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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 A.Y.2020-21, unless otherwise stated in the questions/case studies

CASE STUDY – 1

Best Ltd. is an Indian company and is a wholly owned subsidiary of Best Plc, UK. Best Ltd. is engaged in the business of manufacturing and selling telecommunication equipment. During the previous year 2019-20, Best Ltd. inter alia has transactions with the following enterprises:

S. No.	Transactions	Enterprise	Amount (₹ in Cr.)
1	Purchase of tools and spare-parts	Best BV, Netherlands	100
2	Payment of royalty	Best PLC, UK	25
3	Sale of telecom equipment	Best Pty. Ltd, Singapore	150

The EBITDA (earnings before interest, dividend, tax, depreciation and amortization) of Best Ltd. for Financial year 2019-20 is ₹ 150 crores.

On April 1, 2019, Best Ltd. had obtained loan of ₹ 700 crores @8% from Best LLC, Cyprus.

The following additional information pertaining to loans obtained and interest payments of Best Ltd. are provided:

- The book value of the total assets of Best Ltd. is ₹ 1200 crores.
- Loan of ₹ 100 crores from Bank of India based on a guarantee provided by Best PLC., UK. Interest of ₹ 8 crores paid on such loan and guarantee fee of ₹ 30 lakhs paid to Best PLC., UK.
- Loan of ₹ 70 crores from the Bank of Germany, India Branch. Guarantee was provided by Best GmbH., Germany. Interest paid for the concerned year is ₹ 5 crore. Guarantee fees paid to Best GmbH is ₹ 20 lakhs. Best Ltd. holds shares carrying 25% voting power in Best GmbH., Germany.
- Foreign currency loan of EURO 10 million from the Bank of London, in UK, based on a back to back deposit made by Best Plc. Interest paid to bank amounts to ₹ 6 crores.
- Best Ltd. had to incur a sum of ₹ 1 crore as an interest towards the delayed payment to Best BV, Netherlands, being its creditor for supply of tools and spare parts. 95% of raw materials required by Best Ltd. are supplied by Best BV. The price and other conditions for supply of raw material are influenced by Best BV.

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.

Mr. Robin, Director at Best PLC and sports person

Mr. Robin is the director of Best PLC, UK and is a citizen and tax resident of Country UK. He came to India on 25th January, 2020 for participation in a sports car race championship. He left India on 30th March, 2020 for UK. He received ₹ 35 lakhs for participation in the championship in India. He also received ₹ 5 lakhs from XYZ Ltd. for advertisement of a product on television. Mr. Robin also wrote an article in a sports magazine about maintenance of sports car for which he received ₹ 1,00,000. Mr. Robin also visited Goa for 2 days during March 2020 and won ₹ 25,000 in a casino in Goa. He incurred ₹ 1 lakh towards his travel costs to India. All other expenses were met by his sponsors. He also won a prize of ₹ 2,00,000 from a local race competition in New Delhi. He has no other income in India during the year ended 31st March 2020.

Ms. Rachel, sister of Mr. Robin and a dancer by profession also accompanied him to India during January-March 2020. She earned ₹ 5 lakhs from dance performances given by her in India during that period. She has no other income in India.

Both Mr. Robin and Ms. Rachel did not file their return of income in India. Ms. Rachel received a notice from the income-tax department under section 142(1) of the Act to furnish a return of income for the AY 2020-21.

Choose the correct alternative for the following MCQs:

- 1.1 To mitigate tax litigation, Mr Robin has been advised to make an application for advance ruling. Is he eligible to make the application?
 - (a) No. Since the matter is pending by virtue of notice issued to Ms. Rachel.
 - (b) No. Since the application can be made only prior to the transaction.
 - (c) Yes. The income tax notice is not in respect of Mr Robin's transactions/income.
 - (d) Yes, but the application has to be made within 6 months of receipt of income in India.
- 1.2 Which of the following approaches does India follow in relation to secondary adjustments?
 - (a) Deemed equity approach
 - (b) Deemed dividend approach
 - (c) Deemed loan approach
 - (d) Either (b) or (c)
- 1.3 In a case where primary adjustment to transfer price is made suo motu by Best Ltd., the time limit for repatriation of "excess money" is -
 - (a) 90 days from the due date of filing of return of income
 - (b) 120 days from the due date of filing of return of income
 - (c) 60 days from the date of filing of return of income
 - (d) 90 days from the date of filing of return of income

- 1.4 *The application of tax treaties between two countries helps in solving which of the following problem?*
- (a) *Juridical double taxation*
 - (b) *Economic double taxation*
 - (c) *Both (a) and (b)*
 - (d) *Double Non-taxation*
- 1.5 *Which Action Plan of OECD BEPS and provision of the Income-tax Act, 1961 address the issue of thin capitalization?*
- (a) *Action Plan 6 and Section 92CE*
 - (b) *Action Plan 4 and Section 92CE*
 - (c) *Action Plan 6 and Section 94B*
 - (d) *Action Plan 4 and Section 94B*
- (2 x 5 = 10 Marks)**

You are required to answer the following issues:

- 1.6 *Based on the details provided, determine the permissible interest deduction while computing income under the head "Profits and gains of business or profession" of Best Ltd. for A.Y. 2020-21 under the relevant provisions of the Income-tax Act, 1961, giving reasons for treatment of each item of interest.* **(8 Marks)**
- 1.7 *Best Ltd. wants to understand the implications to it under the transfer pricing provisions of the Income-tax Act, 1961, if it receives interest-free loan from its foreign AE parent Best PLC., UK. Please Advise.* **(2 Marks)**
- 1.8 *Calculate tax liability of Mr. Robin and Ms. Rachel for A.Y. 2020-21. Assuming that the tax deductible on their income has been duly fully deducted, is Mr. Robin and Ms. Rachel required to file return of income in India for A.Y.2020-21.* **(5 Marks)**

Solution to Case Study 1

Q. No.	Answer
1.1	(c)
1.2	(d)
1.3	(a)
1.4	(a)
1.5	(d)

Answer to Q.1.6

Section 94B is applicable to Best Ltd., an Indian company, being the borrower who pays interest in respect of any form of debt issued by

- a non-resident, being an associated enterprises (AE) of such borrower or
- by a lender which is not an AE but where the AE provides either implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, then, such debt would be deemed to have been issued by an AE.

Computation of permissible deduction under the head “Profits and gains from business or profit” of Best Ltd. for A.Y. 2020-21

Particulars		Amount (₹ in crores)
(i)	Interest paid to Best LLC Cyprus [₹ 700 crores x 8%] [Best LLC, Cyprus is deemed to be an AE of Best Ltd., since the loan advanced by it i.e., ₹ 700 crores, constitutes not less than 51% of the book value of total assets of Best Ltd. i.e., ₹ 1,200 crores. Hence, the amount of interest paid on such debt has to be considered for the purpose of section 94B]	56.00
(ii)	Interest of ₹ 8 crores paid to Bank of India based on guarantee provided by Best PLC., UK [Since Best Ltd., India is a wholly owned subsidiary of Best PLC., UK, they are associated enterprises. The debt issued by Bank of India would be deemed as issued by Best PLC., UK, being the AE, since such loan is given based on guarantee given by Best PLC. Hence, the amount of interest paid on such debt has to be considered for the purpose of section 94B]	8.00
(iii)	Guarantee Fee of ₹ 30 lakhs paid to Best PLC., UK [As per section 94B(5)(ii), debt means, <i>inter alia</i> , any loan that gives rise to interest which is deductible while computing business income. Though “guarantee fee” is not specifically referred to in the meaning of the term “debt” defined under section 94B(5)(ii), the term ‘interest’ is defined in section 2(28A). The term ‘interest’ means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized.” Accordingly, guarantee fee paid to Best PLC, UK has to be considered for the purpose of section 94B]	0.30
(iv)	Interest of ₹ 5 crores paid to Bank of Germany [Since Best Ltd.’s voting power in Best GmbH., Germany is less than 26%, Best	

	GmbH., Germany is not an AE of Best Ltd. Since loan was obtained by Best Ltd from Bank of Germany, Indian branch, for which guarantee was given by an enterprise, not being an AE, such interest shall not be considered for the purposes of section 94B]	-
(v)	Guarantee fee of ₹ 20 lakhs paid to Best GmbH., Germany [Guarantee fee paid to Best GmbH shall also not be considered for the purposes of section 94B, since it not an associated enterprise of Best Ltd.]	-
(vi)	Interest of ₹ 6 crores paid to Bank of London based on deposits made by Best PLC., UK [Since Best PLC. UK, being an AE has deposited a corresponding and matching amount of funds with the lender, the debt issued by Bank of London shall be deemed to have been issued by Best PLC.]	6.00
(vii)	Interest of ₹ 1 crore paid to Best BV, Netherlands, being interest on delayed payment to creditor [Since 95% of raw materials required by Best Ltd. is supplied by Best BV., Netherland and price and other conditions for supply of raw material are also influenced by Best BV, Best BV. is deemed to be an AE of Best Ltd. Interest paid towards delayed payment to Best BV, Netherland, being its creditor for supply of raw material, can be considered as a debt which is an arrangement that gives rise to interest or other finance charges that are deductible in computation of income under the head "Profits and gains of business or profession. Hence, the amount of interest paid towards delayed payment has to be considered for the purpose of section 94B]	1.00
Interest paid or payable to non-resident AE		71.30

Computation of interest liable for allowance / disallowance		
Particulars	Amount (₹ in crores)	
Total interest [₹ 71.30 crores + ₹ 5.20 crores]		76.50
Excess Interest: lower of the following would be disallowed		
- Interest paid or payable to non-resident AE in excess of 30% of EBITDA [₹ 71.30 crores – ₹ 45.00 crores (30% of ₹ 150 crores)]	26.30	
- Interest paid or payable to non-resident AE	<u>71.30</u>	
		<u>26.30</u>
Interest paid or payable allowable as deduction under the head "Profits and gains of business or profession"		<u>50.20</u>

Alternative Solution

On a plain reading of provisions of section 94B(2), it appears that the “excess amount” has to be computed by taking–

- **total interest paid or payable** by the borrower in excess of 30% of EBITDA of the borrower in the previous year or

- interest paid or payable to associated enterprises for that previous year,
whichever is less.

Accordingly, the interest disallowance and amount of interest paid or payable by A Ltd allowable as deduction under the head “Profits and gains of business or profession” would be as under:

Computation of interest liable for allowance / disallowance	
Particulars	Amount (₹ in crores)
Total interest [₹ 71.30 crores + ₹ 5.20 crores]	76.50
Excess Interest: lower of the following would be disallowed	
- total interest paid or payable in excess of 30% of EBITDA [₹ 76.50 crores – ₹ 45.00 crores (30% of ₹ 150 crores)]	31.50
- Interest paid or payable to non-resident AE	<u>71.30</u>
	<u>31.50</u>
Interest paid or payable allowable as deduction under the head “Profits and gains of business or profession”	<u>45.00</u>

Answer to Q.1.7

As per section 92(1), any income arising from an international transaction shall be computed having regard to arm's length price. However, section 92(3) provides that transfer pricing provisions shall not apply in cases where determination of allowance of any interest as per ALP has the effect of reducing the income chargeable to tax or increasing the loss, as the case may be.

In the given case, if transfer pricing provisions are applied to compute interest at ALP in respect of interest-free loan received from parent company Best PLC., UK, an AE, the same would only result in increase in the expenditure of Best Ltd., the Indian company and consequent reduction in its profits.

Therefore, transfer pricing provisions under the Income-tax Act, 1961 shall not apply in such a case.

Answer to Q.1.8

Mr. Robin stayed in India for 66 days in the P.Y.2019-20. Assuming that he has not stayed in India for 365 days or more during the four immediately preceding previous years, he would be a non-resident in India for A.Y.2020-21.

Ms. Rachel, sister of Mr. Robin, has also stayed in India for 66 days in the P.Y.2019-20. Assuming that she has not stayed in India for 365 days or more during the four immediately preceding previous years, she would also be non-resident in India for A.Y.2020-21.

Computation of tax liability of Mr. Robin for the A.Y.2020-21		
Particulars	₹	₹
Income taxable under section 115BBA		
Income from participation in sports car race championship in India [Taxable u/s 115BBA, since Mr. Robin is a non-resident sports person and not a citizen of India] [No expenditure is allowed]	35,00,000	
Income from winning in local race competition in New Delhi	2,00,000	
Income received for advertisement of product on TV	5,00,000	
Income received from contribution of articles in a sports magazine	<u>1,00,000</u>	
		43,00,000
Income taxable under section 115BB		
Income from winning in casino in Goa		25,000
Gross Total Income/ Total Income		43,25,000
Computation of tax liability		
Tax@ 20% under section 115BBA on ₹43,00,000		8,60,000
Tax@ 30% under section 115BB on ₹25,000		7,500
		8,67,500
Add: Health & Education cess@4%		34,700
Total tax liability of Mr. Robin for the A.Y.2020-21		9,02,200

The total income of Ms. Rachel is ₹ 5,00,000, which comprises entirely of her income from dance performances given in India [Taxable @20% u/s 115BBA, since Ms. Rachel is a non-resident entertainer and not a citizen of India]

Computation of tax liability of Ms. Rachel for the A.Y.2020-21	
Particulars	₹
Tax@ 20% on ₹ 5,00,000	1,00,000
Add: Health & education cess@4%	4,000
Total tax liability of Ms. Rachel for the A.Y.2020-21	1,04,000

Mr. Robin is required to file his return of income for A.Y. 2020-21, even though tax deductible on his income has been fully deducted, since his total income includes income chargeable to tax u/s 115BB in addition to income chargeable to tax u/s 115BBA. However, Ms. Rachel is not required to file her return of income for A.Y. 2020-21, since her total income consist only income chargeable to tax u/s 115BBA and the tax deductible at source on her income has been fully deducted.

Case Study 2

X Ltd. is an Indian Company in which Y Plc, Gibraltar holds 40% shareholding and voting power. During the previous year 2017-18, X Ltd. supplied 500 scanners to Y Plc. at \$ 1950 per piece. The price of scanners supplied to other unrelated parties in USA is \$ 2250 per piece. During the course of assessment proceedings relating to A. Y. 2018-19, the Assessing Officer carried out primary adjustments and added a sum of ₹ 150 lakhs, being the difference between actual price of scanner and arm's length price and it was duly accepted by X Ltd. The Assessing Officer passed the order on 1st June, 2019. On account of this primary adjustment, the excess money of ₹ 150 lakhs is available with Y Plc. The rate of exchange of 1 USD is ₹ 80 and six-month LIBOR as on 30 September 2017¹ is ₹ 9.50.

The consolidated turnover of X Ltd. and Y Plc (which forms an international group) is ₹ 7,400 crore. Assume India does not have an arrangement for exchange of the CbC report with UK.

Advance Pricing Agreement

X Ltd. wishes to apply for bilateral advance pricing agreement with the Government of India to avoid transfer pricing adjustments in future on the international transactions being undertaken by it.

Liaison office of Y Plc.

Y Plc has set up a liaison office in New Delhi to receive trade inquiries from customer in India. The work of the liaison office is not only restricted to forwarding of the trade inquiries to Y Plc but it also negotiates and secures customer contracts for Y Plc in India. Y Plc wishes to know whether the liaison office would constitute a business connection in India.

Ms. Sushmita, Director of X Ltd., and Independent Consultant

Ms. Sushmita is one of the directors of X Ltd. and is also independently engaged as a consultant in a technical consultancy project of another foreign company based out of Country S viz., Tech Inc. Due to the nature of project, Sushmita frequently travels across the country and there is no fixed place for provision of consultancy services. The expected revenue from the project to Tech Inc is ₹ 20 crores. There are no other personnel of Tech Inc in India.

Ms. Sushmita receives fee for her services from Tech Inc in her bank account in Country S. Ms. Sushmita had also acquired a flat in Country S in the P.Y. 2017-18 for INR 60 lakhs. Out of the said sum, INR 30 lakhs was assessed to tax in total income of the P. Y. 2017-18 and

¹ To be read as 2019

earlier years. This asset comes to the notice of the Assessing Officer on 1st May 2020. The value of flat was ₹ 110 lakhs on 1st April 2020 and ₹ 120 lakhs on 1st May 2020.

Choose the correct alternative for the following MCQs:

- 2.1 If X Ltd. does not furnish transfer pricing report from an accountant for F.Y. 2019-20, what would be the quantum of penalty imposable under the Income-tax Act, 1961 for such a failure?
- (a) 1% of the value of international transaction
 - (b) 2% of the value of international transaction
 - (c) ₹ 10 Lakhs (maximum penalty)
 - (d) ₹ 1 lakh
- 2.2 If Tech Inc. opts for advance ruling to understand the taxability of the project of providing consultancy in the field of computers and scanners, such ruling shall be binding on:
- (a) Tech Inc.
 - (b) Jurisdictional Assessing Officer of Tech Inc.
 - (c) Both (a) and (b), in relation to the mentioned project
 - (d) Both Tech Inc. and Jurisdictional Assessing Officer in relation to the mentioned project and for any future transaction of similar nature in India.
- 2.3 The amount chargeable to tax in the hands of Ms. Sushmita during the year 2020-21 under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015:
- (a) ₹ 110 lakhs
 - (b) ₹ 50 lakhs
 - (c) ₹ 55 lakhs
 - (d) ₹ 80 lakhs
- 2.4 Assume that Ms. Sushmita has sold the flat on 29th March 2020 for ₹ 70 lakhs. What would be the amount chargeable to tax under the Black Money law under this case?
- (a) ₹ 30 lakhs
 - (b) ₹ 50 lakhs
 - (c) ₹ 40 lakhs
 - (d) ₹ 35 lakhs
- 2.5 Assume that X Ltd. has entered into an advance pricing agreement on 20th February 2020 covering the transactions for the period starting from 1 April 2019. The Annual Compliance Report for the assessment year 2020-21 shall be furnished within:

- (a) 60 days from 31st March 2020
- (b) 30 days from 31st March 2021
- (c) 90 days from 20th February 2020
- (d) 30 days from due date of filing of income tax return for PY 2019-20

(2 x 5 = 10 Marks)

You are required to answer the following issues :

- 2.6 X Ltd. wants to know the effect of the transaction of supply of computers to Y Plc., in respect of which the Assessing Officer carried out primary adjustments in computing the total income for A.Y. 2020-21, considering that the excess money is still lying with Y Plc. X Ltd. had declared an income of ₹ 300 lakhs. **(5 Marks)**
- 2.7 With reference to the DTAA between India and Country "S", comment on whether provision of consultancy services through Sushmita would lead to creation of PE of Tech Inc. in India. Assume that the DTAA between India and Country S is akin to UN Model Convention. Will your answer change if the DT AA between India and Country S is akin to OECD Model Convention 2017? **(3 Marks)**
- 2.8 Whether the activities carried out by the liaison office of Y Plc in India constitute business connection to attract deemed accrual provisions under section 9(1) of the Income-tax Act? **(2 Marks)**
- 2.9 What are the circumstances when a constituent entity resident in India is required to file CbC report in India and on the basis of the same, decide whether X Ltd. is required to file CbC report in India. What is the due date of filing CbC report with Indian tax authorities? **(5 Marks)**

Solution to Case Study 2

Q. No.	Answer
2.1	(d)
2.2	(c)
2.3	(c)
2.4	(d)
2.5	(d)

Answer to Q.2.6

In this case, X Ltd., the Indian company, and Y Plc., Gibraltar, are deemed to be associated enterprises as per section 92A(2) since Y Plc. holds more than 26% voting power in X Ltd.

On account of the primary adjustment of ₹ 150 lakhs made by the Assessing Officer, the total income of X Ltd. for A.Y.2018-19 would increase by ₹ 150 lakhs.

In this case, secondary adjustment has to be made under section 92CE, since –

- (1) The company has accepted the primary adjustment made by the Assessing Officer;
- (2) The primary adjustment is in respect of A.Y.2018-19; and
- (3) The primary adjustment exceeds ₹ 100 lakhs.

Accordingly, the excess money (i.e., ₹ 150 lakhs) available with the associated enterprise (i.e., Y Plc, Gibraltar) not repatriated to India within 90 days of the date of the order of the Assessing Officer would be deemed as an advance made by the X Ltd. to its associated enterprise, Y Inc.

Interest would be calculated on such advance at 12.50% [i.e., the rate of six month LIBOR as on 30th September, 2019 (i.e., 9.50%)+ 3%], since the international transaction is denominated in foreign currency.

Such interest computed from 1.6.2019 to 31.3.2020 amounting to ₹15,57,377 [i.e., $304/366 \times ₹ 150 \text{ lakhs} \times 12.50\%$]²² would be added to his total income for A.Y.2020-21. Consequently, the total income of ₹ 3,00,00,000 for A.Y.2020-21 would be increased by the interest amount of ₹ 15,57,377.

Alternatively, X Ltd has the option to pay additional income-tax of ₹ 31,44,960 i.e., @20.9664% (tax @18% plus surcharge @12% plus cess@4%) on ₹ 150 lakhs, being the amount of excess money, within 90 days from the date of order. In such case, it will not be required to make secondary adjustment and compute interest on such excess money.

The additional income-tax so paid by X Ltd. would be treated as the final payment of tax in respect of excess money not repatriated and no further credit would be allowed to X Ltd. or to any other person in respect of the amount of additional income-tax so paid. However, if X Ltd. has paid the additional income-tax on excess money after 90 days from the date of order, then, it will not be required to compute interest from the date of payment of such tax. This implies that interest has to be computed upto the date of payment of such tax.

Note - The question mentions that the Assessing Officer has carried out primary adjustments and added a sum of ₹ 150 lakhs, being the difference between the actual price of scanner and arm's length price and it was duly accepted by X Ltd. However, from the information given in the question, the amount of primary adjustment works out to only ₹ 120 lakhs [$(₹ 2,250 - ₹ 1,950) \times 80 \times 500$ scanners]. In such a case, the interest computed will be ₹ 12,45,902 [$304/366 \times 12.5\% \times ₹ 120$ lakhs]. Alternatively, X Ltd. may opt to pay additional income-tax @20.9664% (tax @18% plus surcharge @12% plus cess@4%) on ₹ 120 lakhs, which amounts to ₹ 25,15,968.

²² The figure would be ₹ 15,62,500 if computed on the basis of months instead of days [i.e., $10/12 \times ₹ 150 \text{ lakhs} \times 12.50\%$].

Answer to Q.2.7

As per paragraph 3(b) of Article 5 'Permanent Establishment' of India-Country "S" DTAA, (which is in line with the UN Model Convention, 2017), a service PE is established if the foreign enterprise provides services in India through employees or other personnel engaged for more than 183 days in a fiscal year.

Thus, Service PE is not dependent upon the fixed place of business or profession. It is only dependent on the continuation of the activity, which does not mandate fixed place of business or profession.

Hence, the project for providing consultancy services will expose it to creation of service PE in India, if Sushmita's period of stay in India is more than 183 days in the P.Y.2019-20. Since the question mentions that she frequently travels across the country, it is logical to assume that her period of stay is more than 183 days in the P.Y.2019-20.

If the India-Country S DTAA is in line with the OECD Model Convention, 2017, provision of technical consultancy services by Sushmita will not constitute a PE in India, since the concept of service PE is absent in the OECD Model Convention, 2017.

Therefore, in the absence of a fixed place of profession in India, the technical consultancy services rendered by Sushmita will **not** constitute a PE in India, irrespective of the period of her stay in India.

Answer to Q.2.8

If a Liaison Office is maintained solely for the purpose of carrying out activities which are preparatory or auxiliary in character, and such activities are approved by the Reserve Bank of India, then, no business connection is established.

In this case, had the liaison office's activities been restricted to forwarding of trade inquiries to Y Plc, a Gibraltar based company, its activities would **not** have constituted business connection.

However, the activities of the liaison office in New Delhi extends to also negotiating and securing contracts for Y Plc. with the customers in India, on account of which business connection is established.

Hence, the deemed accrual provisions under section 9(1)(i) would be attracted.

Answer to Q. No. 2.9

As per section 286(7), the CbC reporting requirement shall apply in respect of an international group for an accounting year, if the total consolidated group revenue as reflected in the consolidated financial statement (CFS) for the accounting year preceding such accounting year is above ₹ 5500 crore.

Circumstances when a constituent entity resident in India is required to file CbC report in India

Situation 1: If a constituent entity, resident in India, is designated as alternate reporting entity

It is required to furnish a report under section 286(2) in respect of the group to the Joint Commissioner, designated by the Director General (Risk Assessment) for every reporting accounting year.

The report in Form No.3CEAD must be furnished within a period of 12 months from the end of the reporting accounting year for which the report is being furnished.

In this case, if X Ltd. has been designated as alternate reporting entity, it has to furnish CbC report within a period of 12 months from the end of the reporting accounting year in Form No.3CEAD.

Situation 2: If a constituent entity, resident in India, is not designated as alternate reporting entity

It is required to furnish CbC report under section 286(4) in Form No.3CEAD, within the twelve months from the end of the reporting accounting year to the Joint Commissioner, designated by the Director General of Income-tax (Risk Assessment), if the parent entity of the group is resident of a country or territory,-

- (i) in which it is not obligated to file report of the nature of CbC report;
- (ii) with which India does not have an arrangement for exchange of the CbC report; or
- (iii) there has been a systemic failure of the country or territory 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.

In the present case, X Ltd., being the constituent entity resident in India, has to file a CbC report for the reporting accounting year since the consolidated group revenue of ₹ 7400 crores for the preceding accounting year exceeds the threshold of ₹ 5,500 crores and India does not have an arrangement for exchange of CbC report with Gibraltar. Accordingly, X Ltd. has to furnish a report in respect of the group to the Joint Commissioner, designated by the Director General (Risk Assessment) for the reporting accounting year on or before 12 months from the end of the reporting accounting year in Form No.3CEAD.

CASE STUDY 3

Boss Ltd. is the Indian parent company holding group of various multinational companies having diversified business portfolio. Its group companies are located in Country P, Country Q, Country R and Country S.

Boss Ltd. undertakes various transactions with its subsidiaries situated in the countries mentioned above at a predetermined profit margin. One of its subsidiaries, Castro Ltd. (Country P) is engaged in the business of manufacturing and trading of heavy machines. Boss

Ltd. purchased a machine from Castro Ltd. for \$ 22,000 which included warranty for 4 months. The identical machine was purchased by Boss Ltd. by paying \$ 19,000 from completely unrelated party with 1 year of warranty. Fair value of warranty is \$ 1,200 for one year. However, Castro Ltd. provided credit of 6 months to Boss Ltd. Arm's length interest rate is 8% p.a. Net profit before tax of Boss Ltd. is ₹ 48,00,000. Assume 1 \$ = ₹ 50.

Mr. Nitin, Employee of Quality Ltd, Country Q

Mr. Nitin is the employee of the Quality Ltd. (Country Q). Quality Ltd. is the associate enterprise of Boss Ltd. Mr. Nitin, Citizen of Country Q came on deputation to Boss Ltd. He first time came to India on 25th April, 2019 and left India on 21st October, 2019. For F.Y. 2019-20, Nitin has earned salary of ₹ 15,00,000 in India and ₹ 23,00,000 in Country Q. Out of that ₹ 23,00,000 earned in Country Q, ₹ 9,00,000 was received in India and ₹ 14,00,000 was received in Country Q.

Efficient Ltd, Country R - subsidiary of Boss Ltd.

Efficient Ltd. (Country R) is one of the subsidiary companies of Boss Ltd. Efficient Ltd. has filed case in Indian Court regarding interpretation of one of the clauses of the India-Country R DTAA and it has made references to the decision given by the Supreme Court of Country E regarding the interpretation of the similar matter in Country X - Country Y DTAA. However, Income-tax department has contended that such reference of Foreign Court decision cannot be made in an Indian Court for interpretation of treaties.

Safety Ltd, Country S

Safety Ltd. (Country S) has office in India which maintains stock of goods for storage, display as well as delivery to the Indian customers. This activity is preparatory and all sales orders and contracts are executed by the head office in Singapore.

Ms. Dona, Director of Safety Ltd.

Ms. Dona, resident and ordinarily resident, and a director of Safety Ltd. did not disclose foreign asset worth ₹ 25 Lakh in income tax return.

Competent Ltd., Indian subsidiary of Boss Ltd.

Competent Ltd., another Indian subsidiary of Boss Ltd. has earned following income in Country Y:

Income	Date of Accrual of Income
Dividend	25th May, 2019
Profit of Shipping Business	12th December, 2019
Capital Gain	31st March, 2020

Assume India has a DTAA with Country P, Q, R and S in line with OECD Model Tax Convention.

Choose the correct alternative for the following MCQs :

- 3.1 Meaning of the term not defined in the tax treaty is interpreted by looking into the meaning of same term in the domestic tax law prevailing at the time of application of the treaty. It is known as:
- (a) Static approach
 - (b) Integrated approach
 - (c) Ambulatory approach
 - (d) Purposive interpretation
- 3.2 Calculate the amount of penalty leviable on Ms. Dona under the Black Money (Undisclosed Income and Assets) and Imposition of Tax Act, 2015 -
- (a) ₹ 25 lakhs
 - (b) ₹ 50 lakhs
 - (c) ₹ 10 lakhs
 - (d) ₹ 1 crore
- 3.3 In the interpretation of the treaty, the provisions shall be interpreted in such a way that it enables provisions of the treaty to work and to have their appropriate effects. Which of the following basic principle suggest the above?
- (a) Purposive Interpretation
 - (b) The principle of effectiveness
 - (c) Liberal Construction
 - (d) Reasonableness and Consistency
- 3.4 The Telegraphic Transfer Buying Rate (TTBR) and Telegraphic Transfer Selling Rate (TTSR) are given as below for Competent Ltd. in respect of dividend received by it from Country Y:
- TTBR on 30th April, 2019 - ₹ 65/CYD
TTSR on 31st March, 2019 - ₹ 66/CYD
TTBR on 25th May, 2019 - ₹ 65/CYD
TTSR on 25th May, 2019 - ₹ 66/CYD
- What will be the specified date and rate of exchange, respectively, for conversion of dividend income?
- (a) 30th April, 65/CYD
 - (b) 31st March, 66/CYD
 - (c) 25th May, 65/CYD
 - (d) 25th May, 65.5/CYD

- 3.5 *Boss Ltd. has advanced a loan of ₹ 60 Crores to a non-resident company. Is the company required to furnish information in Form 15CA in respect of this transaction and if so, in which part?*
- (a) *Part B of Form 15CA*
 (b) *Part C of Form 15CA*
 (c) *Part D of Form 15CA*
 (d) *Not required to furnish Form 15CA* **(2 x 5 = 10 Marks)**

You are required to answer the following issues:

- 3.6 *Calculate Boss Ltd. 's profit chargeable to tax after transfer pricing adjustments. (4 Marks)*
- 3.7 *Assume Boss Ltd. is liable to pay tax under the provisions of section 115JB. i.e. MAT provisions and Boss Ltd. is not required to prepare its books of account as per Indian Accounting Standards (IND-AS). Whether transfer pricing adjustments will still be made to the book profits computed under section 115JB? Will your answer change if Boss Ltd. prepares books as per IND-AS? (3 Marks)*
- 3.8 *Determine residential status of Mr. Nitin for A.Y. 2020-21 and calculate Mr. Nitin's income which will be chargeable to tax in India. (4 Marks)*
- 3.9 *Analyse the correctness of contention made by the income-tax department in the case filed by Efficient Ltd. (2 Marks)*
- 3.10 *State whether Safety Ltd.' s office m India will constitute Permanent Establishment in India. Would your answer change if India's DTAA with Country S was in line with UN Model Convention? (2 Marks)*

Solution to Case Study 3

Q. No.	Answer
3.1	(c)
3.2	(c)
3.3	(b)
3.4	(a)
3.5	(d)

Answer to Q.3.6

- (i) *Boss Ltd, an Indian company and Castro Ltd., located in Country P are associated enterprises as per section 92A, since Castro Ltd. is the subsidiary of Boss Ltd.*

As per *Explanation* to section 92B, the transactions entered into between these two companies for purchase of machine falls within the meaning of "international transaction".

As Boss Ltd. has purchased similar machine from an unrelated entity at \$19,000, the transactions between Boss Ltd. and such unrelated party can be considered as a comparable uncontrolled transaction for the purpose of determining the arm's length price of the transactions between Boss Ltd. and Castro Ltd. Comparable Uncontrolled Price (CUP) method of determination of arm's length price (ALP) would be applicable in this case. However, such figure needs to be adjusted by the functional adjustments.

Computation of ALP of transaction between Boss Ltd. and Castro Ltd.

Particulars	Amount (in \$)
Purchase of machine from unrelated party	19,000
<i>Less:</i> Difference in Warranty [Castro Ltd offered warranty only for 4 months while unrelated party provided it for 1 year. Therefore 8 months' cost of warranty shall be adjusted. (\$1200 x 8/12)]	(800)
	18,200
<i>Add:</i> Adjustment for cost of credit provided by Castro Ltd. [Castro Ltd has provided credit for 6 months whereas unrelated party has not provided such credit. Therefore, adjustment for the cost of such credit has to be carried out to arrive at arm's length price. (\$19000 x 8% x 6/12)]	760
Arm's length price	18,960

Therefore, transfer pricing adjustment would be of ₹ 1,52,000 [(\$ 22,000 - \$ 18,960) x ₹ 50].

The profits of Boss Ltd chargeable to tax would be ₹ 48,00,000 + ₹ 1,52,000 = ₹ 49,52,000.

Answer to Q.3.7

For the purpose of computing book profit for levy of minimum alternate tax under section 115JB, the profit shown in the statement of profit and loss prepared in accordance with the Companies Act, 2013 can be increased/decreased only by the additions and deductions specified in *Explanation 1* to section 115JB, in case of a company which is not required to comply with Ind AS.

Therefore, transfer pricing adjustments cannot be made while computing book profit of Boss Ltd. for levy of MAT.

No; the answer will not change even if Boss Ltd. is required to comply with Ind AS. Even then, only the adjustments listed in 115JB(2A) need to be made, and not the transfer pricing adjustment.

Answer to Q. 3.8**Determination of residential status:**

As per section 6(1), an individual is said to be resident in India in any previous year if he satisfies any of the following conditions -

- (i) He has been in India during the previous year for a total period of 182 days or more, or
- (ii) He has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 60 days in the previous year.

In this case, Mr. Nitin stayed in India during the P.Y. 2019-20 for 180 days (i.e., 6+31+30+31+31+30+21 days).

Since his stay in India is for less than 182 days, he does not satisfy condition (i).

Since Mr. Nitin came to India for the first time in P.Y. 2019-20, he cannot satisfy the second basic condition [i.e., condition (ii)] which requires stay of atleast 365 days in the four immediately preceding previous years in addition to stay of atleast 60 days in the current previous year.

Hence, his residential status for A.Y. 2020-21 is **non-resident**.

Taxability of income

As per section 5(2), in case of a non-resident, only income which accrues or arises or which is deemed to accrue or arise to him in India or which is received or deemed to be received in India in the relevant previous year is taxable in India.

**Computation of income chargeable to tax in the hands of Mr. Nitin for A.Y. 2020-21
[On the basis of section 5(2) of the Income-tax Act, 1961]**

Particulars	Amount (₹)
Salary earned in India	15,00,000
Salary earned outside India but received in India	9,00,000
Salary earned outside India and received outside India (not taxable)	Nil
Gross Salary	24,00,000
Less: Standard deduction u/s 16(ia)	50,000
Net Salary chargeable to tax in India	23,50,000

Answer to Q. 3.9

In *CIT v. Vishakhapatnam Port Trust's case* [1983] 144 ITR 146, the Andhra Pradesh High Court observed that, "in view of the standard OECD Models which are being used in various countries, a new area of genuine 'international tax law' is now in the process of developing.

Any person interpreting a tax treaty must now consider decisions and rulings worldwide relating to similar treaties. The maintenance of uniformity in the interpretation of a rule after its international adoption is just as important as the initial removal of divergences.

Therefore, judgements rendered by Courts in other Countries or ruling given by other tax authorities would be relevant.

Accordingly, the stand taken by the Income-tax Department is not correct and may not be accepted by the Court.

Answer to Q.3.10

As per Article 5 of the DTAA between India-Country S, which is in line with OECD Model Tax Convention, 2017, the term "permanent establishment" shall be deemed **not** to include maintenance of stock of goods solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise, where such activities are preparatory or auxiliary.

Therefore, Safety Ltd.'s (Country S) office in India will **not** constitute Permanent Establishment, since its preparatory activities are confined only to storage, display and delivery of goods.

However, if India's DTAA with Country S is in line with UN Model Convention, 2017, then, maintenance of stock of goods for the purpose of delivery may constitute a Permanent Establishment since as per the said Convention permanent establishment excludes the use of facilities was solely for the purpose of storage or display of goods or merchandise belonging to the enterprise, where such activities are of preparatory or auxiliary character.

Hence, it may constitute PE in this case as Safety Ltd maintains stock of goods for storage, display as well as delivery to Indian customers.

CASE STUDY 4

Income-tax assessment of Surat Textiles (P) Ltd. was completed on 10th March, 2020 for the assessment year 2018-19. Additions were made to the extent of ₹ 60 lakhs to the returned income after making reference to the TPO. The TPO called for information and documents relating to international transactions and those were furnished to him. To buy peace, the assessee did not object to the upward revision of income due to ALP re-determined by TPO and there was no other addition to the returned income.

Surat Textiles (P) Ltd. had 55% shares in Tiger Ltd. of UK. On 30th June, 2019, Surat Textiles (P) Ltd. sold all its shareholding in Tiger Ltd. UK to Deer Ltd. of USA for a consideration of ₹ 10 crores. The shares were acquired on 05.06.2005 for ₹ 170 lakhs.

Surat Textiles (P) Ltd. has exported goods to its associated enterprise in France. The Tax Manager of the company says that the DTAA between India and France contains Most Favoured Nation (MFN) Clause.

Surat Textiles (P) Ltd. has a branch at Frankfurt, Germany. The increase or decrease in value of assets and liabilities of the branch due to foreign exchange translation as on 31st March, 2020 are given below:

Foreign currency translation gain:	Cash ₹ 6 lakhs;
	Receivables ₹ 9 lakhs;
Foreign currency translation loss:	Office building ₹ 10 lakhs;
	Payables to suppliers ₹ 8 lakhs.

Surat Textiles (P) Ltd. issued bonds in accordance with Foreign Currency Exchangeable Bonds Scheme, 2008 and mobilized ₹ 50 crores during the previous year 2008-09. Auckland Pte. of Singapore is one of the subscribers to bond to the extent of 20% by making payment in foreign currency. On 1st October, 2019, the bonds were converted to equity shares and Surat Textiles (P) Ltd. allotted 8 lakh equity shares of ₹ 100 each in exchange of the said bonds to Auckland Pte. Singapore. The value of each equity share of Surat Textiles (P) Ltd. as per rule 11UA was determined at ₹ 250 per share.

Cost inflation index FY 2008-09 - 137; F.Y 2019-20 - 289.

Pune Autos (P) Ltd.

Pune Autos (P) Ltd., is a subsidiary of Surat Textiles (P) Ltd. It is engaged in manufacture of core auto components. In April, 2017, it received a bulk order from its associated enterprise by name Randall Ltd. of Malaysia for manufacture and supply of core auto components and it exported in bulk quantities on monthly basis from May, 2017. Randall Ltd. would repack the auto components and sell the same in its brand name.

Following details pertain to the previous year 2019-20 of Pune Autos (P) Ltd:

Particulars	₹ in Crores	
Goods exported to Randall Ltd		687
Cost of goods exported (before considering below expenses/incomes)	397	
ESOP shares allotted to employees	50	
Interest paid / payable	20	
Pre-operating expenses	15	
Loss on account of currency fluctuations	5	
Transport (Amount reimbursed to associated enterprise, who incurred ₹ 8 Crores the same on behalf of the assessee)	10	
Depreciation	95	

Income-tax paid	25	
		617
Net Profit		70

World Tex Inc. of Malaysia

World Tex Inc. of Malaysia is the holding company of Surat Textiles (P) Ltd. In the previous year 2007-08, World Tex Inc. acquired a vacant land at Chennai for establishing a manufacturing unit. It abandoned that idea and hence sold the vacant land in April, 2019. Also, World Tex Inc. established a manufacturing unit in Pune in the previous year 2014-15 which was engaged in manufacture and sale of woolen garments in India. The manufacturing unit being branch of World Tex Inc. had no connection with subsidiary Surat Textiles (P) Ltd. in its business operations in India. In January, 2020, World Tex Inc. decided to sell its manufacturing unit located in Pune and wind-up its operations in India. It transferred plant and machinery, receivables, inventory, patents, payables for composite consideration of ₹800 lakhs. The net worth of the undertaking was arrived at ₹500 lakhs.

Anand Arora - MD of Surat Textiles (P) Ltd.

Anand Arora, who was Managing Director of Surat Textiles (P) Ltd. left India and settled in UK from July, 2017. He acquired shares in listed companies in India after his departure by remitting foreign currency and earned dividend income (covered by section 115-O) of ₹1,20,000 credited to his bank account in India for the year ended 31st March, 2020. He earned income by way of interest on debentures held in Indian companies of ₹3,00,000 credited to his bank account in India and those debentures were purchased during the previous year 2018-19 by remitting foreign currency. He acquired 10,000 equity shares of ₹100 each by remitting foreign currency viz. £15,000 on 5th June, 2018. He sold all the equity shares on 30th January, 2020 through off-market transaction for £20,000.

TT buying rates of 1£ on various dates are as follows: 05.06.2018 = ₹80; 31.05.2018 = ₹78; 31.12.2019 = ₹88 and 30.01.2020 = ₹90

He has a let out property at Bengaluru fetching monthly rent of ₹25,000 which was credited to his bank account in India.

He is a partner in ABC & Co, Cochin since April, 2002 where he has 10% share. His income for the previous year 2019-20 from the firm was (i) interest on capital of ₹36,000 (at 18%); and (ii) share income from firm ₹25,000.

Choose the most appropriate alternative for the following MCQs :

4.1 How much is the amount Surat Textiles (P) Ltd. has to pay by way of penalty for under-reported income for the assessment year 2018-19 arising due to ALP determined by the TPO? The rate of tax applicable to the assessee may be taken as 30%.

- (a) Nil
- (b) ₹9 lakhs

- (c) ₹ 6 lakhs
(d) ₹ 18 lakhs
- 4.2 How much of the foreign currency translation as on 31st March, 2020 would go to impact the total income of Surat Textiles (P) Ltd. for the assessment year 2020-21?
- (a) Total income would decrease by ₹ 3 lakhs
(b) Total income would increase by ₹ 7 lakhs
(c) Total income would increase by ₹ 5 lakhs
(d) Total income would increase by ₹ 15 lakhs
- 4.3 What is the time limit/due date within which Surat Textiles (P) Ltd. has to inform the Assessing Officer having jurisdiction over it, about the sale of shares of Tiger Ltd. to Deer Ltd.?
- (a) 30th November, 2020 - due date for filing its return of income specified in section 139(1).
(b) 29th June, 2020 - within 90 days from the end of the financial year in which the shares were sold.
(c) 31st March, 2020 - being the last day of the previous year in which the shares were sold.
(d) 28th September, 2019 - within 90 days from the date of sale of shares held in foreign company.
- 4.4 How much is the chargeable amount of capital gains in the hands of Auckland Pte. on conversion of bonds into equity shares of Surat Textiles (P) Ltd.?
- (a) Long-term capital loss ₹ 109.48 lakhs
(b) Long-term capital gain ₹ 10 crores
(c) No capital gain
(d) Long-term capital loss ₹ 13.094 crores
- 4.5 Where would you find the Most Favoured Nation clause in a tax treaty between two Contracting States as per UN Model?
- (a) Article 1 of the DTAA
(b) Article 25 of the DTAA
(c) Protocol to the DTAA
(d) Preamble to the DTAA

(2 x 5 = 10 Marks)

You are required to answer the following issues:

- 4.6 Compute the total income and tax liability of Anand Arora for the A.Y. 2020-21. **(7 Marks)**

4.7 Determine how World Tex Inc. on sale of its manufacturing unit located in Pune, would be subjected to tax in India as per the UN Model Convention. No computation is required.

(4 Marks)

4.8 Determine whether the operating profit margin of Pune Autos (P) Ltd. is eligible for availing Safe Harbour Rules (SHR) applicable for the assessment year 2020-21. Your answer must show your workings to justify the conclusion. Also state the time period within which it has to communicate its desire for opting SHR.

(4 Marks)

Solution to Case Study 4

Q. No.	Answer
4.1	(a)
4.2	(b)
4.3	-
4.4	(c)
4.5	(c)

Answer to Q.4.6

Anand Arora left India and settled in UK from July, 2017. Since he was not present in India during the entire P.Y.2019-20, he would be a non-resident in India for A.Y.2020-21. He, being a non-resident, is chargeable to tax in respect of income received or deemed to be received in India and income which accrues or arises or is deemed to accrue or arise to him in India.

Computation of total income and tax liability of Anand Arora for A.Y.2020-21

Particulars	Amount (₹)	
Income from House Property		
Gross Annual Value [₹ 25,000 x 12] ³	3,00,000	
Less: Municipal taxes paid	-	
Net Annual Value	3,00,000	
Less: Deduction @30% u/s 24(a)	90,000	
		2,10,000

³In the absence of other information, rent received is taken as GAV.

Profits and gains from business or profession		
Interest on capital [₹ 36,000 x 12/18] [Taxable to the extent deduction is allowed to the firm] ⁴	24,000	
Share of profit [Exempt u/s 10(2A)]	-	24,000
Capital Gains		
Sale consideration	£ 20,000	
Less: Cost of acquisition	£ 15,000	
	£ 5,000	4,50,000
Long term capital gain [Since equity shares in listed companies held for more than 12 months] [As per first proviso to section 48 read with Rule 115A, for conversion of capital gains computed in foreign currency, TTBR on the date of transfer i.e., 30.1.2020 would be taken] [£ 5,000 x 90]		
Income from Other Sources		
Dividend from Indian companies [Exempt u/s 10(34)]		-
Interest on debentures		3,00,000
Gross Total Income/Total Income		9,84,000
Computation of tax liability		
Tax on interest on debenture i.e., ₹ 3,00,000@20%		60,000
Tax on LTCG i.e., ₹ 4,50,000@10%		45,000
Tax on other income of ₹ 2,34,000		-
		1,05,000
Add: Health & Education Cess@4%		4,200
Tax liability		1,09,200

Note –In the case of Mr. Anand Arora, the tax liability would be the same under Chapter XII-A and the regular provisions of the Income-tax Act, 1961, since interest on debentures would be subject to tax@20% both under Chapter XII-A (u/s 115E) and under the regular provisions of the Act (u/s 115A). Likewise, LTCG would be subject to tax@10% both under Chapter XII-A (u/s 115E) and under the regular provisions of the Act (u/s 112). The tax on remaining total income of ₹ 2,34,000, being less than the basic exemption limit, would be Nil both under Chapter XII-A and under the regular provisions of the Act.

Answer to Q.4.7

As per Article 13(2) of UN Model Convention, 2017, “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

⁴It is assumed interest on capital is authorized by the partnership deed

fixed base available to a resident 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 with the whole enterprise) or of such fixed base, may be taxed in that other State.”

The rules apply when movable property of a PE or fixed base is alienated as well as when the PE as such (alone or with the whole enterprise) or the fixed base as such is alienated.

In the facts given, World Tex Inc., Malaysia, has a manufacturing unit in Pune, being its branch in India. As per Article 5 of UN Model Convention, the manufacturing unit in Pune would constitute a permanent establishment of World Tex Inc. in India.

Therefore, gains from transfer of a PE in India i.e., manufacturing unit in Pune, of an enterprise of a Contracting State i.e., World Tex Inc. of Malaysia may be taxed in India.

Accordingly, capital gains would be computed applying the provisions of section 50B relating to slump sale.

Answer to Q.4.8

Computation of operating profit margin of Pune Autos (P) Ltd.	
Particulars	Amount (₹ in crores)
Operating revenue [Goods exported to Randall Ltd.]	687
Less: Operating expense	
Cost of goods exported	397
ESOP shares allotted to employees	50
Interest paid/payable [not includible in operating expense]	-
Pre-operating expenses [not includible in operating expense]	-
Loss on account of currency fluctuations [not includible in operating expense]	-
Transport [Reimbursement to AE of expenses incurred by the AE on behalf of the assessee shall be included at cost]	8
Depreciation	95
Income-tax paid [not includible in operating expense]	—
	<u>550</u>
Operating Profit	<u>137</u>
Operating profit margin [(Operating revenue – operating expense)/operating expenses x 100] [(₹ 687 crores – ₹ 550 crores)/ ₹ 550 crores x 100]	24.91%

Pune Autos (P) Ltd. is eligible for availing safe harbour rules for A.Y. 2020-21, if the operating profit margin declared by it from manufacture and export of core auto components in relation to operating expense is not less than 12%. Since the operating profit margin declared by Pune Autos (P) Ltd. is 24.91%, which is not less than 12%, it is eligible to opt for safe harbour rules for A.Y. 2020-21.

For exercising the option of safe harbour for A.Y. 2020-21, Pune Autos (P) Ltd. has to furnish Form 3CEFA to the Assessing Officer on or before 30.11.2020 i.e., the due date for filing return of income for A.Y. 2020-21.

CASE STUDY 5

Hockey World Championship

HWC, a company incorporated under the laws of UK entered into an agreement with Hockey Federation India Limited (HFIL). HWC and HFIL are deemed associate enterprises. Under the Agreement, HFIL will license all the commercial rights in the championship for a period of 25 years to HWC. The Agreement also provides that a contract will be entered into between HWC and participating teams and HWC will be given the exclusive commercial right in relation to the Hockey championship which it could exploit directly or through its affiliates.

For the purpose of conducting the event in India, HWC will also enter into an event promotion agreement with the Sports Event International Limited (SEIL), an Indian company, granting it the right to host, stage and promote the hockey matches in stadiums in India for a consideration of USD 40 million for a period of 5 years. The agreement, inter-alia, required that the matches are conducted as per the format provided by HWC and that the stadiums are required to be modified/constructed in the form and manner prescribed by HWC. HWC and its employees will have full access to the entire stadium during each championship.

HFIL⁵ is mandated to engage a third party approved by HWC to carry out all the service relating to origination of international television feed. However, all broadcasting and other intellectual property rights relating to the event shall be irrevocable and unconditionally be assigned to the HWC.

In HWC's view, the duration of the event will be only 10 days and there will be limited access to it, which may not be sufficient to constitute the degree of permanence necessary to establish a PE. Further, since the construction of the stadium will be done by HFIL⁶ and hence it will not have right of disposal over the stadiums.

Assume India has a DTAA with UK in line with UN Model Tax Convention.

⁵ To be read as "SEIL"

⁶ To be read as "SEIL"

Advertisement

To advertise the hockey championship, HWC entered into an agreement with Game Inc. USA who does not have a PE in India. HWC paid INR 10 lakhs for such advertisement and however, it did not deduct and pay the equalization levy on the same. The Assessing Officer assessed the same and raised demand for equalization levy along with interest. HWC wants to file appeal before Commissioner of Income-tax (Appeals) against such order of the Assessing Officer.

Mr. Hira, Non-executive director of HFIL

Mr. Hira is a resident Indian professional. He also has passion for stand-up comedy and performs shows in India and in abroad on part time basis. For the previous year 2019-20, he has furnished below information in respect of income earned by him in India and in Country P and Country R. India does not have a DTAA with both these countries.

Particulars	Amount (₹)
Professional income earned in India	12,50,000
Fee for technical services rendered in country P	2,50,000
Expenses incurred to earn FTS	35,000
Income from agricultural land in country R	55,000
Income earned on part time basis from stage shows in country R	75,000
Amount deposited in 5 years fixed deposit in a scheduled bank	50,000
Cash paid towards health insurance premium of self and spouse	30,000

The income earned in Country P and Country R are taxed at the rate of 15% and 20% in the source country respectively.

Choose the correct alternative for the following MCQs :

- 5.1 In the given case, the subject-matter is to decide which type of following PE under India - UK DTAA
- Fixed Place PE
 - Construction PE
 - Service PE
 - All of the above
- 5.2 Assume that HWC has filed application before Authority of Advance Ruling (AAR) to check whether income earned by it in India will be taxable in India and such application got rejected by AAR. What recourse will it have against such order of AAR?
- Appeal before Income Tax Appellate Tribunal
 - Appeal before High Court
 - Writ petition before High Court

- (d) Appeal before appellate authority of AAR
- 5.3 What is the time limit in which HWC can file an appeal before Commissioner of Income-tax (Appeals) against the order of Assessing Officer levying the equalization levy and interest thereon?
- (a) Within 30 days from the date of the order;
- (b) Within 30 days from the date of receipt of the order;
- (c) Within 30 days from the date of receipt of the notice of demand;
- (d) Appeal cannot be filed;
- 5.4 Assuming that HWC does not have fixed place PE in India, it may constitute PE, if it sends its employees to India for rendering consultancy services in P.Y. 2019-20 for
- (a) 182 days
- (b) 183 days
- (c) 184 days
- (d) No PE is constituted irrespective of number of days of stay of personnel in India.
- 5.5 Which of the following statements is true in the context of satisfaction or otherwise of the disposition test by HWC?
- (a) Disposition test fails since HWC has limited access to the stadiums, the access is available only for limited period each time the event is conducted
- (b) Disposition test fails since construction of the stadium is by an Indian contractor.
- (c) Disposition test is satisfied, since HWC had access and exercised control over the entire event.
- (d) Disposition test is satisfied, because HWC and HFIL are Associated Enterprises.

(2 x 5 = 10 Marks)

You are required to answer the following issues:

- 5.6 From the facts of the case, you are required to advise whether the agreement entered into by HWC and its activities pursuant thereto constitute a PE in India. Justify your answer with reasoning and decided case law, if any. **(6 Marks)**
- 5.7 Advise HFIL⁷ whether it is required to withhold any tax on the payments to HWC. State reasons for your answer. **(3 Marks)**
- 5.8 Compute the total income, foreign tax credit and final tax liability of Mr. Hira for A.Y. 2020-21. **(6 Marks)**

⁷ To be read as "SEIL"

Solution to Case Study 5

Q. No.	Answer
5.1	(a)
5.2	(c)
5.3	(b)
5.4	(c)
5.5	(c)

Answer to Q.5.6

The facts of the case are similar to the decision of Supreme Court in the case of *Formula One World Championship Ltd. v. Commissioner of Income-tax (International Taxation)* 394 ITR 80. In that case, Supreme Court held that the race circuit constituted fixed place PE of the assessee.

The Supreme Court observed that the essential conditions which need to be satisfied for the existence of a fixed place PE under Article 5(1) of the India UK DTAA are:

- (a) existence of a fixed place of business; and
- (b) the business of the enterprise is wholly or partly carried out through that fixed place.

Applying the Supreme Court observations in that case to the case on hand, the following conclusions emerge:

Even though the Indian Company, SIEL, has been designated as the promoter of the Event, in reality, its authority to act as promoter was severely restricted. This is evident from the agreement, which clearly highlight that:

- The stadium is required to be modified/constructed in the form and manner prescribed by HWC;
- Matches have to be conducted as per the format provided by HWC;
- HWC has full access to the entire stadium during each Championship;
- All broadcasting and other intellectual property rights relating to the Event had been irrevocable and unconditionally assigned to HWC; and
- SEIL was mandated to engage a third party approved by HWC to carry out all service relating to the origination of international television feed.

Thus, the agreement entered into by HWC and its activities pursuant thereto constitute Fixed Place PE in India since -

- (i) HWC and its employees had full access to the entire stadium during each championship and SEIL's capacity to act was extremely limited.
- (ii) HWC carried on business in India within the meaning of expression under Article 5(1) of the DTAA.

- (iii) The arrangement clearly demonstrated that the entire event was taken over and controlled by HWC, since for the entire period of championship, the control was with HWC.
- (iv) Mere construction of the stadium by SEIL was of no consequence while determining whether HWC had disposal over the track.

Accordingly, the tests laid down for constitution of a PE viz. **stability, productivity and dependence** are satisfied in this case.

Answer to Q.5.7

The Supreme Court in the case of *Formula One World Championship Ltd. v. Commissioner of Income-tax (International Taxation) 394 ITR 80* clarified that TDS obligation of Indian company u/s 195 on the payments made to assessee (foreign company) was limited to the appropriate portion of income which is chargeable to tax in India and directed the Assessing Officer to compute the same.

On the basis of the above ruling, it can be seen that the payments being made by Indian Company were in the nature of business income earned by HWC through its fixed place PE in India, i.e., the Stadium. Therefore, SIEL, India is under an obligation to withhold taxes on such payment. However, SIEL's liability to withhold taxes could only arise for that portion of the income of HWC which is chargeable to tax in India on account of the existence of the PE.

Accordingly, SIEL is required to withhold taxes on payments to be made to HWC on the portion of income which is chargeable to tax in India, since the stadium constituted a fixed place PE in India.

Answer to Q.5.8

Since Mr. Hira is resident in India for the P.Y.2019-20, his global income would be subject to tax in India. Therefore, income earned by him in Country P & Country R would be taxable in India. He is, however, entitled to deduction under section 91, since India does not have a DTAA with Country P & R, and all conditions under section 91 are satisfied.

Computation of total income of Mr. Hira for A.Y.2020-21

Particulars	₹	₹
Profits and Gains of Business or Profession		
Professional income earned in India	12,50,000	
Fee for technical services rendered in Country P	2,50,000	
Less: Expenses incurred	35,000	
	2,15,000	
Income earned from stage shows in Country R	75,000	
		15,40,000
Income from Other Sources		
Agricultural income from Country R [Not exempt]		55,000
Gross Total Income		15,95,000
Less: Deduction under Chapter VI-A		
U/s 80C – Deposits in 5 year fixed deposits	50,000	

U/s 80D – No deduction allowable, since payment towards health insurance premium is made in cash	Nil	50,000
Total Income		15,45,000

Computation of tax liability of Mr. Hira for A.Y.2020-21

Particulars	₹
Tax on total income [30% of ₹ 5,45,000 + ₹ 1,12,500]	2,76,000
Add: Health and education cess@4%	11,040
	2,87,040
Less: Rebate under section 91 (See Working Note below)	56,401
Tax Payable	2,30,639
Tax payable (rounded off)	2,30,640

Calculation of Rebate under section 91:		₹
Average rate of tax in India [i.e., ₹ 2,87,040 / ₹ 15,45,000 x 100]	18.578%	
Average rate of tax in Country P	15%	
Doubly taxed income pertaining to Country P		
Fees for technical services [₹ 2,50,000 – ₹ 35,000 (Expenses)]	2,15,000	
Rebate under section 91 on ₹ 2,15,000 @15% [being the lower of average Indian tax rate (18.578%) and Country P tax rate (15%)]		32,250
Average rate of tax in Country R	20%	
Doubly taxed income pertaining to Country R		
Agricultural Income	55,000	
Income from stage shows	75,000	
	1,30,000	
Rebate u/s 91 on ₹ 1,30,000 @18.578% (being the lower of average Indian tax rate (18.578%) and Country R tax rate (20%)]		24,151
Total rebate under section 91 (Country P + Country R)		56,401