

Time Allowed: - 4 Hours

Maximum Marks: 100

The question paper comprises 5 case study questions. The candidates are required to answer any 4 case study questions out of 5.

Case Study 1

Mahamaru Ltd., Baroda is engaged in automobile manufacturing activity. Maxman LLP of Germany is yet another global automobile manufacturer. They propose to commence a joint venture in India by name Nation Ltd.

Mahamaru Ltd. will give its financial support for the new venture while Maxman LLP will give its technical support. In the new venture to be located in Chennai, they furnish following facts:

- (i) Mahamaru Ltd. will invest ₹ 500 crores. It will have 51% share in equity (₹ 255 crores) and balance kept as loan eligible for interest at 12% per annum. It will supply all the raw materials available in India with a mark-up of 10%. The total supply per annum would exceed ₹ 1000 crores.
- (ii) Maxman LLP will give technical support for which it is eligible for annual fee of ₹ 100 crores.
- (iii) Maxman LLP will also permit Nation Ltd. to use its brand name for the final product and for which royalty @ 5% of total sales has to be paid on annual basis.
- (iv) Maxman LLP will depute its staff for providing support service in applying its technology in India. No salary however would be paid by Nation Ltd. Only accommodation and incidental expenses would be incurred on their behalf during their stay in India.
- (v) Maxman LLP will pay online advertisement charges to Google Inc. UK with a strip of the advertisement making mention of its products manufactured also in India. This would enable the products manufactured at Chennai to have better global reach. This expenditure will not be reimbursable or payable (either in part or whole) to Maxman LLP by Nation Ltd.
- (vi) Nation Ltd. would issue equity shares for 49% of the capital to Maxman LLP and claim the payment as capital expenditure towards acquisition of "patent and design". This would give exclusive right to Nation Ltd. to manufacture and market products in India.

You are the tax consultant for the project proposed.

- (A) Give your views in brief on the following issues :
 - (i) Whether Mahamaru Ltd., Nation Ltd. and Maxman LLP will be associated enterprises?
 - (ii) Whether transactions mentioned be considered as international transaction?

- (iii) Which transaction will be liable to withholding tax and under which Section?
- (iv) Is there any activity which may create PE of Maxman LLP?
- (v) Will there be any transaction liable to equalization levy?
- (vi) How can the taxpayer avoid litigation?

(12 Marks)

- (B) A foreign company having income in India, does not have a PAN. It is advised that the tax would be deducted at the higher of the following rates, namely – (i) At the rate specified in the relevant provisions of this Act or (ii) At the rates in force; or (iii) At the rate of 20%.

Explain the meaning of the following expressions:

- (i) Rate specified in the Act.
- (ii) Rate in force.
- (iii) When is the tax to be deducted?
- (iv) What will be the exchange rate?

(3 Marks)

- (C) Choose the most appropriate alternative for the following MCQs :

(2 x 5 = 10 Marks)

1. Which of the following tax credit method do most of the Indian treaties follow?
 - (a) Full credit method
 - (b) Ordinary tax credit method
 - (c) Tax sparing method
 - (d) Underlying tax credit method

2. Most Favoured Nation (MFN) clause found in Protocols and Exchange of Notes to tax treaties implies-
 - (a) Special benefits are provided by one State to the resident of other State.
 - (b) One State agrees to provide similar benefits to the resident of other State which it has provided to the resident of third states.
 - (c) One State agrees not to tax business income of resident of other State in all circumstances.
 - (d) None of the above.

3. Which of the following income is taxable on source basis without regard to presence of PE?
 - (a) Royalty
 - (b) Collection of fee for newspaper advertisement outside India
 - (c) Operations confined to shooting of cinematographic film
 - (d) Operations confined to purchase of goods in India for export.

4. In a typical Model Convention, the Article on Dependent Personal Service deals with
- Income earned by independent professionals
 - Income earned under employment
 - Income earned by sportsmen representing a nation
 - Income earned by Government employees
5. When a resident pays ₹ 12 lakhs to a non-resident in respect of shipping of goods in Indian port and the destination is foreign port where the non-resident is taxable under section 44 BB of the Income-tax Act, 1961 the TDS would be reckoned on
- 30% of the amount paid
 - 20% of the amount paid
 - 7.5% of the amount paid
 - NIL

Case Study 2

- (A) Hari Om Ltd., Mumbai is engaged in automobile manufacturing. It established a branch in Singapore in the year, 2017 and in Australia in April, 2019. During the financial year 2019-20, the branch in Australia availed the services of the branch in Singapore. The total results of the head office and branches vis-à-vis their tax rate and withholding tax rates are given below:

		₹in Lakhs
(i)	Income of Hari Om Ltd. in India	2,000
(ii)	Tax thereon @34.944% (including surcharge and cess)	
(iii)	Income of branch in Singapore from business in Singapore excluding (v) below (converted in Indian rupee)	500
(iv)	Income tax rate in Singapore 17%	
(v)	Income of Singapore Branch from performing service in Australia	100
(vi)	Tax withheld in Australia at 30% on the above income	30
(vii)	Income of Australian Branch from business in Australia (including net income earned by availing the service of Singapore branch)	300
(viii)	Income-tax on the income of Australian Branch @30%	

The DTAA between India and Singapore is given below:

Article 7
BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as it directly or indirectly attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment. In any case where the correct amount of profits attributable to a permanent establishment is incapable of determination or the determination thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated on a reasonable basis.
3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere, in accordance with the provisions of and subject to the limitations of the taxation laws of that State.

You may assume similar such articles are found in India-Australia DTAA and Singapore-Australia DTAA.

(A) You are requested to answer the following:

- (i) Will Singapore and Australia double taxation convention apply for determination of income of Hari Om Ltd. in India?
- (ii) Will Singapore Branch get credit for tax withheld in Australia?
- (iii) Can Hari Om Ltd. get credit under India and Singapore tax convention for tax withheld in Australia?
- (iv) Which double taxation convention will apply for Hari Om Ltd. in determination of its income tax liability?
- (v) Whether triple taxation can be mitigated?

(10 Marks)

(B) How does OECD and UN Model conventions provide hassle-free taxation of Income arising from operation of ships or aircrafts in international traffic?

(2 Marks)

(C) How will you distinguish the scope applicability of Section 44B vis a vis section 172 in respect of income from shipping business of non-resident tax payers?

(3 Marks)

(D) Choose the most appropriate alternative for the following MCQs :

(2 x 5 = 10 Marks)

1. Where a company has presence in India as well as abroad, to be treated as engaged in active business outside India (ABOI) for POEM purposes, one has to consider, inter alia, whether

(a) 50% of the total book value of assets are located outside India.

(b) 50% of the total market value of assets are located outside India.

(c) 50% of the total market value of assets are located in India.

(d) None of the above.

2. International tax law originated from the following:

(a) Multilateral international agreements, such as the Vienna Convention on Law of Treaties

(b) Double Taxation Avoidance Agreements

(c) Customary international law and general principles of law

(d) All the above

3. Article 30 of the OECD Tax Model talks about two dates – ‘entry into force’ and ‘provisions having effect’. Normally

(a) Both dates are the same

(b) Date of ‘entry into force’ precedes the date of ‘provisions having effect’.

(c) Date of ‘provision having effect’ precedes the date of ‘entry into force’.

- (d) None of the above
4. A tax treaty is interpreted by looking into the meaning of the terms used when the treaty was signed. This is known as
- (a) Ambulatory approach
- (b) Static approach
- (c) Protocol approach
- (d) Treaty Override
5. Indirect transfer are taxable under the Act, but DTAA's with some countries do not give India right to tax indirect transfer. Some of these countries are:
- (a) Switzerland, UAE, Russia, USA.
- (b) Switzerland, Ireland, Poland, UK.
- (c) Portugal, Ireland, Poland, France.
- (d) There is no such DTAA which exempts taxation of indirect transfer in India.

Case Study 3

ABC Associates, an Indian firm of Chartered Accountants, has certain assignments in hand relating to International Taxation. As a partner of firm, you are required to provide solutions for following assignments.

- 1) Jupiter LLC of New Zealand has expertise and reputation in dairy products. The Management of the company wants to establish its brand "kiwi" in India. The management wants to manufacture and market dairy products in India. They want to know whether a 100% subsidiary could be established in India or a branch office could be located in India for carrying out the same set of activities in India just like a 100% subsidiary company.
- 2) Mr. S provides you with his following particulars:

Foreign business Income	-	₹ 4,50,000
Business Loss in India	-	₹ 1,50,000

Income from other Source in India	-	₹ 1,00,000
Tax rate in Foreign Country	-	25%
Effective Tax rate in India	-	30%

- 3)** Alpha Ltd., an Indian company, is engaged in the business of manufacturing and selling of cut and polished diamonds. It carries its business outside India through branches. In the branches in country 'L', it has incurred losses and it has earned profits from its branches in country 'P'.

Under the provisions of the Income Tax Act, 1961 global income of Alpha Ltd. is taxable in India. In order to compute the taxable income in India, income from all the sources (including income from foreign branches) will be clubbed / aggregated.

India has DTAA with country 'L', however, there is no such DTAA with country 'P'. Alpha Ltd. has paid taxes in country 'P'. Since it has incurred loss in country 'L', therefore, the tax liability in that country is NIL.

Answer the following in the context of above assignments:-

- (A) Analyse the pros and cons of establishing either a subsidiary or a branch in the context of the Income-tax Act, 1961. **(5 Marks)**
- (B) Compute the tax relief for Mr. S as per section 91 of the Income Tax Act, 1961. **(5 Marks)**
- (C) Discuss whether relief would be available to Alpha Ltd. "country-wise" or "on the basis of aggregation of Income from all foreign countries". **(5 Marks)**
- (D) Choose the most appropriate alternative for the following MCQs : **(2 x 5 = 10 Marks)**
- When a foreign Enterprise sets up a PE in the state of source, it brings itself within the fiscal jurisdiction of that state to such a degree that all profits that the Enterprise derives from the state of source, whether through the PE or not, can be taxed by the state of source; this is known as:
 - Anti-Treaty abuse
 - Limitation of Benefits
 - Tax Sparing

- (d) Force of attraction
2. As per the Carter Commission Report, the Anti-tax avoidance provisions which target broad types of avoidance practices in specific areas [Example : General Anti- Avoidance Rules] fall under :
- (a) Administrative Approach
- (b) Sniper Approach
- (c) Shotgun Approach
- (d) Arms Length Approach
3. The presentation under Mutual Agreement Procedure (MAP) of Model Conventions of Double Tax Avoidance should be made within _____ from the first notification of the action resulting in disputed Taxation.
- (a) 12 Months
- (b) 2 Years
- (c) 3 Years
- (d) 5 Years
4. An eligible investment fund referred to in section 9A (3) of the Income Tax Act, 1961 means a fund established outside India which collects funds from its members for investing it for their benefit and fulfils, interalia, the condition that the monthly average of the corpus of the fund shall not be less than:
- (a) ₹ 10 Crores
- (b) ₹ 100 Crores
- (c) ₹ 200 Crores
- (d) ₹ 1000 Crores
5. Which of the following DTAAAs does not contain a 'limitation of Benefits' clause?
- (a) India - Singapore DTAA

- (b) India - Mauritius DTAA
- (c) India - Cyprus DTAA
- (d) All of the above

Case Study 4

TATA Corporation Ltd. (TCL), is a company incorporated under the Companies Act, 2013, having factory and registered office in Mumbai. It is engaged in manufacture, purchase and sale of men's wear, selling various kinds of garment products according to the requirement of the buyers across the world. The company has sold different garment products in the Financial Year 2019-20 to different vendors in the Indian and outside Indian market, including sale of Jeans to one its associated enterprises, namely, TATA US LLC, to whom it had sold 1,00,000 pieces at the rate of ₹ 500 per piece.

Major portion of the income of TCL is from sale of manufactured products. The company (TCL) maintains a operating profit margin of 15% for sale made to TATA US LLC. However, it has purchased the Jeans sold to its US based associated enterprise from Rohan Garments Ltd. of Jaipur at a price of ₹ 420 per piece.

TCL computes Arm's Length Price using Transactional Net Margin Method (TNMM) for transactions with TATA US LLC. Given below are the operating profit and operating cost details of several companies in textile industry. You are required to compute ALP from the following set of multi years data Where the Profit Level Indicator used in applying the most appropriate method is Operating Profit (OP) as compared to Operating Cost (OC) i.e. (OP/OC).

Sr. No.	Name of the company	Year 1	Year 2	Year 3 (Current Year)
1	L	OC = 190 OP = 30	OC = 310 OP = 35	OC = 405 OP = 35
2	M	OC = 150 OP = 45	OC = 100 OP = 40	OC = 150 OP = 55
3	N	OC = 225 OP = 45	OC = 250 OP = 25	OC = 180 OP = 55
4	O	OC = 220 OP = 33	OC = 175 OP = 45	OC = 200 OP = 50
5	P	OC = 140 OP = 10	OC = 150 OP = 12	OC = 165 OP = 28
6	Q	OC = 75 OP = 10	OC = 115 OP = 15	OC = 155 OP = 30

7	R	OC = 200 OP = 50	OC = 225 OP = 40	OC = 325 OP = 60
8	S	OC= 200 OP= 15	OC= 185 OP= 30	OC= 220 OP= 55

The Chief Financial Officer (CFO) of the company appraised the Board of Directors that it is beneficial for the company to enter into a Unilateral Advance Pricing Agreement for five years starting from A.Y. 2021-22 to A.Y. 2025-26. The amount of similar international transaction proposed to be undertaken in respect of which the APA agreement is proposed during the aforesaid period is ₹190 crores. In this regard, CFO seeks your professional advice on the following issue:

- (a) Whether pre-filing consultation with the Income Tax authorities is to be mandatorily done?
- (b) What is the fee which the company is required to pay before filing the APA application?
- (c) To whom the APA application is required to be furnished?
- (d) What is the time limit for filing the APA application?
- (e) Whether any amendment can be made in the APA application after the same has been filed? If so, briefly discuss the procedure.

In the context of the above case study, you are required to answer the following:-

- (A) Compute the ALP by following TNMM and applying Range Concept.
(10 Marks)
- (B) Advise TCL regarding various issues raised by the CFO of the company in respect of APA.
(5 Marks)
- (C) Choose the most appropriate alternative for the following MCQs :
(2 x 5 = 10 Marks)
 1. The CFO of TCL is a Resident of both India and US. Assume India-US DTAA is based on OECD Model. Tie breaker rule for determining the residential status of CFO under the OECD Model does not contain the concept of
 - (a) Permanent Home
 - (b) Centre of vital interest
 - (c) Habitual Abode

- (d) Place of effective management
2. The concept of tax sparing under tax treaty means
- (a) Exempting tax on a particular income in the country of residence.
 - (b) Levying tax on a particular income in the country of source.
 - (c) Allowing credit of tax foregone by the country of source.
 - (d) None of the above.
3. When does a treaty enter in to force?
- (a) The date of signing of the agreement.
 - (b) The date of exchange of instrument of ratification.
 - (c) The date of notification.
 - (d) None of the above
4. TCL approached the Advance Ruling Authority for some issues relating to determination of its tax liability. AAR issued adverse order against TCL. What recourse does TCL have from an adverse order by the Authority for Advance Ruling (AAR) constituted under the Income Tax Act, 1961?
- (a) Appeal before the Income Tax Appellate Tribunal
 - (b) Appeal before the High Court
 - (c) Write petition before the High Court
 - (d) Appeal before the Appellate Authority for Advance Rulings (AAR)
5. Where a TATA US LLC not having a PAN has received interest income from India, what would be the applicable TDS rate if such company has provided prescribed documents such as TRC or the

Tax Identification No. in the country of its residence etc.?

- (a) 20%
- (b) 40%
- (c) Beneficial rate under the applicable tax treaty
- (d) None of the above

Case Study 5

Mr. Mohan, born in India in the year 1961, left for employment in the United States in October, 1991. His family members, viz; his wife (Smt. Meera) and two sons were then residing at Chennai. He remitted US \$ 50,000 to his wife's joint bank account in Chennai on 16th April, 2012. She invested in her name, Rs. 12 lakhs in the shares of domestic companies on 14th April, 2013 and Rs. 13 lakhs on 25th March, 2016. The consideration for purchase of shares on both the occasions was met in foreign exchange (USD) and the values, as translated in INR terms, have been furnished.

On 28.03.2020, the shares purchased in April, 2013 were sold for Rs. 15 lakhs and the shares purchased in March, 2016 were sold for Rs. 19 lakhs. For both purchase and sale of shares, STT of Rs. 1,200 was paid.

Date	Average of Telegraphic Transfer buying rate and selling rate of 1 US Dollar in Indian rupees.
14.03.2013	Rs. 58
25.03.2016	Rs. 62
28.03.2020	Rs. 68

Mr. Mohan owned a vacant site at Chennai which had been acquired on 14.10.2010 for Rs. 7,40,000. It was sold on 20.03.2020 for Rs. 35 lakhs to Mr. Sohan, his younger brother (a resident at Chennai). The stamp duty valuation of the property was Rs. 40 lakhs. The entire sale proceeds of vacant site and shares were used for acquiring a residential property at Malaysia. He owns only one residential house in Mumbai and a commercial apartment at Singapore, owned since October, 2011. (GAV of apartment = Rs. 5 Lacs, Income from Mumbai House Computed = Rs. 2,40,000)

Note : Cost inflation indices :

- F.Y. 2010-11 = 167 ;
- F.Y. 2012-13 = 200 ;
- F.Y. 2013-14 = 220 ;
- F.Y. 2015-16 = 254;

F.Y. 2016-17 = 264;

F.Y. 2019-20 = 289

Smt. Meera (born and brought up in India) returned to India permanently in 2007. She has assets outside India in the form of immovable property, jewellery and bank deposits in Cayman Islands. Proceedings were initiated under Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 ("BM Act") in June 2019. She owns a residential house property at Chennai besides an apartment in the United States occupied by Mr. Mohan. She had been moving between India and USA frequently.

Mr. Mohan's first son Mr. Lava (born in India in 1986), an engineer, left India in May 2013 for permanently settling down in Australia. He acquired 50,000, 8% debentures of Rs. 100 each in a listed company in India, by remitting foreign exchange in May, 2015. He received debenture interest on 28.03.2020 for the year. He remitted Z Rs. 1 lakh by way of premium on life insurance policy taken in the year 2007 with capital sum assured of Rs. 12 lakhs. He has dividend income from listed domestic companies of Rs. 15,00,000 for the year.

REQUIRED

You are requested to answer the following issues arising from the above facts:-

- (A) Mr. Mohan wants you to compute his total income and tax there on, including capital gains tax payable by him for the assessment year 2020-21. **(10 Marks)**
- (B) Compute the total income of Mr. Lava and advise on the possibility of availing the benefits of Chapter XII-A deductions. **(5 Marks)**
- (C) Choose the most appropriate alternative for the following MCQs : **(2 x 5 = 10 Marks)**
- (i) When Smt. Meera has undisclosed asset located outside India, what is the time limit within which it is chargeable to tax under Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 ("BM Act") :
- (a) Within 16 years from the end of the financial year in which it was originally acquired.
 - (b) Within 10 years from the end of the financial year in which it was originally acquired.
 - (c) Within 6 years from the end of the financial year in which it was originally acquired.
 - (d) No time limit and it would be chargeable to tax when it comes to the notice of the Assessing Officer.
- (ii) When Smt. Meera owns an undisclosed asset outside India being

immovable property, its value for the purpose of assessment under the BM Act, would be:

- (a) Fair market value as on 01.04.1981.
 - (b) Fair market value as on 01.04.2001.
 - (c) Higher of cost of acquisition or open market value on the valuation date as per valuation report from a valuer recognized by the foreign country.
 - (d) Lower of cost of acquisition or open market value on the valuation date as per valuation report from a valuer recognized by the foreign country.
- (iii) When Smt. Meera owned a property/asset outside India but has not disclosed the same for income-tax purpose, she can be prosecuted under the BM Act for:
- (a) 3 months
 - (b) Not less than 6 months but which may extend to 7 years
 - (c) Not less than 3 months but which may extend to 3 years
 - (d) None of these
- (iv) The time limit for completion of assessment of Smt. Meera under the BM Act, is:
- (a) 1 year from the end of the financial year i.e. 31.03.2021
 - (b) 2 year from the end of the financial year i.e. 31.03.2022
 - (c) 1 year from the end of the impugned month i.e. 30.06.2020.
 - (d) None of these
- (v) When Smt. Meera files appeal before the Appellate Tribunal under the BM Act, the appeal fee payable by her is
- | | |
|----------------|----------------|
| (a) Rs. 5,000 | (b) Rs. 10,000 |
| (c) Rs. 25,000 | (d) Rs. 50,000 |