SUGGESTED SOLUTION

CA FINAL N'19

SUBJECT- INTERNATIONAL TAXATION

(ELECTIVE)

Test Code - FNJ 7203

BRANCH - () (Date :)

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CASE STUDY -1

I. ANSWERS TO MCQs (Most appropriate answers)

1. (b)
2. (c)
3. (d)
4. (a)
5. (d)
6. (d)
7. (c)
8. (b)
9. (c)
10. (c)

II. ANSWERS TO DESCRIPTIVE QUESTIONS

Answer to Q.1:

Income of a non-resident from transfer of a capital asset situated in India is deemed to accrue in India as per the provisions of section 9(1)(i) of the Income-tax Act,1961. As per *Explanation 5* to section 9(1)(i), an asset being any share or interest in a company or entity incorporated outside India shall be deemed to be situated in India if, if the share or interest, derives directly or indirectly, its value substantially from assets located in India.

Further, *Explanation 6* to section 9(1)(i), provides that the share or interest in a company or entity registered or incorporated outside India, shall be deemed to derive its value substantially from the assets (whether tangible or intangible) located in India, if on the specified date, the value of Indian assets:

- exceeds the amount of INR 10 crores; and
- represents at least 50% of the value of all assets owned by the company, or entity, as the case may be

Specified date for this purpose would be the date on which the accounting period of the company or entity ends preceding the date of transfer of a share or an interest.

However, in case the book value of the assets of the company or entity on the date of transfer exceeds by at least 15%, the book value of the assets as on the last balance sheet date preceding the date of transfer, the date of transfer shall be the specified date.

Value of an asset means Fair Market value as on specified date, of such asset without reduction of liabilities in respect of the asset.

Further, section 90(2) provides that where the Indian Government has entered into DTAAs which are applicable to the taxpayers, then, the provisions of the Act or the provisions of the DTAA, whichever is more beneficial to the taxpayer, shall apply.

In light of the above, the provisions of the DTAA and the provisions of the Act have been examined with respect to the each of the Groups below.

(a) Transfer of shares of Singapore Intermediary Co by US Co.

In the instant case, specified date is 31.05.2019

Fair value of assets of Singapore Intermediary Co as on 31.5.2019 - INR 50 crores Fair value of Ind Co as on 31.5.2019 (without reduction of liabilities) - INR 200 crores Fair value of Ind Co as held by Singapore Intermediary Co (20%) - INR 40 crores

Since, the value of assets located in India i.e., INR 40 crores exceeds INR 10 crores and also exceeds 50% of the value of assets of Singapore Intermediary Co, the shares of Singapore Intermediary Co would be deemed to derive its value substantially from assets located in India.

Hence, the shares of Singapore Intermediary Co would be deemed to be a capital asset situated in India and the capital gains from transfer of shares of Singapore Intermediary Co would be deemed to accrue or arise in India. Accordingly, the gains would be taxable in the hands of US Co in India as per the Income-tax Act, 1961. However, the provisions of the applicable DTAA would need to be examined.

The India-US DTAA would be the applicable DTAA, for the purpose of analysing taxability in India of the transfer of shares of Singapore Intermediary Co by US Co, since in the instant case, India is the ‘country of source’ and US is the ‘country of residence’.

As per Article 13 of the India-US DTAA, US and India may tax capital gains in accordance with the provisions of its domestic law. Hence, the capital gains income from transfer of shares of Singapore Intermediary Co by US Co shall be taxable in India.

(b) Transfer of shares of Mauritius Intermediary Co by Germany Co.

In the instant case, specified date is 31.05.2019

Fair value of assets of Mauritius Intermediary Co as on 31.5.2019 - INR 60 crores

Fair value of Ind Co as on 31.5.2019 (without reduction of liabilities) - INR 200 crores

Fair value of Ind Co as held by Mauritius Intermediary Co (25%) - INR 50 crores

Since, the value of assets located in India i.e., INR 50 crores exceeds INR 10 crores and also exceeds 50% of the value of assets of Mauritius Intermediary Co, shares of Mauritius Intermediary Co would be deemed to derive its value substantially from assets located in India.

Hence, the shares of Mauritius Intermediary Co would be deemed to be a capital asset situated in India and the capital gains from transfer of shares of Mauritius Intermediary Co would be deemed t o accrue or arise in India. Accordingly, the gains would be taxable in the hands of Germany Co in India as per the Income-tax Act, 1961. However, the provisions of the applicable DTAA would need to be examined.

The India-Germany DTAA would be the applicable DTAA, for the purpose of analysing taxability in India of the transfer of shares of Mauritius Intermediary Co by Germany Co, since in the instant case, India is the ‘country of source’ and Germany is the ‘country of residence’.

Clauses (1) to (3) of Article 13 of the India-Germany DTAA, would not be relevant to the instant case. As per clause (4) of Article 13 of the India-Germany DTAA, *"gains from the alienation of shares in a company which is a resident of a Contracting State may be taxed in that State".*

In the instant case, the shares being transferred are those of Mauritius Intermediary Co, which is not a resident of India. Accordingly, the instant case would not be covered under clause (4) of Article 13 and the residual clause (5) of Article 13 would be applicable. As per clause (5), *"Gains from the alienation of any property other than that referred to in paragraphs 1 to 4 shall be taxable only in the Contracting State of which the alienator is a resident"*. The alienator is Germany Co, which is a resident of Germany and not India and accordingly, the capital gains shall be taxable only in Germany and is not taxable in India.

Since the provisions of the DTAA can be applied, where they are more beneficial to the taxpayer than the provisions of the Act, in the instant case, the provisions of the DTAA can be applied and accordingly, the capital gains would not be taxable in India.

(c) Transfer of shares of Australian Intermediary Co by Cyprus Co.

In the instant case, specified date is 31.05.2019

Fair value of assets of Australian Intermediary Co as on 31.5.2019 - INR 300

crores Fair value of Ind Co as on 31.5.2019 (without reduction of liabilities) -

INR 200 crores Fair value of Ind Co as held by Australian Intermediary Co

(51%) - INR 102 crores

Since, the value of assets located in India i.e., INR 102 crores exceeds INR 10 crores but it does not represent at least 50% of the value of assets of Australian Intermediary Co, shares of Australian Intermediary Co would not be deemed to derive its value substantially from assets located in India.

Hence, the shares of Australia Intermediary Co would not be deemed to be a capital asset situated in India and the capital gains from transfer of shares of Australia Intermediary Co would not be deemed to accrue or arise in India. Accordingly, the gains would not be taxable in the hands of Cyprus Co in India as per the Income-tax Act, 1961.

Accordingly, it would not be necessary to examine the provisions of the applicable DTAA.

(d) Transfer of shares of Spain Intermediary Co by UK Co.

In the instant case, specified date is 31.03.2019

Fair value of assets of Spain Intermediary Co as on 31.3.2019 - INR 12 crores

Fair value of Ind Co as on 31.3.2019 (without reduction of liabilities) - INR 200 crores

Fair value of Ind Co as held by Spain Intermediary Co (4%) - INR 8 crores

Since, the value of assets located in India i.e., INR 8 crores does not exceed INR 10 crores, shares of Spain Intermediary Co would not be deemed to derive its value substantially f rom assets located in India.

Hence, the shares of Spain Intermediary Co would not be deemed to be a capital asset situated in India and the capital gains from transfer of shares of Spain Intermediary Co would not be deemed to accrue or arise in India. Accordingly, the gains would not be taxable in the hands of UK Co in India as per the Income-tax Act, 1961.

Accordingly, it would not be necessary to examine the provisions of the applicable DTAA.

Answer to Q.2:

(i) Computation of capital gains chargeable to tax and tax amount in India on transfer of shares of Singapore Intermediary Co by US Co

S. No	Particulars	Amount (INR crores)
1.	Full value of consideration for transfer of shares of Singapore Intermediary Co	50.00
2.	Cost of acquisition of shares of Singapore Intermediary Co	10.00
3.	**Long-term capital gains**	**40.00**
4.	Fair Market Value of all the assets of the Singapore Intermediary Co as on the specified date (31 May 2019)	50.00
5.	Fair Market Value of assets of the Singapore Intermediary Co located in India as on the specified date (31 May 2019) , i.e., Fair value of Ind Co as held by Singapore Intermediary	40.00
6.	Long-term capital gains (income) attributed to assets located in India [(3)*(5)/(4)]	32.00
7.	**Long-term capital gains tax at 10% (as per section 112)**	**3.20**

<u>Notes:</u>

1. The capital assets, being transferred, in the instant case, are the shares of Singapore Intermediary Co. Since, the shares of Singapore Intermediary Co have been held by US Co for more than 24 months, the capital gains would be long-term capital gains.
2. As per Rule 11UC, the income attributed to assets located in India would be based on the proportion of fair market value of assets located in India on the specified date, from which the share derives its value substantially to the fair market value of all assets of Singapore Intermediary Co.
3. As per section 112(1)(c)(iii), in case of a foreign company, the long term capital gain on unlisted securities is chargeable to tax @10% without indexation and fluctuation benefit.
4. The rate of 10% is excluding cess and surcharge, if any, depending on the total income of the company.

(ii) <u>Computation of capital gains chargeable to tax and tax amount in India on transfer of shares of Ind Co by Singapore Intermediary Co</u>

S. No	Particulars	Amount (INR crores)
1.	Full value of consideration for transfer of shares of Ind Co	45.00
2.	Cost of acquisition of shares of Ind Co	5.00
3.	**Short-term capital gains (since shares of Ind Co have been held for less than 24 months)**	**40.00**
4.	Short-term capital gains chargeable to tax @40%	14.00

Note: The rate of 40% is excluding cess and surcharge, if any, depending on the total income of the company

Taxability as per India-Singapore DTAA

Under the provisions of the Income-tax Act, 1961, the capital gains from transfer of shares of Ind Co would be chargeable to tax in India in the hands of Singapore Intermediary Co. However, the provisions of the India-Singapore DTAA can be applied to the extent they are more beneficial to the taxpayer.

As per Clause 4B of Article 13 of the India-Singapore DTAA, dealing with capital gains, gains arising from the alienation of shares acquired on or after 1 April 2017 in a company which is a resident of a Contracting State may be taxable in that State.

However, where such gain arise during the period beginning on 1 April 2017 and ending on 31 March 2019, it may be taxed in the State of which the company whose shares are being alienated is a resident at a tax rate that shall not exceed 50% of the tax rate applicable on such gains in that State.

In the instant case, Singapore Intermediary Co acquired shares of Ind Co on 1 March 2018 (i.e., after 1 April 2017). Accordingly, the gains may be taxable in India, being Contracting State in which the Ind Co is resident. However, restriction of 50% of tax rate shall not be applicable in this case since the capital gain arises after 31.3.2019.

(iii) Amalgamation of US Co with another group company US Co 2

As per section 47(viab), any transfer, in a scheme of amalgamation, of a capital asset, being a share of a foreign company, referred to in the *Explanation 5* to section 9(1)(i), which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the amalgamating foreign company to the amalgamated foreign company, shall not be regarded as transfer, if—

(A) at least twenty-five per cent of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company; and

(B) such transfer does not attract tax on capital gains in the country in which the amalgamating company is incorporated;

Accordingly, in the instant case, if 25% of shareholders of US Co continue to remain shareholders of US Co 2 and if such transfer (by way of amalgamation) does not attract capital gains tax in US, then the amalgamation of US Co with US Co 2 would not be regarded as a ‘transfer’ under the Income -tax Act, 1961 and hence, not chargeable to tax in India.

Other option available with US Co is to demerge its one or more undertaking

As per section 47(vicc), any transfer, in a scheme of demerger, of a capital asset, being a share of a foreign company, referred to in the *Explanation 5* to section 9(1)(i), which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the demerged foreign company to the resulting foreign company, shall not be regarded as transfer, if—

(A) the shareholders, holding not less than three-fourth in the value of the shares of the demerged foreign company, continue to remain shareholders of the resulting foreign company; and

(B) such transfer does not attract tax on capital gains in the country in which the demerged foreign company is incorporated;

Accordingly, if three-fourth value of the shares of US Co continue to remain shareholders of resulting company and if such transfer (by way of demerger) does not attract capital gains tax in US, then the demerger of one or more undertaking of US Co would not be regarded as a ‘transfer’ under the Income-tax Act, 1961 and hence, not chargeable to tax in India.

CASE STUDY -2

I. ANSWERS TO MCQs (Most appropriate answers)

1. (c)

2. (d)

3. (a)

4. (b)

5. (d)

6. (b)

7. (d)

8. (d)

9. (b)

10. (a)

II. ANSWERS TO DESCRIPTIVE QUESTIONS

Answer to Q.1:

(i) The statement is incorrect

An agreement, after being entered, may be revised by the Board either *suo moto* or on request of the assessee or the competent authority in India or the Director General of Income-tax (International Taxation), in appropriate situations, as per Rule 10Q.

(ii) The statement is partly correct

If the return of income filed u/s 139(1) is revised, then the return of income filed under section 139(5) of the Act replaces the original return of income filed the under section 139(1). Hence, if there is a return which is filed under section 139(5) to revise the original return filed before the due date specified in *Explanation 2* to section 139(1), the applicant would be entitled for rollback on this revised return of income.

However, rollback provisions will not be available in case of a return of income filed under section 139(4) because it is a return which is not filed before the due date.

Further, if a return filed u/s 139(4) is revised u/s 139(5), then, the revised return replaces the belated return filed u/s 139(4) in which case, the applicant would not be entitled for roll back.

(iii) The statement is correct

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

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

No, the answer will not change even if TCL is required to comply with Ind AS. Even then the adjustment in 115JB(2A) need to be made, but not TP adjustment.

Answer to Q.2:

Any income arising from an international transaction, where two or more "associated enterprises” enter into a mutual agreement or arrangement, shall be computed having regard to arm's length price as per the provisions of Chapter X of the Act.

The items that are to be considered for transfer pricing adjustments are as under:

(a) Sales to SL, XY Inc and AB LLC;

(b) Royalty payments received from D Inc., and
(c) Interest on borrowings from Danubes Inc., Dubai.

Export sales to foreign companies

Sales to SL

Section 92A defines an "associated enterprise" and sub-section (2) of this section speaks of the situations when the two enterprises shall be deemed to be associated enterprises.

In SL, TCL holds 14/50 i.e. 28% of the voting power.

Since TCL holds more than 26% of the voting power in SL, TCL and SL are deemed to be associated enterprises.

SL is a non-resident company. The transaction is for sale of the product. Hence, the sales made by TCL to SL are international transactions.

Sales to GSL

In GSL, TCL holds 18/80 i.e. 22.5% of the voting power

Since TCL holds less than 26% of the voting power, GSL is not an associated enterprise.

Sales to XY Inc and AB LLC

Both these companies are located in notified jurisdictional areas (NJA). As per section 94A, following are the consequences:

(i) all the parties to the transaction shall be deemed to be associated enterprises within the meaning of section 92A;

(ii) Transactions of purchase and sale shall be treated as international transactions;

(iii) Transfer pricing provisions will apply to such transactions.

Hence, the transactions in question have to be tested with reference to the ALP.

GSL is not an associated enterprise and hence the selling price of Rs. 12,000 per MT to GSL can be taken as the ALP, as per CUP method.

Considering the above, the understatement of profits on account of lower selling price is:

Name of the party	Qty in MT	Rate per MT (Rs.)	ALP	Difference per MT	Total amount (Rs. In lakhs)
SL	8,00,000	11,800	12,000	200	1600
XY Inc.	3,00,000	11,900	12,000	100	300
AB LLC.	2,00,000	11,700	12,000	300	600
				Total adjustment to ALP	**2,500**

Royalty receipts

D Inc., is a wholly owned subsidiary of TCL and is a non-resident company. Hence it is an associated enterprise.

Royalty falls within the meaning of international transaction, since it is payment for supply of know-how, being an intangible property.

D Inc., is currently paying a royalty of 2 million USD per annum (year ended 31 -3-2019) to TCL for supply of know-how. For similar supply of know how to Epsilon LLC., a wholly owned Government Company in Japan, TCL receives annual royalty of 3 million.

Under CUP Method, ALP has to be taken as 3 million USD

Understatement of royalty is 1 million USD, i.e. 1 M USD x Rs.70 =Rs.700 lakhs.

Borrowings

If one enterprise advances loan to the other enterprise of an amount of 51% or more of the book value of the total assets of such other enterprise, the two enterprises would be deemed to be associated enterprises.

As on the date of borrowing, the amount advanced is Rs.200 crores out of Rs.330 crores, which comes to 60.6%.

Hence Danubes Inc., is deemed to be an associated enterprise of TCL.

Interest payments are also covered by the term "international transaction".

Danubes Inc., has charged interest at 8% and TCL has paid interest of Rs.16 crores for the year ended 31- 3-2019.

Interest rate charged to other parties is 7%. This has to be taken as the ALP rate.

In the light of this, the interest payment should have been 16x7/8 i.e., Rs.14 crores There has been an excess payment of Rs.2 crores w.r.t. ALP.

Total income of TCL

The total income of TCL, after considering the above adjustments will be as under:

Particulars	Amount (Rs. in cr)
Net profit as given prior to TP adjustments	32.2
Add: Difference on account of value in international transactions	
(i) Export sales	25.0
(ii) Royalty receipts	7.0
(iii) Interest payment	2.0
Total Income	**66.2**

Answer to Q.3:

As per the first proviso to section 92CA(4), TCL cannot claimed deduction u/s 10AA in respect of the income enhanced (Rs.25 crores) by applying the transfer pricing adjustments, where such adjustments are made by the Assessing Officer to determine the ALP.

CASE STUDY -3

I. **ANSWERS TO MCQs (Most appropriate answers)**

1. **(d)**
2. **(b)**
3. **(d)**
4. **(a)**
5. **(d)**
6. **(b)**
7. **(c)**
8. **(c)**
9. **(a)**
10. **(c)**

II. **ANSWERS TO DESCRIPTIVE QUESTIONS**

Answer to Q.1:

1. **(i)** In accordance with the provisions of section 115A, where the total income of a non-corporate non-resident includes any income by way of royalty or fees for technical services other than the income referred to in section 44DA(1), received from an Indian concern in pursuance of an agreement made by him with the Indian concern and the agreement is approved by the Central Government, then, the special rate of tax at 10% of such fees for technical services is applicable. No deduction would be allowable under sections 28 to 44C while computing such income.

Section 90(2) makes it clear that where the Central Government has entered into a DTAA with a country outside India, then, in respect of an assessee to whom such agreement applies, the provisions of the Act shall apply to the extent they are more beneficial to the assessee. Therefore, if the DTAA provides for a rate lower than 10%, then, the provisions of DTAA would apply.

(a) In this case, since India does not have a DTAA with Country 'X', of which the Abhinav is a resident, the fees for technical services (FTS) of INR 10,00,000 from ABC Ltd. would be taxable @10%, by virtue of section 115A.

(b) In this case, the FTS from ABC Ltd. would be taxable @5%, being the rate specified in the DTAA, even though section 115A provides for a higher rate of tax, since the tax rates specified in the DTAA are more beneficial. However, since Abhinav is a non-resident, he has to furnish a tax residency certificate from the Government of Country X for claiming such benefit. Also, he has to furnish other information, namely, his nationality, his tax identification number in Country X and his address in Country X

(c) In this case, the FTS from ABC Ltd. would be taxable @10% as per section 115A, even though DTAA provides for a higher rate of tax, since the provisions of the Act (i.e. section 115A in this case) are more beneficial.

(ii) Under section 206AA, any person who is entitled to receive any sum or income or amount on which tax is deductible under Chapter XVII-B has to furnish his Permanent Account Number (PAN) to the person responsible for deducting such tax, failing which tax shall be deducted at

- the rate mentioned in the relevant provisions of the Act or
- the rate or rates in force or
  - the rate of 20%

whichever is higher.

For the purpose of reducing the compliance burden of non-corporate non-residents or foreign company, section 206AA(7) provides for non-applicability of the requirements contained in section 206AA to a non-corporate non-resident or foreign company, in respect of interest on long- term bonds as referred to in section 194LC and any other payment subject to prescribed conditions.

As per Rule 37BC, the provisions of section 206AA shall not apply to a non-corporate non-resident or foreign company not having PAN in respect of payments in the nature of interest, royalty, fees for technical services and payments on transfer of any capital asset, if the deductee furnishes the following details and documents to the deductor:

- Name, e-mail id, contact number;
- address in the country or specified territory outside India of which the deductee is a resident;
- a certificate of his being resident in any country outside India from the Government of that country, if the law of that country provides for issuance of such certificate;
- Tax Identification Number of the deductee in the country of his residence. In case no such number is available, then a unique number on the basis of which the deductee is identified by the Government of that country or the specified territory of which he claims to be a resident.

Hence, if Mr. Abhinav fails to furnish the PAN details to ABC Ltd., then the company can obtain the above information from him and deduct TDS @10% in accordance with provisions of section 115A. If he is not able to furnish the requisite details, tax has to be deducted @20% under section 206AA, being the highest of the following rates –

- rate under section 115A i.e., 10%,
- rates in force i.e., 10%,

- 20%.

(iii) By virtue of section 44DA, the income by way of fees for technical services received by Mr. Abhinav from ABC Ltd., India, would be computed under the head "Profits and gains of business or profession" in accordance with the provisions of Income-tax Act, 1961, since technical services are provided from a fixed place of profession situated in India and fees for technical services is received from an Indian concern in pursuance of an agreement by Mr. Abhinav with ABC Ltd., an Indian company, and is effectively connected with such fixed place of profession. No deduction would, however, be allowed in respect of any expenditure or allowance which is not wholly an d exclusively incurred for the fixed place of profession in India.

Mr. Abhinav is required to keep and maintain books of account and other documents in accordance with the provisions contained in section 44AA and get his accounts audited by an accountant and furnish the report of such audit in the prescribed form duly signed and verified by such accountant along with the return of income.

2. **(i)** The statement is **incorrect**, since as per section 195(1), the obligation to deduct tax at source from interest and other payment to non-resident which are chargeable to tax in India, is on "any person responsible for paying to a non-resident or to a foreign company". The words "any person" used in section is intended to include both residents and non-residents. Therefore, if the income of payee non-resident is chargeable to tax, then tax has to be deducted at source, whether the payment is made by a resident or non-resident.

Further, *Explanation 2* to section 195(1) also clarifies that the obligation to comply with section 195(1) and to make deduction thereunder applies and shall be deemed to have always applied and extends to all persons, resident or non-resident, whether or not the non-resident has:

(a) a residence or place of business or business connection in India; or

(b) any other presence in any manner whatsoever in India.

(ii) Section 194A requiring deduction of tax at source on any income by way of interest, other than interest on securities credited or paid to a resident, excludes from its scope, income credi ted or paid by a firm to its partner. However, section 195 which requires tax deduction at source on payment to non-residents, does not provide for any exclusion in respect of payment of interest by firm to its non-resident partner. Therefore, tax has to be deducted under section 195 @ 30%, being the rate in force in respect of Interest on capital paid to Mr. Abhinav.

As per section 10(2A), share of profit received by partner from the total income of firm is exempt from tax. Therefore, the share of profit paid to non-resident Indian is not liable for tax deduction at source.

However, section 195(6) provides that the person responsible for paying any sum, whether or not chargeable to tax, to a non-corporate non-resident or to a foreign company shall be required to furnish the information relating to payment of such sum in the prescribed form and manner.

(iii) The CBDT has, vide Circular No.7/2007 dated 23.10.2007, laid down the procedure for refund of tax deducted at source under section 195 of the Income-tax Act, 1961 to the person deducting tax at source from the payment to a non-resident. The said Circular allowed refund to the person making payment under section 195, *inter alia*, when there occurs payment of tax at a higher rate under the Income-tax Act, 1961 while a lower rate is prescribed in the relevant double taxation avoidance treaty entered into by India.

Hence, M/s Lotus & Co., India can claim tax refund of excess tax deducted at source under section 195 where tax has been deducted at source at the rate of 30% provided under the Income-tax Act, 1961 while a lower rate i.e., 10% is prescribed under the DTAA with Country 'X'.

3. Computation of Total Income of Mr. Abhinav for A.Y. 2019-20

Particulars	INR	INR	INR
<u>Profits & Gains of Business & Profession</u>			
Income from partnership firm M/s Lotus & Co., India			
- Interest on Capital *[See Note (ii)]*		5,00,000	
- Share of Profit	4,00,000		
Less: Exempt under section 10(2A)	(4,00,000)	-	
Fees for technical services received from ABC Ltd., India		10,00,000	
Fees for technical services received from Government of Country "Y" *[See Note (iii)]*		-	15,00,000
<u>Capital Gains</u> ***[See Working Note]***			
Short-term capital gain on sale of shares of -			
- PQR Pvt. Ltd.	1,500		
- Hello Pvt. Ltd	1,80,000	1,81,500	
Long- term capital gain on sale of shares of			
- PQR Pvt. Ltd.	Nil		
- Prime Pvt. Ltd.	72,500	72,500	2,54,000
<u>Income from Other Sources</u>			
Interest earned on deposits:			
- Interest earned on NRO saving deposits		4,000	
- Interest earned on fixed deposits		5,000	
- Interest on NRE savings account [Exempt u/s 10(4)(ii)] *[See Note (v)]*		-	9,000
Gross Total Income			17,63,000
Less: **Deductions under Chapter VI-A**			
<u>Deduction under section 80C</u> ***<u>[See Note (viii)]</u>***			
Life insurance premium for self and his spouse	50,000		
Term deposit [Five year term deposit]	60,000		
Repayment of housing loan borrowed for construction of residential house	-	1,10,000	
<u>Deduction under section 80D [</u>***<u>See Note (ix)]</u>***			
Health insurance of self and spouse	20,000		
Health insurance of mother	25,000	45,000	
Deduction u/s 80TTA ***[See Note (x)]***		4,000	1,59,000
Total Income			**16,04,000**

Computation of Tax Liability of Mr. Abhinav for A.Y. 2019-20

Particulars	INR	INR
Tax@10% on fee for technical services under section 115A		1,00,000
Tax@10% on long-term capital gain on sale of foreign exchange assets under section 115E[1]		7,250

Tax on balance income of INR 5,31,500 (i.e., INR 6,90,500 - INR 1,59,000)		18,800
		1,26,050
Add: Health and education cess @4%		5,042
Tax liability		**1,31,092**
Tax liability (rounded off)		**1,31,090**

Woking Note:

Computation of Capital Gain on sale of shares purchased in convertible foreign currency

Particulars	**INR**
LTCG on sale of shares of Prime Pvt. Ltd., since held for more than 24 months	
(As per the provisions of Chapter XII-A, long term capital gain, on sale of any specified asset in foreign currency, shall be calculated at flat rate of 10% without indexation. Shares of Prime Pvt. Ltd fall under the category of "specified assets")	
Sale Consideration	12,00,000
Less: Cost of Acquisition	(6,20,000)
Long term capital gain	5,80,000
Less: Exemption under section 115F	
5,80,000*10,50,000/12,00,000	(5,07,500)
Long-term capital gain as per Chapter XII-A	**72,500**
(***Note*** - Since within a period of six months after the date of transfer of a long term foreign exchange asset, Mr. Abhinav has invested part of the net consideration in any specified asset, namely shares of Cheers Pvt. Ltd., he is eligible to claim proportionate deduction as per section 115F)	
STCG on sale of shares of Hello Pvt. Ltd., since held for less than 24 months	
Sale Consideration	9,30,000
Less: Cost of Acquisition	(7,50,000)
Short term Capital Gain	1,80,000
(Provisions of Chapter XII-A are only applicable in respect of long term capital gain from transfer of foreign exchange assets.)	

Computation of Capital Gain on sale of shares of PQR Pvt. Ltd.

Particulars	INR
LTCG on sale of 1500 shares acquired on October 1, 2016	
(As per section 2(42A), share of an unlisted company, if sold after period of 24 months from the acquisition date will be considered as long-term capital asset)	
Sale Consideration [1,500 x INR 15]	22,500
Less: Cost of Acquisition [1,500 x INR 10]	(15,000)
Long term Capital Gain	**7,500**
Less: Exemption u/s 54F [since the amount invested in construction of house at Pune exceeds the net sale consideration of INR 22,500 on sale of shares, the entire capital gain would be exempt. The construction of the house in Pune was completed within the prescribed time i.e., within three years after the date of transfer]	7,500
	Nil
STCG on sale of 500 shares acquired on October 31, 2017	
Sale Consideration [500 x INR 15]	7,500
Less: Cost of Acquisition [500 x INR 12]	(6,000)
Short term Capital Gain	**1,500**

Notes:

(i) Mr. Abhinav is a person who, staying outside India, comes on a visit to India every year. Hence, the minimum period of stay in India for Mr. Abhinav to be treated as a resident is 182 days in any previous year. For A.Y.2019-20, Mr. Abhinav is a non-resident since his stay in India in the P.Y.2018-19 is less than 182 days. In case of a non-resident, only income which accrues or arises or is deemed to accrue or arise in India or is received or is deemed to be received in India is taxable in India. Income which accrues or arises outside India is not taxable in India. Rental income from property in Country 'X' received there and subsequently brought to India is not taxable in India in the hands of Mr. Abhinav, since it neither accrues to him in India nor is it received by him in India.

(ii) Interest on capital paid by the partnership firm is includible as business income in the hands of the partner, only to the extent the interest is allowed as deduction in the hands of firm. In this case, the entire interest of INR 5 lakhs is included in the income of Mr. Abhinav assuming that the same has been fully allowed as deduction in the hands of firm.

(iii) Fees for technical services received from ABC Ltd., an Indian company, would be chargeable to tax under the head "Profits and gains of business or profession" in the hands of Mr. Abhinav. Since Mr. Abhinav is a resident of a country 'X' with which India has no DTAA, such fees for technical services would be taxable @10% as per section 115A.
However, fees for technical services received in foreign currency by Mr. Abhinav from the Government of Country "Y" would not be taxable in India, since such income has neither accrued in India nor is the same received in India.

(iv) As per section 9(1)(v)(c), interest payable by a non-resident would be deemed to accrue or arise in India, where the interest is payable on any debt incurred, or money borrowed and used, for the purpose of a business or profession carried on by such non-resident in India. In the present case, Mr. George, a non-resident had purchased bonds of MNO Ltd., an Indian company out of the money borrowed. Consequently, the interest received by Mr. Abhinav in foreign currency equivalent to INR 1,95,000 will not be taxable in India, since such interest is neither received nor is it deemed to accrue or arise in India. Mr. George is a non-resident in India for A.Y.2019-20 since his stay in India during the P.Y.2018-19 is only 36 days.

(v) As per section 10(4)(ii), in case of an individual, any income by way of interest on moneys standing to his credit in Non-resident External Account (NRE A/c) would be exempt, provided the individual is a person resident outside India, as defined in Foreign Exchange Management Act (FEMA), 1999. Here, it is assumed that Mr. Abhinav qualifies to be person resident outside India as per FEMA, 1999 and hence, interest of INR 9,000 from NRE A/c is exempt from tax in his hands.

(vi) Transfer outside India of Rupee denominated bonds of an Indian company issued outside India and Government Securities through an intermediary dealing settlement of securities by Mr. Abhinav, a non-resident, to Mr. Thomas, another non-resident, would not be regarded as a transfer under section 47 for levy of capital gains tax. Thomas is a non-resident since he has stayed in India only for 100 days in the P.Y.2018-19. Being a citizen of India residing in Country "X", he has to come and stay in India for atleast 182 days in a year to be treated as a resident.

(vii) As per section 64(1A), all income accruing to minor child is includible in the hands of the parent, whose total income before including minor's income is higher, after providing deduction of INR 1,500 per child under section 10(32). However, if minor child has earned the income because of his skill or talent then it will not be included in the hand of parents. Hence, income generated by Mr. Abhinav's minor son, Kapil, by winning Science Olympiad shall not be clubbed with Mr. Abhinav's income.

(viii) Under section 80C, deduction is allowed for life insurance premium paid for self or spouse or any child, even though such premium is paid outside India. It is assumed that the annual premium is not more than 10% of actual capital sum assured. However, deduction in respect of tuition fees paid by individual to any university, college, school or other educational institution for full time education of his two children would be allowed only if, such institution is situated in India. Thus, payment for life insurance premium paid by Mr. Abhinav is fully allowable as deduction but no deduction would be allowed for annual tuition fees, since it is for education abroad. Further, no deduction is allowable under section 80C for A.Y.2019-20 in respect of repayment of housing loan, since the property in Pune is under-construction and no amount is chargeable to tax as income from house property, during the previous year 2018 -19.

(ix) Mr. Abhinav is eligible for deduction of INR 20,000 in respect of health insurance premium of self and spouse, since the same is less than INR 25,000. He is also eligible for deduction in respect of premium paid for insuring the health of his mother, subject to a maximum of INR 25,000. However, he would not be eligible for claiming higher deduction of upto INR 50,000 under section 80D, as applicable to senior citizen, for the insurance on the health of his mother, since she is non-resident. Further, he is not eligible for any deduction in respect of the premium paid to insure the health of his sister, Ms. Geetha, since sister is not included within the definition of "family".

(x) As per section 80TTA, deduction in respect of interest earned on savings deposits with a bank, co-operative society carrying on the business of banking or post office is allowed to the extent of INR 10,000. Mr. Abhinav can, therefore, claim deduction u/s 80TTA on account of NRO saving bank interest of INR 4,000. However, no deduction is allowed on interest earned on time deposits.

Therefore, interest earned on fixed deposits by Mr. Abhinav shall not be eligible for deduction under section 80TTA.