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

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

**Case Study 1****Moon Co Ltd., Delhi**

Moon Co Ltd., Delhi is engaged in manufacture of electrical equipment. XY Co. Ltd., UK has 55% shareholding in Moon Co Ltd. The paid up share capital of Moon Co Ltd. is ₹ 20 crores as on 31st March 2020. XY Co Ltd. transferred 25% of its shareholding in Moon Co Ltd. to MNO GmbH Germany for ₹ 15.75 crores (USD 2.1 million) on 30th November 2020, and retained the balance 30% shareholding in Moon Co Ltd. The book value of assets of Moon Co Ltd. as on 31st March 2020 was ₹ 20 crores and on 30th November 2020, it was ₹ 22 crores. The aforesaid 55% shareholding in Moon Co Ltd, was acquired by XY Co Ltd. on 1st October 2014 at the time of incorporation of Moon Co Ltd. for USD 2.20 million. Moon Co Ltd. applied for Advance Pricing Agreement (APA) in November 2020 and the APA was signed on 20<sup>th</sup> March 2021.

Moon Co Ltd. admitted gross profit margin of 13% on turnover of ₹ 100 crores while filing its return of income for the assessment year 2018-19. At that time, the data relating to comparable entities were not available. However, at the time of assessment, data of 3 comparable entities are available for the same assessment year. The average gross profit of the other entities was 16%, 18% and 11%, respectively (after necessary adjustments).

Moon Co. Ltd. entered into an agreement for import of goods from Hilltop Inc of USA. The agreement envisaged that the goods imported would be assembled in the warehouse owned by Moon Co Ltd. by the employees of Hilltop Inc. who visited India on deputation basis. Moon Co Ltd. filed an application before AAR to know the tax consequences of the transaction in the hands of Hilltop Inc.

**Sumoto Ltd., Country X**

Sumoto Ltd. is a reputed digital advertiser in country 'X' which has global reach. It has a branch in Kolkata to campaign and procure advertisements from Indian companies for the purpose of digital advertisement. Moon Co Ltd. paid ₹ 5 lakhs to the branch of Sumoto Ltd. for advertising its goods in digital advertisement platform to have global reach. The DTAA between India and country X provides withholding tax of 20% on the fee for technical services.

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, 2020.

**Sky (P) Ltd., Mumbai**

Sky (P) Ltd., Mumbai is a subsidiary of Moon Co Ltd. It is engaged in trading of electronic goods such as washing machines, refrigerators, television sets and air-conditioners. It purchases from its associated enterprise Solar Pte. Ltd., Singapore and also from unrelated party Waterworks Ltd., UK. For the financial year 2018-19, the gross profit margin was 15% on the sale of goods of Solar Pte. Ltd. and whereas it was 20% in the case of Waterworks Ltd. After-sales warranty of 6 months was provided by Solar Pte. Ltd. and whereas Waterworks Ltd. gave after sales warranty of 12 months. The cost of warranty may be taken as 2% of the sale price. The Solar Pte. Ltd. brand value is internationally known and the benefit of brand value can be taken as 1% of sale price. During the financial year 2018-19, it sold goods of Solar Pte. Ltd. for ₹ 20 crores and of Waterworks Ltd. for ₹ 15 crores. As regards transport cost of the goods purchased, there was no difference between related and unrelated party. In the assessment of Sky (P) Ltd. for the assessment year 2019-20, the TPO selected comparables based on functional comparability.

During the previous year 2020-21, Sky (P) Ltd. borrowed ₹ 25 crores from EXE Ltd. located in Country 'P'. The loan is eligible for interest @ 9% per annum. Interest payable for the financial year 2020-21 is ₹ 140 lakhs. Total asset value of Sky (P) Ltd. on the date of loan does not exceed 40 crores and there is no other borrowing made by it except the said loan. There is no DTAA between India and Country 'P'.

**Laxman, son of Director of Moon Co. Ltd.**

Laxman (citizen of India) is son of one of the directors of Moon Co Ltd. He is born and brought up in India who left India for employment in Country S on 05 June 2012. He regularly visited in India and stayed for 60 days in every previous year since the previous year 2013-14. In the financial year 2020-21, Laxman came to India on 01st May 2020 and remained in India till 31st August 2020. His salary was ₹ 3 lakhs per month which he earned for 8 months during the previous year 2020-2021. He also has income from a commercial complex in Chennai (computed) ₹ 18 lakhs. He does not pay income tax in Country S where he is employed as there is no income-tax law in that country.

**Choose the correct alternative for the following MCQs:**

**(2 x 5 = 10 Marks)**

1.1 The ruling of AAR on the basis of application filed by Moon Co Ltd. is binding on which of the following parties?

- (A) Hilltop Inc.
- (B) Moon Co Ltd.
- (C) Pr. Commissioner of Income-tax (PCIT) who can initiate proceedings on Hilltop Inc. and Moon Co. Ltd,
- (D) Both Hilltop Inc. and Moon Co. Ltd. in case the application of Moon Co. Ltd. was to know the tax consequence for both of them and the PCIT.

- 1.2 At what rate Moon Co Ltd. must deduct tax at source or by way of equalisation levy in respect of the payment made by it to Sumoto Ltd.? (Ignore Surcharge and HEC)
- (A) 6% by way of equalisation levy
  - (B) 40% by way of TDS on fees for technical services under section 195
  - (C) 20% by way of TDS on fees for technical services as per DTAA
  - (D) NIL-Neither Equalisation levy is applicable nor payment qualify to be fee for technical services as per the Income-tax Act.
- 1.3 What would be the transfer pricing adjustments in the hands of Moon Co. Ltd. for the assessment year 2018-19 on the reported turnover of the associated enterprise of ₹ 100 crores taking note of the gross profit ratio of comparable entities?
- (A) ₹ 200 lakhs
  - (B) ₹ 300 lakhs
  - (C) ₹ 500 lakhs
  - (D) NIL
- 1.4 What is the time limit for Moon Co. Ltd. for the purpose of furnishing Annual Compliance Report for the year ended 31st March, 2021?
- (A) 30th November, 2021
  - (B) 18th June, 2021
  - (C) 28th February, 2022
  - (D) 30th December, 2021
- 1.5 How much is the amount of tax deductible at source (including Surcharge and HEC) on the interest paid to EXE Ltd. by Sky (P) Ltd.?
- (A) ₹ 61,15,200
  - (B) ₹ 59,40,480
  - (C) ₹ 44,55,360
  - (D) ₹ 29,70,240

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

- 1.6 State briefly which method of ALP determination would be the most appropriate method. Also, compute the ALP of the transaction between Sky (P) Ltd. and Solar Pte. Ltd., Singapore. **(5 Marks)**
- 1.7 Compute the amount of capital gains chargeable to tax in the hands of XY Co. Ltd. and the tax liability for the assessment year 2021-22 when the transaction is an off-market transaction. In case the shares of Moon Co Ltd. are listed in a recognized stock exchange

and the fair market value of 25% of the shares of Moon Co Ltd. as on 31st March 2018<sup>1</sup> was ₹ 550 lakhs, how much would be the capital gains chargeable to tax and resultant tax liability in the hands of XY Co Ltd., UK.

**Note:** SBI TTBR on 1st October 2014 - 1 USD = ₹ 50, on 30th November 2020 - 1 USD = ₹ 75. **(5 Marks)**

- 1.8 Determine the residential status of Laxman and compute his total income for Assessment year 2021-22. What would be your answer, in case Laxman pays income tax@20% in Country 'S', with regard to his residential status under the Income-tax Act, 1961 and his total income taxable in India? **(5 Marks)**

**Answer**

Q. No.	Answer
1.1	(D)
1.2	- <sup>2</sup>
1.3	(A)
1.4	(D)
1.5	(B)

**Answer to Q.1.6**

**Most appropriate method for determination of ALP**

As per section 92B, the transactions entered into between Sky (P) Ltd., an Indian company, and Solar Pte. Ltd., Singapore, being associated enterprises, for purchase of electronic goods would be international transactions.

As Sky (P) Ltd. purchased electronic goods from Solar Pte. Ltd., being a related party for resale to independent parties and Sky (P) Ltd. does not add substantial value to such goods, **resale price method** would be the most appropriate method to determine the ALP of the transactions between associated enterprises. Since Sky (P) Ltd. purchased similar electronic goods from Waterworks Ltd., an unrelated entity, and sold the same to unrelated parties, this transaction can be considered as uncontrolled transaction and the gross profit margin of 20% earned on sale of such goods can be considered for the purpose of determining the arm's length price of the transactions between Sky (P) Ltd. and Solar Pte. Ltd. However, functional adjustments need to be given effect to in arriving at the ALP.

Computation of ALP of transaction between Sky (P) Ltd. and Solar Pte. Ltd.	
Particulars	Amount (in ₹)
Resale price of goods purchased from Solar Pte. Ltd.	20,00,00,000
Less: Profit margin with reference to uncontrolled transaction between	

<sup>1</sup> To be read as 31<sup>st</sup> January, 2018

<sup>2</sup> None of the options are correct.

Sky (P) Ltd. and Waterworks Ltd. (20% on sale)	<u>4,00,00,000</u>
	<b>16,00,00,000</b>
<b><u>Functional adjustments</u></b>	
Adjustment for benefit of brand value of Solar Pte. Ltd. [Solar Pte. Ltd has its brand value internationally. Therefore, adjustment of benefit of brand value has to be carried out to arrive at ALP (1% of sale price)]	20,00,000
Adjustment of cost of warranty [Solar Pte. Ltd. provides warranty for 6 months whereas unrelated party has provided warranty of 12 months. Therefore, adjustment for the cost of such warranty has to be carried out to arrive at arm's length price (2% of sale price x 6/12)]	<u>(20,00,000)</u>
<b>Arm's length price</b>	<b><u>16,00,00,000</u></b>

**Answer to Q.1.7****I. If the shares of Moon Co Ltd. are unlisted shares [where the transaction is an off-market transaction]****Computation of capital gain chargeable to tax and tax liability in the hands of XY Co Ltd., UK**

Particulars	Amount (in ₹)
Full value of consideration for transfer of shares of Moon Co. Ltd.	15,75,00,000
Less: Cost of acquisition of shares of Moon Co. Ltd. (₹ 50 million, being \$2.20 million x ₹ 50 per \$ / 55% x 25%) (₹ 50 million / 10)	<u>5,00,00,000</u>
Long term capital gains u/s 112 [Since the shares of Moon Co. Ltd. have been held for more than 24 months]	<b><u>10,75,00,000</u></b>
Tax on LTCG@10% u/s 112 (without foreign currency fluctuation benefit and indexation benefit)	1,07,50,000
Add: Surcharge @5% (Since, the total income exceeds ₹ 10 crores)	<u>5,37,500</u>
	1,12,87,500
Add: HEC@4%	<u>4,51,500</u>
<b>Tax liability</b>	<b><u>1,17,39,000</u></b>

**II. If the shares of Moon Co Ltd. are listed on recognized stock exchange****Computation of capital gain chargeable to tax and tax liability in the hands of XY Co Ltd., UK**

Particulars	Amount (in ₹)
Full value of consideration for transfer of shares of Moon Co. Ltd.	15,75,00,000
Less: Cost of acquisition of shares of Moon Co. Ltd.	

Higher of		
- Cost of acquisition	5,00,00,000	
[\$2.20 million x ₹ 50 per \$ / 55% x 25% / 10]		
- Lower of fair market value per share as on 31.1.2018 i.e., ₹ 5.50 crores and sale consideration i.e., ₹ 15.75 crores	5,50,00,000	
		<u>5,50,00,000</u>
Long term capital gains u/s 112A [Since, the shares of Moon Co. Ltd. have been held for more than 12 months]		<u>10,25,00,000</u>
Tax on LTCG exceeding ₹ 1 lakh@10% u/s 112A (without foreign currency fluctuation benefit and indexation benefit)		1,02,40,000
Add: Surcharge@5% (Since the total income exceeds ₹ 10 crores)		<u>5,12,000</u>
		1,07,52,000
Add: HEC@4%		<u>4,30,080</u>
Tax liability		<u>1,11,82,080</u>

**Note** - In the facts given in the second sentence in the first paragraph of the case study, it is mentioned that XY Co. Ltd. has 55% shareholding in Moon Co. Ltd. The fourth sentence mentions that it transferred 25% of its shareholding in Moon Co Ltd. However, in the same sentence, it is mentioned that it retained the balance 30% shareholding in Moon Co. Ltd. It is not clear whether XY Co. Ltd has sold 25% shareholding of Moon Co Ltd consequent to which it retained balance 30% shareholding in Moon Co. Ltd.; or whether it has sold 25% of its shareholding (which is 55%), in which case it would have sold 13.75% shareholding. In such a case the balance holding will not be 30%.

The main solution given above has been worked out on the assumption that it has transferred 25% shareholding of Moon Co Ltd and retained balance 30% shareholding. However, due to the language used, it is possible to take a view that XY Co. Ltd. has sold 25% of its shareholding, as mentioned in the 4<sup>th</sup> line in the facts of the case. In such a case, if shares of Moon Co. Ltd. are unlisted shares, cost of acquisition of shares would be ₹ 2.75 crores (\$ 2.20 million x 50 per \$ x 13.75% /55%). Long-term capital gain would be ₹ 13 crores (₹ 15.75 crores - ₹ 2.75 crores). Tax@10% of ₹ 13 crores would be ₹ 1.30 crore plus 0.065 crore, being surcharge@5% plus ₹ 0.0546 crore being HEC@4%. The total tax liability would be ₹ 1.4196 crores.

However, in case shares of Moon Co. Ltd. are listed on recognised stock exchange, there would be no change in the amount long term capital gain, since FMV (₹ 5.50 crores given in the question) as on 31.1.2018 is higher than actual cost of ₹ 2.75 crores. Accordingly, there would be no change in the tax liability.

### Answer to Q.1.8

As per clause (b) of *Explanation 1* to section 6(1), an Indian citizen or a person of Indian origin who, being outside India, comes on a visit to India in any previous year and whose total income, other than from foreign sources, in that previous year exceeds ₹ 15 lakhs, would be resident in India if he stays in India for a period of 182 days or more during that previous year; or stays in

India for a period of 120 days or more during that previous year and 365 days or more during 4 years immediately preceding that previous year.

As per section 6(1A), an individual, being a citizen of India whose total income, other than the income from foreign sources, exceeds ₹ 15 lakhs during the previous year would be deemed to be resident in India in that previous year, if he is not liable to tax in any other country. A citizen of India who is deemed to be resident in India under section 6(1A) would, by default, be treated as “not ordinarily resident” in India as per section 6(6).

#### **Residential status of Mr. Laxman, if he does not pay any income-tax in Country S**

In this case, since Mr. Laxman is an Indian citizen who has total income other than from foreign sources i.e., income from commercial complex in Chennai, exceeding ₹ 15,00,000, and he is not liable to tax in Country S, he would be a deemed resident for the A.Y. 2021-22 as per section 6(1A).

Consequently, by default, he would be a “**not ordinarily resident**” in India as per section 6(6), without having to satisfy any further conditions.

The number of days of stay in India is not relevant for attracting the provisions of section 6(1A).

#### **Taxability of income**

As per section 5(1), in case of a resident but not ordinarily resident, income which accrues or arises or which is deemed to accrue or arise to him in India or which is received or is deemed to be received in India would be includible in his total income. Income which accrues or arises to him outside India would be included in his total income only if it is derived from a business controlled in or a profession set up in India.

#### **Computation of total income of Mr. Laxman, a deemed resident, for A.Y. 2021-22**

Particulars	Amount (in ₹)
<b>Salary</b>	
Salary for employment in Country S [Not taxable, since it does not accrue or arise in India nor is it deemed to accrue or arise in India] <sup>3</sup>	Nil
<b>Income from house property</b>	
Income from commercial complex in Chennai [computed] [Taxable, since it is deemed to accrue or arise in India as the property is situated in India]	<u>18,00,000</u>
<b>Total Income</b>	<u><b>18,00,000</b></u>

#### **Residential status of Laxman if he pays income-tax@20% in Country S**

In case Laxman pays income-tax @20% in Country S, he would be non-resident in India for A.Y. 2021-22, even though he is an Indian citizen who comes on a visit to India for 123 days (31+30+31+31) [i.e., 120 days or more] during P.Y. 2020-21 and his total income other than from foreign sources exceed ₹ 15,00,000, since he has stayed in India for only 240 days (60 days x 4 years) during the four immediately preceding previous years i.e., P.Y. 2016-17 to

<sup>3</sup>It is assumed that it is not received in India



P.Y. 2019-20. The minimum period of stay required in the four immediately preceding previous years for being treated as a resident is 365.

Accordingly, his total income for A.Y.2021-22 would comprise of only income of ₹ 18 lakh from commercial complex in Chennai, since income which accrues or arises in India or which is deemed to accrue or arise to him in India or which is received or deemed to be received in India alone would be taxable in the hands of non-resident in India.

### **Case Study 2**

#### **Hyper Ltd., Chennai**

*Hyper Ltd., Chennai is engaged in the manufacture of food items. It entered into an agreement with Venus SpA; Belgium for the export of processed and packaged food items for two financial years commencing from 1<sup>st</sup> April 2020. The foreign company Venus SpA would source raw materials for manufacture of food items by Hyper Ltd. according to its specifications. For this purpose, Venus SpA appointed procurement agents in India who supplied raw material and also monitored the quality standards of the material to be used in the manufacture of food items by Hyper Ltd. Hyper Ltd. applied for rollback provision on 2nd April 2021 and it was signed on 5th May, 2021. The rollback is applicable for the assessment years 2019-20 and 2020-21. The revised APA incorporating the rollback provisions was signed on 1st July 2021.*

*Modem Bankers Inc. of Singapore is an associated enterprise of Hyper Ltd. In April 2020, Modem bankers Inc. established 10 branches in India for the purpose of doing banking business after taking permission and requisite licenses from RBI. During the financial year 2020-21, it advanced, 100 crores to each of the branch to do the banking business in India. For the year ended 31<sup>st</sup> March 2021, the EBITDA (consolidated) of all the branches amounted to ₹150 crores and the aggregate interest payable to the head office was ₹60 crores.*

#### **Krishna, Ex-Director of Hyper Ltd.**

*Krishna was one of the Executive Directors of Hyper Co. Ltd. up to March, 2016. He left India in April 2016 and settled with his son in Canada. Consequent to a search under section 132 in the premises of Hyper Co Ltd. in April .2019, it was found that Krishna had earned commission income in respect of imports made from USA by the company and the said commission of USD 1,00,000 earned in financial year 2014-15 remains undisclosed in tax returns filed by him in India. The said commission income was used for acquiring an apartment in USA in April 2015. The fair market value of the apartment on the valuation date is USD 2,00,000. The exchange rates are on 31<sup>st</sup> March 2015 1 USD = ₹ 50; on 1<sup>st</sup> April 2019 (valuation date) 1 USD = ₹ 70.*

#### **Balaji, brother of Ex-director Krishna**

*Balaji who remained in Australia returned to India permanently in January 2020. He has a property in Australia from which he earned income of AUS\$ 40,000 and AUS \$ 44,000 for the year ended 31<sup>st</sup> March, 2020 and 31<sup>st</sup> March, 2021, respectively. He is eligible for basic exemption limit of AUS \$ 18,200 and on the balance income, he paid income-tax for both the years@ 20% in Australia. The tax was paid for the let out property income earned in Australia*

for both the years on 5th April 2020 and on 10th April 2021, respectively, from his bank account in India. His income from business in India is ₹ 12,00,000 for the year ended 31-03-2021.

Assume that the financial year are same for both India and Australia.

The exchange rate of 1 Australian Dollar on various dates is given below:

31st March 2020 = ₹ 50; 05th April 2020 = ₹ 50.50; 31st December 2020 = ₹ 51;

31st March 2021 = ₹ 52; 10th April 2021 = ₹ 51.50 and 31st December 2021 = ₹ 53

**Ram, Foreign resident deputed to Hyper Ltd.**

Ram, a foreign resident came to India with his family on 01<sup>st</sup> November 2020 on deputation for 7 months to work in Hyper Ltd. Wife of Ram had to take some traditional medical treatment in India and that was the reason which prompted him to seek deputation to work at client's place in India. He would incur a minimum of ₹ 1,00,000 towards medical expenditure for his wife up to 31st March 2021. As per the agreement between Hyper Ltd. where he was deputed and his original employer in foreign country, the salary of Ram is to be paid by Hyper Ltd. and the foreign company would not make salary payment for the deputed period. He was paid salary of ₹ 2,50,000 per month in India from 1<sup>st</sup> November to 31st March, 2021 by Hyper Ltd.

**Red GmbH, Germany**

Red GmbH Germany is a group concern to which Hyper Ltd. belongs. It is engaged in manufacturing and sale of solar panels. It opened a branch office in Chennai for sale in India. The profit mark-up was cost plus 40% in respect of sales made by the branch. The company also supplied the goods directly to various customers in India at cost plus 60%. The turnover for the previous year 2020-21 of the branch was ₹ 180 crores and direct sale to Indian customers was ₹ 55 crores.

**Choose the correct alternative for the following MCQs (2 x 5 = 10 Marks)**

2.1 How much is the undisclosed income under the Black Money (Undisclosed Asset and Income and Imposition of Tax) Act, 2015 in the hands of Krishna?

- (A) ₹ 20,00,000
- (B) ₹ 50,00,000
- (C) ₹ 70,00,000
- (D) ₹ 1,40,00,000

2.2 What is the monetary limit for Hyper Ltd. to seek advance ruling from AAR in respect of the transaction to be executed in pursuance of the agreement with Venus SPA?

- (A) ₹ 100 crores or more
- (B) ₹ 200 crores or more
- (C) ₹ 300 crores or more

- (D) Being a resident i.e., domestic company, it is not eligible to seek advance ruling.
- 2.3 What is the time limit available to Hyper Ltd. for filing modified return for rollback years consequent to revised APA?
- (A) 31<sup>st</sup> March, 2022  
(B) 30<sup>th</sup> September, 2021  
(C) 31<sup>st</sup> October, 2021  
(D) 30<sup>th</sup> November, 2021
- 2.4 How much of the interest paid by the Indian branches of Modern Bankers to the head office, Singapore, would be disallowed for computing the total income under the head 'Profits and gains of business or profession'? Assume that the branches have complied with TDS provisions as applicable for the interest paid.
- (A) No interest would be disallowed as TDS provisions were complied with by the branches in India but ₹ 15 crores would be disallowed by applying section 94B.  
(B) No interest would be disallowed as TDS provisions were complied with by the branches in India and also section 94B limiting the interest deduction would not apply.  
(C) ₹ 60 crores paid to head office would be disallowed in spite of complying with TDS provisions since it is a payment to self.  
(D) ₹ 15 crores would be disallowed in spite of complying with TDS provisions.
- 2.5 Which of the following benefit could not be availed by Balaji since he is non-resident for the assessment year 2020-21?
- (A) Tax saver deposit/Donation to public charitable trust registered under section 12AA.  
(B) Medical/Health insurance premium  
(C) Interest on loan taken for higher education.  
(D) Rebate under section 87A

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

- 2.6 Assume Mr. Ram came to you in January, 2021 to plan his tax affairs for the period up to 31<sup>st</sup> March 2021. Suggest the available tax regime, eligible investments and optimal tax liability within the four corners of law. **(5 Marks)**
- 2.7 Compute net tax liability of Balaji in India for assessment year 2021-22 on the assumption that there is no DTAA between India and Australia. **(5 Marks)**

2.8 The Assessing Officer wants to tax the profit earned by Red GmbH from direct supply to customers in India though the PE (i.e., the Indian branch) had no role to play in it. Decide the validity in the context of OECD and UN Model Tax Conventions. **(5 Marks)**

**Answer**

Q. No.	Answer
2.1	- <sup>4</sup>
2.2	(A)
2.3	(C)
2.4	(B)
2.5	(D)

**Answer to Q.2.6**

Ram's stay in India for the P.Y.2020-21 is 151 days. He does not stay for 182 days in the P.Y.2020-21. Therefore, he does not satisfy the first basic condition for being a resident.

Further, even though his stay in India exceeds 60 days in the P.Y.2020-21, he does not satisfy the second basic condition for being a resident, since the minimum period of 365 days stay in the four immediately preceding previous years is not satisfied.

Hence, he is non-resident for P.Y.2020-21.

Accordingly, only salary earned and received in India from Hyper Ltd. would be taxable in his hands in India for the P.Y.2020-21.

He can declare total income under the regular provisions, by paying life insurance premium or making a term deposit for 5 years etc. up to ₹ 1,50,000, since he has sufficient cash flow from salary. He can also make additional investment of ₹ 50,000 in NPS and claim deduction u/s 80CCD(1B). Also, he can take health insurance policy and claim deduction of ₹ 25,000.

The computation of tax liability under the regular provisions, after claiming standard deduction in respect of salary and deduction for investments and payment, is as follows –

Particulars	₹
Salary (₹ 2,50,000 x 5)	12,50,000
Less: Standard deduction u/s 16(ia)	<u>50,000</u>
Gross total income	12,00,000
Less: <b>Deduction under Chapter VI-A</b>	
Deduction u/s 80C	1,50,000
Deduction u/s 80CCD(1B)	50,000

<sup>4</sup> None of the options are correct.

Deduction u/s.80D	<u>25,000</u>	<u>2,25,000</u>
<b>Total Income</b>		<b><u>9,75,000</u></b>
<b>Tax on total income of ₹ 10 lakh under the regular provisions</b>		
Upto ₹ 2,50,000	Nil	
2,50,001 – ₹ 5,00,000 [i.e., ₹ 2,50,000 x 5%]	12,500	
₹ 5,00,001 – ₹ 9,75,000 [i.e., ₹ 4,75,000 x 20%]	95,000	
		1,07,500
Add: HEC@4%		<u>4,300</u>
Tax liability as per the regular provisions of the Act		<b><u>1,11,800</u></b>

He is eligible to opt for the special provisions u/s 115BAC even if he is a non-resident, in which case he would not be eligible for standard deduction as well as deductions under Chapter VI-A. His tax liability on total income (comprising of gross salary income) of ₹12,50,000 would be as follows –

<b>Tax on total income of ₹ 12.50 lakh u/s 115BAC</b>	<b>₹</b>
Upto ₹ 2,50,000	Nil
2,50,001 – ₹ 5,00,000 [i.e., ₹ 2,50,000 x 5%]	12,500
₹ 5,00,001 – ₹ 7,50,000 [i.e., ₹ 2,50,000 x 10%]	25,000
₹ 7,50,001 – ₹ 10,00,000 [i.e., ₹ 2,50,000 x 15%]	37,500
₹ 10,00,001 – ₹ 12,50,000 [i.e., ₹ 2,50,000 x 20%]	<u>50,000</u>
	1,25,000
Add: HEC@4%	<u>5,000</u>
Tax liability as per section 115BAC	<b><u>1,30,000</u></b>

Thus, Ram can opt to make investments of ₹ 2 lakhs and payment of Medclaim premium of ₹ 25,000; and consequently, claim deduction in respect of the same and pay lower tax of ₹ 1,11,800 under the regular provisions of the Income-tax Act, 1961.

Alternatively, he may be advised to pay tax as per section 115BAC instead of making investments since he visited you for consultation in January, 2021 and would leave India by 31<sup>st</sup> May, 2021. Making investments at the fag end of his stay in India could be avoided and he can pay tax of ₹ 1,30,000 in one go and avoid keeping track of those investments made in India for encashing them at a later date. His cash outflow would be substantially reduced, even though tax payable is higher by ₹ 18,200.

**Answer to Q.2.7**

Balaji is a resident but not ordinarily resident for the P.Y.2020-21. He is resident since he has stayed in India for the whole year and hence, he satisfies the condition of stay in India for a period of 182 days or more during the P.Y.2020-21.

However, he is not ordinarily resident, since he has stayed in India only for a maximum period of 91 days (assuming he was in the India for the whole month of January, 2020) prior to P.Y.2020-21.

Hence, he satisfies the condition of stay in India for a period of 729 days or less in the seven previous years immediately preceding P.Y.2020-21 stipulated under section 6(6) for being treated as a “not ordinarily resident” in India in the P.Y.2020-21.

Also, he has been non-resident in all the ten previous years immediately preceding P.Y.2020-21. Hence, he also satisfies the condition in section 6(6) of being non-resident in 9 out of 10 previous years immediately preceding P.Y.2020-21. In this case, he has satisfied two conditions even though satisfaction of any one condition would suffice for being treated as “not-ordinarily resident”.

In case of a resident but not ordinarily resident, income which accrues or arises to him outside India would be included in his total income, only if it is derived from a business controlled from or profession set up in India.

Accordingly, income from property earned and received in Australia would not be taxable in Balaji's hands in India. Since the amount is received in AUS \$, it is logical to presume that the same is received outside India, in the absence of any information in this regard in the question.

He would not be entitled to any deduction u/s 91 in respect of such income which is not includible in his total income.

Resultantly, only income of ₹ 12 lakh from business in India would be taxable in India. The same would constitute his total income. It would be more beneficial for him to opt for concessional tax rates u/s 115BAC, in the absence of deduction under Chapter VI-A. Tax on such income u/s 115BAC would be calculated as follows -

Particulars	₹
<b>Tax on total income of ₹ 12 lakh u/s 115BAC</b>	
Upto ₹ 2,50,000	Nil
2,50,001 – ₹ 5,00,000 [i.e., ₹ 2,50,000 x 5%]	12,500
₹ 5,00,001 – ₹ 7,50,000 [i.e., ₹ 2,50,000 x 10%]	25,000
₹ 7,50,001 – ₹ 10,00,000 [i.e., ₹ 2,50,000 x 15%]	37,500
₹ 10,00,001 – ₹12,00,000 [i.e., ₹ 2,00,000 x 20%]	<u>40,000</u>
	1,15,000
Add: HEC@4%	<u>4,600</u>
<b>Tax liability as per section 115BAC</b>	<b>1,19,600</b>

**Answer to Q.2.8**

Article 7 of the OECD and UN Model Conventions, 2017 on “Business Profits” provides the situation when business profits of a non-resident would be taxable in the Source State.

Both the Conventions state that the profits of an enterprise of a Contracting State would be taxable only in that State (i.e., the State of Residence).

An exception is when such enterprise carries on business in another Contracting State (i.e., Source State) through a Permanent Establishment (PE) situated in that State.

**In the case of OECD Model Convention:** The OECD Model Convention provides that if the enterprise of the Residence State carries on business in the Source State through a PE situated therein, then, the profits that are attributable to the PE alone may be taxed in the Source State.

OECD Model Convention does not incorporate “Force of Attraction” rule

Thus, if Article 7(1) of the DTAA with Germany is in line with OECD Model Convention, 2017, then, only profits from turnover of ₹180 crores, representing sale of solar panels made by the Chennai branch would be taxable in India in the hands of Red GmbH, Germany.

Accordingly, in this case, the Assessing Officer’s proposed action to bring to tax profit earned by Red GmbH, Germany from direct supply to customers in India, in which the PE had no role to play, is not valid.

**In the case of UN Model Convention:** The UN Model Convention amplifies this attribution principle by a limited Force of Attraction rule, which permits Source State taxation of the enterprise, not only in respect of the business carried on by it through a PE in the Source State, but also on business profits arising from sales in Source State of same or similar goods or merchandise as those sold through that PE and other business activities carried on in Source State of the same or similar kind as those effected through that PE.

If Article 7(1) of the DTAA with Germany is in line with UN Model Convention, 2017, then, profits from turnover of ₹ 235 crore, representing sale of solar panels made by the Chennai branch as well as the direct sale of solar panels made by Red GmbH, Germany to Indian customers would be taxable in India in the hands of Red GmbH, Germany.

Accordingly, in this case, the Assessing Officer’s proposed action to bring to tax profit earned by Red GmbH, Germany from direct supply to customers in India is valid, even though the PE had not role to play.

**Case Study 3****Surakav (P) Ltd., Bengaluru**

*Surakav (P) Ltd., Bengaluru is engaged in manufacture of electronic goods and exporting the same to various associated and other enterprises across South East Asia. It has been in the*

business from 01<sup>st</sup> April 2016. The income tax assessment for assessment year 2018-19 was completed by making reference to the TPO who enhanced the arm's length price of the international transaction by ₹ 500 lakhs. The company applied for APA in April 2020 which was signed in July 2020. The tax assessment for the assessment year 2017-18 regarding ALP of international transaction was disputed before the Tribunal which set aside the order for fresh consideration by the Assessing Officer in December 2020. The company also applied for rollback benefit which was agreed and signed in January 2021. If the APA is applied, the ALP determined for the assessment year 2018-19 would get enhanced by ₹ 300 lakhs as against ₹ 500 lakhs originally determined by TPO.

**Atorva Ltd. of UK**

Atorva Ltd of UK is an e-commerce operator providing foreign currency services through electronic mode. For the previous year 2020-21, it provided services to Surakav (P) Ltd. for a consideration of ₹ 250 lakhs. Surakav (P) Ltd. availed the services using IP address located in India.

**Timber GmbH, Germany**

Surakav (P) Ltd. has an associated enterprise by name Timber GmbH in Germany. The associated enterprise i.e., Timber GmbH, wants to appoint an agent in India to procure raw materials from India for the purpose of manufacture of its products in Germany. The persons/entity so appointed would be authorized to enter into contracts on its behalf after negotiations with the suppliers.

Surakav (P) Ltd. borrowed USD 100 lakhs from Xylo Inc. USA on 1st July 2015 under a loan agreement approved by the Central Government. Interest is payable half yearly in foreign currency @ 4% per annum, on every half year i.e. on 31<sup>st</sup> December and 30th June. For the half year ended 31st December 2020, interest was paid on 28th February 2021 after deducting tax on source.

TT buying rate of SBI on various dates are: 31st December 2020 - 1 USD = ₹ 72; 31st January 2021 - 1 USD = ₹ 73; 28 February 2021 - 1 USD = ₹ 72.50; 31st March 2021-1 USD = ₹ 74.

Surakav (P) Ltd. exported its products to unrelated party Mountain Ltd., Australia. Surakav (P) Ltd. is dependent on Zoom Ltd. for marketing its products and 48% of its sales are made by it through the price negotiations made and fixed by Zoom Ltd. The terms of sale and price charged by Surakav (P) Ltd. to Mountain Ltd. were also influenced by Zoom Ltd. Surakav (P) Ltd. did not maintain any document and information in respect of sales made to Mountain Ltd. During the financial year 2020-21, the aggregate sale made by Surakav (P) Ltd. to Mountain Ltd., was ₹ 12crores.

**Raghav, ex-Director of Surakav (P) Ltd.**

Raghav (age 61) is resident of India. He has income in India chargeable to tax for the assessment year 2021-22 of ₹ 7 lakhs. He remained in foreign country W earlier and has regular income of ₹ 18 lakhs (converted in Indian currency) per annum from that country.



**Zoom Ltd., UK**

Zoom Ltd., UK is a business conglomerate with subsidiaries in various countries. It owns 51% shares of Surakav (P) Ltd., Bengaluru. Zoom Ltd. has a liaison office at New Delhi. It wants to utilize the services of liaison office for furthering its business in India and in South East Asia. The liaison office would carry out advertisement/marketing activities in India. This strategy would lead to turnover of around ₹ 100 crores per annum with resultant profit margin of 15%.

**Talta Pte. Ltd., Singapore.**

Talta Pte. Ltd., Singapore (a Foreign Institutional Investor) is a subsidiary company of Zoom Ltd. U.K. Taltla Inc. commenced its activities in India from 01st December, 2020. During the previous year ended 31st March 2021, it earned short-term capital gain of ₹ 70 lakhs on transfer of securities.

**Choose the correct alternative for the following MCQs: (2 x 5 = 10 Marks)**

- 3.1 How much would be the quantum of penalty leviable on Surakav (P) Ltd. for failure keep and maintain documents in respect of its transactions with Mountain Ltd?
- (A) ₹ 1,00,000  
 (B) ₹ 24,00,000  
 (C) ₹ 25,00,000  
 (D) NIL
- 3.2 How much is the amount of equalization levy payable for the transaction between Surakav (P) Ltd. and Atorva Ltd. of UK? Who must make the payment?
- (A) @6% i.e., ₹ 15 lakhs; To be paid by Atorva Ltd., UK  
 (B) @6% i.e., ₹ 15 lakhs; To be paid by TRF (P) Ltd.  
 (C) @2% i.e., ₹ 5 lakhs; To be paid by Atorva Ltd., UK  
 (D) No equalization levy on the transaction
- 3.3 How much is the amount of tax deductible at source by Surakav (P) Ltd. on interest paid to Xylo Inc. on 28th February 2021? [Note: Your answer must consider Surcharge and HEC wherever applicable]
- (A) ₹ 7,63,776  
 (B) ₹ 7,74,384  
 (C) ₹ 7,69,080  
 (D) ₹ 61,10,208
- 3.4 In which of the following instances, business connection would not get established for Timber GmbH in India?
- (A) Opening a branch in India by itself.

- (B) Opening a liaison office in India for finalizing the contracts for supply of raw materials by the suppliers.
- (C) Appointing an agent who would be interacting with potential customers which leads to the conclusion of contract between Timber GmbH and the customers in India.
- (D) Appointing an agent in Mumbai for finalizing contracts with the suppliers on its behalf
- 3.5 How much is the tax payable by Tatla Pte on the short-term capital gain for the assessment year. 2021-22? [Note: Your answer must be inclusive of Surcharge and HEC, if applicable]
- (A) ₹ 21,84,000
- (B) ₹ 14,56,000
- (C) ₹ 10,92,000
- (D) ₹ 7,28,280

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

- 3.6 State the assessment years for which the rollback benefit would be applicable for Surakav (P) Ltd. Also state the time limit for filing the modified return in pursuance of APA and for the rollback years. **(5 Marks)**
- 3.7 Compute income-tax liability of Raghav for the assessment year 2021-22 under (i) full exemption method; and (ii) exemption with progression method. **(5 Marks)**
- Note:** Raghav does not opt for section 115BAC.
- 3.8 As a tax consultant on international taxation matters, you are requested to list out the activities which could be carried out by the liaison office of Zoom Ltd. in India without any tax consequence taking note of UN Model Tax Convention. **(5 Marks)**

**Answer**

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

**Note – MCQ 3.5** requires determination of tax payable by Tatla Pte. for the A.Y. 2021-22 on the short-term capital gains of Rs.70 lakhs arising on transfer of securities. The facts given in page 12 of the question paper mention that short-term capital gain is on transfer of securities. It is not stated

*whether the short-term capital gains arises on listed securities on which STT is paid as referred to u/s 111A or other securities. Section 111A covers only listed equity shares, units of equity oriented fund and units of business trust. Other securities are not included under section 111A.*

*If it is assumed that the securities are listed securities as referred to u/s 111A, then, option (C) Rs. 10,92,000 (Rs. 70,00,000 x 15.6%) would be the correct answer. However, if it is assumed that securities are other securities, then, the correct answer would be option (A) Rs. 21,84,000 (Rs. 70 lakhs x 31.2%). Thus, option (A) or (C), can be chosen as the correct option, based on the assumption made.*

### **Answer to Q.3.6**

Roll back year means any previous year, falling within the period not exceeding four previous years, preceding the first of the five consecutive previous years for which advance pricing agreement is valid.

The application for advance pricing agreement may be filed **at any time before the first day of the previous year relevant to the first assessment year for which the application is made**, in respect of transactions which are of a continuing nature from dealings that are already occurring; or before undertaking the transaction in respect of remaining transactions.

In the present case, since Surakav (P) Ltd. has made an application of APA and also opted for rollback provisions, the APA is apparently in respect of international transactions which are of continuing nature. Accordingly, the APA application filed in April, 2020 would be in respect of five previous years beginning with P.Y. 2021-22 relevant to the A.Y. 2022-23.

Consequently, **Surakav (P) Ltd. can make an application for roll back for four previous years immediately preceding P.Y.2021-22** i.e., P.Y.2017-18 (A.Y. 2018-19), P.Y.2018-19 (A.Y. 2019-20), P.Y.2019-20 (A.Y. 2020-21) and P.Y.2020-21 (A.Y. 2021-22).

Therefore, **Surakav (P) Ltd. cannot make application for roll back for A.Y. 2017-18** even though ITAT has not decided the matter and has only set aside the order for fresh consideration and the matter has not reached finality, since it falls beyond the four year period.

However, **it can apply for roll back for the A.Y. 2018-19**, even if ALP adjustment was reduced to addition of ₹ 300 lakhs as against addition of ₹ 500 lakhs originally determined by the TPO on account of APA, since such reduction in the amount of ALP adjustment does not result in reducing the total income or increasing the total loss, as declared in the return of income of the said year by Surakav (P) Ltd.

Surakav (P) Ltd. has to file a modified return within 3 months from the end of the month in which the revised APA incorporating the roll back provisions was signed.

Since agreement for rollback is signed in January, 2021, it has to file modified return on or before 30<sup>th</sup> April, 2021 for A.Y.2018-19, A.Y.2019-20 and A.Y.2020-21.

## Answer to Q.3.7

- (i) Computation of income-tax liability of Raghav for A.Y. 2021-22 under Full Exemption Method

Particulars	Amount (in ₹)
Income earned in India (Residence State)	7,00,000
Income of ₹ 18,00,000 earned in Country W (Source State) would be exempt under Full Exemption Method	<u>Nil</u>
<b>Total income</b>	<b><u>7,00,000</u></b>
Tax liability (Mr. Raghav, being a resident and a senior citizen is eligible for higher exemption limit of ₹ 3,00,000)	
Upto ₹ 3,00,000	Nil
₹ 3,00,001 to ₹ 5,00,000 @5%	10,000
₹ 5,00,001 to ₹ 7,00,000 @20%	<u>40,000</u>
Add: Health and education cess @4%	<u>2,000</u>
<b>Tax liability</b>	<b><u>52,000</u></b>

- (ii) Computation of Income-tax liability of Raghav for A.Y. 2021-22 under Exemption with progression method

Particulars	Amount (in ₹)
Income earned in India (Residence State)	7,00,000
Income earned in country W (Source State) of ₹ 18,00,000 would be includible for computing effective tax rate	<u>18,00,000</u>
<b>Total income</b>	<b><u>25,00,000</u></b>
<b>Tax liability</b>	
Upto ₹ 3,00,000	Nil
₹ 3,00,001 to ₹ 5,00,000 @5%	10,000
₹ 5,00,001 to ₹ 10,00,000 @20%	1,00,000
₹ 10,00,001 to ₹ 25,00,000 @30%	<u>4,50,000</u>
Add: Health and Education cess @4%	<u>22,400</u>
<b>Tax liability</b>	<b><u>5,82,400</u></b>
Effective tax rate [₹ 5,82,400 / ₹ 25,00,000 x 100] = 23.296%	
Tax liability on income earned in India [7,00,000 x 23.296%]	1,63,072
<b>Tax liability (rounded off)</b>	<b><u>1,63,070</u></b>

**Answer to Q. 3.8**

The activities of a liaison office **which are auxiliary or preparatory in nature would not constitute a PE<sup>5</sup>** and accordingly the profits attributable to such office would not be taxable in India in the hands of Zoom Ltd.

Certain activities of a liaison office have been held by Courts to be auxiliary or preparatory in nature, and hence do not result in PE. Such activities are as follows:

- remittance services
- downloading information (such as names and addresses of beneficiaries, amount to be remitted, etc.) by accessing the main servers of assessee in another country, printing cheques/draft and dispatching them to the addresses of beneficiaries through courier.
- receiving information, enquiries and feedback for passing it on to the Head Office and co-ordination activities

Moreover, in some cases, where no violation is reported by the RBI, the activities of the liaison office are presumed to be of preparatory and auxiliary character<sup>6</sup>.

However, identifying new customers, marketing activities, price negotiation, discussion of commercial issues, securing and processing orders can lead to the liaison office forming a PE<sup>7</sup>.

**Note** – *The question requires listing out the activities which could be carried out by the liaison office of Zoom Ltd. in India without any tax consequence taking note of UN Model Tax Convention. It may be noted that UN Model Tax Convention simply mentions that “permanent establishment” would not include maintaining a fixed place of business to carry out any other activity which is preparatory or auxiliary in nature. This is mentioned in Article 5(4)(e). In the Study Material, the related Court rulings are detailed in relation to liaison office under this Article. The above answer is based on the said rulings which relate specifically to liaison office not constituting a PE in India.*

*Alternatively, the question can be answered based on the exclusions from the definition of PE listed out in the UN Model Tax Convention, in the context of an office (and not particularly, liaison office) of Zoom Ltd. in India. Accordingly, an alternate answer has been given below –*

The activities of a liaison office which are auxiliary or preparatory in nature would not constitute a PE<sup>8</sup> and accordingly the profits attributable to such office would not be taxable in India in the hands of Zoom Ltd.

The following activities of an office of Zoom Ltd. which are auxiliary or preparatory in nature would not constitute a PE and hence would not be subject to tax in the hands of Zoom Ltd.-

<sup>5</sup>Union of India v. UAE Exchange Center (SC)

<sup>6</sup> Union of India v. UAE Exchange Center (SC)

<sup>7</sup>Jebon Corporation India v CIT (2012) 206 Taxman 7 (Kar HC), Brown And Sharpe Inc v CIT (2014) 369 ITR 704 (All HC)

<sup>8</sup>Union of India v. UAE Exchange Center (SC)

- (i) Use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise
- (ii) Maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display
- (iii) Maintenance of stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise.
- (iv) Maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or collecting information, for the enterprise.
- (v) Maintenance of a fixed place of business, solely for the purpose of carrying on for the enterprise, any other activity which is preparatory or auxiliary in nature.
- (vi) Maintenance of fixed place of business solely for any combination of activities mentioned in (i) to (v) above.

#### **Case Study 4**

##### **Yellow (P) Ltd., Mumbai**

*Yellow (P) Ltd., Mumbai is subsidiary of Global Inc. of Country X. It entered into an agreement with Greig Inc. of Canada on 05th December, 2020 for export of garments manufactured by it. The agreement stipulates that Greig Inc. would arrange for raw materials and consumables required for the manufacture of said garments. The agreement provides for export by Yellow (P) Ltd. to Greig Inc. of supply of finished garments exceeding ₹100 crores for every financial year for 5 years w.e.f. 1st April 2021. Yellow (P) Ltd. wants to seek advance ruling in respect of the transaction contemplated in pursuance of the agreement with Greig Inc. Yellow (P) Ltd. borrowed ₹100 crore on 1st June 2020 as interest-free loan from its parent company, Global Inc. Similar loan from an unrelated party would cost 6% per annum. There was no other transaction between Yellow (P) Ltd. and Global Inc. during the financial year 2020-21.*

*Yellow (P) Ltd. has a branch office in country Y with which there is a DTAA between India and country Y. However, the term 'transfer' is not defined in the tax treaty between India and country Y. Yellow (P) Ltd. is contemplating some transactions relating to purchase and sale of assets in country Y.*

##### **Dr. Dominic, resident of UK**

*Dr. Dominic a reputed neurosurgeon employed in ABC LLP, United Kingdom. He came to India on 1st December 2020 and performed surgery for Manish, CEO of Yellow (P) Ltd. at Mumbai. The surgeon fee was paid directly by Yellow (P) Ltd. to ABC LLP, United Kingdom. Dr. Dominic did not receive any payment. He remained in India for only 3 days and all his expenses were met by ABC LLP directly.*

##### **Omega SpA, Belgium**

*Omega SpA, Belgium is an e-commerce operator engaged in sale of goods in India through electronic facility by matching suppliers throughout India against the orders placed by*

Indian customers. During the previous year 2020-21, it made a turnover of ₹ 12 crores from India. It may be noted that Omega SpA has no branch in India. It had a dedicated office for rendering the service to customers in India and earned net income of ₹ 80 lakhs for the year ended 31st March, 2021.

During the previous year 2020-21, Yellow (P) Ltd. exported goods to unrelated party Walters Ltd. of Australia for ₹ 12 crores. The TPO determined the arm's length price at ₹ 13 crores. Yellow (P) Ltd. has not maintained any document or information for the goods exported to Walters Ltd.

Yellow (P) Ltd. is a constituent of Global Inc. of Country 'X' where there is no legal requirement for filing a report similar to CbC report. The parent company Global Inc. has designated Fire Ltd. of UK as designated entity for filing the CbC report in UK for the year ended 31st December, 2019 as per the relevant law applicable in UK. It may be noted that there is an agreement between Indian and UK tax authorities for exchange of information between them. The consolidated annual turnover of Global Inc. exceeds ₹ 10,000 crores for each of the last 3 financial years.

**Robert ex-CEO of Yellow (P) Ltd.**

Robert a citizen of USA acted as CEO of Yellow (P) Ltd. from 1st April 2010 and up to 31st March 2017. He returned to USA in April, 2017 to rejoin Red Inc, USA. It was found that when he acted as CEO of Yellow (P) Ltd. he accumulated undisclosed income/wealth such as (i) shares of listed companies in USA acquired on 10th December, 2009; (ii) acquired one apartment in London on 20th April, 2012 and (iii) established a leather goods manufacturing factory in Malaysia on 15th April, 2017. He earned income by taking commission from various foreign buyers located outside India. The Assessing Officer issued notice under the Black Money Act, 2015 in July, 2019. The Assessing Officer obtained directions from Joint Commissioner under section 144A for completion of assessment.

**Greig Inc. of Canada**

Greig Inc. of Canada has a branch at Chennai. The branch invested in shares of Birta Ltd., Mumbai. It received interim dividend in December, 2020 of 12 lakhs. Greig Inc. became resident because of POEM for the assessment year 2021-22. The total business income of the branch (excluding dividend income) is ₹ 320 lakhs for the year ended 31st March 2021. The total turnover of the company in India was ₹ 370 crores for the previous year 2017-18 and ₹ 405 crores for the previous year 2018-19. The branch on 13 March 2021 acquired a vacant land from Welfare Trust, Pune (registered under section 12AA of the Act) for ₹ 300 lakhs when the circle rate (guideline value) was ₹ 400 lakhs. The branch of Greig Inc. sold a building at Chennai on 01-03-2021 for ₹ 210 lakhs to Alps Ltd., Cochin when the circle rate was ₹ 240 lakhs. The building was acquired by the branch of Greig Inc. on 10th April, 2019 for ₹ 182 lakhs. The company (branch) gave donation of ₹ 40 lakhs to a registered political party. The company wants to opt for section 115BA of the Act.

**Choose the correct alternative for the following MCQs: (2 x 5 =10 Marks)**

- 4.1 When would the services of Dr. Dominic fall in the category of independent personal service as per UN Model convention?
- (A) When he is not in employment of ABC LLP.  
(B) When he is in employment of ABC LLP.  
(C) If had received the cheque for the services rendered directly in India.  
(D) If he had visited in India with an agreement with the employer as regards his remuneration for the visit to India.
- 4.2 How much is the quantum of penalty leviable on Yellow (P) Ltd. for non-maintenance of documents and records relating to goods exported to Walters Ltd.?
- (A) NIL  
(B) ₹ 24 lakhs  
(C) ₹ 12 lakhs  
(D) ₹ 1,50,000
- 4.3 How much of the interest on loan taken from Global Inc. would be adjusted by way of adjustment of arm's length price in determination of total income of Yellow (P) Ltd. for the assessment year 2021-22?
- (A) ₹ 6 crores  
(B) ₹ 5 crores  
(C) NIL  
(D) ₹ 5,00,000
- 4.4 How much of the amount is payable by Omega SpA by way of income-tax or as equalization levy for the year ended 31st March 2021?
- (A) No income is chargeable to tax in India and also no equalization levy is payable.  
(B) The income is not chargeable to tax in India but it has to pay equalization levy@6% on the income of ₹ 80 lakhs.  
(C) The income is not chargeable to tax in India but it has to pay equalization levy@2% on ₹ 12 crores.  
(D) Income is chargeable to tax in India since the source is in India and no equalization levy is payable by it.
- 4.5 How would you interpret the term 'transfer' when it is not defined in the tax treaty when you advise Yellow (P) Ltd.?
- (A) As per General Clauses Act,



- (B) As per the Income-tax Act, 1961
- (C) As per the corresponding domestic tax law of the country Y
- (D) By adopting how it was interpreted in similar treaty with any other country entered into by Government of India.

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

- 4.6 Yellow (P) Ltd. seeks your advice as regards the scope of coverage of advance ruling it could have sought before AAR. It also wants to know when a ruling could have been declared as void and the time limit for giving such ruling by the AAR. Advise suitably. **(3 Marks)**
- 4.7 Is the notice issued by the Assessing Officer under Black Money Act, 2015 on Robert tenable in law? Is the Joint Commissioner empowered in law to give directions to the Assessing Officer for assessment of Robert under the Black Money Act? And what is the time limit for completion of assessment under the Black Money Act? **(3 Marks)**
- 4.8 State whether Yellow (P) Ltd., has to furnish a CbC report in India? Also list the instances where the Yellow (P) Ltd. need not file CbC report even though the group turnover exceeds the prescribed monetary limit. **(5 Marks)**
- 4.9 Compute the total income and tax liability of Greig Inc. for the assessment year 2021-22 under the Income-tax Act, 1961. **(4 Marks)**

**Answer**

Q. No.	Answer
4.1	(A)
4.2	(A)
4.3	(C)
4.4	- <sup>9</sup>
4.5	(B)

**Answer to Q.4.6**

**(i) Scope of coverage of advance ruling**

A resident would be an applicant in relation to his tax liability arising out of one or more transactions valuing ₹ 100 crore or more in total which has been undertaken or is proposed to be undertaken.

Yellow (P) Ltd. may apply for advance ruling before AAR for determination by the authority in relation to its tax liability, arising out of agreement for export of finished garments by it

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<sup>9</sup> None of the options are correct.

to Greig Inc. since the value of transactions to be undertaken exceeds ₹ 100 crores for every financial year.

Yellow (P) Ltd. may also apply for advance ruling in relation to the tax liability of non-resident (i.e. Greig Inc.) arising out of a transaction which has been undertaken or proposed to be undertaken with such non-resident and such determination shall include the determination of any question of law or of fact specified in the application.

Since Greig Inc. would arrange for supply of raw materials and consumables to Yellow (P) Ltd for manufacture of garments, the tax liability which may or may not arise in respect of the transaction could be ascertained by Yellow (P) Ltd by virtue of its application before AAR.

**(ii) Circumstances when a ruling could have been declared as void**

As per section 245T, an advance ruling can be declared to be *void ab initio* by the Authority for Advance Rulings if, on a representation made to it by the Principal Commissioner or Commissioner or otherwise, it finds that the ruling has been obtained by the applicant by **fraud or misrepresentation of facts**.

**(iii) Time limit for pronouncement of ruling by the AAR**

As per section 245R, the authority shall pronounce its advance ruling in writing **within 6 months of the receipt of application**.

**Answer to Q. 4.7**

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.

Section 2(2) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 defines "assessee" to include a person being -

- (a) a resident in India within the meaning of section 6 of the Income-tax Act, 1961 in the previous year; or
- (b) a non-resident or not ordinarily resident in India within the meaning of section 6(6) of the Income-tax Act, 1961 in the previous year, who was resident in India either in the previous year to which the income referred to in section 4 relates; or in the previous year in which the undisclosed asset located outside India was acquired.

**Tenability of notice issued by the Assessing Officer**

Mr. Robert, a citizen of USA, is non-resident for the P.Y. 2019-20 (the previous year in which notice is issued by the Assessing Officer), since he returned to USA in April, 2017. He was also a non-resident for the P.Y. 2009-10, when he acquired shares of listed companies in USA and P.Y. 2017-18, when he established a leather goods manufacturing factory in Malaysia, since he

was in India only during the previous years from P.Y. 2010-11 to P.Y. 2016-17. However, he was resident in India in the P.Y. 2012-13, when he acquired one apartment in London.

Accordingly, the issue of notice on Mr. Robert under section 10 of the Black Money Act, 2015, is tenable in law, in respect of apartment in London since he was resident in the previous year 2012-13 when the property was acquired.

However, notice issued in respect of shares of listed companies in USA acquired in the P.Y.2009-10 and leather goods manufacturing factory established in Malaysia in the P.Y.2017-18 is not tenable in law, since Mr. Robert was non-resident in the previous years in which undisclosed assets were acquired and also in the previous year in which notice was issued.

As regards commission earned from various foreign buyers located outside India, notice can be issued to the extent the same relates to P.Y.2015-16 and P.Y.2016-17. Undisclosed foreign income relating to the period prior to P.Y.2015-16 does not fall within the scope of Black Money Law, which is effective only from A.Y.2016-17.

#### **Power of Joint Commissioner to give directions to the Assessing Officer under the Black Money Law**

Yes, as per section 144A of the Income-tax Act, 1961, a Joint Commissioner is empowered to issue such directions as he thinks fit for the guidance of Assessing Officer to enable him to complete the assessment under the Black Money law also.

#### **Time limit for completion of assessment under the Black Money Law**

The time limit for passing an order of assessment under Black Money Law is two years from the end of the financial year in which notice under section 10(1) is issued by the Assessing Officer. Accordingly, in the present case, the assessment has to be completed on or before 31.3.2022 i.e., within two years from the financial year ending on 31.3.2020, being the financial year in which notice was issued.

#### **Answer to Q.4.8**

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 crores.

In the present case, Yellow (P) Ltd., being the constituent entity resident in India, has to file a CbC report for the reporting accounting year since the consolidated group revenue for the preceding accounting year exceeds the threshold of ₹ 5500 crores and Global Inc., being a parent entity is a resident of Country X where it is not required to file CbC report. Accordingly, Yellow (P) Ltd. has to furnish a CbC report in India.

**Circumstances in which Yellow (P) Ltd., being a constituent entity resident in India, is not required to file CbC report in India**

As per section 286(5), if an international group, having parent entity which is not resident in India, had designated an alternate entity for filing its report with the tax jurisdiction in which the alternate entity is resident, then, the entities of such group operating in India would not be obliged to furnish report if the specified conditions are fulfilled.

In the given case, since Global Inc., being a non-resident parent entity, had designated Fire Ltd. for filing its CbC report in UK in which Fire Ltd. is a resident, Yellow Ltd., is not required to file CbC report in India, even though the group turnover exceeds ₹ 5500 crores, if the following conditions are satisfied -

- Fire Ltd has furnished CbC report in UK on or before the date specified by UK;
- the CbC report is required to be furnished under the law for the time being in force in UK;
- UK has entered into an agreement with India providing for exchange of the said report;
- the prescribed authority has not conveyed any systemic failure in respect of UK to any constituent entity of the group that is resident in India;
- the UK Country has been informed in writing by Fire Ltd., that it is the alternative reporting entity on behalf of the international group and
- the same has been informed to the prescribed authority by Yellow (P) Ltd. in accordance with section 286(1).

If a constituent entity, resident in India, is not designated as alternate reporting entity of an international group, it is required to furnish CbC report under section 286(4) in Form No.3CEAD, if the parent entity of the group is resident of a country or territory, -

- (1) in which it is not obligated to file report of the nature of CbC report;
- (2) with which India does not have an arrangement for exchange of the CbC report; or
- (3) 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.

**Answer to Q. 4.9**

**Computation of Total Income and Tax liability of Greig Inc. for the A.Y. 2021-22**

Particulars	₹
<b>Business Income of the branch</b>	3,20,00,000
<b>Short-term capital gain on transfer of building</b> at Chennai (since held for not more than 24 months)	

Full value of consideration [Stamp duty value since it exceeds 110% of actual consideration (i.e., ₹ 231 lakhs, being 110% of ₹ 210 lakhs)]	₹ 2,40,00,000	
Less: Cost of acquisition	<u>₹ 1,82,00,000</u>	58,00,000
<b>Income from Other Sources</b>		
- Interim dividend from an Indian company [₹12,00,000 x 100/79.2, since tax would have been deducted at source @20.8% u/s 195]		15,15,152
- Vacant land acquired for inadequate consideration from Welfare Trust Pune, registered u/s 12AA, would not be chargeable, since provisions of 56(2)(x) are not attracted in respect of property received from trust registered u/s 12AA		<u>Nil</u>
<b>Gross Total Income</b>		<b>3,93,15,152</b>
<b>Less: Deduction under Chapter VI-A</b>		
U/s 80GGB [Not allowable to Greig Inc., since it is a foreign company]		-
U/s 80GGC [Donation to registered political party by a branch of Greig Inc]		<u>40,00,000</u>
<b>Total Income</b>		<b><u>3,53,15,152</u></b>
<b>Total Income (rounded off)</b>		<b>3,53,15,150</b>
<b>Computation of tax liability</b>		<b>₹</b>
Dividend income [taxable@20% under section 115A, since provision applicable for foreign company would continue to apply though Greig Inc. became resident in India because of POEM for the A.Y. 2021-22]		3,03,030
Other income of ₹ 3,38,00,000 [taxable@40% [rate applicable for foreign company would apply though Greig Inc. became resident in India because of POEM for the A.Y. 2021-22]		<u>1,35,20,000</u>
		1,38,23,030
Add: Surcharge@2%, since total income exceeds ₹ 1 crore but does not exceed ₹10 crores		<u>2,76,461</u>
		1,40,99,491
Add: Health and education cess@4%		<u>5,63,980</u>
<b>Tax liability <sup>10</sup></b>		<b><u>1,46,63,471</u></b>
<b>Tax liability (rounded off)</b>		<b>1,46,63,470</b>

**Note** – Donation made by a branch of a foreign company, not permitted as deduction u/s 80GGB may be allowable u/s 80GGC which permits donation by “any person” except local authority and every artificial juridical person wholly or partly funded by the Government. It is noteworthy that

<sup>10</sup>TDS on dividend has to be deducted to arrive at the net tax payable. The question, however, asks only for tax liability

Schedule VI-A of ITR 6 contains reference to deduction u/s 80GGC. If deduction u/s 80GGC is not allowable to foreign companies, then ITR 6 which is relevant only for companies, would not have contained reference to section 80GGC.

**Alternative view** - The title of section 80GGB is "Deductions in respect of contributions given by companies to political parties". However, the section permits deduction only to donations made by an Indian company. From a plain reading of the title of the section and the limitation contained thereunder, it is possible to infer that donations made by foreign companies are not eligible for deduction u/s 80GGB. In such case, the total income would be ₹ 3,93,15,150 instead of ₹ 3,53,15,150. The consequent tax liability on other income of ₹ 3,78,00,000@40% would be ₹ 1,51,20,000, in addition to the tax liability of ₹ 3,03,030 on dividend. The resultant final tax liability would be ₹ 1,63,60,750 i.e., ₹ 1,54,23,030 plus surcharge@2% (₹ 3,08,461) and HEC@4% (₹ 6,29,260).

#### Case Study 5

#### **Sun (P) Ltd., Kolkata**

Sun (P) Ltd., Kolkata is the subsidiary of Jupiter Ltd. of Sydney, Australia. It is engaged in import and redistribution of Tasmania apples in the brand name "Jones" from Jupiter Ltd. Sun (P) Ltd. was authorized to advertise in television channels for the purpose of marketing the brand in India. During the previous year 2019-20, Sun (P) Ltd. incurred ₹ 1500 lakhs towards advertisement expenses. The advertisement in television channels in India facilitated Jupiter Ltd. to reach markets of Middle East and South East Asian nations. In the assessment of Sun (P) Ltd., the TPO applied Bright Line Test for disallowing advertisement expenditure to the extent of ₹ 400 lakhs. Sun (P) Ltd. was also engaged in manufacture of footwear in India meant for 100% export to its AE in UK. The amount of expenditure incurred by way of wages to new employees (computed) was ₹ 1500 lakhs. Sun (P) Ltd. was also engaged in software development for its AE in U.S.A. which is eligible for deduction under section 10AA. As regards software development division, the TPO found certain expenses for which no evidences were available and hence, disallowed to the extent of ₹ 100 lakhs. The income of Sun (P) Ltd. before deduction in respect of additional new employees cost (relating to footwear division) and disallowance of expenditures (relating to software division) consisted of (i) from distribution of apples ₹ 800 lakhs; (ii) from footwear unit ₹ 1000 lakhs and (iii) software development division (eligible for section 10AA) ₹ 500 lakhs.

The tax authorities of Country X solicited the services of Indian tax authorities for recovery of income-tax due from Martin who migrated to India in the year 2016-17 and became director of Sun (P) Ltd. There is a DT AA between India and Country X.

In the tax assessment of Sun (P) Ltd. for the assessment year 2018-19, the following details are furnished. (i) Total income before ALP adjustment ₹ 100 lakhs; (ii) EBITDA (computed) ₹ 300 lakhs; (iii) interest paid to associated enterprise ₹ 200 lakhs; and (iv) ALP adjustment by way of interest paid to associated enterprise was limited to ₹ 180 lakhs only.

**Chandan, ex-MD of Sun (P) Ltd.**

Chandan ex-MD of Sun (P) Ltd. when he was resident in India accumulated assets outside India by understating his income for the purpose of income-tax in India. Consequently, the proceedings under the Black Money Act were initiated against him. In the proceedings under the Black Money Act, 2015 he contended that 50% of the fair market value of the assets accumulated outside India were met by his daughter who is a resident in the said foreign country. The Assessing Officer rejected the contention of Chandan and completed the assessment under Black Money Act with tax of ₹ 40 lakhs and interest of ₹ 10 lakhs. The penalty proceedings under the Black Money Act are underway as on date.

**Bhagwat, Brother of Chandan**

Bhagwat (age 81) resident of Bengaluru is brother of Chandan authored a book on Hindu philosophy which was published in country P. He earned royalty income of ₹ 3.40 lakhs during the previous year 2020-21. His expenditure for earning the royalty income was ₹ 60,000. He paid tax @ 10% on the said royalty income in country P. The entire royalty income was received in convertible foreign exchange by 31st March, 2021. There is no DTAA between India and country P. His other income in India is ₹ 4,50,000.

**Madan, Director of Sun (P) Ltd.**

Madan, one of the Directors of Sun (P) Ltd. joined the company on 1st March 2021 after remaining outside India for 10 years. He has following incomes for the year ended 31st March 2021:

Salary from Sun (P) Ltd.	1,50,000
Long-term capital gain on sale of shares in listed companies (acquired in foreign currency)- STT paid	4,00,000
Income from debentures in Indian companies (₹ 50,000 belongs to debentures purchased in foreign currency)	80,000
Premium on life insurance policy - on self	1,50,000
Health insurance premium	20,000
Income from property at Bengaluru (computed)	60,000
Donation to registered political parties in India by cheque	40,000

Madan is regularly assessed to income-tax even when he remained outside India.

**Uranus Corporation, Japan**

Uranus Corporation, Japan is a wholly owned subsidiary of Jupiter Ltd. Uranus Corporation is engaged in manufacture of electronic goods. It wanted to gain foothold in Indian markets. It sold its products through an e-commerce operator in Delhi and earned 10% on total sales of ₹ 500 lakhs. It obtained data of customers in India from a market research company by name Chappell Pte. Ltd., Singapore to whom it paid ₹ 100 lakhs in January 2021 by directly remitting the amount to its bank account held in Singapore. It also sold goods directly to customers in

India by making use of the data obtained from Chappell Pte. Ltd. and earned 20% on the goods sold to customers in India. Total sale of goods directly to customers in India up to 31st March, 2021 was ₹ 700 lakhs.

**Choose the correct alternative for the following MCQs: (2 x 5 = 10 Marks)**

- 5.1 How much amount of demand must be paid by Chandan before filing appeal against the order of assessment under the Black Money Act made by the Assessing Officer?
- (A) NIL  
(B) ₹ 10,000  
(C) ₹ 25,00,000  
(D) ₹ 50,00,000
- 5.2 What is the total income of Sun (P) Ltd. for the assessment year 2018-19 taking note of the adjustment of ALP in respect of interest paid and secondary adjustment to be made to impact its total income?
- (A) ₹ 210 lakhs  
(B) ₹ 280 lakhs  
(C) ₹ 120 lakhs  
(D) ₹ 200 lakhs
- 5.3 As an advisor to Sun (P) Ltd., please advise if a signatory to the MLI can opt out of the minimum standards prescribed under the BEPS Action Plan.
- (A) Yes  
(B) No  
(C) Yes, in case when the contracting states together agree to reflect the minimum standards provided in the MLI into their existing DTAA  
(D) Yes, in case both the contracting states agree
- 5.4 PG Assets Plc is a subsidiary of Jupiter Ltd., Sydney and a resident of UK. Its only asset is a Palace (used as a guest house) in India. The company is selling the Palace to another non-resident. Assuming OECD Model Convention treaty, which of the following is false.
- (A) The transfer is taxable in India under the indirect transfer of assets provisions in India  
(B) The transfer is taxable in India under the Act as capital gains  
(C) The transfer is taxable in India under the Treaty  
(D) The primary right of taxation under the Tax Treaty is with India



- 5.5 How much would be the net tax liability of Bhagwat after allowing rebate under section 91 for the assessment year 2021-22?
- (A) NIL  
 (B) ₹ 13,840  
 (C) ₹ 19,840  
 (D) ₹ 32,320

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

- 5.6 Compute the total income of Sun (P) Ltd. for the assessment year 2020-2021 in the light of the disallowances proposed by the TPO. Also, discuss whether disallowance of advertisement expenditure by applying Bright Line Test is tenable in law. **(5 Marks)**
- 5.7 State briefly, how the total income of Madan would be subjected to tax in India after he returned to India on permanent basis. Compute his total income and tax liability for the assessment year 2021-22. **(5 Marks)**
- 5.8 Is the income earned by Uranus Corporation through e-commerce operator located in Delhi and direct sale of goods to customers in India chargeable to tax in India? Also state whether the amount received by Chappell Pte. Ltd. by sale of data of customers in India chargeable to tax in India. Ignore provisions of DTAA. **(3 Marks)**
- 5.9 State whether the provisions of the Income-tax Act, 1961 enable the income-tax authorities to help tax authorities of Country X to make tax recovery from Martin under their domestic law. **(2 Marks)**

**Answer**

Q. No.	Answer
5.1	(C)
5.2	- <sup>11</sup>
5.3	(C)
5.4	(A)
5.5	(A)

**Answer to Q.5.6**

**Computation of total income of Sun (P) Ltd.**

Particulars	₹ in lakhs	₹ in lakhs
Distribution of apples		800

<sup>11</sup> None of the options are correct.

Footwear division		1,000
Software development division	500	
Add: Disallowances made by the Assessing Officer	<u>100</u>	
		<u>600</u>
<b>Gross Total Income</b>		<b>2,400</b>
Less: Deduction u/s 10AA [It is assumed that A.Y.2021-22 falls within the first five years of setting up of SEZ, hence 100% of ₹ 500 lakhs would be the deduction allowable in respect of its export profits. Deduction would <b>not</b> be allowable in respect of ₹ 100 lakhs, being the amount of enhancement in total income consequent to addition made by the TPO for computing arm's length price. Since it is mentioned in the question that the company is engaged in software development for its AE in USA, its entire profits would be export profits i.e., the export turnover would be the same as total turnover]	500	
Deduction u/s 80JJAA [30% of additional employee cost i.e., 30% of ₹ 1500 lakhs]	<u>450</u>	
		<u>950</u>
<b>Total Income</b>		<b>1,450</b>

**Note** – If it is assumed that A.Y.2021-22 falls within the 6<sup>th</sup> to 10<sup>th</sup> year of setting up of SEZ, ₹ 250 lakhs, being 50% of ₹ 500 lakhs would be the deduction allowable u/s 10AA in respect of its export profits. Total deduction under Chapter VI-A would be ₹ 700 lakhs and the total income would be ₹ 1700 lakhs.

**Tenability of disallowance of advertisement expenditure applying Bright Line Test**

The Delhi High Court, in *Bausch & Lomb Eyecare (India) (P.) Ltd. v. Addl. CIT [2016] 381 ITR 227*, held that advertisement expense is **not** an international transaction and there is no machinery provision for computation of advertisement, marketing, promotion (AMP) expense adjustment.

In *Sony Ericsson Mobile Communications India (P) Ltd v. CIT (2015) 374 ITR 118*, the Delhi High Court held that **bright line test has no statutory mandate** and a broad-brush approach is not mandated or prescribed. It further opined that the exercise to separate “routine” and “non-routine” advertising, marketing and promotion or brand building exercise by applying the bright line test of non-comparables should not be sanctioned.

Applying the rationale of the above rulings of the Delhi High Court, the TPO's action in applying the “Bright Line Test” for disallowing or adjusting the advertisement expenditure to the extent of ₹ 400 lakhs is **not** tenable.

**Answer to Q.5.7**

Madan is non-resident in India for A.Y.2021-22, since his stay in India during the P.Y.2020-21 is only for 31 days. Hence, only income accruing or arising in India or which is deemed to accrue or arise or which is received or deemed to be received in India would be included in his total income and subject to tax in his hands for A.Y.2021-22.

For A.Y.2021-22, since he is a non-resident, he can opt to be taxed under the special provisions under Chapter XII-A, assuming that he is a citizen of India. Accordingly, he has to examine whether the computation of total income and tax liability under the special provisions under Chapter XII-A are more beneficial to him *vis-à-vis* the regular provisions of the Income-tax Act, 1961.

**Computation of total income and tax liability of Madan for A.Y.2021-22 under Chapter XII-A**

Particulars	Amount (₹)	Amount (₹)
<b>Salaries</b>		
Salary from Sun (P) Ltd.	1,50,000	
Less: Standard deduction u/s 16(ia)	<u>50,000</u>	
		1,00,000
Income from house property in India (computed)		60,000
Long-term capital gains on sale of listed shares (STT paid) acquired in foreign currency		4,00,000
<b>Income from Other Sources</b>		
Interest on debentures in Indian companies Purchased in foreign currency	50,000	
Purchased in rupees	<u>30,000</u>	
		80,000
<b>Gross Total Income</b>		<b>6,40,000</b>
<b>Less: Deduction under Chapter VI-A</b>		
U/s 80C – Life insurance premium paid for self	1,50,000	
U/s 80D – Health insurance premium [Assumed to have been paid otherwise than in cash]	20,000	
U/s 80GGC - [Deduction in respect of donation to registered political party in India by cheque]	40,000	
	<b>2,10,000</b>	
<b>Restricted to</b>		1,90,000
[Deduction under Chapter VI-A is allowable against gross total income other than LTCG on sale of shares acquired in foreign currency and interest on debentures purchased in foreign currency.]		

Therefore, deduction under Chapter VI-A has to be restricted to ₹ 1,90,000, being salary income ₹ 1,00,000 plus income from house property ₹ 60,000 and interest on debentures in Indian companies purchased in rupees ₹ 30,000].	
<b>Total Income</b>	<b>4,50,000</b>

<b>Computation of tax liability</b>	<b>₹</b>
Tax on interest on debentures purchased in foreign currency i.e., ₹ 50,000 @20%	10,000
Tax on LTCG on sale of listed shares (STT paid) acquired in foreign currency i.e., ₹ 4,00,000@10%	<u>40,000</u>
	50,000
Add: Health & Education Cess@4%	<u>2,000</u>
<b>Tax liability</b>	<b><u>52,000</u></b>

**Computation of total income and tax liability of Madan for A.Y.2021-22 under the regular provisions of the Act**

<b>Particulars</b>	<b>Amount (₹)</b>
<b>Total Income = ₹ 4,50,000</b>	
<b>Tax liability:</b>	
Tax on LTCG i.e., ₹ 3,00,000@10% [LTCG in excess of ₹ 1 lakh taxable @10% u/s 112A]	30,000
Interest on debentures purchased in foreign currency@20% u/s 115A [₹ 50,000 x 20%]	<u>10,000</u>
	40,000
Add: Health & Education Cess@4%	<u>1,600</u>
<b>Tax liability</b>	<b><u>41,600</u></b>

Since the regular provisions of the Act are more beneficial to Madan, he should compute his total income and pay tax under the regular provisions of the Act. His tax liability for A.Y.2021-22 would be ₹ 41,600.

**Note** – The tax liability as per the provisions of section 115BAC would be the same as the tax liability computed under the regular provisions since the total income would be higher by ₹ 2,40,000 (i.e., standard deduction of ₹ 50,000 and Chapter VI-A deductions of ₹ 1,90,000). The other income would, therefore, be ₹ 2,40,000 which is lower than the basic exemption limit of ₹ 2,50,000, and hence there would be no tax liability on such income. The tax liability u/s 112A and 115A would be the same under section 115BAC also.

**Answer to Q.5.8**

As per section 9(1)(i), business profits of a foreign company, Uranus Corporation, would be deemed to accrue or arise in India, if such income accrues or arises through or from any business connection in India. In such a case, such income would be taxable in the hands of Uranus Corporation in India.

Further, as per *Explanation 1* to section 9(1)(i), in case of a business, of which all operations are not carried out in India, the income of the business which is deemed to accrue or arise in India due to business connection in India shall be only such part of the income as is reasonably attributable to the operations carried out in India.

*Explanation 3A* to section 9(1)(i) provides that income attributable to operations in India for establishing business connection would include income from, *inter alia*, -

- (i) sale of data collected from a person who resides in India or from a person who uses internet protocol address located in India; and
- (ii) sale of goods and services using data collected from a person who resides in India or from a person who uses internet protocol address located in India.

In this case, Uranus Ltd. has earned profits by selling goods in India through an e-commerce operator in Delhi and also by selling goods directly to customers in India making use of data obtained from Chappell Pte Ltd., Singapore.

Profits earned by Uranus Ltd. from sale of goods through an e-commerce operator in Delhi does not arise through or from business connection in India, since an e-commerce operator is not a dependent agent who acts wholly and exclusively or mainly for Uranus Ltd.

The concept of “significant economic presence” is not applicable for A.Y.2021-22. Therefore, there is no specific provision in the Income-tax Act, 1961 for bringing such income within the ambit of business connection.

Section 194-O, which is a TDS provision, would also apply only if Uranus Ltd., the e-commerce participant, is resident in India, which is not so in this case.

Profits earned by Uranus Ltd. from sale of goods directly to customers in India making use of data obtained from Chappell Pte Ltd., Singapore does not arise through or from business connection in India, because the data is not collected from a person who resides in India or from a person who uses internet protocol address located in India. It is collected from a Singapore based company.

Further, the amount received by Chappell Pte Ltd. from Uranus Ltd. for sale of data of customers in India is not chargeable to tax in India since the income does not arise from sale of data collected from a person who resides in India or from a person who uses internet protocol address located in India.

**Note** – *The question does not mention that Chappell Pte Ltd. Singapore has collected data from a person residing in India or from a person who uses internet protocol address located in India. Hence, in the absence of such information, the question has been answered on the above lines.*

**Alternate Answer (based on specific assumption):**

In case Chappell Pte Ltd. Singapore has collected data from a person residing in India or from a person who uses internet protocol address located in India and has sold such data to Uranus Ltd., then, the amount received by Chappell Pte Ltd. for sale of such data would be deemed to accrue or arise in India on account of business connection in India and would become taxable in India.

Resultantly, the profits earned by Uranus Ltd. from sale of goods directly to customers in India making use of data obtained from Chappell Pte Ltd., Singapore (who has collected data from a person residing in India or from a person who uses internet protocol address located in India), would be deemed to accrue or arise in India on account of business connection in India and would become taxable in India.

Income earned by Uranus Ltd. from sale through e-commerce operator in India would, in any case, not be deemed to accrue or arise in India for A.Y.2021-22. Hence, such income would not be taxable in India.

**Answer to Q.5.9**

Yes, the provisions of section 228A of the Income-tax Act, 1961 enable the income-tax authorities to help tax authorities of Country X, with which India has a DTAA, to make recovery from Martin under the Income-tax Act, 1961, since Martin is resident in India.

For this purpose, the Government of Country X has to send a certificate to the CBDT for the recovery of any tax due under the law of Country X from Martin. The CBDT may forward such certificate to any Tax Recovery Officer (TRO) having jurisdiction over Martin or within whose jurisdiction Martin's property is situated.

The TRO shall, then, proceed to recover the amount specified in the certificate in the manner in which he would proceed to recover the amount specified in a certificate drawn up by him under section 222 [i.e., by attachment and sale of Martin's property, by appointing a receiver for management of his property etc.]

Thereafter, the TRO has to remit any sum so recovered to the CBDT after deducting the expenses in connection with the recovery proceedings.