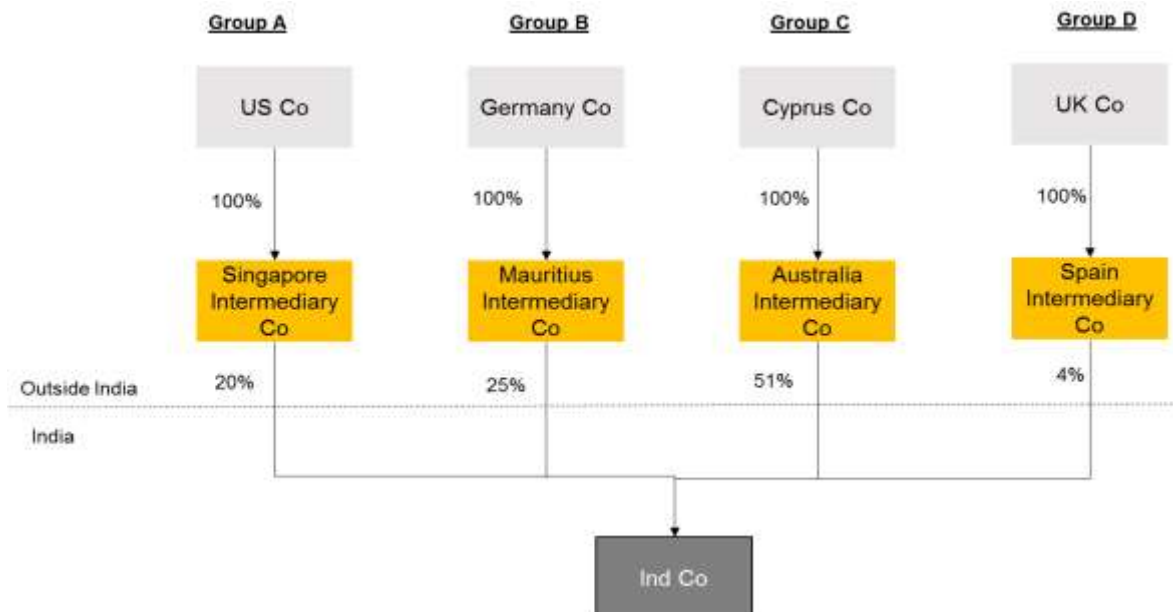


Attempt any two out of three case study based questions.

Each case study carries 50 Marks.

### CASE STUDY -1

Ind Co is an unlisted, private limited, Indian company incorporated under the Companies Act, 1956 and is engaged in the business of the manufacturing of automobile components. Ind Co is held by 4 groups of shareholders (Groups A, B, C and D) in different proportions. Groups A, B, C and D are headquartered in US, Germany, Cyprus and UK respectively. However, these headquarter companies do not hold shares of Ind Co directly, but hold the shares through intermediary companies in Singapore, Mauritius, Australia, Spain respectively, as depicted in the shareholding pattern below:



The date of acquisition of shares by each of the Groups is given below:

Date of acquisition			
Group A	Group B	Group C	Group D
Date of acquisition by US Co in Singapore Intermediary Co - 1 April 2013	Date of acquisition by Germany Co in Mauritius Intermediary Co - 1 April 2013	Date of acquisition by Cyprus Co in Australia Intermediary Co - 1 April 2013	Date of acquisition by UK Co in Spain Intermediary Co - 1 April 2013

Date of acquisition by Singapore Intermediary Co in Ind Co - 1 March 2018	Date of acquisition by Mauritius Intermediary Co in Ind Co -1 April 2013	Date of acquisition by Australia Intermediary Co in Ind Co - 1 April 2013	Date of acquisition by Spain Intermediary Co in Ind Co - 1 April 2013
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Each of the Groups are now proposing to restructure their shareholding in Ind Co. Alternatively, they are also considering the proposal of exiting from Ind Co by transferring their stake to a buyer to be identified. The restructuring/ exit is proposed to be undertaken on 31 May 2019 by each of the Groups.

The last accounting year end (for the purpose of complying with the tax laws of the territory) for each of the entities and their respective book values of assets as on such date are provided below:

Group A	Group B	Group C	Group D
US Co – 31 December 2018	Germany Co – 31 March 2019	Cyprus Co – 31 March 2019	UK Co - 31 March 2019
Book value – INR 500 crores	Book value – INR 200 crores	Book value – INR 100 crores	Book value – INR 100 crores
Singapore Intermediary Co – 30 June 2018	Mauritius Intermediary – 31 December 2018	Australia Intermediary Co – 31 December 2018	Spain Intermediary Co - 31 March 2019
Book value – INR 25 crores	Book value – INR 25 crores	Book value – INR 100 crores	Book value – INR 7 crores

Ind Co follows 1 April - 31 March as the Financial Year and the book value of assets of Ind Co as on 31 March 2019 was INR 100 crores.

The book values of assets (after reduction of liabilities), fair market values of assets (after reduction of liabilities) and liabilities of some of the entities as on 31 May 2019 (i.e., date of transfer) is as below:

Particulars	Book value (INR crores)	Fair market value (INR crores)	Liabilities (INR crores)
<b>Group A</b>			
US Co	550	1000	100
Singapore Intermediary Co	30	50	0
<b>Group B</b>			
Germany Co	200	500	50
Mauritius Intermediary Co	30	60	0
<b>Group C</b>			
Cyprus Co	100	400	0
Australia Intermediary Co	120	300	0
<b>Group D</b>			
UK Co	120	150	50
Spain Intermediary Co	7	12	0
<b>Ind Co</b>	<b>110</b>	<b>180</b>	<b>20</b>

Groups A, B, C and D hold no other shares or assets in India other than investment in shares of Ind Co.

**Note:** Assume the fair market value and liability of all the companies as on 31.3.2019 is same as it is on 31.05.2019

#### I. MULTIPLE CHOICE QUESTIONS

**Write the most appropriate option to each of the following questions by choosing one of the four options given. Each question carries two marks.**

- The provisions relating to taxation of indirect transfer of shares of an Indian company were introduced *vide* Finance Act, 2012, as a consequence of which of the following decisions of the Supreme Court -
  - McDowell & Co. Ltd. v. CTO
  - Vodafone International Holdings B.V. vs. UOI
  - Union Of India vs Azadi Bachao Andolan
  - CIT Vs Yokogawa India Limited
- Based on the facts in the case, where US Co proposes to transfer shares of Singapore Intermediary Co, which of the following Double Taxation Avoidance Agreements ('DTAA'), would be applicable for analysing the taxability in the hands of US Co in India -
  - US-Singapore DTAA
  - India- Singapore DTAA
  - India-US DTAA
  - None of the DTAA's are applicable

3. With respect to transfer of shares of Singapore Intermediary Co by US Co, which of the following would be the 'specified date' for the purpose of determining whether such shares derive its value substantially from assets located in India:

- (a) 30<sup>th</sup> June 2018
- (b) 31<sup>st</sup> December 2018
- (c) 31<sup>st</sup> March 2019
- (d) 31<sup>st</sup> May 2019

4. Assuming the transfer of shares of Singapore Intermediary Co by US Co is taxable in India and ignoring DTAA provisions, if any, what would be the rate of tax on the gains arising from such transfer:

- (a) 10%
- (b) 20%
- (c) 30%
- (d) 40%

*(Note – The above tax rates are excluding cess and surcharge, if any)*

5. With respect to transfer of shares of Mauritius Intermediary Co by Germany Co, what would be the value of 'assets located in India' –

- (a) INR 27.5 crores
- (b) INR 32.5 crores
- (c) INR 45 crores
- (d) INR 50 crores

6. Which of the following incomes is not deemed to accrue or arise in India under section 9(1)(i) of the Income-tax Act, 1961?

- (a) Income from any business connection in India
- (b) Income through or from any property in India
- (c) Income arising from transfer of a capital asset situated in India
- (d) Income relating to operations which are confined to purchase of goods in India for the purpose of export

7. Ind Co is required to report details with respect to transfer of shares of Singapore Intermediary Co by US Co in which of the following forms-

- (a) Form 3CEA
- (b) Form 3CT
- (c) Form 49D
- (d) There is no reporting requirement on Ind Co and reporting requirement applies only on Singapore Intermediary Co.

8. What is the timeline within which Ind Co is required to furnish information pertaining to transfer of shares of Mauritius Intermediary Co by Germany Co if the transaction has the effect of directly or indirectly transferring rights and management of Ind Co -
- (a) Within the due date for filing return of income for the year in which the transfer has taken place
  - (b) Within 90 days from the date of the transaction
  - (c) Within 90 days from the end of the Financial Year in which such transfer has taken place
  - (d) There is no requirement on Ind Co to furnish information
9. What are the penal consequences on Ind Co if it fails to furnish information pertaining to transfer of shares of Mauritius Intermediary Co by Germany Co if the transaction has the effect of directly or indirectly transferring rights and management of Ind Co -
- (a) INR 100,000
  - (b) INR 500,000
  - (c) 2% of the value of the transaction in respect of which there is a failure to report
  - (d) There is no requirement on Ind Co to furnish information
10. The fair market value of an unlisted share, held directly or indirectly by a company or an entity registered or incorporated outside India, for the purposes of section 9 (1)(i), shall be computed in accordance with which of the following methods -
- (a) Net asset value, as certified by a Chartered Accountant
  - (b) Discounted Cash Flow method, as certified by a Chartered Accountant, as increased by liabilities, if any, considered in such valuation
  - (c) Any internationally accepted valuation methodology for valuation of shares on arm's length basis, as determined by a merchant banker or a Chartered Accountant, as increased by liabilities, if any, considered in such valuation
  - (d) Fair market value of all assets of the company computed on an arm's length basis, as certified by a Chartered Accountant

## II. **DESCRIPTIVE QUESTIONS**

1. Examine the tax consequences of the following transactions under section 9(1)(i) of the Income-tax Act, 1961 and the applicable Double Taxation Avoidance Agreements -
- a. Transfer of shares of Singapore Intermediary Co by US Co to an unrelated Buyer **(4 Marks)**
  - b. Transfer of shares of Mauritius Intermediary Co by Germany Co to an unrelated Buyer **(4 Marks)**
  - c. Transfer of shares of Australia Intermediary Co by Cyprus Co to an unrelated Buyer **(3 Marks)**

d. Transfer of shares of Spain Intermediary Co by UK Co to an unrelated Buyer

**(4 Marks)**

2. (i) Compute the capital gains chargeable to tax in India in the hands of US Co from transfer of shares of Singapore Intermediary Co to an unrelated Buyer for INR 50 crores and the tax applicable on such capital gains. Also comment on whether the capital gains would be long-term capital gains or short-term capital gains.

US Co had acquire shares of Singapore Intermediary Co for INR 10 crores.

**(5 Marks)**

- (ii) As an alternative, Group A is also evaluating the option of transferring shares held by Singapore Intermediary Co in Ind Co to an unrelated Buyer for a consideration of INR 45 crores. Singapore Intermediary Co had acquire shares of Ind Co for INR 5 crores. Evaluate the capital gains chargeable to tax in India considering the provisions of the Income-tax Act, 1961 and the applicable DTAA.

**(4 Marks)**

- (iii) As an alternative to the (i) and (ii) above, if proposal of corporate restructuring is considered instead of exit proposal, Group A is evaluating the option of amalgamating US Co with another group company in US (US Co 2) as a result of which shares of Singapore Intermediary Co would be transferred to US Co 2. What are the conditions under which such transfer of shares of Singapore Intermediary Co to US Co 2 be exempt from capital gains tax in India? If the US Co has more than one undertaking, what is other option, if any, available with US Co to transfer shares of Singapore Intermediary Co by way of corporate restructuring without attracting income-tax in India?

**(6 Marks)**

#### **EXHIBIT I**

#### **EXTRACTS OF ARTICLE ON CAPITAL GAINS FROM DOUBLE TAXATION AVOIDANCE AGREEMENTS**

#### **India-US DTAA**

#### **“ARTICLE 13 - GAINS**

Except as provided in Article 8 (Shipping and Air Transport) of this Convention, each Contracting State may tax capital gains in accordance with the provisions of its domestic law.”

#### **India- Singapore DTAA**

#### **“ARTICLE 13 – CAPITAL GAINS**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in Article 6, and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed

base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.
- 4A. Gains from the alienation of shares acquired before 1 April 2017 in a company which is a resident of a Contracting State shall be taxable only in the Contracting State in which the alienator is a resident.
- 4B. Gains 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 taxed in that State.
- 4C. However, the gains referred to in paragraph 4B of this Article which arise during the period beginning on 1 April 2017 and ending on 31 March 2019 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.
5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4A and 4B of this Article shall be taxable only in the Contracting State of which the alienator is a resident.”

### **Germany-Mauritius DTAA**

#### **“ARTICLE 13 – CAPITAL GAINS**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. Gains derived by a resident of a Contracting State from the alienation of shares, participation, or other rights in the capital of a company or an interest in a partnership which is a resident of the other Contracting State may be taxed in that other Contracting State.
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.
6. Where an individual who was a resident of a Contracting State for a period of 5 years or more has become a resident of the other Contracting State, paragraph 5 shall not prevent the first -mentioned State from taxing under its domestic law

the capital appreciation of shares in a company resident in the first-mentioned State for the period of residency of that individual in the first -mentioned State. In such case, the appreciation of capital taxed in the first-mentioned State shall not be included in the determination of the subsequent appreciation of capital by the other State.”

#### **India-Germany DTAA**

##### **“ARTICLE 13 – CAPITAL GAINS**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. Gains from the alienation of shares in a company which is a resident of a Contracting State may be taxed in that State.
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.”

#### **India-Mauritius DTAA**

##### **“ARTICLE 13 – CAPITAL GAINS**

1. Gains from the alienation of immovable property, as defined in paragraph (2) of article 6, may be taxed in the Contracting State in which such property is situated.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in that other State.
3. Notwithstanding the provisions of paragraph (2) of this article, gains from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.



- 3A. Gains from the alienation of shares acquired on or after 1st April 2017 in a company which is resident of a Contracting State may be taxed in that State.
- 3B. However, the tax rate on the gains referred to in paragraph 3A of this Article and arising during the period beginning on 1st April, 2017 and ending on 31<sup>st</sup> March, 2019 shall not exceed 50% of the tax rate applicable on such gains in the State of residence of the company whose shares are being alienated;
4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 3A shall be taxable only in the Contracting State of which the alienator is a resident.
5. For the purposes of this article, the term "alienation" means the sale, exchange, transfer, or relinquishment of the property or the extinguishment of any rights therein or the compulsory acquisition thereof under any law in force in the respective Contracting States.

### **India-Cyprus DTAA**

#### **"ARTICLE 13 – CAPITAL GAINS**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.
4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.
5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.
6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5, shall be taxable only in the Contracting State of which the alienator is a resident."

### **India-Australia DTAA**

#### **"Article 13 – Alienation of Property**

1. Income or gains derived by a resident of one of the Contracting States from the alienation of real property referred to in Article 6 and, as provided in that Article, situated in the other Contracting State may be taxed in that other State.

2. Income or gains derived from the alienation of property, other than real property referred to in Article 6, that forms part of the business property of a permanent establishment which an enterprise of one of the Contracting States has in the other Contracting State or pertains to a fixed base available to a resident of the first-mentioned State in that other State for the purpose of performing independent personal services, including income or gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State.
3. Income or gains derived from the alienation of ships or aircraft operated in international traffic, or of property other than real property referred to in Article 6 pertaining to the operation of those ships or aircraft, shall be taxable only in the Contracting State of which the enterprise which operated those ships or aircraft is a resident.
4. Income or gains derived from the alienation of shares or comparable interests in a company, the assets of which consist wholly or principally of real property referred to in Article 6 and, as provided in that Article, situated in one of the Contracting States, may be taxed in that State.
5. Income or gains derived from the alienation of shares or comparable interests in a company, other than those referred to in paragraph (4), may be taxed in the Contracting State of which the company is a resident.
6. Nothing in this Agreement affects the application of a law of a Contracting State relating to the taxation of gains of a capital nature derived from the alienation of property other than that to which any of paragraphs (1), (2), (3), (4) and (5) apply.”

#### **UK-Spain DTAA**

##### **“Article 13 – Capital Gains**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) may be taxed in that other Contracting State.
3. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic by an enterprise of that State or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.
4. Gains derived by a resident of a Contracting State from the alienation of shares, other than shares in which there is substantial and regular trading on a Stock Exchange, or comparable interests, deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.
5. Gains from the alienation of shares or other rights, which directly or indirectly entitle the owner of such shares or rights to the enjoyment of immovable property situated in a Contracting State, may be taxed in that State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.”

#### **India-UK DTAA**

##### **“Article 14- Capital Gains**

1. Except as provided in Article 8 (Air Transport) and 9 (Shipping) of this Convention, each Contracting State may tax capital gains in accordance with the provisions of its domestic law.”

#### **India-Spain DTAA**

##### **“Article 14 – Capital Gains**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in Article 6, and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic or of movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.
4. Gains from the alienation of shares of the capital stock of a company the property of which consists, directly or indirectly, principally of immovable property situated in a Contracting State may be taxed in that State.
5. Gains for the alienation of shares of the capital stock of a company forming part of a participation of at least 10 per cent in a company which is a resident of a Contracting State may be taxed in that Contracting State.
6. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.”

## **CASE STUDY -2**

### **Introduction:**

Trikal Cement Ltd. (TCL) is an Indian company, having its head office at Vishakhapatnam. The company operates a SEZ unit as well as several DTA units. TCL is the flagship company in the group and the group has a foreign subsidiary D Inc.

You are the CFO with CA background, handling all taxation matters.

## Meeting of the Board of Directors

An important Board meeting is scheduled on 25<sup>th</sup> May, 2019. The current date is 20<sup>th</sup> May, 2019. In this meeting, some important decisions are proposed to be taken, some of them having repercussions associated with Indian and international taxation.

## Background of the business activities

TCL supplies goods to Shine Ltd. (SL), in Sri Lanka. The paid-up capital of SL in INR equivalent is Rs.50 crores. TCL holds to the tune of Rs.14 crores in the same.

TCL supplies goods to Grew Solid Ltd. (GSL), in Singapore. The paid-up capital of GSL in INR equivalent is Rs.80 crores. TCL holds to the tune of Rs.18 crores in GSL.

The voting power in both the companies is directly proportional to the number of shares held.

## Royalty receipts

D Inc., is currently paying a royalty of 2 millions 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 USD 3 millions. (1 USD = Rs. 70)

## Export sales data

Export sales are made from the SEZ unit of TCL.

Manager of Exports Division has furnished the following data pertaining to export sales of identical goods made during the year ended 31-3-2019:

Name of the party	Qty in MT	CIF Rate per MT (Rs.)
SL	8,00,000	11,800
GSL	5,00,000	12,000
XY Inc.	3,00,000	11,900
AB LLC.	2,00,000	11,700

XY Inc and AB LLC are unrelated third parties, located in notified jurisdictional areas.

## External borrowings

TCL has borrowed a sum of equivalent of Rs.200 crores from Danubes Inc., Dubai on 12-4-2018. On this date, the assets position of TCL was as under:

	(In Rs. Crores)	
Type of assets	Market value	Book value
Tangible fixed assets	350	270
Intangible assets	30	25
Other assets	40	35

Danubes Inc., has charged interest at 8% and TCL has paid interest of Rs.16 crores for the year ended 31-3- 2019. Though the normal lending rate of Danubes Inc. was 7% per annum to other parties, in view of the urgent requirement of funds and pressing financial commitments, TCL decided to borrow this amount then.

### I. **MULTIPLE CHOICE QUESTIONS**

**Write the most appropriate option to each of the following questions by choosing one of the four options given. Each question carries two marks.**

- Assume that TCL has entered into an Advance Pricing Agreement (APA) on 2nd Jan., 2019, covering transactions for the period starting from 1<sup>st</sup> April, 2017. This was submitted to the Department on 19<sup>th</sup> Jan., 2019. The Annual Compliance Report for the assessment year 2018-19 shall be furnished within:
  - 60 days from 19<sup>th</sup> Jan., 2019
  - 90 days from 19<sup>th</sup> Jan., 2019
  - 90 days from 2<sup>nd</sup> Jan., 2019
  - 30 days from 30<sup>th</sup> Nov., 2018
- Associated enterprise refers to an enterprise which participates, directly or indirectly, or through one or more intermediaries, in, or if one or more persons participates, directly or indirectly, or through one or more intermediaries in certain areas/spheres. Following is not a connected area or sphere:
  - Management of the two different enterprises.
  - Control of two different enterprises.
  - Capital of two different enterprises.
  - Dividend distribution policy of the two different enterprises.
- Assume that TCL has entered into an agreement for sale of a product to Mr. Kashyap on 21-1-2019, who has an agreement with Deep Inc., of Singapore, in which TCL holds 40% of the share capital. The transaction between TCL and Mr. Kashyap will be deemed to be international transaction for transfer pricing purposes (if the other parameters are met),
  - Whether Kashyap is a resident or non-resident;
  - If Kashyap is a non-resident;
  - If Kashyap is a resident;
  - Will not be deemed to be international transaction at all.

4. Which of the following is not a transfer pricing method specified u/s 92C for computation of the ALP?
- (a) Resale price method
  - (b) Uncontrolled profit method
  - (c) Cost plus method
  - (d) Profit split method
5. Variation permitted between the actual price charged by an assessee, being a manufacturer, to an associated enterprise in a Notified Jurisdictional Area (NJA) and the Arm's Length Price (ALP) is
- (a) 3%
  - (b) 5%
  - (c) 7.5%
  - (d) Nil
6. The applicant desiring roll back of the APA may furnish the request for rollback provision in Form No. \_\_\_\_\_ with proof of payment of an additional fee of \_\_\_\_\_.
- (a) 3CEDA; Rs.1 lakh
  - (b) 3CEDA; Rs.5 lakh
  - (c) 3CED; Rs.2 lakh
  - (d) 3CED; Rs.3 lakh
7. In the context of transfer pricing provisions entered into by TCL, international transaction should be in the nature of
- (i) Purchase, sale or lease of tangible or intangible property
  - (ii) Provision of service
  - (iii) Lending or borrowing money
- (a) Transaction specified in (i) or (ii) above with an associated enterprise whether resident or non- resident
  - (b) Transaction specified in (i) or (ii) above with a non-resident associated enterprise
  - (c) Transaction specified in (i) or (ii) or (iii) above with an associated enterprise whether resident or non-resident
  - (d) Transaction specified in (i) or (ii) or (iii) above with a non-resident associated enterprise
8. The OECD member countries have accepted the concept of Arm's Length Price (ALP) for reaping the following benefit:
- (a) Minimises double taxation;
  - (b) Real taxable profits can be determined;
  - (c) Artificial price distortion is reduced;
  - (d) All the three above.

9. Which of the following transactions fall within the meaning of specified domestic transaction under section 92BA?
- (i) any transaction referred to in section 80-A
  - (ii) any transfer of goods and services between eligible business u/s 80-IA and any other business at a price not corresponding to the market value
  - (iii) any expenditure in respect of which payment is made to a related person referred to in section 40A(2)(b)
- (a) Only (i) above  
(b) (i) and (ii) above  
(c) (i) and (iii) above  
(d) (i), (ii) and (iii)
10. Where TCL has maintained proper records and documents, and the TPO has made some adjustments to the ALP, thereby increasing the total income by Rs.1 crore, the penalty leviable u/s 270A will be \_\_\_\_\_
- (a) Nil  
(b) 50% of amount of tax payable on under-reported income  
(c) 200% of amount of tax payable on under-reported income  
(d) amount equal to tax payable on under-reported income

## II. DESCRIPTIVE QUESTIONS

1. State with reasons the correctness or otherwise of following statements.
- (i) An Advance Pricing Agreement (APA) entered into by the assessee cannot be revised by the CBDT suo moto, but only upon an application made by the assessee for such revision. **(2 Marks)**
  - (ii) Under Rule 10MA(2)(ii), there is a condition that the return of income for the relevant roll back year has been or is furnished by the applicant before the due date specified in Explanation 2 to section 139(1). Hence the applicants who have filed returns under section 139(4) or 139(5) of the Act would not be eligible for roll back of the APA. **(4 Marks)**
  - (iii) Where the total income of TCL is computed by the Assessing Officer applying the provisions of section 115JB, then adjustments made on account of transfer pricing provisions will not have any impact while computing the book profits under section 115JB. Assume that TCL is a company which is not required to comply with the Indian Accounting Standards.  
  
Would your answer change if TCL is required to comply with Ind AS?  
  
**(4 Marks)**
2. The Board of Directors want to know the income likely to be computed by the Assessing Officer, taking note of the adjustments under transfer pricing provisions. The profits of TCL computed without taking note of said adjustments, as per the provisions of Chapter IV -D of the Act is Rs.32.2 crores. Assume that there is no Advance Pricing Agreement and TCL has opted not to be subjected to Safe Harbour Rules. You are required to examine the various transactions entered into by TCL and determine the applicability of transfer pricing provisions for each transaction.

**(18 Marks)**

3. State with reason, whether TCL can claim deduction under section 10AA in respect of the transfer pricing adjustment made in respect of the export sales, if such adjustments to transfer pricing are made by the Assessing Officer. **(2 Marks)**

### **CASE STUDY -3**

Mr. Abhinav, a citizen of India, aged 48 years, for the first time, moved for employment purpose to Country "X", a country outside India, on 1<sup>st</sup> September, 2014. He was employed with a consulting firm in Country "X". Since then, he has visited India during the P.Y.2014 -15, 2015-16, 2016-17, 2017-18, 2018-19 for 30 days, 50 days, 50 days, 170 days and 150 days, respectively, for both personal and professional purposes. His family comprises of himself, his spouse Mrs. Archana (aged 45 years); his mother, Mrs. Kamala (aged 81 years); and his two sons, Rohan and Kapil, aged 19 years and 15 years, respectively. In addition, Mr. Abhinav's unmarried sister Ms.Geetha, aged 42 years, is living with his family in Country "X" since September, 2014. Ms. Geetha and Mrs. Kamala have been visiting India during the P.Y.2014 -15, 2015-16, 2016-17, 2017-18, 2018-19 for 50 days, 50 days, 120 days, 150 days and 150 days, respectively.

In the year 2017-18, Mr. Abhinav resigned from his job and started his own consultancy in Country "X" for providing technical services. He entered into an agreement with ABC Ltd, an Indian company, on 01.06.2017 and pursuant to the agreement, Fees for Technical Services (FTS) of INR 10,00,000, is payable to Mr. Abhinav every year for a period of five years. The agreement is approved by the Central Government. Mr. Abhinav also entered into an agreement with the Government of Country "Y" for provision of technical services for a period of three years. The FTS payable to Mr. Abhinav every year for a period of three years under this agreement in foreign currency is equivalent to INR 15,00,000.

During the previous year 2017-18, Mr. Abhinav became partner in a partnership firm M/s Lotus & Co., India and contributed INR 50 lakhs towards capital. He was paid interest @10% as interest on capital and profit share of INR 4 lakhs every year by the firm.

His friend Mr. George, a citizen and resident of Country "X", borrowed money from Mr. Abhinav and invested the same in bonds issued by MNO Ltd., an Indian Company in April, 2018. Mr. George visited India during the P.Y.2018-19 for the period from 10<sup>th</sup> April, 2018 to 15<sup>th</sup> May, 2018. During the previous year 2018-19, interest on borrowings in foreign currency equivalent to INR 1,95,000 was paid by Mr. George to Mr. Abhinav in his bank account in Country "X".

Mr. Abhinav also earned income of foreign currency equivalent to INR 3,00,000 from his house property in Country 'X' deposited in an Indian Bank at Country 'X' and subsequently brought to India. Also, he had paid property tax of foreign currency equivalent to INR 3,000 on the said property. During the previous year 2018-19, the rental income earned was invested in deposits in India in the ratio of 30:20:50 in NRO savings account, 5 year fixed deposits and NRE savings account. Interest earned on such deposits is INR 4,000, 5,000 and 9,000, respectively.

On 30.06.2018, he sold shares of Prime Pvt. Ltd., India for INR 12,00,000 and of Hello Pvt. Ltd., India for INR 9,30,000 net of transfer expenses. These shares were purchased by him in convertible foreign currency on 01.12.2015 at a cost of INR 6,20,000 and on 01.01.2018 at a cost of INR 7,50,000 respectively. On 31.10.2018, he invested the sale proceeds of INR 10,50,000 in purchase of shares of Cheers Pvt. Ltd., India.



Further, on 01.12.2018, Mr. Abhinav sold 2000 shares of PQR Pvt. Ltd., India, for INR 15 each. 1500 of such shares were acquired on 01.10.2016 @ INR 10 each and 500 shares were acquired on 31.10.2017 @ INR 12 each.

In April, 2018, he had taken a loan of INR 50 lakhs @10% from SBI for construction of residential house in Pune. The construction is completed in May, 2019. He prepaid INR 3 lakhs in March, 2019 to the bank.

He had also purchased the following capital assets in April, 2018 and he transferred the same outside India to Mr. Thomas, a resident of Country "X", in March, 2019 –

- Rupee Denominated Bonds of INR 1,00,000 of LMN Ltd., an Indian Company, issued outside India, for INR 2,00,000.

- Government Securities of INR 1,00,000 through an intermediary dealing in settlement of securities, for INR 1,50,000

Mr. Thomas, a citizen of India, visits India for 100 days every year.

Mrs. Archana, a painter by profession, earned income of INR 3,00,000 from exhibition conducted in Mumbai. Rohan and Kapil are pursuing education in Country 'X'. Mr. Abhinav paid foreign currency equivalent to INR 60,000 to Cathedral School, Country 'X,' towards their annual tuition fees. Kapil won an excellence award of INR 25,000 at the Science Olympiad held in Mumbai in February, 2019.

Mr. Abhinav paid foreign currency equivalent to INR 50,000 to an Insurance Company in Country 'X' towards life insurance premium to insure his life and life of Mrs. Archana. Mr. Abhinav has also paid INR 20,000 to New India Assurance Company, India, for health insurance of himself and Mrs. Archana, INR 35,000 to insure health of Mrs. Kamala and INR 25,000 to insure the health of Ms. Geetha.

## I. MULTIPLE CHOICE QUESTIONS

**Write the most appropriate option to each of the following questions by choosing one of the four options given. Each question carries two marks.**

1. Based on the above facts, Mr. Abhinav's residential status in India for P.Y.2018 -19 and P.Y.2014-15 is -
  - (a) Non-resident for both the years
  - (b) Non-resident for P.Y.2018-19 and Resident but not ordinarily resident for P.Y.2014-15
  - (c) Resident but not ordinarily resident for P.Y.2018-19 and Resident for P.Y.2014-15
  - (d) Non-resident for P.Y.2018-19 and Resident and ordinarily resident for P.Y.2014-15.

*(Note – Assume that the rules for determining residential status for A.Y.2015 -16 were the same as it is for A.Y.2019-20)*

2. Which of the following benefits are not allowable to Ms. Geetha, while computing her total income and tax liability for A.Y.2019-20 under the Income-tax Act, 1961?

- (a) Deduction of 30% of gross annual value while computing her income from house property in Bangalore, India
  - (b) Tax rebate of INR 2,500 from tax payable on her total income of INR 3,40,000
  - (c) Deduction for donation made by her to Prime Minister's National Relief Fund
  - (d) Deduction for interest earned by her on NRO savings account.
3. Unexhausted basic exemption limit, if any, of Mr. Thomas, for A.Y.2019-20 can be adjusted against –
- (a) Only LTCG taxable@20%
  - (b) Only STCG taxable@15%
  - (c) Both (a) and (b)
  - (d) Neither (a) nor (b)
4. Had Ms. Geetha been seconded on employment outside India by the Indian Government, which of the following emoluments paid to her by the Indian Government shall be taxable under the Income-tax Act, 1961:
- (a) Basic Salary paid outside India
  - (b) Allowances and Perquisites paid outside India
  - (c) Both (a) and (b), since emoluments are paid to her by the Indian Government
  - (d) Neither (a) nor (b), since she has rendered services outside India
5. Ms. Geetha is an enthusiastic sports person and is keen on contributing an article on a game of Soccer in a leading newspaper in India. She approaches you to enquire on taxability of such income for A.Y.2019-20. As per the provisions of Income-tax Act, 1961, such income shall be taxable in her hands at -
- (a) 5%
  - (b) 10%
  - (c) 20%
  - (d) Normal tax slab rates

**(Note – The above tax rates are excluding cess and surcharge, if any)**

6. Ms. Geetha shall be mandatorily required to file return of income in India for A.Y.2019-20, -
- (a) if she holds assets outside India even though she does not have taxable income in India
  - (b) if she has income exceeding the basic exemption limit but after taking into account deduction under Chapter VI-A, her income falls below the basic exemption limit
  - (c) if she has income, without giving effect to deduction under Chapter VI-A, below the basic exemption limit and tax credit appearing in Form 26AS, in respect of which she does not wish to claim the refund
  - (d) in all the above situations
7. In December, 2015, Ms. Geetha bought, in foreign currency, 500 Global Depository Receipts of PQR Ltd, an Indian Company, which were issued in accordance with the notified scheme of the Central Government. In January, 2019, she sold 300 GDRs outside India to Mr. Frank, a citizen and resident of Country 'X' and 200 GDRs to

Mr. Kamal, a Resident but not ordinarily resident in India. Comment on the tax consequences of such sale transaction under the Income-tax Act, 1961 –

- (a) Capital gains arising on sale of 500 GDRs shall be subject to tax @20% with indexation benefit in India
  - (b) No capital gains would arise on sale of 500 GDRs in India, since the GDRs are purchased in foreign currency
  - (c) No capital gains would arise on sale of 300 GDRs, but capital gains arising on sale of 200 GDRs shall be taxed in India @10% without indexation benefit
  - (d) No capital gains would arise on sale of 300 GDRs, but capital gains arising on sale of 200 GDRs shall be taxed @20% with indexation benefit in India
8. Benefit of presumptive taxation under the Income-tax Act, 1961 would not be available to Mr. George for A.Y.2019-20, in respect of the related Indian income, if he is engaged in the business of -
- (a) Operation of Ships
  - (b) Operation of Aircrafts
  - (c) Civil Construction in connection with an approved turnkey power project
  - (d) Plying, hiring or leasing of goods carriages.
9. Interest income earned by Mr. George during the P.Y.2018 -19 on bonds, issued by MNO Ltd., an Indian company, under a scheme notified by the Central Government, which were purchased by him in convertible foreign currency, is -
- (a) taxable@10%
  - (b) taxable@15%
  - (c) taxable@20%
  - (d) not taxable

*(Note – The above tax rates are excluding cess and surcharge, if any)*

10. An agent, in relation to income which is deemed to accrue or arise in India to a non-resident, is considered as a representative assessee. However, an agent, in relation to a non-resident person does not include -
- (a) An employee in India of the non-resident
  - (b) A trustee in India of the non-resident
  - (c) A broker in India dealing with the non-resident person only through a non-resident broker, where both non-residents carry on transactions in the ordinary course of business
  - (d) A person in India having business connection with the non-resident

## II. DESCRIPTIVE QUESTIONS

1. (i) Examine the tax consequence of fees for technical services (FTS) received by Mr. Abhinav, a resident of Country "X", from ABC Ltd. for Assessment Year 2019-20, if India has no Double Tax Avoidance Agreement (DTAA) with Country "X"  
India has a DTAA with Country "X", which provides for taxation of such FTS @5%.  
India has a DTAA with Country "X", which provides for taxation of such FTS @15%.

**(3 Marks)**

(ii) In case Mr. Abhinav fails to furnish the PAN details to ABC Ltd., at what rate should ABC Ltd. deduct tax at source, considering that Mr. Abhinav is a resident of a Country 'X', with which India has no DTAA? **(4 Marks)**

(iii) If Mr. Abhinav has a fixed place of profession in India and the contract in respect of FTS with ABC Ltd. is effectively connected with such fixed place of profession in India, how would the FTS be computed in such a case and what are the related requirements under the Income-tax Act, 1961? **(3 Marks)**

2. (i) Chapter XVII-B requires tax deduction at source by a resident making payment to either a resident or a non-resident. It does not require tax deduction at source by non-residents, who do not have any place of business or business connection in India. Examine the correctness or otherwise of this statement.

**(3 Marks)**

(ii) As a tax consultant for M/s Lotus & Co., India, you need to advise the firm regarding tax deduction at source on the payments (i.e. interest on capital and share of profit) made to Mr. Abhinav during the previous year 2018-19, considering that Mr. Abhinav is a resident of Country 'X', with which India has no DTAA. In case tax is not deductible at source, is there any other related requirement to be complied with by the firm? **(4 Marks)**

(iii) If India has a DTAA with Country 'X' providing for deduction of tax at 10%, then, what is the remedy available in case M/s Lotus & Co., India has deducted tax at the requisite rate provided under the Income-tax Act, 1961?

**(3 Marks)**

3. Using the information given in the facts of the case, compute Mr. Abhinav's total income and tax liability for the Assessment Year 2019-20, assuming that he is a resident of Country X, with which India has no DTAA and he opts for computing his income in accordance with the provisions of Chapter XII-A of the Income-tax Act, 1961. You may ignore the amount of advance tax and TDS credit appearing in Form 26AS. Also, ignore the effect of first proviso to section 48, wherever applicable.

**(10 Marks)**

#### **EXHIBIT I**

#### **COST INFLATION INDICES**

<b>Financial Year</b>	<b>Cost Inflation Index</b>
2001-02	100
2002-03	105
2003-04	109
2004-05	113
2005-06	117
2006-07	122
2007-08	129
2008-09	137

2009-10	148
2010-11	167
2011-12	184
2012-13	200
2013-14	220
2014-15	240
2015-16	254
2016-17	264
2017-18	272
2018-19	280