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Further, in the Elective Papers which are Case Study based, the solutions have been worked out on the basis of certain assumptions/views derived from the facts given in the question or language used in the question. It may be possible to work out the solution to the case studies in a different manner based on the assumption made or view taken.

PAPER 6C: INTERNATIONAL TAXATION

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

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

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 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.

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

The Suggested Answers for Final Paper 6C: International Taxation, in so far as they relate to questions involving application of the provisions of Indian tax laws, are based on the provisions of direct tax laws as amended by the Finance Act, 2019, the Finance (No.2) Act, 2019 and the Taxation Laws (Amendment) Act, 2019.

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.*

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 x 5 = 10 Marks)

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.

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%

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

(C) ₹ 28,60,000

(B) ₹ 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 Marks)***

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 Marks)***

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 Marks)***

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 Marks)***

Solution to Case Study 1

Q. No.	Answer
1.1	(B)
1.2	(B)
1.3	(A)
1.4	(A) or (D)
1.5	(A)

Note *– MCQ 1.4 requires 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. The relevant facts given in page 2 state that Banerjee Co. Ltd. has deducted tax@20% as per the Income-tax Act, 1961 on such payment, whereas the TDS rate as per DTAA is 10%. Circular No.7/2007 dated 23.10.2007 states that the resident deductor can claim refund of excess tax deducted on payments to non-resident in specified circumstances i.e., where tax is borne by the resident deductor or when the non-resident has no further transactions with the deductor. If the tax is borne by Banerjee Co. Ltd. or if M/s Filibuster Inc. USA has no further transactions with Banerjee Co. Ltd., the answer would be (D) 10%. If the tax is borne by M/s. Filibuster Inc. USA or if M/s Filibuster Inc. USA has further*

transactions with Banerjee Co. Ltd., then Banerjee cannot seek refund of excess tax deducted at source, in which case, the most appropriate answer would be (A) Nil. Thus, the most appropriate answer could be either (A) or (D).

Answer to Q.1.6

(i) When a reference is made to DRP, the time limit for giving direction by the DRP is 9 months from the end of the month in which the draft order is forwarded to the eligible assessee. The Assessing Officer issued draft assessment order on 30.01.2019. The assessee had filed objections on 15.02.2019, which is within 30 days from the date of receipt of draft order. The DRP has time up to 31.10.2019 for giving the direction to the Assessing Officer.

The DRP gave the directions to the Assessing Officer within 9 months i.e. on 01.09.2019. Therefore, the Assessing Officer has to pass an order on or before 31.10.2019 i.e., within one month from the end of the month in which the direction from DRP was received. In this case, the Assessing Officer also passed the order on 28.9.2019, which is within the above time limit.

Therefore, the order passed by the Assessing Officer is not barred by limitation.

(ii) The assessee has to file an appeal before the Income-tax Appellate Tribunal against such order passed the Assessing Officer which is in accordance with the directions of the DRP.

(iii) Every direction issued by the DRP is binding on the Assessing Officer. Therefore, the Assessing Officer cannot pass an assessment order which is not in conformity with the direction issued by DRP. Therefore, there would be no change in appellate authority before whom the appeal would lie in the case of Banerjee Co Ltd.

Answer to Q.1.7

Explanation 4 to section 9(1)(vi) provides that the consideration for use or right to use of computer software (including granting of a licence) constitutes royalty.

Consequently, the provisions of tax deduction at source under section 194J would be attracted in respect of consideration paid by Crowe Co Ltd. of UK for use or right to use computer software purchased from Quik (P) Ltd., an Indian company, since the same falls within the definition of royalty and the payment is made to a resident[1].

As per *Notification No.21/2012 dated 13.6.2012*, certain software payments, have been excluded from the applicability of tax deduction under section 194J, by virtue of section 197A(1F). Accordingly, where payment is made for acquisition of software from a resident-

[1] It is possible to take an alternate view that clause (ba) of the *Explanation* to section 194J makes reference of the term 'royalty' to the *Explanation 2* to section 9(1)(vi) and does not cover *Explanation 4* to section 9(1)(vi) which deals with computer software and payment in regard thereto. If this view is taken, TDS u/s 194J would **not** be attracted in respect of consideration paid by Crowe Co Ltd. of UK for use or right to use computer software purchased from Quik (P) Ltd., an Indian company

transferor, the provisions of section 194J would not be attracted if –

(1) the software is acquired in a subsequent transfer without any modification by the transferor [In other words, it is a "ready to use" software with no modification or value addition made by the transferor];

(2) tax has been deducted either u/s 194J or u/s 195 on paymentfor any previous transfer of such software; and

(3) the transferee obtains a declaration from the transferor that tax has been so deducted along with the PAN of the transferor.

Answer to Q.1.8

As per clause (iva) of *Explanation 2* to section 9(1)(vi), consideration for use or right to use any industrial, commercial or scientific equipment is royalty but it excludes the amounts which are referred to in section 44BB viz. by way of hire charges for using plant and machinery in extraction of mineral oils etc.

Therefore, the payment made by Banerjee Ltd. to Mike Co Ltd. is **not** royalty.

The payment made by Banerjee Co. Ltd., an Indian company, for obtaining plant and machinery on hire is deemed to accrue or arise in India u/s 9(1) in the hands of the non-resident, Mike Co. Ltd., Denmark since it is for supplying the plant and machinery on hire for use in extraction of mineral oils in India. Hence, Banerjee Co. Ltd. has to deduct tax at source under section 195 in respect of such payment.

Since Mike Co. Ltd. is a non-resident engaged in the business of providing services in connection with, or supplying plant and machinery on hire used in the extraction of mineral oils, a sum equal to ₹ 70 lakhs, i.e., 10% of ₹ 700 lakhs would be deemed to be the profits and gains of such business chargeable to tax as its business income as per section 44BB.

Mike Co. Ltd., being a foreign company, has to pay tax@41.6% (i.e., 40% plus HEC @ 4%) on the income of ₹ 70 lakhs. The tax liability would be ₹ 29,12,000.

However, Mike Co. Ltd. can declare lower profits than ₹ 70 lakhs, if it maintains books of account under section 44AA and gets them audited under section 44AB. If Mike Ltd. does not opt for presumptive provisions of section 44BB, the Assessing Officer shall proceed to make an assessment under section 143(3).

Answer to Q.1.9

Time limit for repatriation of excess money

Assessment Year	Determination of Primary Adjustment to Transfer Price	Time limit for repatriation of excess money	Date by which excess money has to be repatriated - On or before
(1)	(2)	(3)	(4)
2017-18	Primary adjustment to transfer price determined in the order of the ITAT and accepted by Banerjee Co. Ltd.	90 days from the date of order of ITAT i.e., 90 days from 20.4.2020	19.7.2020
2018-19	Primary adjustment to transfer price determined vide Assessment Order u/s 143(3) and accepted by Banerjee Co. Ltd.	90 days from the date of assessment order i.e., 90 days from 20.12.2019	19.3.2020
2019-20	Primary adjustment to transfer price made *suo moto* by Banerjee Co. Ltd.	90 days from the due date of filing of return, i.e., 90 days from 30.11.2019	28.2.2020

Consequence of non-repatriation of excess money within the prescribed time limit.

In all the above cases the primary adjustment exceeds one crore and the same relates to A.Y.2017-18 and later assessment years. Hence, section 92CE will be attracted and Banerjee Co. Ltd. has to carry out secondary adjustment.

Consequently, if the excess money is not repatriated within the time limits given in column (3) above, the same would be deemed to be an advance made by Banerjee Co. Ltd. to such associated enterprise and interest on such advance would be computed in the prescribed manner and included in the total income of the company.

In case the international transaction is denominated in Indian rupees, the rate of interest applicable is one year marginal cost of fund lending rate of SBI as on 1st April of the relevant previous year + 3.25%. In case, the international transaction is denominated in foreign currency, at 6 month LIBOR as on 30th September of the relevant previous year + 3%.

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.

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.

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.

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 x 5 = 10 Marks)

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

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.

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 Marks)***

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 Marks)***

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 Marks)***

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. Your answer must be with reference to the UN Model of DTAA. ***(3 Marks)***

Solution to Case Study 2

Q. No.	Answer
2.1	(D)
2.2	(A)
2.3	(C)
2.4	(D)
2.5	(D)

Answer to Q. No. 2.6

As per clause (a) of the *Explanation* below to section 9(1)(v), in the case of a non-resident, being a person engaged in the business of banking, any interest payable by the PE in India of such non-resident to the head office outside India, shall be deemed to accrue or arise in India. Such interest shall be chargeable to tax in the hands of such non-resident in addition to any income attributable to the PE in India.

Further, the PE in India shall be deemed to be a person separate and independent of the non-resident person of which it is a PE and the provisions of the Act relating to computation of total income, determination of tax and collection and recovery would apply accordingly.

Also, the PE in India has to deduct tax at source on any interest payable to the head office outside India. Non-deduction would result in 100% disallowance of interest claimed as expenditure by the PE and may also attract levy of interest and penalty in accordance with relevant provisions of the Act.

Branch is a fixed place of business through which the business of the enterprise is wholly or partly carried on; thus, it constitutes permanent establishment of the enterprise.

In the present case, interest payable by the branches (PE) of XYZ Banking Corporation Ltd., being a person engaged in the business of banking to the head office shall be deemed to accrue or arise in India. Thus, such interest shall be chargeable to tax in India in addition to any income attributable to the branches in India.

Therefore, branches are required to deduct tax at source under section 195 at the rates in force on the amount of interest payable to the head office.

Answer to Q. 2.7

The contention of the assessee that the proceedings under the Black Money Act is barred by limitation is not tenable in law. The time limitation given in the Income-tax Act will not apply for the purpose of Black Money Act. There is no time limit for initiation of proceedings under the Black Money Law, therefore, proceedings can be initiated against Piloo, even though 6 years have elapsed from the last assessment year in which he was assessed in India.

Every assessee would be liable to tax@30% in respect of his undisclosed foreign income and asset of the previous year. Undisclosed foreign asset would be liable to tax in the previous year in which such asset comes to the notice of the Assessing Officer.

Since Mr. Piloo left India permanently in January, 2012, he is a non-resident in India for the previous year 2019-20, the year in which the notice under the Black Money Act was served on him. However, he was resident in India during the previous year 2007-08, being the year in which he accumulated assets outside India which were not disclosed by him in the return of income.

The term "assessee" defined under section 2(2) of the Black Money Act, *inter alia,* includes a person being a non-resident or not ordinarily resident in India within the meaning of section 6(6) of the Income-tax Act, 1961 in the relevant previous year, but who was resident in India in the previous year in which the undisclosed asset located outside India was acquired. Accordingly, Piloo who was resident in India in the P.Y.2007-08 would be an assessee under the Black Money Act, even though he is a non-resident for P.Y.2019-20.

Accordingly, Piloo is liable to pay tax@30% in respect of undisclosed foreign asset during the previous year 2019-20, the year in which such assets came to the notice of the Assessing Officer.

The relevant date for determination of the value of undisclosed assets would be the first day of April of the previous year in which the Assessing Officer came to know of the undisclosed asset located outside India. The notice under the Black Money Act was served in January and the question states that it came to the notice of Joint Director of Income-tax (Investigation) in June, 2019. Accordingly, the fair market value of the asset as on 01.04.2019 would be adopted.

He is also liable to pay penalty, in addition to tax, if any, payable by him, of a sum equal to three times the tax so computed.

The value of the undisclosed asset would be the fair market value of an asset (including financial interest in any entity) determined in the prescribed manner as laid down in Rule 3 of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015.

The value of residential apartments would be the higher of,—

(i) its cost of acquisition; and

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

The value of bank deposits would be the sum of all the deposits made in the account with the bank since the date of opening of the account. However, where any deposit is made from the proceeds of any withdrawal from the account, such deposit shall not be taken into consideration while computing the value of the account.

Answer to Q. 2.8

Salary received by Dr. Vignesh from US Government - Such salary is in connection with co-operative technical assistance programme under an agreement between Government India and the USA, hence, it would be exempt in the hands of Dr. Vignesh u/s 10(8).

Income of Dr. Vignesh from business in USA - Income of Dr. Vignesh from business in USA would also be exempt u/s 10(8), since it accrues or arises outside India and is not deemed to accrue or arise in India. It is stated in the question that this income is subject to tax in USA.

Rental income of Ms. Rekha in USA – Rental income in USA is exempt u/s 10(9), since such income accrues or arises outside India to a family member and the said income from house property accrues or arises outside India and is not deemed to accrue or arise in India. It is stated in the question that the income is subject to tax in USA.

Answer to Q. 2.9

Since Mr. Prakash is a resident of India and also of a foreign country in the P.Y.2019-20, his residential status with reference to UN Model Convention, would be determined applying the tie-breaker rule in the following manner:

(i) The first test is based on where he has a **permanent home**.

(ii) Since he has permanent home both in India and foreign country, he will be considered a resident of the Contracting State where **his personal and economic relations are closer**, in other words, the place where lies **his centre of vital interests**. Thus, preference is given to his family and social relations, occupation, place of business, place of administration of his properties, his political, cultural and other activities.

(iii) Since he has centre of vital interests i.e., business establishment both in India and the foreign country, he shall be treated as a resident of the Contracting State of which he has a **habitual abode**.

(iv) Habitual abode depends on the frequency, duration and regularity of stay in a country. Since he is a resident in both countries, and the residential status in India is based on the number of days of stay in India and assuming that the residential status of the foreign country is also based on the number of days of stay in that country, he would have habitual abode in both India and the foreign country

In such a case, he would be considered resident of that country of which he is **a national**.

Since Mr. Prakash is a national of the foreign country, he would be said to be resident of that foreign country for P.Y.2019-20.

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.

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 1 OAA 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).

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 01-4-2010. The loan is eligible for interest@6% per annum. For the 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]

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.

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 x 5 = 10 Marks)

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.

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.*

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[2], 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*

You are required to answer the following issues:

3.6 *Is the action of the Assessing Officer in 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 Marks)***

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 Marks)***

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 Marks)***

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 Marks)***

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[2] The phrase "how much of interest is liable for tax deduction at source" to be read as "how much of tax is liable to be deducted on such interest"

Solution to Case Study 3

Q. No.	Answer
3.1	(C)
3.2	(C)
3.3	(A)
3.4	(B)
3.5	(A)

Answer to Q.3.6

(i) As per clause 2(a) of Article 25 of the India-US DTAA, the company can claim deduction of the income-tax paid in US to the extent it does not 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 US. Thus, full tax credit is available in this case.

Accordingly, foreign tax credit (FTC) would be available in respect of such taxes paid in US, even though the entire income chargeable to tax under the Income-tax Act, 1961 is eligible for deduction u/s 10AA under the domestic tax laws.

However, as per Article 23(a) of the India-Canada DTAA, only the amount of Canadian tax paid by an Indian resident which is subjected to tax both in India and Canada shall be allowed as credit against the Indian tax payable. Since the income qualifies for 100% deduction u/s 10AA in India, no part of such income would actually be subjected to tax in both the countries. Hence, the condition in Article 23(a) is not fulfilled. In this case, ordinary tax credit is available as per the treaty and not full tax credit.

Accordingly, FTC would **not** be available in respect of taxes paid in Canada.

Therefore, the action of the Assessing Officer is partly correct to the extent of denying FTC to Vijay Co Ltd. in respect of tax paid in Canada, but not correct in denying FTC in respect of taxes paid in US.

Note *– The facts of the case are similar to the facts in Wipro Ltd v. Dy.CIT (2016) 382 ITR 179. The above answer is based on the Karnataka High Court ruling in the said case.*

(ii) Rule 128(4) provides that no foreign tax credit (FTC) would be available in respect of any amount of foreign tax which is disputed in any manner by the assessee. Since income-tax has not been paid in USA, treaty benefit as per clause 2(a) of Article 25 of the India-USA DTAA would not be available. Therefore, in case the company 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, then, the Assessing Officer would be correct in denying FTC in respect of tax payable in USA.

Answer to Q.3.7

Computation of capital gains chargeable to tax in the hands of Chandan for A.Y.2020-21		
	Particulars	**₹**
I	**Long-term capital gains on transfer of listed equity shares (STT paid) [since held for more than 12 months]**	
	Full value of consideration (5,000 shares x ₹ 700 per share)	35,00,000
	Less: Cost of acquisition (5,000 shares x ₹ 450 per share)	22,50,000
	Higher of (i) Actual cost ₹ 200 per share **(and)** (ii) ₹ 450 per share, being the lower of - - ₹ 450 per share, being the FMV on 31.1.2018 - ₹ 700 per share, the actual sale price	
	LTCG u/s 112A (the amount in excess of ₹ 1 lakh chargeable to tax@10%)	**12,50,000**
	Note *– Indexation benefit and benefit of foreign currency conversion is not available in respect of LTCG computed u/s 112A*	
II	**Long-term capital gains on sale of vacant land (since held for more than 24 months)**	
	Sale consideration 36,00,000	
	Less: Indexed cost of acquisition [₹ 10,00,000 x 289/240] 12,04,167	
	LTCG u/s 112 (taxable@20%)	23,95,833
	Long-term capital gains	**36,45,833**
	Investment in capital gain bonds of National Highway Authority of India Mr. Chandan can claim benefit of deduction u/s 54EC by investing the LTCG arising on sale of vacant land in bonds of NHAI and RECL within six months from the date of sale, even though he is a non-resident.	

Answer to Q.3.8

Applicability of APA benefit for rollback years

P.Y./A.Y.	Whether roll back benefit would be available?	Reason
P.Y.2013-14 (A.Y.2014-15)	No	Roll back year means any previous year, falling within the period not exceeding four previous years, preceding P.Y.2018-19, being the first of the five consecutive previous years specified in the APA. Since P.Y.2013-14 falls beyond the said four year period, roll back benefit cannot be availed in respect of that year.
P.Y.2014-15 (A.Y.2015-16)	No	The return of income has been filed belatedly u/s 139(4) on 15.1.2016
P.Y.2015-16 (A.Y.2016-17)	Yes	The return of income was filed u/s 139(1) on 11.11.2016 i.e., before the due date, namely, 30.11.2016
P.Y.2016-17 (A.Y.2017-18)	Yes	The return of income was filed u/s 139(1) on 28.9.2017 i.e., before the due date, namely, 30.11.2017, and hence, the revised return filed u/s 139(5) on 28.3.2018 (i.e., before the end of the assessment year) would replace the original return filed u/s 139(1).
P.Y.2017-18 (A.Y.2018-19)	Yes	The return of income has been filed u/s 139(1) on 30.5.2018 i.e., before the due date, namely, 30.11.2018

Answer to Q.3.9

Vijay Co Ltd being Indian constituent of international group has to file CbC report, if the consolidated group revenue as reflected in the consolidated financial statement for the accounting year preceding such accounting year exceeds ₹ 5,500 crores.

Vijay Co Ltd. would be required to furnish CbC report within the twelve months from the end of the reporting accounting year to the Joint Commissioner as may be designated by the Director General of Income-tax (Risk Assessment), if Country X, in which the parent entity Jefferson Inc. is a resident, is a country -

(1) in which it is not obligated to file report of the nature of CbCreport;

(2) with which India does not have an arrangement for exchange of the CbC report; or

(3) there has been a systemic failure of Country X i.e., such country is not exchanging information with India even though there is an agreement and this fact has been intimated to the entity by the prescribed authority.

However, in case there has been a systemic failure of Country X and the said failure has been intimated to Vijay Co. Ltd., the period for submission of the report would be six months from the end of the month in which said systemic failure has been intimated.

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.

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.

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

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 x 5 = 10 Marks)

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%

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) 31-03-20201/₹ 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) Protoco1

(C) Mutual agreement procedure.

(D) Tax Information Exchange Agreements [TIEAs].

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 Marks)***

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 Marks)***

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 Marks)***

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 Marks)***

Solution to Case Study 4

Q. No.	Answer
4.1	(C)
4.2	(C)
4.3	(D)
4.4	(B)
4.5	(B)

Answer to Q. 4.6

Suresh and his wife Usha would be non-resident in India for the previous year 2019-20, since they both are living in Malaysia since 1995.

As per section 9(1)(viii), any income arising outside India, being any sum of money paid without consideration, by an Indian resident person to a non-corporate non-resident or foreign company on or after 5.7.2019 would be deemed to accrue or arise in India, if the same is chargeable to tax under section 56(2)(x) i.e., if the aggregate of such sum received by a non-corporate non-resident or foreign company exceeds ₹ 50,000.

Since Ramesh had given cash gift of ₹ 13,00,000 (i.e., sum of money exceeding ₹ 50,000) to Suresh on 17.3.2020**,** such sum would be deemed to accrue or arise in India and would thus, be chargeable to tax in India, even though such income accrues or arises to him (Suresh) outside India.

Gift of immovable property by Ramesh to Usha would be deemed to accrue or arise in India by virtue of section 9(1)(i), since such property is situated in India. As per section 2(24)(xviia), income includes sum of money or value of property referred under section 56(2)(x). Income would be chargeable to tax in India, where any person receives any immovable property without consideration from any person.

Hence, the value of ₹ 20,00,000**,** being the stamp duty value would be chargeable to tax in the hands of Usha.

Ramesh can be treated as agent of Suresh and Usha, since as per section 163, agent in relation to a non-resident includes *inter alia* any person in India from or through whom the non-resident is in receipt of any income, whether directly or indirectly.

As Suresh and Usha are non-residents who have received income in the form of cash gift and value of immovable property, respectively, from Ramesh, he would be deemed to be agent in relation to both of them. However, an opportunity of being heard in this regard has to be given by the Assessing Officer before treating him as a non-resident.

Answer to Q. 4.7

Computation of Arm's Length Price of purchases made from AE, Yemen Ltd. and quantum of income adjustment in the hands of Apropos (P) (Ltd.) by adopting TNMM

Particulars		₹
Step 1 – Computation of Net Profit Margin from International Transaction with AE, Yemen Ltd. (I)		
Sales price per watch		1,500
Less: Purchase price per watch	₹ 700	
Expenditure towards advertisement	₹ 400	
		1,100
Net profit		**400**
Net profit margin (as % of sales) [400 x 100/1500]		**26.67%**
Step 2 - Net profit margin realised from the watches purchased from unrelated enterprise (II)		
Sales price per watch		2,000
Less: Purchase price per watch	₹ 1,000	
Expenditure towards advertisement	₹ 200	
		1,200
Net Profit		**800**
Net profit margin as a percentage of sale price		**40%**
[₹ 800 x 100/2,000] = 40%		
Step 3 - Determination of arm's length purchase price		
Sale price of watches purchased from AE, Yemen Ltd. of UK		1,500
Less: Arm's length profit of related party transaction [40% of ₹1,500]		600
		900
Less: Advertisement expenses incurred		400
Arm's length purchase price of watches		**500**
Actual purchase price of watches from AE, Yemen Ltd., UK		700
Arm's length adjustment to purchase price (per watch)		**200**

Income adjustment to be made on account of adjustment in purchase price (10,000 x ₹ 200)	**20,00,000**

Answer to Q. 4.8

Computation of value of undisclosed foreign asset chargeable to tax in the hands of Deepak under Black Money Law

The definition of "assessee" under the Black Money Law, *inter alia,* includes a person who, being a non-resident in the previous year when the undisclosed income came to the notice of the Assessing Officer, was resident in India in the previous year in which the undisclosed asset located outside India was acquired. Therefore, Deepak is an assessee under the Black Money Law since he was resident in India in the P.Y.2008-09, when the property was acquired, even though he is a non-resident in the P.Y.2017-18, when notice under Black Money Law was issued. Accordingly, the value of undisclosed asset located outside India of Deepak would be chargeable to be tax under the Black Money Law in the previous year in which such asset comes to the notice of the Assessing Officer i.e., P.Y 2017-18, even though he is a non-resident in India for that previous year.

Computation of value of undisclosed foreign asset

Particulars	USD	₹
Value of residential property in California acquired on 25.6.2008	25,000	
Value of residential property would be the fair market value, being the higher of -		
- Cost of acquisition USD 20,000		
- Price that the property shall ordinarily fetch if sold in the open market on the valuation date, i.e., 1.4.2017 USD 25,000		
Converted into Indian currency taking the rate as on 1.4.2017	₹71/USD	17,75,000
Bank Deposits in a bank A/c in New York as on 1st April 2017 [the sum of all the deposits made in the account with the bank since the date of opening of the account would be the value of the bank deposits]	10,000	
Converted into Indian currency taking the rate as on 1.4.2017	₹ 71/USD	7,10,000
Total value of undisclosed foreign asset		**24,85,000**

Answer to Q. 4.9

Dr. Rajesh is a citizen of USA but a person of Indian origin, since his grandfather was born in undivided India and he came on visit to India during the previous year for 90 to 100 days. Since he stayed in India for less than 182 days during the previous year 2019-20, he would be a **non-resident** in India.

Article 14 of UN Model Convention deals with "Independent personal services". As per Para 1 of Article 14, income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:

(a) If he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or

(b) If his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

The term "Professional Services" *inter alia* include independent activities of physicians. Thus, the services rendered by Dr. Rajesh would fall within the definition of "Professional Services".

Since he has no fixed place in India for his profession and he stayed in India only for 90 to 100 days, which is not exceeding 183 days during the previous year, the income of ₹ 7,70,000 earned during the previous year would not be chargeable to tax in India.

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.

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[3], 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.

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.

Exhibit 1

(Applicable to this Case Study only)

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

[3] To be read as as 31-3-2020

" .....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

(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) ……. "

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

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 under 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

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 kind 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.

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 Marks)***

(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 Mark)***

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

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 Marks)***

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 Marks)***

Solution to Case Study 5

Q. No.	Answer
5.1	(B)
5.2	(B)
5.3	(D)
5.4	(B)
5.5	(D)

Answer to Q.5.6

(i) The fee is payable for supply management services rendered by CL to UPL i.e., the services in relation to finalization of supplier prices, ensuring market competitive pricing from suppliers, assurance of manufacturing capacities and infrastructure of suppliers, ensuring on-time delivery of components by suppliers and resolution of delivery performance issues with suppliers.

Services rendered by CL to UPL may fall within the scope of "managerial services" under the definition of "Fee for technical services" as per *Explanation 2* to section 9(1)(vii) of the Income-tax Act, 1961. Accordingly, such income would be deemed to accrue or arise in India in the hands of CL as per the provisions of the Income-tax Act, 1961.

Payments made by CL to UPL would **not** fall in the category of royalty under section 9(1)(vi) as the payment is not in consideration for transfer of rights or grant of licence or use in respect of patent, invention, model, design, secret formula etc.

However, the provisions of the India-UK tax treaty have also to be considered and if they are more beneficial, then, the treaty provisions would apply.

Article 13(3) and (4) of the India-UK treaty is relevant in this case. The payment is **not** in the nature of royalty, since it is not a consideration for use or right to use any copyright, patent trade mark, design etc. described in Article 13(3)(a); nor is it payment as consideration for use or right to use industrial, commercial or scientific equipment as described in Article 13(3)(b).

The payment is also **not** in the nature of FTS, since it does not represent consideration for rendering any technical or consultancy services which are ancillary and subsidiary to the enjoyment of right, property or information for which payment described in Article 13(3)(a) in received or enjoyment of property for which payment described in Article 13(3)(b) is received. Also, the requirement in the third limb of Article 13(4) i.e. in para (c), is also not satisfied as no technical knowledge, experience, etc. is made available by CL to UPL.

Such services, therefore, do **not** fall within the meaning of FTS or royalty as described in Article 13(3) or 13(4) of the India-UK treaty.

Since the treaty provisions are more beneficial, they would apply in this case. Accordingly, the fee paid would neither constitute FTS nor royalties.

ii) Since payment of fees to CL qualifies as FTS under the Income-tax Act, 1961, it would be deemed to accrue or arise in India in the hands of CL, whether or not, it has a place of business or business connection in India by virtue of *Explanation* below section 9(2).

However, as per India-UK treaty such payment is **not** considered as FTS or royalty. Therefore, it would **not** be chargeable to tax in the hands of CL since treaty provisions are more beneficial.

(iii) No, there is no need to deduct tax at source under section 195 from the payments to CL, since such amount is **not** chargeable to tax in India as per India-UK treaty.

Answer to Q.5.7

Tax implications in respect of payment to Cable Plc Ltd., a non-resident having no PE in India

Equalisation levy@6% on ₹ 7,85,000, being the amount of consideration for provision of digital advertising space, a specified service, would be attracted in respect of payment made by UPL, a resident, to Cable Plc Ltd., UK, since it is a non-resident **not** having PE in India.

Therefore, ₹ 47,100, has to deducted by UPL on the amount paid to Cable Plc Ltd. Non-deduction of equalization levy would attract disallowance u/s 40(a)(ib) of 100% of the amount paid while computing its business income.

Section 10(50) exempts any income arising from any specified service, which is chargeable to equalization levy. Accordingly, no income-tax liability would be attracted on the amount of ₹ 7,85,000 received by Cable Plc Ltd from UPL.

DTAA benefit cannot be availed in respect of equalization levy paid.

Tax implications in respect of payment to Corfu Ltd., a non-resident having PE in India

The answer to this part of the question on provision of digital advertising space by Corfu Ltd. would depend on whether the services are effectively connected to the PE or not.

I If services are effectively connected with the PE

Equalisation levy would **not** be attracted on payment of ₹ 8 lakh made by UPL, being the amount of consideration for provision of digital advertising space, provided by Corfu Ltd., Greece, since it is a non-resident having PE in India and its services are effectively connected with the PE. In such a case, UPL is **not** required to deduct equalization levy on ₹ 8 lakh paid to Corfu Ltd. for provision of digital advertising space.

If its services are effectively connected with the PE in India, ₹ 8 lakh would be chargeable to tax as business income in the hands of Corfu Ltd. Exemption u/s 10(50) would **not** be available in respect of the said amount of ₹ 8 lakh. Accordingly, tax has to deducted by UPL at the rates in force under section 195 in respect of such payment to Corfu Ltd. Non-deduction of tax at source would attract disallowance @100% of the amount paid u/s 40(a)(i) while computing business income.

DTAA benefit can be availed in respect of income-tax payable under the provisions of the Act.

II If services are not effectively connected with PE

If services are not effectively connected with PE, equalization levy@6% would be attracted on ₹ 8 lakh, which would amount to ₹ 48,000.

Non-deduction of equalization levy would attract disallowance u/s 40(a)(ib) of 100% of the amount paid while computing its business income.

Exemption u/s 10(50) would be available and accordingly, no income-tax liability would be attracted on the amount of ₹ 8 lakh.

DTAA benefit cannot be availed in respect of equalization levy paid.

Answer to Q.5.8

As per section 9(1)(i) of the Income-tax Act, 1961, income from transfer of a capital asset (equity shares in an Indian company) situated in India is deemed to accrue or arise in India. Since UPL is an Indian company, equity shares of UPL held by Regina Singapore Pte. Ltd is a capital asset situated in India. Hence, the gain from their transfer are taxable in India.

However, the provisions of the India-Singapore DTAA have to be considered. India-Singapore DTAA was amended in 2016 to provide that capital gains from the alienation of shares of an Indian company by a resident of Singapore may be taxed in India. However, capital gains on sale of shares of an Indian company by a resident of Singapore was taxable only in Singapore, if such shares were acquired before 1.4.2017. The question states that it has to be assumed that capital gains earned by a resident of Singapore is not taxable in Singapore. In such a case, the capital gains on sale of shares of an Indian company acquired before 1.4.2017 by a resident of Singapore would neither be taxable in India nor in Singapore.

Accordingly, since the shares in UPL, an Indian company, were acquired by Regina Singapore Pte, a resident of Singapore, in the year 2010, the capital gains arising therefrom would neither be taxable in India nor Singapore.

Potential impact of treaty anti-abuse measures considered under BEPS regime

The Limitation of Benefit clause in the India-Singapore tax treaty provides that the resident of the Contracting State, Singapore, in this case, shall not be entitled to this treaty benefit if its affairs are arranged with the primary purpose of taking advantage of exemption of capital gains tax in India, available in the treaty. Further, a shell or conduit company claiming to be a resident of Singapore would not be entitled to this benefit.

In this case, Regina Global Inc, USA owns 100% share capital in Regina Singapore Pte Ltd. and has infused the necessary capital in Regina Singapore Pte Ltd. to enable it to acquire shares in UPL. Accordingly, it is possible that Regina Singapore Pte Ltd. may be denied treaty benefits in respect of exemption of capital gains tax in India, if its affairs are arranged with the primary purpose of taking advantage of exemption of capital gains tax in India. Consequently, capital gains tax may be attracted in India in respect of the transaction of sale of shares of UPL.

Accordingly, the Board of Directors have to be advised to comply with LOB rules, involving satisfaction of various objective criteria to qualify for treaty benefits and satisfy the principal purpose test, so that the capital gains does not become chargeable to tax in India.