



CA FINAL MAY'19
SUBJECT- INTERNATIONAL TAXATION
Test Code – FNJ 7189
(Date :)

(Marks - 100)

Attempt any two case studies out of total three. Each case study is having 50 marks.

Case Study 1:

Shivam completed his engineering from BITS Country "P" and thereafter, came back to India in Mid 2011 for further training and job placement. Since then, he has been working with a reputed MNC in Delhi and has been staying in a rented accommodation in Defence Colony, Delhi along with his parents and his wife Sudha, who is a doctor by profession.

Shivam has keen interest in Carnatic music and performs in music concerts in the Delhi Tamil Sangam from time to time along with his friend Arvind. Shivam and Arvind also perform in music concerts in Margazhi Maha Utsav held in Chennai every December. Carnatic Music is Shivam's passion and he does not charge for performing in music concerts.

Arvind visits Country "P" for 60 days every year. For the rest of the year, he stays in Delhi. He is engaged in the business of wholesale trade in foodgrains in Delhi. He has no source of income in Country "P" except rental income from house property purchased by him in the P.Y.2014-15 and interest on fixed deposits made by him with a bank in that country out of his Indian income.

Sudha and her team are engaged in a project with Cure House Inc., a company based in Country "R", to provide consultancy services in field of medicine to various research institutes in India. The engagement began during May 2018 and continued throughout the year. Due to the nature of project, Sudha frequently travels across the country to various institutes. There is no fixed place for provision of consultancy services. The expected revenue from the project is INR 70 crores.

Shivam's employer is an MNC which has offices across the globe. The Indian office of the company has been processing, in respect of Mr. Shivam, basic salary of INR 70,000, dearness allowance of INR 30,000 and special allowance of INR 5,000 every month.

During the year 2018-19, the company initiated a Global Mobility Program and selected Shivam for secondment to Country "Q" on a three-year assignment. Once Shivam starts his assignment, no further salary shall be processed from India payroll and he shall receive salary for services rendered in Country "Q" in his Country "Q" bank account. As per the terms of global mobility program, Shivam would be entitled to a monthly basic salary of QGD 1400 and cost of living allowance of QGD 1000. Tax at the rate of 15% would be withheld on such salary as per Country "Q" tax laws. Shivam would be staying there in a rent-free accommodation provided by the company for the three year period.

Shivam left India on September 30, 2018 for his overseas assignment and reached Country "Q" next day. His parents and Sudha stayed in India in the same rented accommodation in Defence Colony, Delhi owing to Sudha's work commitments. For F.Y.2018-19, Shivam paid rent of INR 25,000 per month in respect of the said accommodation.

On July 31, 2018, the company announced a bonus of INR 3,00,000 for the previous financial year (i.e. F.Y.2017-18). As a retention policy, such bonus was paid after the first half of the financial year i.e. in October 2018. Shivam received the bonus amount in his salary account with the bank in Country "Q".

Shivam had invested his overseas salary in purchase of securities of a Country "Q" company which yielded an interest income of QGD 5,000 due as on March 31, 2019. Such interest was taxed at 15% of the gross amount as per Country "Q" domestic tax laws. The rate of tax in respect of such income as per the India- Country "Q" DTAA is also 15% on the gross amount.

He has also purchased shares of Country "Q" Company and dividend of QGD 1,000 was credited to his bank account on March 31, 2019. Just like Indian tax laws, dividend paid by Country "Q" Company is exempt in the hands of shareholders.

On 31.03.2019, he had earned interest income of QGD 150 from his saving bank account in Country "Q", which is also exempt as per the domestic tax laws of Country "Q".

Shivam also owns a residential house property in Mumbai, which was let out at a monthly rent of INR 50,000 and security deposit equivalent to two months' rent was invested to earn interest at the rate of 10% per annum from the same. He annually spends INR 60,000 for medical treatment and nursing of his dependent disabled mother.

During his engineering days, Shivam had also invested in bonds issued by the Government of Country "P" and earned annual interest of foreign currency equivalent to INR 30,000 during the previous year. Such interest earned was exempt from tax in Country "P".

Other points:

As per Country "Q" tax laws, tax year means a financial year, being a period of 12 months beginning with 1st April. As per tax residency laws in Country "Q", a person shall be regarded as resident if he stays in Country "Q" for more than 180 days in a financial year.

QGD is the currency abbreviation for the Country "Q" dollar, the currency of Country "Q".

Based on the above facts, you are required to answer the following questions:

I. MULTIPLE CHOICE QUESTIONS

Write the correct answer to each of the following questions by choosing one of the four options given. Each question carries two marks.

1. Delhi Tamil Sangam, as per its rules, pays a fixed honorarium per concert to each musician performing in the concerts organised by it. Shivam, however, refuses to accept this sum. If he requests Delhi Tamil Sangam to pay such sum directly to Help All, an unregistered institution providing relief to the poor and needy in rural India, what would be the tax consequence?
 - (a) No amount would be chargeable to tax in the hands of Mr. Shivam, since this is a case of diversion of income at source by overriding title.
 - (b) The amount payable to Help All would be chargeable to tax only in the hands of Mr. Shivam, since it is a case of application of income.
 - (c) The amount payable to Help All would be chargeable to tax only in the hands of the institution which has received the amount.
 - (d) The amount payable to Help All would be chargeable to tax both in the hands of Mr. Shivam and in the hands of the institution.

2. Mr. Arvind opened a bank account in Country "P" on 1.7.2016. He has made deposits of foreign currency equivalent to INR 5 lakhs on 1.7.2016, INR 7 lakhs on 1.10.2016, INR 12 lakhs on 1.9.2018 and INR 25 lakhs on 1.3.2019, in that bank, out of Indian income which has not been assessed to tax in India. The deposit of INR 12 lakhs on 1.9.2018 is made out of the withdrawal of earlier deposits made on 1.7.2016 and 1.12.2016 with the said bank. Further, out of INR 25 lakhs deposited by him on 1.3.2019, Mr. Arvind withdrew INR 2 lakhs on 31.3.2019. The value of an undisclosed asset in form of bank account under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 will be taken as:
 - (a) INR 49 lakhs
 - (b) INR 47 lakhs
 - (c) INR 37 lakhs
 - (d) INR 35 lakhs

3. Which of the following statements does not hold good in the case of OECD Model Convention? :
 - (a) OECD Model lays emphasis on the right of the State of Residence to tax income.
 - (b) The relevant article of the Convention providing for determination of business profits of a PE, does not provide for deduction of expenses
 - (c) The relevant article relating to PE of the Convention explicitly deals with mechanism of Service PE

- (d) It is essentially a model treaty between two developed nations
4. To address the problem of dual residency, under OECD Model Convention, certain rules are provided. The rules are to be applied:
- (a) At the discretion of competent authority of the respective countries based on permanent home and nationality of the assessee
 - (b) Sequentially in order of nationality, permanent home, centre of vital interest and habitual abode
 - (c) Sequentially in order of permanent home, centre of vital interest, habitual abode and nationality
 - (d) Only if an assessee is not able to produce Tax Residency Certificate from the respective country.
5. If Cure House Inc. opts for advance ruling for the project of providing consultancy in field of medicine, such ruling shall be binding on :
- (a) Cure House Inc., in relation to the abovementioned project
 - (b) Jurisdictional Assessing Officer of Cure House
 - (c) Both (a) and (b)
 - (d) Cure House Inc. and Jurisdictional Assessing Officer in relation to the abovementioned project and for any future transaction of similar nature in India
6. Which of the following would **not** be considered as a permanent home of Mr. Shivam in context of the relevant rule in the DTAA with Country "Q" for dual residency?
- (i) House in Defence Colony, Delhi where his family lives
 - (ii) Own house in Mumbai which has been let out
 - (iii) Rent-free accommodation provided by his employer in Country "Q"
- The correct answer is -
- (a) Only (i) above
 - (b) Only (ii) above
 - (c) Only (iii) above
 - (d) Both (i) and (iii) above
7. Form 67 has to be filed mandatorily on or before the due date of filing of return of income -
- (i) if the assessee claims foreign tax credit in his return of income for the year in which such corresponding income was offered to tax
 - (ii) if the assessee owns directly, or as a beneficial owner, any foreign assets
 - (iii) if there is a carry backward of loss of the current year resulting in refund of foreign tax for which credit has been claimed in an earlier previous year.

The correct answer is -

- (a) Only (i) above
 - (b) Both (i) and (ii) above
 - (c) Both (i) and (iii) above
 - (d) (i), (ii) and (iii) above.
8. While interpreting the treaty entered into by India with Country "P", the Budget Speech of Shri Arun Jaitley was relied upon to understand the intent at the time of signing the treaty . Which law of interpretation has been followed in this case?
- (a) Liberal Interpretation
 - (b) Subjective Interpretation
 - (c) Purposive Interpretation
 - (d) Objective Interpretation
9. An application for advance ruling was made on 31.05.2018 in relation to a transaction proposed to be undertaken by Mr. James, a resident of Country "P". On 07.07.2018, he decides to withdraw the said application. Such application:
- (a) cannot be withdrawn once filed
 - (b) can be withdrawn on 07.07.2018 only with special permission of Principal Chief Commissioner
 - (c) cannot be withdrawn since 30 days from date of application have passed
 - (d) can be withdrawn on 07.07.2018 with permission of the AAR, if the circumstances of the case so justify
10. Mr. Arvind acquired a flat in Country "P" in the P.Y.2014-15 for INR 50 lakhs out of his Indian income. Out of the said sum, INR 20 lakhs was assessed to tax in India during the P.Y.2014-15 and earlier years. This asset comes to the notice of the Assessing Officer in the year 2018-19. If the value of the flat on 1.4.2018 is INR 90 lakhs, the amount chargeable to tax in the year 2018-19 would be:
- (a) INR 90 lakhs
 - (b) INR 70 lakhs
 - (c) INR 54 lakhs
 - (d) INR 30 lakhs

II. DESCRIPTIVE QUESTIONS

1. (i) With reference to the DTAA between India and Country "Q", examine whether Shivam is a resident in India or Country "Q" in the year 2018-19. **(6 Marks)**
- (ii) The Competent Authority in India has made a request to the concerned official in Country "Q" to provide certain information in order to prevent tax avoidance in India. The Country "Q" tax officer denied the request stating that they are not obliged to provide such information as Country "Q" will not get any revenue benefit by doing so. Is the officer justified in his denial? Examine.

Will your answer change, if the officer denied stating that exchange of such information would be contrary to public policy? **(4 Marks)**

- 2 (a) (i) With reference to the DTAA between India and Country “R”, comment on whether provision of consultancy services through Sudha would lead to creation of PE in India for Cure House Inc., a Country “R” company.

(3 Marks)

(ii) Can Cure House Inc. approach the Authority of Advance Rulings to determine its tax liability arising from project undertaken in India? Is Sudha eligible to file an application for advance ruling to determine her tax liability arising from the project? Examine. **(4 Marks)**

- (b) India has a DTAA with Country “Q” but does not have a DTAA with Country “N”. Examine the significance of the concepts of business connection and permanent establishment in bringing to tax business income earned by a resident of Country “Q” and Country “N” in India. **(3 Marks)**

- 3 Determine the total income and tax liability of Shivam for the previous year 2018-19 as per the provisions of the Income-tax Act, 1961. Advance tax calculations may be ignored. Ignore the perquisite value of rent free accommodation provided to Shivam in Country “Q”. Indicate reasons for treatment of each item. Working Notes should form part of your answer.

(10 Marks)

EXHIBIT I

Telegraphic Transfer Buying Rate

SBI TT buying rate for Country “Q” – India currency conversion:

Date	Exchange Rate (INR)	Date	Exchange Rate (INR)
30.09.2018	45.95	31.01.2019	47.83
31.10.2018	46.85	28.02.2019	48.52
30.11.2018	45.10	31.03.2019	48.61
31.12.2018	46.95		

EXHIBIT II

Rate of exchange for conversion into rupees of income expressed in

foreign currency [Rule 115 of the Income-tax Rules, 1962]

- (1) The rate of exchange for the calculation of the value in rupees of any income accruing or arising or deemed to accrue or arise to the assessee in foreign currency or received or deemed to be received by him or on his behalf in foreign currency shall be the telegraphic transfer buying rate of such currency as on the specified date.

Explanation: For the purposes of this rule

- (1) "telegraphic transfer buying rate" shall have the same meaning as in the *Explanation* to rule 26;

As per *Explanation* to Rule 26 "telegraphic transfer buying rate", in relation to a foreign currency, means the rate or rates of exchange adopted by the State Bank of India, for buying such currency, having regard to the guidelines specified from time to time by the Reserve Bank of India for buying such currency, where such currency is made available to that bank through a telegraphic transfer.

- (2) "specified date" means—

- (a) in respect of income chargeable under the head "Salaries", the last day of the month immediately preceding the month in which the salary is due, or is paid in advance or in arrears;
- (b) in respect of income[by way of] "interest on securities", the last day of the month immediately preceding the month in which the income is due;
- (c) in respect of income chargeable under the heads "Income from house property", "Profits and gains of business or profession" [not being income referred to in clause (d)] and "Income from other sources" (not being income by way of dividends [and "Interest on securities"])), the last day of the previous year of the assessee;
- (d) in respect of income chargeable under the head "Profits and gains of business or profession" in the case of a non-resident engaged in the business of operation of ships, the last day of the month immediately preceding the month in which such income is deemed to accrue or arise in India ;
- (e) in respect of income by way of dividends, the last day of the month immediately preceding the month in which the dividend is declared, distributed or paid by the company;
- (f) in respect of income chargeable under the head "Capital gains", the last day of the month immediately preceding the month in which the capital asset is transferred :]

Provided that the specified date, in respect of income referred to in sub-clauses (a) to (f) payable in foreign currency and from which tax has been deducted at source under rule 26, shall be the date on which the tax was required to be deducted under the provisions of the Chapter XVII-B.

- (2) Nothing contained in sub-rule (1) shall apply in respect of income referred to in clause (c) of the *Explanation* to sub-rule (1) where such income is received in, or brought into India by the assessee or on his behalf before the specified date in accordance with the provisions of the Foreign Exchange Regulation Act, 1973.

EXHIBIT III

Foreign Tax Credit [Rule 128 of the Income-tax Rules, 1962]

- (1) An assessee, being a resident shall be allowed a credit for the amount of any foreign tax paid by him in a country or specified territory outside India, by way of deduction or otherwise, in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India, in the manner and to the extent as specified in this rule:

Provided that in a case where income on which foreign tax has been paid or deducted, is offered to tax in more than one year, credit of foreign tax shall be allowed across those years in the same proportion in which the income is offered to tax or assessed to tax in India.

- (2) The foreign tax referred to in sub-rule (1) shall mean,—
- (a) in respect of a country or specified territory outside India with which India has entered into an agreement for the relief or avoidance of double taxation of income in terms of section 90 or section 90A, the tax covered under the said agreement;
- (b) in respect of any other country or specified territory outside India, the tax payable under the law in force in that country or specified territory in the nature of income-tax referred to in clause (iv) of the Explanation to section 91.
- (3) The credit under sub-rule (1) shall be available against the amount of tax, surcharge and cess payable under the Act but not in respect of any sum payable by way of interest, fee or penalty.
- (4) No credit under sub-rule (1) shall be available in respect of any amount of foreign tax or part thereof which is disputed in any manner by the assessee:

Provided that the credit of such disputed tax shall be allowed for the year in which such income is offered to tax or assessed to tax in India if the assessee within six months from the end of the month in which the dispute is finally settled, furnishes evidence of settlement of dispute and an evidence to the effect that the liability for payment of such foreign tax has been discharged by him and furnishes an undertaking that no refund in respect of such amount has directly or indirectly been claimed or shall be claimed.

- (5) The credit of foreign tax shall be the aggregate of the amounts of credit computed separately for each source of income arising from a particular country or specified territory outside India and shall be given effect to in the following manner:—
- (i) the credit shall be the lower of the tax payable under the Act on such income and the foreign tax paid on such income :

Provided that where the foreign tax paid exceeds the amount of tax payable in accordance with the provisions of the agreement for relief or avoidance of double taxation, such excess shall be ignored for the purposes of this clause;

- (ii) the credit shall be determined by conversion of the currency of payment of foreign tax at the telegraphic transfer buying rate on the last day of the month immediately preceding the month in which such tax has been paid or deducted.
- (6) In a case where any tax is payable under the provisions of section 115JB or section 115JC, the credit of foreign tax shall be allowed against such tax in the same manner as is allowable against any tax payable under the provisions of the Act other than the provisions of the said sections (hereafter referred to as the "normal provisions").
- (7) Where the amount of foreign tax credit available against the tax payable under the provisions of section 115JB or section 115JC exceeds the amount of tax credit available against the normal provisions, then while computing the amount of credit under section 115JAA or section 115JD in respect of the taxes paid under section 115JB or section 115JC, as the case may be, such excess shall be ignored.
- (8) Credit of any foreign tax shall be allowed on furnishing the following documents by the assessee, namely:—
- (i) a statement of income from the country or specified territory outside India offered for tax for the previous year and of foreign tax deducted or paid on such income in Form No.67 and verified in the manner specified therein;
 - (ii) certificate or statement specifying the nature of income and the amount of tax deducted therefrom or paid by the assessee,—
 - (a) from the tax authority of the country or the specified territory outside India; or
 - (b) from the person responsible for deduction of such tax; or
 - (c) signed by the assessee:
Provided that the statement furnished by the assessee in clause (c) shall be valid if it is accompanied by,—
 - (A) an acknowledgement of online payment or bank counter foil or challan for payment of tax where the payment has been made by the assessee;
 - (B) proof of deduction where the tax has been deducted.
- (9) The statement in Form No.67 referred to in clause (i) of sub-rule (8) and the certificate or the statement referred to in clause (ii) of sub-rule (8) shall be furnished on or before the due date specified for furnishing the return of income under sub-section (1) of section 139, in the manner specified for furnishing such return of income.
- (10) Form No.67 shall also be furnished in a case where the carry backward of loss of the current year results in refund of foreign tax for which credit has been claimed in any earlier previous year or years.

Explanation—For the purposes of this rule 'telegraphic transfer buying rate' shall have the same meaning as assigned to it in Explanation to Rule 26.

EXHIBIT IV

EXTRACTS OF DTAA BETWEEN INDIA AND COUNTRY "Q"

ARTICLE 4

FISCAL DOMICILE

1. *For the purposes of this Agreement, the term "resident of a Contracting State" means any person who is a resident of a Contracting State in accordance with the taxation laws of that State.*
2. *"Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows:*
 - (a) *he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests) ;*
 - (b) *if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode ;*
 - (c) *if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national ;*
 - (d) *if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement*

ARTICLE 23

AVOIDANCE OF DOUBLE TAXATION

1. *The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting States except where express provision to the contrary is made in this Agreement.*
2. *Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Country "Q", India shall allow as a deduction from the tax on the income of that resident an amount equal to the Country "Q" tax paid, whether directly or by deduction. Where the income is a dividend paid by a company which is a resident of Country "Q" to a company which is a resident of India and which owns directly or indirectly not less than 25 per cent of the share capital of the company paying the dividend, the deduction shall take into account the Country "Q" tax paid in respect of the profits out of which the dividend is paid. Such deduction in either case shall not, however, exceed that part of the tax (as computed before the deduction is given) which is attributable to the income which may be taxed in Country "Q".*

ARTICLE 26

EXCHANGE OF INFORMATION

1. *The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political sub-divisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.*
2. *Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.*
3. *In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:*
 - (a) *to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;*
 - (b) *to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;*
 - (c) *to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.*
4. *If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.*
5. *In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.*

EXHIBIT V

EXTRACT OF DTAA BETWEEN INDIA AND COUNTRY "R"

ARTICLE 5

PERMANENT ESTABLISHMENT

1. *For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.*
2. *The term "permanent establishment" includes especially:*
 - (a) *a place of management;*
 - (b) *a branch;*
 - (c) *an office;*
 - (d) *a factory;*
 - (e) *a workshop;*
 - (f) *a sales outlet;*
 - (g) *a warehouse in relation to a person providing storage facilities for others;*
 - (h) *a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on; and*
 - (i) *a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.*
3. *The term "permanent establishment" shall also include:*
 - (a)** *a building site, a construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities continue for a period or periods aggregating more than 180 days;*
 - (b)** *the furnishing of services including consultancy services by an enterprise through employees or other personnel by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the Contracting State for a period or periods aggregating more than 180 days within any twelve-month period.*

Case Study 2:

'A' Ltd., an Indian company, was incorporated in the year 2009. It is a wholly owned subsidiary of A Inc, USA. A Ltd. is engaged in the business of manufacturing and selling virtual reality cameras. During the previous year 2018-19, A Ltd. entered into various transactions with the following enterprises for purchase of raw materials, use of technology and sale of finished goods. The earnings before interest, dividend, tax and amortization of A Ltd for Financial year 2018-19 is Rs 200 crores. The details of the transactions entered into by A

Ltd. during F.Y.2018-19 are given hereunder:

S. No	Transaction	Enterprise	Amount (Rs in crores)
1	Purchase of raw-materials	AA Ltd, China	150
2	Payment of royalty	A Inc, USA	5
3	Sale of finished goods	AAA Ltd, Taiwan	50

Prior to F.Y.2018-19, A Ltd. had obtained loan of Rs 1000 crores @8% from A LLC, Cyprus in April, 2017.

The following additional information pertaining to loans obtained by A Ltd. is provided for the previous year 2018-19:

- Interest of Rs 80 crores paid to A LLC, Cyprus on the loan of Rs 1000 crores. The book value of the total assets of A Ltd is Rs 1800 crores.
- A Ltd. obtained loan of Rs 100 crores from Bank of Chennai, India based on a guarantee provided by A Inc., USA. Interest of Rs 8 crores paid on such loan and guarantee fee of Rs 50 lacs paid to A Inc., USA.
- A Ltd. obtained loan of Rs 50 crores from TN Mercantile Bank, India based on a letter of comfort provided by Mr. Balaji, who is an Indian resident and director of A Ltd. Interest of Rs 4 crores is paid towards such loan.
- A Ltd. obtained an independent loan of Rs 300 crores from Union City Bank, India for which interest of Rs 3 crores has been paid to the bank.
A Ltd. obtained loan of Rs 50 crores from Bank of Taiwan, India Branch. Guarantee was provided by AAA Ltd., Taiwan. Interest paid for the concerned year is Rs 3 crores. Guarantee fees paid to AAA Ltd. is Rs 25 lakhs. A Ltd. holds shares carrying 25% voting power in AAA Ltd., Taiwan.
- A Ltd. obtained interest-free loan of Rs 50 crores from A Pty, Singapore. Out of the 25 directors of A Pty., Singapore, 10 are appointed by A Ltd.
- A Ltd. obtained foreign currency loan of \$ 10 million from Wells Fargo Bank of USA, in USA, based on a back to back deposit made by A Inc. USA to the tune of \$ 5 million in the bank. Interest of Rs 6 crores is paid on such loan.
- A Ltd. obtained foreign currency loan of \$ 20 million from Bank of USA, in USA, based on a back to back deposit made by A Inc., USA to the tune of \$ 20 million in the bank. Interest works out to Rs 12 crores.

- A Ltd. had to incur a sum of Rs 1 crore as an interest towards the delayed payment to AA Ltd. China, being its creditor for supply of raw material. 90% of raw materials required by A Ltd. is supplied by AA Ltd., China. The price and other conditions for supply of raw material are influenced by AA Ltd., China.

Based on the above facts, you are required to answer the following questions:

I. OBJECTIVE TYPE QUESTIONS

Write the correct answer to each of the following questions by choosing one of the four options given.

1. The provisions relating to limitation of interest deduction in respect of debt issued by a non- resident associated enterprise are **not** applicable to an Indian company engaged in the business of:
 - (a) Information Technology
 - (b) Banking and Insurance
 - (c) Bio-technology
 - (d) Aviation

2. The provisions relating to limitation of interest deduction in respect of debt issued by a non- resident associated enterprise would not apply where the expenditure by way of interest or similar nature is -
 - (a) Rs 2.10 crore
 - (b) Rs 2 crore
 - (c) Rs 1.50 crore
 - (d) Rs 1 crore

3. Which of the following enterprises are associated enterprises/deemed associated enterprises of A Ltd.?
- (a) A Inc., USA; A LLC, Cyprus; and AAA Ltd., Taiwan.
 - (b) A Inc., USA; A LLC, Cyprus; and A Pty, Singapore.
 - (c) A Inc., USA; A LLC, Cyprus; and AA Ltd., China.
 - (d) A Inc., USA; AA Ltd., China; and A Pty, Singapore.
4. In respect of any payment made to a person located in a Notified Jurisdictional Area (NJA), tax is deductible at higher of the rate specified in the Income-tax Act 1961 or rates in force or -
- (a) 10%
 - (b) 15%
 - (c) 20%
 - (d) 30%
5. A Ltd. has a wholly owned subsidiary in Sri Lanka, and it extends corporate guarantee to the said non-resident subsidiary. If the amount guaranteed is Rs 95 crore, the Assessing Officer has to accept the guarantee fee declared by A Ltd. for F.Y.2018-19, if the guarantee fee declared is -
- (a) Rs 47.50 lakhs
 - (b) Rs90 lakhs
 - (c) Rs 95 lakhs
 - (d) Either (a) or (b)

6. If A Ltd. does not furnish transfer pricing report for F.Y.2018-19, what would be the quantum of penalty imposable under the Income-tax Act, 1961 for such a failure?
- (a) 1% of the value of international transaction
 - (b) 2% of the value of international transaction
 - (c) Rs 1 crore – fixed penalty
 - (d) Rs 1 lakh – fixed penalty
7. Interest paid to non-resident associated enterprise disallowed under the relevant provision of the Income-tax Act, 1961, during the A.Y.2019-20 can be carried forward upto-
- (a) A.Y.2023-24
 - (b) A.Y.2024-25
 - (c) A.Y.2027-28
 - (d) Indefinitely
8. In a case where primary adjustment to transfer price is made *suo motu* by A Ltd., the time limit for repatriation of “excess money” is -
- (a) 60 days from 30th September of the Assessment Year
 - (b) 90 days from 30th September of the Assessment Year
 - (c) 60 days from 30th November of the Assessment Year
 - (d) 90 days from 30th November of the Assessment Year
9. The excess money which is available with the AE, if not repatriated to India within the prescribed time, shall be deemed to be an advance made by A Ltd. to such AE, if the primary adjustment to transfer price, made by it *suo motu* in its return of income, is in respect of -
- (a) A.Y.2016-17 and the amount of primary adjustment is Rs 2 crores.
 - (b) A.Y.2018-19 and the amount of primary adjustment is Rs 1 crore
 - (c) A.Y.2018-19 and the amount of primary adjustment is Rs 1.05 crore
 - (d) A.Y.2017-18 and the amount of primary adjustment is Rs 1 crore.

10. Which of the following approaches does India follow in relation to secondary adjustments?
- (a) Deemed equity approach
 - (b) Deemed dividend approach
 - (c) Deemed loan approach
 - (d) Either (a) or (c)

II. DESCRIPTIVE QUESTIONS

1. Based on the details provided in respect of interest paid by A Ltd., determine the amount of interest to be disallowed for A.Y.2019-20 under the relevant provisions of the Income-tax Act, 1961 relating to limitation of interest deduction, giving reasons for treatment of each item of interest. Consequently, determine the permissible interest deduction while computing income under the head "Profits and gains of business or profession". **(10 Marks)**

2. (a) (i) Examine how thin capitalization is an anti-avoidance measure. **(2 Marks)**

(ii) Which Action Plan of BEPS is based on thin capitalization? Mention the provision incorporated in the Income-tax Act, 1961 in line with this Action Plan.

(2 Marks)

(iii) A Ltd. is contemplating to stop the current business activity and start a new business vertical. In this regard, it wants to know whether the interest disallowed under the relevant provision of the Income-tax Act, 1961 can be carried forward to next year and whether it could be set-off against the income of the new business.

(2 Marks)

- (b) The Assessing Officer has, while carrying out the transfer pricing assessment for Assessment Year 2018-19, arrived at an arm's length rate interest of 4% on the loan obtained from A LLC Cyprus (Interest paid Rs 80 crores). Accordingly, he has made a primary adjustment to the tune of Rs 40 crores for A.Y. 2018-19. In this regard,

(i) You are required to examine whether any secondary adjustment is to be made under the relevant provision of the Income-tax Act, 1961, where –

(1) A Ltd has not gone on an appeal on the said matter.

(2) A Ltd. has opted to file an appeal before the CIT (Appeals)

(ii) What would be the consequence if the CIT (Appeals) increases the Arm's Length price determined by the Assessing Officer to Rs 50 crores, by considering the arm's length interest rate @5% instead of 4%, and the same is accepted by A Ltd.?

(4 Marks)

- 3 (a)** On the facts provided, A Ltd makes interest payment to A LLC, Cyprus. While making the interest payment to A LLC, Cyprus, A Ltd had withheld taxes at 10% based on Article 11 of India-Cyprus double taxation avoidance agreement. The Assessing Officer has issued a show cause notice contending that the assessee has deducted tax at a lower rate, based on the view that A LLC, Cyprus is a notified jurisdiction area. You are required to reply to the show cause notice of the Assessing Officer, giving your views.

(4 Marks)

Extract of ARTICLE 11 of DTAA between India and Cyprus

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State, provided that it is derived and beneficially owned by:

(a) the Government, a political sub-division or a local authority of the other Contracting State; or

(b) in the case of India, the Reserve Bank of India, the Export-Import bank of India, the National Housing bank; and

(c) any other institution as may be agreed upon from time to time between the Competent authorities of the Contracting States through exchange of letters

4. The term "interest" as used in this Article means income from debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt claim in respect

of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

(b) A Ltd wants to understand whether it can opt for safe harbour rules in order to avoid litigation on transfer pricing related matters, for the intra-group loans that it has taken from its Associated Enterprises. If the answer is in the affirmative, what are the conditions to be satisfied?

(3 Marks)

- (c) A Ltd, being a wholly owned subsidiary of a US entity A Inc., wants to understand whether transfer pricing provisions under the Income-tax Act, 1961 will trigger if it receives interest-free loan from its foreign AE parent A Inc., USA. Advise **(3 Marks)**

Case Study 3:

M/s Gryffindors LLP (“the firm”) is a Country X based partnership firm engaged in the practice of law. The firm is the largest law firm in Country X and advises fortune 500 clients on various legal matters namely Corporate Mergers & Acquisitions, Tax, Trade law, Construction, Arbitration, Anti-trust laws, Energy, Banking laws etc. The firm has global offices in Country Y and Country Z. The firm does not have any presence in India owing to regulatory requirements and, therefore, does not have any office in India. The firm is a tax resident of Country X but by virtue of the tax laws in Country X, it is a fiscally transparent entity.

The following are the assignments entered into by the firm and its global offices. Assignment A is a completed assignment, Assignment B is an ongoing assignment and Assignment C pertains to a future assignment which the firm is proposing to undertake. The facts and nature of the assignments containing India nexus are provided below.

Assignment A

Client Name: Connors & Ann, Country X

Nature of Assignment: Connors & Ann had entered into a joint venture agreement with an Indian party in March, 2017 for construction of a nuclear thermal power plant in Tamil Nadu, India during the financial year 2017-18.

Additional Details:

- As per the scope of work, the firm had
 - advised on all aspects of structuring and drafting, negotiation, construction contract and maintenance contracts;
 - advised on procurement structures, multi contract/onshore offshore structures;
 - provided specialised project finance expertise and ensured to reduce the risks associated with operating in foreign jurisdiction;
 - advised on tax and regulatory implications from a Country X law perspective; and
 - attended meetings with project sponsors, negotiated floating rate issues and advisory on any other overseas jurisdiction related regulatory aspects etc.
- The execution of work was done partly from India and partly from Country X office.
- The firm’s employees and partners were in India for 120 days.
- The firm’s billing model for the services rendered were as follows:

- each partner and employee of the firm who was involved in doing work for the clients was required to maintain detailed time sheets recording the time spent by them on such work; the said time sheets separately showed the time spent on doing such work in India and outside India;
- the time so spent was multiplied by the hourly billing rates applicable to each respective partner/employee as specified in the terms of appointment between the firm and the client;
- the bills so raised were paid to the firm by the client outside India.

Based on the above details, the firm is of the view that the income attributable to the services rendered in India would be taxable in India. The said income would be arrived at based on “estimation of fees with reference to the fees rates at which such services could have been procured from corresponding professionals acting in India”.

The firm intends to claim the following expenditure -

- (a) direct costs allocated on the basis of number of hours spent at the pro-rated Country X salary cost; and
- (b) general overheads have been allocated @5% of income on an ad-hoc basis.

Assignment B

Client Name: Vidyut India Limited, an Indian Company which is a subsidiary of a Vidyut AG, an entity in Country Y.

Nature of Assignment: Vidyut India has entered into a contract with an Indian construction company for construction of a pharma research and development unit in India. Vidyut India also has a group entity, Vidyut Z Inc, in Country Z, from whom necessary inputs are obtained for construction of the pharma research and development centre. The construction agreement provided that the law in Country Y will govern the contract. There is currently a dispute in the contract and as per the agreement, the adjudication proceedings were initiated on 30th August 2017. Gryffindors Y is a registered firm in Country Y engaged by Vidyut India to represent it in the adjudication proceedings in India. Further, as part of the adjudication proceedings, site visits are essential in India and Country Z. For the site visit in Country Z, Gryffindors Z, a Country Z registered partnership firm was engaged for which Vidyut India would compensate the Country Z firm separately.

Additional Details:

- As per the terms of agreement, the activities are to be carried on in Country Y, Country Z and India.
- Except a site visit and an adjudication hearing in Chennai between 21st and 24th September, 2017, no other activity is carried on in India by Gryffindors Y. The total time spent in India was 6 days between 19th September and 24th September, 2017.
- Meanwhile, another site visit in Country Z was for 10 days for which partners from Gryffindors Z undertook the visit and provided its report to Gryffindors Y, Country Y. For the time spent by the Country Z firm, it had raised an invoice to Vidyut India.

- Apart from the 6 days in India and 10 days in Country Z, major part of the adjudication proceedings were at Country Y.
- Gryffindors Y produced a tax residency certificate from Country Y. It is also to be noted that Gryffindors Y is a fiscally transparent entity as per the tax laws of Country Y. Gryffindors Y is only liable for trade tax in Country Y.
- Gryffindors Z produced a tax residency certificate from Country Z tax authorities certifying that it is a tax resident of Country Z. It is also to be noted that Gryffindors Z is a fiscally transparent entity as per the Country Z tax laws.

Assignment C

Client Name: Abhimanyu Holdings Bank Limited, a banking company registered in India.

Nature of Assignment: Abhimanyu Holdings Bank Limited is contemplating to acquire a Country X based national bank. Therefore, it has approached Gryffindors LLP, Country X ('the Firm') for a counsel opinion for the proposed acquisition.

Additional Details:

The scope of work for the firm shall be the following:

- Phase I: Education & Training
- Phase II: Acquisition Transaction
- Phase III: Regulatory approval for the transaction.
- As part of the first phase, on education and training, the firm will provide a detailed document to Abhimanyu India on the legal framework on banking and regulatory laws in Country X. Further, apart from the document, the firm will provide presentation and discuss the various legal and regulatory requirements in Country X for setting up a bank branch or acquiring a bank in Country X.
- The presentation to be made by the firm will be to the bank officials of Abhimanyu India . The presentation will be made from the law firm's office in Country X. The purpose of the training is to ensure that if the bank sets up a branch or office in Country X, the said officials will be deputed to the Country X entity.
- The work shall be undertaken by the firm from its office in Country X and there will be no visit in India.
- As mentioned previously, the firm is a tax resident of Country X and is a fiscally transparent entity for tax purpose in Country X.
- Phase II and Phase III are subject to the conditions and legal environment being favourable, and hence, the happening of the same is not certain. However, Phase I: Education is certain and a fee of foreign currency equivalent to Rs.1,50,000 has been agreed upon by the firm to render Phase I services, which would be paid in Country X.

Based on the above facts, you are required to answer the following questions:

I. MULTIPLE CHOICE QUESTIONS

Write the correct answer to each of the following questions by choosing one of the four options given. Each question carries two marks.

1. ABC Ltd. an Indian company paid dividend distribution tax under section 115 -O in respect of dividend distributed by it to its resident and non-resident shareholders. Mr. John, a shareholder of ABC Ltd. and a resident of Country X, has to pay tax in Country X on dividend received by him from ABC Ltd., as per the domestic tax laws of Country X. This is an example of:
 - (a) Juridical double taxation
 - (b) Territorial double taxation
 - (c) Economic double taxation
 - (d) Municipal double taxation
2. Tax treaty is part of international law; hence its interpretation should be based on a certain set of principles and rules of interpretation. Which convention is used globally for interpretation of tax treaties?
 - (a) The UN Model Convention
 - (b) The OECD Model Convention
 - (c) Either (a) or (b) [Except in case of USA, where US Model Convention is used]
 - (d) The Vienna Convention
3. Can benefit of India-Country X tax treaty be availed by M/s. Gryffinders LLP (“the firm”), Country X in respect of income earned by it in India from Assignment A, which is taxable in both India and Country X, by virtue of the respective domestic tax laws?
 - (a) Yes, since the income is subject to tax in both countries albeit in the hands of different persons
 - (b) No, since as per the laws of Country X, the firm is a fiscally transparent entity. Hence, there is no double taxation of income in its hands.
 - (c) Yes, since the firm’s employees and partners stayed in India for more than 100 days. Hence, the requisite condition for availing treaty benefit under the DTAA is satisfied.
 - (d) Yes, since the execution of work was done partly from India and partly from Country X. Hence, treaty benefit can be availed.
4. A fiscally transparent entity means –
 - (a) An entity entitled to concessional rate of tax
 - (b) An entity enjoying tax pass through status

- (c) An entity entitled to benefits of DTAA
 - (d) An entity which is subject to distribution tax on profits distributed by it.
5. What are the tax implications under the Income-tax Act, 1961 in respect of income earned from assignment A by M/s. Gryffindors LLP, a Country X based partnership firm (You may ignore the provisions of the DTAA for the purpose of answering this question) -
- (a) the entire income from the assignment is taxable in India
 - (b) Only income attributable to the services rendered in India is taxable in India
 - (c) No part of the income is taxable in India since the firm does not have a permanent establishment in India
 - (d) No part of the income is taxable in India since the income was received outside India.
6. In order to claim relief under the tax treaty in India, a non-resident -
- (a) should have a business presence in India
 - (b) should produce his Permanent Account Number
 - (c) should produce Tax Residency Certificate (TRC)
 - (d) should produce his income-tax return filed in the home country.
7. As per the provisions of the Income-tax Act, 1961, which of the following is **not** an objective of the Central Government to enter into tax treaty with another Country:
- (a) For granting relief in respect of income-tax chargeable to tax in India and the other country
 - (b) For enabling round tripping of unaccounted money into India
 - (c) For recovery of income-tax
 - (d) For exchange of information for prevention of evasion or avoidance of income tax
8. When a term used in a tax treaty is not defined in the tax treaty or in the Act, but the same is defined subsequently through a notification in the Official Gazette by the Central Government, then, in such a case:
- (a) The notification shall take effect from the date of its publication in the Official Gazette
 - (b) The notification shall be deemed to be effective from the date when the tax treaty came into force
 - (c) The notification shall be deemed to be effective from the date when the tax treaty was last modified
 - (d) The notification shall take effect from 1st April and be effective from the current assessment year.

9. In order to invoke the tax treaty for a person who is a dual resident i.e. tax resident in both the countries, which rule may be applied under the relevant article of the tax treaties to resolve the issue?
- (a) Force of Attraction
 - (b) Tie-breaker
 - (c) Equivalent beneficiary
 - (d) Non-discrimination
10. Under the provisions of the Income-tax Act, 1961, the term "Person" would not include:
- (a) A body corporate incorporated in a country outside India
 - (b) A Limited Liability Partnership (LLP)
 - (c) Indian branch of a foreign company
 - (d) A co-operative society

II. DESCRIPTIVE QUESTIONS

1. (i) For making the payment to Gryffindors Y and Gryffindors Z, Vidyut India Limited's tax advisor has opined that the Country Y firm and the Country Z firm are not eligible to access India -Country Y DTAA and India-Country Z DTAA, respectively, even though TRC has been provided by such firms. The Indian client's tax advisor has formed this view based on Article 1 read with the relevant articles of the India-Country Y DTAA and India Country Z DTAA coupled with the fact that both the firms are fiscally transparent entities as per the tax laws of the respective countries. Examine the correctness of the view taken by the tax adviser by analysing the relevant Articles of the India-Country Y DTAA and India Country Z DTAA. **(6 Marks)**
- (ii) Assuming that the tax treaty benefit is available for both the foreign entities, namely, Gryffindors Y and Gryffindors Z your views are solicited as to whether Article 14 of India-Country Y and India-Country Z tax treaty can be invoked. **(4 Marks)**
- (iii) The firms want clarification as to whether surcharge, education cess and secondary and higher education cess need to be separately added to the withholding tax rate specified in the tax treaty while invoking the tax treaty rate. Examine. **(5 Marks)**
2. (i) What are the tax implications under the Income-tax Act, 1961 in respect of income earned by the firm, M/s. Gryffindors X from the proposed phase I service to be rendered by it in respect of Assignment C? **(4 Marks)**
- (ii) Assuming that the above-referred income is not chargeable to tax in India in the hands of the firm as per the Indian tax laws, is it possible to bring it into tax by invoking the India-Country X DTAA provisions? Examine. **(4 Marks)**

(iii) Assuming that the above-referred income is chargeable to tax in India, how can the tax liability of the firm be mitigated? Your answer should be based on the relevant provision(s) of the Income-tax Act, 1961.

(4 Marks)

(iv) Assuming that the tax consequences in the above case are not certain, what is the option available to M/s. Gryffindors X to ensure tax certainty?

(3 Marks)

EXHIBIT A

Extract of the relevant Articles of India - Country X DTAA

ARTICLE 1

SCOPE OF THE CONVENTION

1. *This Convention shall apply to persons who are residents of one or both of the Contracting States.*
2. *This Convention extends to the territory of each Contracting State, including its territorial sea, and to those areas of the exclusive economic zone or the continental shelf adjacent to the outer limit of the territorial sea of each State over which it has, in accordance with international law, sovereign rights for the purpose of exploration and exploitation of the natural resources of such areas, and references in this Convention to the Contracting State or to either of them shall be construed accordingly.*

ARTICLE 2

TAXES COVERED

1. *The taxes which are the subject of this Convention are :*
 - (a) *in Country X :*
 - (i) *the income-tax;*
 - (ii) *the corporation tax;*
 - (iii) *the capital gains tax; and*
 - (iv) *the petroleum revenue tax;*
(hereinafter referred to as "Country X tax");
 - (b) *in India;*
the income-tax including any surcharge thereon; (hereinafter referred to as "Indian tax").

2. *This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Convention in addition to, or in place of, the taxes of that Contracting State referred to in paragraph 1 of this Article. The competent authorities of the Contracting States shall notify each other of any substantial changes which are made in their respective taxation laws.*

ARTICLE 3 (EXTRACT)

GENERAL DEFINITIONS

1. *In this Convention, unless the context otherwise requires:*

(f) the term "person" includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;

ARTICLE 4

FISCAL DOMICILE

1. *For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature, provided, however, that:*
 - (a) *this term does not include any person who is liable to tax in that State in respect only of income from sources in that State; and*
 - (b) *in the case of income derived or paid by a partnership, estate, or trust, this term applies only to the extent that the income derived by such partnership, estate, or trust is subject to tax in that State as the income of a resident, either in its hands or in the hands of its partners or beneficiaries.*

ARTICLE 5

PERMANENT ESTABLISHMENT

1. *For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.*
2. *The term "permanent establishment" shall include especially:*
 - (a) *a place of management;*
 - (b) *a branch;*
 - (c) *an office;*
 - (d) *a factory;*
 - (e) *a workshop;*
 - (f) *premises used as a sales outlet or for receiving or soliciting orders;*
 - (g) *a warehouse in relation to a person providing store facilities for others;*
 - (h) *a mine, an oil or gas well, quarry or other place of extraction of natural resources;*

- (i) *an installation or structure used for the exploration or exploitation of natural resources;*
- (j) *a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or supervisory activity continues for a period of more than six months, or where such project or supervisory activity, being incidental to the sale or machinery or equipment, continues for a period not exceeding six months and the charges payable for the project or supervisory activity exceed 10 per cent of the sale price of the machinery and equipment;*
- (k) *the furnishing of services including managerial services, other than those taxable under Article 13 (Royalties and fees for technical services), within a Contracting State by an enterprise through employees or other personnel, but only if:*
 - (i) *activities of that nature continue within that State for a period or periods aggregating more than 90 days within any twelve month period; or*
 - (ii) *services are performed within that State for an enterprise within the meaning of paragraph 1 of Article 10 (Associated enterprises) and continue for a period or periods aggregating more than 30 days within any twelve-month period:*

Provided that for the purposes of this paragraph an enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it provides services or facilities in connection with, or supplies plant and machinery on hire used or to be used in, the prospecting for, or extraction or production of, mineral oils in that State.

ARTICLE 13

ROYALTIES AND FEES FOR TECHNICAL SERVICES

1. *Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.*
2. *However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the law of that State; but if the beneficial owner of the royalties or fees for technical services is a resident of the other Contracting State, the tax so charged shall not exceed :*
 - (a) *in the case of royalties within paragraph 3(a) of this Articles, and fees for technical services within paragraphs 4(a) and (c) of this Article,—*
 - (i) *during the first five years for which this Convention has effect ;*
 - (aa) *15 per cent of the gross amount of such royalties or fees for technical services when the payer of the royalties or fees for technical services is the Government of the first -mentioned Contracting State or a political sub-division of that State, and*
 - (bb) *20 per cent of the gross amount of such royalties or fees for technical services in all other cases; and*

- (ii) *during subsequent years, 15 per cent of the gross amount of such royalties or fees for technical services; and*
 - (b) *in the case of royalties within paragraph 3(b) of this Article and fees for technical services defined in paragraph 4(b) of this Article, 10 per cent of the gross amount of such royalties and fees for technical services.*
- 3. *For the purposes of this Article, the term "royalties" means :*
 - (a) *payments of any kind received as a consideration for the use of, or the right to use, any copyright of a literary, artistic or scientific work, including cinematography films or work on films, tape or other means of reproduction for use in connection with radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience; and*
 - (b) *payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial or scientific equipment, other than income derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic.*
- 4. *For the purposes of paragraph 2 of this Article, and subject to paragraph 5, of this Article, the term "fees for technical services" means payments of any kind of any person in consideration for the rendering of any technical or consultancy services (including the provision of services of a technical or other personnel) which:*
 - (a) *are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 3(a) of this article is received ; or*
 - (b) *are ancillary and subsidiary to the enjoyment of the property for which a payment described in paragraph 3(b) of this Article is received ; or*
 - (c) *make available technical knowledge, experience, skill know-how or processes, or consist of the development and transfer of a technical plan or technical design.*
- 5. *The definition of fees for technical services in paragraph 4 of this Article shall not include amounts paid :*
 - (a) *for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property, other than property described in paragraph 3(a) of this Article;*
 - (b) *for services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships, or aircraft in international traffic;*
 - (c) *for teaching in or by educational institutions ;*
 - (d) *for services for the private use of the individual or individuals making the payment ; or*
 - (e) *to an employee of the person making the payments or to any individual or partnership for professional services as defined in Article 15 (Independent personal services) of this Convention.*

6. *The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 (Business profits) or Article 15 (Independent personal services) of this Convention, as the case may be, shall apply.*
7. *Royalties and fees for technical services shall be deemed to arise in a Contracting State where the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to make payments was incurred and the payments are borne by that permanent establishment or fixed base then the royalties or fees for technical services shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.*
8. *Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties or fees for technical services paid exceeds for whatever reason the amount which would have been paid in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.*
9. *The provisions of this Article shall not apply if it was the main purposes or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties or fees for technical services are paid to take advantage of this Article by means of that creation or assignment.*

EXHIBIT B

Extract of the relevant Articles of India - Country Y DTAA

ARTICLE 1

PERSONAL SCOPE

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

TAXES COVERED

- 1 *This Agreement shall apply to taxes on income and on capital imposed on behalf of a Contracting State, of a land or a political sub-division or local authority thereof, irrespective of the procedure in which they are levied.*

- 2 *There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, and the pay roll tax.*
- 3 *The existing taxes to which this Agreement shall apply are in particular:*
 - (a) *in the Federal Republic of Country Y :*
income-tax,
corporation-tax,
capital tax, and
trade tax
(hereinafter referred to as "Country Y tax");
 - (b) *in the Republic of India,*
the income-tax including any surcharge tax thereon, and the wealth-tax
(hereinafter referred to as "Indian tax").
- 4 *This Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of changes of importance which have been made in their respective taxation laws.*

ARTICLE 3 (EXTRACT)

GENERAL DEFINITIONS

1. *For the purposes of this Agreement, unless the context otherwise requires, -*
 - (d) *the term "person" includes an individual, a company and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States ;*

ARTICLE 4 (EXTRACT)

RESIDENT

1. *For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.*

ARTICLE 14

INDEPENDENT PERSONAL SERVICES

1. *Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State:*

- (a) *if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities, in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State ;
or*
 - (b) *if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 120 days in the relevant fiscal year; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.*
2. *The term "professional services" includes independent scientific, literary, artistic, educational or teaching activities, as well as the independent activities of physicians, surgeons, lawyers, engineers, architects, dentists and accountants.*

EXHIBIT C

Extract of the relevant Articles of India – Country Z DTAA

ARTICLE 1

PERSONAL SCOPE

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

TAXES COVERED

1. *The taxes to which this Agreement shall apply are:*
 - (a) *in the case of India :*

the Income-tax including any surcharge thereon; and
 - (b) *in the case of Country Z:*

the federal, cantonal and communal taxes on income (total income, earned income, income from capital, industrial and commercial profits, capital gains, and other items of income).
2. *The Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the present Agreement in addition to, or in place of, the taxes referred to in paragraph 1 of this Article.*
3. *In this Agreement, the term "Indian tax" means tax imposed by India, being tax to which this Agreement applies; the term "Country Z tax" means tax imposed in Country Z, being tax to which this Agreement applies; and the term "tax" means Indian tax or Country Z tax, as the context requires; but the taxes in the preceding paragraphs of this Article do not include any penalty or interest imposed under the law in force in either Contracting State relating to the taxes to which this Agreement applies.*
4. *The competent authorities of the Contracting States shall notify to each other any significant changes which have been made in their relevant respective taxation laws.*

ARTICLE 3 (EXTRACT)

GENERAL DEFINITIONS

1. *In this Agreement, unless the context otherwise requires:*
 - (d) *the term "person" includes an individual, a company, a body of persons, or any other entity which is taxable under the laws in force in either Contracting State;*

ARTICLE 4

FISCAL DOMICILE

1. *For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature, provided, however, that:*
 - (a) *this term does not include any person who is liable to tax in that State in respect only of income from sources in that State; and*
 - (b) *in the case of income derived or paid by a partnership, estate, or trust, this term applies only to the extent that the income derived by such partnership, estate, or trust is subject to tax in that State as the income of a resident, either in its hands or in the hands of its partners or beneficiaries.*

ARTICLE 14

INDEPENDENT PERSONAL SERVICES

1. *Income derived by an individual or a firm who is a resident of one of the Contracting States in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless:*
 - (a) *the individual or firm has a fixed base regularly available to the individual or firm in the other Contracting State for the purpose of performing the individual's or the firm's activities, in which case the income may be taxed in that other State but only so much of it as is attributable to activities exercised from that fixed base; or*
 - (b) *the stay by the individual or, in the case of a firm, by one or more members of the firm (alone or together) in the other Contracting State is for a period or periods amounting to or exceeding 183 days in a year of income, in which case only so much of the income as is derived from the activities of the individual, that member or those members, as the case may be, in that other State may be taxed in that other State.*
2. *The term "professional services" includes services performed in the exercise of independent scientific, literary, artistic, educational or teaching activities as well as in the exercise of the independent activities of physicians, surgeons, lawyers, engineers, architects, dentists and accountants.*