the undisclosed income / asset of Mithun Banerjee under Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. Also, compute the tax liability of Mithun Banerjee. 4
- 1.19 Compute the tax liability of Dr. Deepak Mitra and the amount of eligible foreign tax credit and the amount of foreign tax credit to be carried forward to future assessment years 4
- 1.20 At what rate, the tax is deductible at source on the payment made to Mr. Ricky Ponting ? Is Mr. Ricky Renting liable to file his income-tax return in India? In case he has no PAN, at what rate tax is deductible at source and what would be the consequences of filing or non-filing of income tax return ? 3

### Case Study 2

#### Introductory

Harivallabh Pvt. Ltd., (HPL) is a private limited company, incorporated in India 1990. It is engaged in several activities, important one being manufacture of accessories for mobile phones.

This company is a part of a group called Dow Group. A company called DAS Martin, which is also a part of the Dow group, has acquired 10 lakh shares of ₹ 100 each in HPL, 18 years ago, for a consideration of ₹ 50.3 crores. The investment made in HPL was with the prior approval of Department of Industrial Policy & Promotion (DIPP) and RBI permission was also obtained.

**About DAS Martin**

DAS Martin holds 70% of the share capital of HPL.

DAS Martin does not have an office, or employee or agent in India and hence no Permanent Establishment (PE) in India as per Article 5 of the India Nation L Double Taxation Avoidance Agreement (Called India Nation L DTAA). As far as Indian taxation is concerned, it is a non-resident, as it is not covered under the provisions of section 6(3) of the Income-tax Act, 1961. DAS Martin is a resident of Nation L and is engaged in trading activities for the last two decades, with annual turnover of 2 million USD.

DAS Martin proposes to transfer in February, 2019, above 70% of the shareholding to another Singapore company called DAS Singapore, which is part of the Dow group, pursuant to Group reorganisation. Assume that this Case Study is being given to you for your opinion in January, 2019.

**Objectives of transfer of shares in HPL by Dow Group**

- (i) Dow Group is a large and complex group having presence in several countries across the world. In order to reduce complexities, improve efficiency and reduce costs in group companies worldwide, Dow Group is transforming its holding model. The group reorganization will change the business model of the group giving the capability to support more diverse, growing business that is also expected to be more profitable in the long-term.
- (ii) Prior to 2019, Dow group was divided in the following 5 areas depending on its geographical locations :
  - North America
  - South America
  - Europe
  - Asia Pacific
  - India, Middle East and Africa ('Dow IMEA group)

- (iii) In the beginning of year 2019, the IMEA group was dismantled and countries in IMEA group were realigned to other regions as per geographical convenience. The Asia Pacific region now consists of countries like India, China and other South East Asian countries. The Europe region, inter alia, consists of Mauritius, United Kingdom, Germany and other European countries.
- (iv) In order to achieve objective of operational excellence and administrative convenience, it became necessary for the Dow groups to re-align the holding model of HPL.
- (v) It is contemplated that the holding company of HPL would be shifted to Singapore, to achieve better control. Singapore is one of the upcoming countries in the Asia Pacific region. Keeping in view the above facts, Dow group is contemplating to shift the shareholding of HPL from Nation L to Singapore.
- (vi) The Group believes that such re-alignment would help the Group to focus on customer service including support for new product launches, strong compliance culture, commitment to health, safety and the environment, and commitment to developing people that deliver strong results for the Group even as the external environment has become more demanding.

#### **Related facts and aftermath of proposed transfer of shares**

- (i) Dow group proposes to achieve the above objective through its entity in Singapore i.e. DAS Singapore. DAS Singapore will be a 70% subsidiary of DAS Martin.

- (ii) DAS Martin proposes to contribute shares held in HPL as its capital in DAS Singapore. By virtue of this, HPL India would become 70% subsidiary of DAS Singapore.
- (iii) In view of above, the DAS Martin proposes to transfer the shareholding (10 lakh shares) of HPL to DAS Singapore by way of capital contribution.
- (iv) The value of DAS Singapore's shares recorded in the books of DAS Martin (equivalent amount in INR being 182.3 crores) would be considered as the sales consideration for transfer of shares of HPL.
- (v) The cost at which DAS Martin has obtained the shares of HPL would be the cost of acquisition.

#### **Payments made by HPL for advertisements**

HPL has made the following payments to DAS Martin from April 2018 to December 2019:

- (i) ₹ 43 lakhs for advertisements in foreign web sites;
- (ii) ₹ 8 lakhs for space booking in foreign newspapers.

#### **Installation projects undertaken by KTS Singapore in India**

Another group company of DOW group, KTS Singapore, a company incorporated in Singapore 10 years back and having its tax residency there, has carried out four installation projects in India during the PY 2018-19.

These four projects are independent of each other and secured through four independent work orders. These are installation projects and executed using its two cranes which were imported from Singapore in November, 2017. To carry out the installation work, four to five key personnel from Singapore are deployed, along with the local manpower. Prior to the present installation projects, the cranes were used for executing installation projects for XYZ Pvt. Ltd., India, in the Godavari basin.

The scope of work under these projects is similar and requires the Singapore entity to provide ground preparation details for the movement of cranes and obtain approval to the scheme under which erection is to be executed. The Load Movement Test on the crane is required to be organized. The holding of the equipments after erection before completion of welding of the column sections is required to be carried out. Setting up, fitting, placing, positioning of the fabricated equipments at the site is thus required to be carried out.

One of these four projects was from 1<sup>st</sup> April, 2018 and was for a period of 173 days. Another project, undertaken for some other client, was from 1<sup>st</sup> August, 2018 and was for 170 days. The other two projects were for a period of 90 days each, falling within the above periods only.

### Exhibit 1

Article 13 of the India Nation L DTAA which deals with the taxation of capital gains arising to the resident of contracting state, reads thus:

#### “ARTICLE 13 - Capital Gains -

1. Gains from the alienation of immovable property, as defined in paragraph (2) of article 6, may be taxed in the Contracting State in which such property is situated.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in that other State.



3. Notwithstanding the provisions of paragraph (2) of this article, gains from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. Gains derived by a resident of a Contracting State from the alienation of any property other than those mentioned in paragraphs (1), (2) and (3) of this article shall be taxable only in that State.

For the purposes of this article, the term "alienation" means the sale, exchange, transfer, or relinquishment of the property or the extinguishment of any right therein or the compulsory acquisition thereof under any law in force in the respective Contracting States."

## Exhibit 2

### India Singapore DTAA

#### ARTICLE 5 : "PERMANENT ESTABLISHMENT :

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of the enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially :  
.....
3. A building site or construction, installation or assembly project constitutes a permanent establishment only if it continues for a period of more than 183 days in any fiscal year.

4. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it carries on supervisory activities in that Contracting State for a period of more than 183 days in any fiscal year in connection with a building site or construction, installation or assembly project which is being undertaken in that Contracting State.
5. Notwithstanding the provisions of paragraphs 3 and 4, an enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it provides services or facilities in that Contracting State for a period of more than 183 days in any fiscal year in connection with the exploration, exploitation or extraction of mineral oils in that Contracting State."

#### ARTICLE 7 : BUSINESS PROFITS :

"The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as it directly or indirectly attributable to that permanent establishment."

## 2. (a) Multiple choice questions

Choose the most appropriate alternative for the following :

(Alternative to be given only in capital letters A, B, C or D) :

- (i) In respect of payments effected by HPL to DAS Martin, the total withholding tax (ignoring DTAA provisions) required to be made is
- (A) ₹ 5,07,600
- (B) ₹ 5,17,920
- (C) ₹ 4,24,400
- (D) Insufficient data/information to compute
- (ii) Relating to the installation projects, KTS Singapore offered payment of ₹ 1,20,000 to CA Akash Kumar, who did not receive it, but directed the company to give it to Children India, an unregistered entity engaged in charitable activities. The said amount of ₹ 1,20,000 is
- (A) Taxable in the hands of CA Akash Kumar only;
- (B) Taxable in the hands of CA Akash Kumar as well as Children India;
- (C) Taxable only in the hands of Children India;
- (D) Taxable neither in the hands of CA Akash Kumar nor Children India.

(iii) The provisions relating to taxation of indirect transfer of shares of an Indian company (like HPL in this Case Study) were introduced vide Finance Act, 2012, as an aftermath of the decision of the Apex Court in

- (A) McDowell & Co. Ltd. vs. CTO;
- (B) Union of India vs Azadi Bachao Andolan;
- (C) Vodafone International Holdings B.V. vs. UOI;
- (D) CIT Vs Yokogawa India Ltd.

(iv) If in the given Case Study, if DAS Singapore happens to be a subsidiary of DSA USA (A US company), the transfer of shares in HPL to DAS Singapore will be governed by the provisions of

- (A) India US DTAA;
- (B) India Nation L DTAA;
- (C) India Singapore DTAA;
- (D) USA Singapore DTAA.

(v) If it is held that the transfer of shares in HPL by DAS Martin to DAS Singapore is chargeable to tax in India, ignoring the DTAA provisions, the rate of tax applicable (without surcharge or cess) is

- (A) 30%;
- (B) 10%;
- (C) 20%;
- (D) None of the above

(vi) Assuming that the FMV of the shareholding in HPL in the hands of DAS Martin is ₹ 192.3 crores, regardless of the taxability of the capital gain in India.

- (A) DAS Singapore alone will be liable to tax in India for ₹ 10 crore u/s 56(2) in respect of the difference between FMV and the consideration given to DAS Martin;
- (B) DAS Martin alone will be liable to tax u/s 56(2) in India for ₹ 10 crore in respect of the difference between FMV and the consideration received by DAS Martin;
- (C) DAS Singapore will not be liable to tax in India u/s 56(2) for ₹ 10 crore in respect of the difference between FMV and the consideration given to DAS Martin;
- (D) Neither DAS Martin nor DAS Singapore will be liable to tax in India under section 56(2).

(vii) HPL is Bound to report details with respect to transfer of shares by DAS Martin to DAS Singapore in the following Form :

- (A) Form 49D;
- (B) Form 3CT;
- (C) Form 3CTA;
- (D) There is no reporting requirement on HPL to report the transfer of the shareholding.

(viii) If DAS Martin happens to be a resident of two Contracting States, namely, Nation L being the place of effective management and also Nation M being the place of incorporation, then it will be treated as resident of Country L as per the

- (A) US Model Convention;
- (B) OECD Model Convention;
- (C) UN Model Convention;
- (D) Both options (B) as well as (C)

(ix) In order to determine the residence of an individual, the following factor is not taken cognizance of under the OECD Model Convention :

- (A) Centre of vital interests;
- (B) Habitual abode;
- (C) Own house in Chennai given on rent for the past twelve years;
- (D) Flat taken on rent in Noida where the individual is living for the last twelve years.

(x) If DAS Martin happens to be a resident of two Contracting States, namely, Nation L being the place of effective management and also Nation M being the place of incorporation, then it will be treated as resident of either Nation L or Nation M, as per the

- (A) US Model Convention only
- (B) OECD Model Convention
- (C) UN Model Convention
- (D) Both options (B) and (C)

**(b) Descriptive questions :**

- (i) The management of DAS Martin wishes to know whether the proposed transfer of shares in HPL to Das Singapore can be regarded as a device or scheme to avoid income-tax in India and whether GAAR can be invoked. **5**
- (ii) Examine whether the gains arising from the transfer will be taxable in India, when the former does not have a PE in India, per Article 13 – India Nation L DTAA (Exhibit 1) and in light of the provisions of Article 13 of the said Treaty. **4**
- (iii) State whether the provisions of section 92 to section 92F of the Income-tax Act, 1961 ("the Act") relating to transfer pricing would still be applicable in respect of the transfer of shares by DSA Mauritius to DSA Singapore. **3**
- (iv) Examine whether the sale consideration receivable by DAS Martin should suffer any withholding tax in India as per section 195 of the Act. **3**
- (v) Is DAS Martin required to file return of income in India under section 139(1) of the Act ? **4**
- (c) In respect of the payments made by HPL to DAS Martin, discuss the applicability of equalization levy. **5**
- (d) Can KTS Singapore be considered to have a PE in India, in terms of the India Singapore DTAA and can the profits from the installation projects undertaken in India be taxed in India ? **6**

**Case Study 3 :**

FMG Associates is a firm of Chartered Accountants at Jaipur. It has received queries from its clients and for which it has to provide solutions. All the facts relate to assessment year 2019-20.

**Resident Ramji with income outside India**

Mr. Ramji an individual resident in India furnished details of his global income for the previous year 2018-19.

Income from Business carried on India ₹ 8,00,000

Agricultural income in Sri Lanka (in Sri Lanka Rupee) 1,00,000

Dividend income from a company incorporated in USA (declared on 10.01.2019) US \$ 20,000

Royalty income from a detective novel published in country Sri Lanka (in Sri Lanka Rupee) 7,00,000

Income from house property in the country USA US\$ 10,000

Business income from Sri Lanka (in Sri Lanka Rupee) 4,00,000

**Note :** All the foreign incomes were repatriated to his bank account in India in April, 2019 except business income earned outside India. Assume the accounting year is uniform for all the countries and tax payable in foreign country was paid, wherever it was taxable.

The **synopsis** of the relevant Article of the **DTAA between India and USA** as regards taxation of property income and dividend income is given below :

- (1) Income derived by a resident of a Contracting State from immovable property, situated in the other Contracting State may be taxed in that other State.

Assume rate of tax in USA 30% and in India at slab rate.

- (2) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident.

Assume rate of tax in USA @25% and in India at slab rate.



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**Marks**

The synopsis of the relevant Article of the DTAA between India and Sri Lanka as regards taxation of agricultural income, business income and royalty income are given below :

- (1) Income derived by a resident of a Contracting State from immovable property (including income from agricultural land) situated in the other Contracting State may be taxed in that other Contracting State.
- (2) The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profit of the enterprise may be taxed in the other State but only so much as is attributable to that permanent establishment.

Assume rate of tax in Sri Lanka @20% and in India @ slab rate.

- (3) Royalties arising in a Contracting State and paid to resident of the other Contracting State may be taxed in that other State. However, such royalties may also be taxed in the Contracting State at a rate not exceeding 10% of the gross amount of royalty.

Assume rate of tax in Sri Lanka @10% and in India @ 10% for non-residents and regular rate for residents.

**Exchange rates**

TT Buying Rate	Sri Lanka Rupee	US Dollars
31.03.2019	INR 1 = 2.54 LKR	1 US dollar = 70 INR
31.12.2018		1 US dollar = 71 INR

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Ramji's son Pramod (age 23) is employed in ESS Softwares Ltd, Bengaluru. He was sent on deputation to USA on 10.01.2017 to attend to onsite duties and he returned to India on 05.01.2019. He was paid per diem allowance at USA which was adequate enough to meet his living expenses there. His salary of ₹ 27 lakhs after deducting his PF contribution of ₹ 1,80,000, was credited to his bank account at Bengaluru during the previous year 2018-19.

**Non-Resident company seeking AAR**

PQR Inc. of Germany is supplying technical know-how to be used by Mayur Co Ltd, Mumbai for manufacture of combustion engine at Nagpur. The agreement for supply of technical know-how is in return for royalty and was signed on 10.05.2017. The royalty exceeded ₹ 10 crore for the assessment year 2017-18. Mayur Co Ltd filed its return of income on 30<sup>th</sup> August, 2018 and approached AAR in September, 2018 as regards withholding tax on royalties paid to PQR Inc. Germany. The application of Mayur Co Ltd was admitted by AAR in November, 2018. The Assessing Officer issued a notice under section 143(2) on 10.01.2019. The foreign company PQR Inc. also applied for advance ruling on 20.01.2019 to know its tax liability in respect of its royalty income received from Mayur Co Ltd.

Mayur Co Ltd has a branch office in Sri Lanka. It exported goods worth ₹ 5 crores by raising invoice for ₹ 4.40 crores. It gave advance of ₹ 1 crore to its branch in Sri Lanka out of the loan obtained by it from State Bank of India. It did not charge any interest though the borrowing cost attributable for the advance is ascertained at ₹ 7,40,000 for the year ended 31.03.2019.

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**DFR2**

**Marks**

PQR Inc. has the following incomes in India for the year ended 31<sup>st</sup> March, 2019 :

- (i) Dividend income from Indian listed companies ₹ 12,50,000;
- (ii) Royalty income from Roger Moore (P) Ltd, Cochin ₹ 8,40,000. The royalty agreement was made in accordance with the policy of the Government of India. The DTAA between India and Germany provides for taxing the royalty at 10%;
- (iii) Interest ₹ 5,50,000 received on global depository receipts purchased in foreign currency from ABC Ltd; and
- (iv) Interest ₹ 3,20,000 received from an infrastructure debt fund referred to in section 10(47).

Mayur Co Ltd has 30% shareholding by way of 3 lakh equity shares of € 10 each in Botham Ltd of Spain. In December, 2018 Botham Ltd declared dividend at 10% on the face value of shares. Mayur Co Ltd received ₹ 22 lakhs on repatriation of the dividend amount to its bank account in India.

Mayur Co Ltd is contemplating to transfer the shareholding in Botham Ltd to a subsidiary company to be incorporated in yet another country and by virtue of the DTAA between that country and Spain, such dividend income will become tax-free. Presently, such dividend income is taxable in India as per DTAA between India and Spain. This plan of transferring the shares by forming the subsidiary company in foreign country is in nascent stage.

#### **Tax dispute of Vijay Jain**

Vijay Jain a resident of India exported goods to foreign country by under-invoicing the sale consideration and accumulated wealth outside India. Based on Tax Information Exchange Agreement between India and Bermuda, a notice for assessment of the undisclosed foreign income under The Black Money (Undisclosed Foreign Income and Assets) and Imposition

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of Tax Act, 2015 was issued in March, 2017. The assessee disputed the issue of notice. The Assessing Officer called for details and proceeded with the assessments. There was change in incumbent and the successor continued the assessment proceedings without issuing a fresh notice to the assessee. Vijay Jain moved writ before the High Court in March, 2018 for quashing the proceedings. The Court vide its order dated 31.03.2018 stayed the proceedings up to 31.12.2018. Vijay Jain had to pay ₹ 8 lakhs towards tuition fees and hostel expenses of his son studying in USA.

#### **Proposal for e-sale of books in India**

XY Co Publishers Ltd, United Kingdom is reputed scientific book publishers with global presence. The company decided to penetrate the Indian market by procuring orders online. The company anticipates the online booking to pick up in due course of time. It is planning to dispatch goods from the warehouse in Kolkata based on the orders received. There would be no direct sale to any of the customers in India from the warehouse in Kolkata. The amounts have to be paid online by the buyers directly to the bank account of XY Co Publishers Ltd maintained in London. It is contemplating to have a website and server in India owned by it or avail the same of an outside entity for its online business in India.

#### **Advertisement expenditure of Chetan Ltd**

Chetan Ltd, Mysore is a 100% subsidiary of Beijing Ltd of Chicago, USA. It acted as the distributor of world famous mobile handsets by brand name "Chicago" manufactured by parent company viz. Beijing Ltd. During the previous year 2018-19, Chetan Ltd remitted the amounts due to Beijing Ltd in settlement of the invoices by furnishing necessary forms prescribed under Income-tax Rules, 1962. The agreement between the companies envisages that 5% of the sale consideration realized by Chetan Ltd must be spent towards advertisement of "Chicago" being the brand name of the mobile handsets.

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**Marks**

Each handset was invoiced @ ₹ 15,000 for Chetan Ltd and whereas it was invoiced at ₹ 13,000 to unrelated parties. Chetan Ltd sold 40,000 handsets in the previous year 2018-19 at the average price of ₹ 16,000 per handset. The credit period allowed by Beijing Ltd was 3 months for Chetan Ltd and whereas for other dealers, it was given against full payment. The cost of capital may be taken as 12% per annum and the purchases as uniform throughout the year. Beijing Ltd charged ₹ 1500 per handset as warranty charges and whereas for unrelated parties it charged ₹ 2000. The assessee selected Beijing Ltd as tested party for comparing controlled and uncontrolled transactions.

Chetan Ltd spent ₹ 3 crores towards advertisement expenses in India. The Assessing Officer applied "Bright Line Test" and wants to add back 50% of the expenditure as towards brand building of parent company's product while determining the arm's length price.

BB Co Ltd of Chennai is associated enterprises of Chetan Ltd. It exported the semi finished textile goods to Pick Inc, Singapore. The goods were further processed and sold to yet another 100% subsidiary of BB Co Ltd viz. Sea Ltd at Sydney, Australia for reaching the customers therein. BB Co Ltd wants to apply for advance pricing agreement to protect itself and its subsidiaries.

**Choose the most appropriate alternative for the following MCQs :**

**10×2  
=20**

3.1 The objective of Tax Information Exchange Agreements entered into by the Central Government with various countries is to enable

- (A) certainty in tax levy between countries
- (B) concessional levy of tax for the same income between them
- (C) investigation of cases of tax evasion or avoidance
- (D) mobilization of tax from non-residents

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**Marks**

- 3.2 What is the time limit within which the assessment of Vijay Jain has to be completed under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 from the facts given ?
- (A) 31.03.2019 (B) 31.12.2019  
(C) 31.12.2020 (D) 31.03.2021
- 3.3 The amount of dividend income earned by Mayur Co Ltd from Botham Ltd of Spain is chargeable to tax in India. @ \_\_\_\_\_ and it is covered by action plan \_\_\_\_\_ of BEPS.
- (A) 10% and 4 (B) 15% and 4  
(C) 15% and 3 (D) 20% and not covered
- 3.4 How will DTAA's prevent treaty shopping / abuse such as the one contemplated by Mayur Co Ltd ?
- (A) Protocols in DTAA  
(B) Provision in domestic law  
(C) Limitation of Benefit clause in DTAA  
(D) Conduit rulings
- 3.5 The APA that would be applicable to BB Co Ltd for protecting itself and its two subsidiaries in Singapore and Australia for avoiding litigation in transfer pricing regulations, would be
- (A) Multi-lateral APA (B) Bilateral APA  
(C) Unilateral APA (D) None, as it is not possible

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- 3.6 The selection and rejection of comparables in India is carried out through
- (A) Deductive approach (B) Detective approach  
(C) Addictive approach (D) Primitive approach
- 3.7 How much is the penalty payable by Vijay Jain for failure to furnish the prescribed form for remittance of tuition fees to his son ?
- (A) Nil (B) ₹ 10,000  
(C) ₹ 50,000 (D) ₹ 1,00,000
- 3.8 What is the residential status of Pramod for the assessment year 2019-20 ?
- (A) Non-resident  
(B) Resident and ordinarily resident  
(C) Resident but not ordinarily resident  
(D) None of the above
- 3.9 How much is to be adjusted to the total income of the Mayur Co Ltd by applying transfer pricing regulations for the transactions carried out with its Sri Lanka branch office ?
- (A) ₹ 60,00,000 (B) ₹ 7,40,000  
(C) ₹ 67,40,000 (D) Nil
- 3.10 Which part of Form No. 15CA is to be filled up and filed by Chetan Ltd for import of handsets from Beijing Ltd ?
- (A) Part A and B (B) Part Band C  
(C) Part A and C (D) Part D

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**Marks**

**You are required to answer the following issues :**

- 3.11 Compute the total income of resident Ramji for the assessment year 2019-20 by allowing foreign tax credit wherever applicable in the light of DTAA provisions. **6**
- 3.12 Pramod claims the salary income earned outside India up to 05.01.2019 is not chargeable to tax in India. Decide the validity of his contention. **2**
- 3.13 Is the application filed by Mayur Co Ltd seeking advance ruling is permissible in law ? Also, decide whether the foreign company PQR Inc. can seek advance ruling when the application of Mayur Co Ltd is pending ? **4**
- 3.14 With brief reasons for treatment of the items, you are requested to compute the tax liability of PQR Inc. for the assessment year 2019-20. **4**
- 3.15 The assessee wants to know the forms to be obtained from the Chartered Accountant and filing of the same before the income-tax authorities in respect of tuition fee paid by Vijay Jain for his son. Advise him suitably. **4**
- 3.16 Advise whether XY Co Publishers Ltd should have a website and server owned by it or avail the same from an outsider in the context of Income-tax Act, 1961 **4**
- 3.17 Compute the arm's length price adjustment for Chetan Ltd ignoring any adjustment towards advertisement expenditure. **4**
- 3.18 Is the Assessing Officer justified in applying "Bright Line Test" for disallowing or adjusting the advertisement expenditure in computing arm's length price ? **2**

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