

Answers to questions are to be given only in English except in the case of candidates who have opted for Hindi medium. If a candidate who has not opted for Hindi medium, his / her answers in Hindi will not be valued.

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

Answers in respect of Multiple Choice Questions are to be marked on the OMR Answer Sheet only.

Answers to other questions are to be written on the descriptive type answer book.

Answers to Multiple Choice Questions, if written in the descriptive type answer book will not be evaluated.

Candidates may use calculator.

All questions related to Assessment Year 2020-21, unless stated otherwise in the questions / case studies.

### **Case Study 1**

DDAP Limited is a Singapore based company. It rendered the following two types of services to its Indian subsidiary viz. rendering of management support services and technical services (in connection with setting up of internet data centres for BSNL) to its Indian subsidiary and received (i) Management Fee– for which it had deputed its employees in India for 2 days and (ii) Service Fee– for which it had deputed its employees for 171 days. As per India – Singapore DTAA, a service PE is created if employees presence in India, in aggregate, exceeds 30 days. The AO aggregated employees' stay on account of rendering of both the services and accordingly held service PE constitution since the cumulative period (i.e. 173 days) exceeded the threshold limit of 30 days as provide under Article 5(6) of the India-Singapore DTAA. Before Tribunal, the assessee offered to tax Service Fee as fee for technical services under section 9(1)(vii), taxable @ 10% under section 115A(1)(b). With respect to the

Management Fee, the assessee offered to be governed by the DTAA provisions. Since the employees of the assessee had visited India for a period of only 2 days for management support services, the threshold of 30 days was not satisfied and accordingly there was no Service PE in India and thus Management Fee was not taxable in India.

### **Advance Rulings**

1. International Zinc Association, Belgium [IZA] was incorporated on 24.09.1992 under the laws of Belgium, and registered as an “International Non-Profit Association” in Brussels. It is a tax resident of Belgium.
2. IZA helps sustain long-term global demand for Zinc by creating awareness about the key end uses of Zinc, such as corrosion protection for steel, the essentiality of Zinc in human health and crop nutrition/fertilizers. Its main programs are Sustainability & Environment, Technology & Market Development and Communications. Environment and Sustainability program focuses on identifying, understanding and managing environmental issues that may impact the Zinc industry, through regulatory affairs and research programs; and Zinc deficiency issues in human health and crop nutrition. The main aim of Technology and Market development program is to develop usage of zinc through R&D. Communication program ensures that key messages about Zinc are disseminated globally through its websites, publications, newsletters, press releases, interviews, video conferences, seminars and training courses.
3. IZA received the permission of the Reserve Bank of India, to establish a Liaison Office in India, which plays an important role in educating the importance of zinc in fertilizers so that the likelihood of Zinc based fertilizers being subsidized would increase, as Zinc deficiency is a wide spread problem in agricultural soils causing decreased crop productivity and nutritional quality, and this requires change of policy. The LO plays an important role in increasing the level of knowledge about Zinc deficiency and proper Zinc fertilization techniques. It also promotes Zinc as an agent to galvanize steel to increase the strength of steel. The major projects proposed to be undertaken by the LO in this report, include:
  - Spread of knowledge to government sectors and public authorities; Revision of Codes to include and favour galvanized steel solutions; Construction and infrastructure focused galvanizing seminars;
  - Zinc First User Engagement and Technical Upliftment; i.e. knowledge development, and awareness and communications
  - It will hosting members’ information on its website, publish various materials, organizing conferences, representing its members etc.

It seeks ruling from AAR as to whether the representative/liaison office (LO) proposed to be established by IZA in India would be liable to income-tax in India under the provisions of the Act or the provisions of Double Taxation Avoidance agreement between India and Belgium (“India – Belgium DTAA”)

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

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

**1.1** Service Permanent Establishment [PE] is a PE recognised only under \_\_\_\_\_ Model Convention:

- (a) OECD (b) UN  
(c) Both the above (d) Neither of the above

**1.2** Relying on taxation under Income-tax Act for one set of transactions and on Double Taxation Avoidance Agreement [DTAA] for another set of transactions is known as:

- (a) Cherry picking  
(b) Pick and drop approach  
(c) Pick and Choose Approach  
(d) Distortion of law approach

**1.3** Following is a correct statement as far as taxability of mutual concerns is concerned:

- (a) Mutual Concerns are always incorporated under section 8 of Companies Act 2013;  
(b) Mutual Concerns are generally not taxable on the principle of mutuality except under section 28(iii) of the Income-tax Act, 1961;  
(c) Even a single transaction with a non-member disallows all benefits to a mutual concern;  
(d) All the above statements are true;

**1.4** Which of the following statements is true as far as taxability under DTAA is concerned:

- (i) Provisions of DTAA always override IT Act;  
(ii) The rates of tax mentioned in DTAA are all inclusive, i.e. no further surcharge or cess needs to be added;  
(iii) The taxability under DTAA depends on existence of Business Connection in India;

(iv) There is no article for Fees for Technical Service under OECD Model Tax Convention

- (a) Only (i) (b) (i) (ii) and (iv)  
(c) Only (ii) and (iv) (d) Only (i) and (ii)

**1.5** In case of TP comparability analysis, generally we choose such party which bears less risk as the tested party. Such analysis for deciding the tested party is known as:

- (a) Function, Allocation and Risk analysis  
(b) Function, Asset and Risk analysis  
(c) Forward, Allocation and Risk analysis  
(d) Comparability analysis

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

**1.6** In the case of DDAP Limited, you are required to state whether the method adopted by assessee is correct or not? If yes, then can the assessee rely on DTAA for one set of income and on IT Act for taxability of another set of Income?

**(5 Marks)**

**1.7** Alternatively, will the stand of assessee succeed if the stay of employees for management support service was for 32 days?

**(3 Marks)**

**1.8** Discuss whether IZA has a Permanent Establishment in India?

**(5 Marks)**

**1.9** What would be your answer if Liaison Office of IZA procured orders on behalf of its parent company in India?

**(2 Marks)**

## **Case Study 2**

Arrangement of ABC and PQR in India

ABC Inc and PQR Inc, both incorporated in the United States, are Associated Enterprises. ABC has two fixed places of business in India, namely L1 and L2. Similarly, PQR has two fixed places of business in India namely L3 and L4. The functions performed by each of the places of business are as under:

L1: entrusted with the responsibility of displaying the goods of ABC at various trade seminars that take place in India – this results in generation of various sales enquiries which are then forwarded to ABC as it is;

L2: in charge of maintaining stock of goods in India for ABC and handing over the goods to third party transporters once the sales are concluded;

L3: acts as a liaising / communication link between the prospective customers and ABC – it simply helps in collecting and passing on information from customers to PQR and vice versa

L4: responsible for coordinating with third party transporters post conclusion of sales between third party customers and PQR to ensure timely delivery;

Both ABC and PQR claim that their activities are preparatory / auxiliary in nature and therefore, there is no Permanent Establishment in India. Accordingly, they are not liable to tax in India;

### **Transfer Pricing**

XYZ Limited has an Associated Enterprise outside India, LMN Inc. For executing various projects, XYZ sends its employees outside India to the premises of LMN Inc. The TPO is of the opinion that such foreign travel expenses are for the benefit of LMN Inc and therefore, he disallows the entire foreign travel expenses by computing the Arms Length Price as NIL.

### **Payer Ltd.**

Pride Inc, a company incorporated under the laws of USA. The value of its global assets are Rs.50 crores. The value of assets in India are Rs.25 crores. Its turnover during the P.Y. 2019-20 is US \$ equivalent to INR 90 crores. Out of 10 board meetings held during the F.Y.2019-20, only 4 meetings are held in India. The key management and commercial decisions for conduct of the company's business as a whole are, however, made by the directors located in India at the meetings held in India. Your client, Payer Ltd, an Indian company, wishes to remit an amount towards professional fees to Pride Inc. on which tax is required to be deducted in India.

**Note:** Assume that India-UK DTAA is in line with UN Model Convention, 2017

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

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

**2.1** Which of the following statements is incorrect with regard to applicability of General Anti Avoidance Rules [GAAR]:

- (a) When GAAR is applied, the treaty benefit can be denied
- (b) GAAR may co-exist along with SAAR [Specific Anti Avoidance Rules]
- (c) When GAAR is applied, location of transaction can be disregarded by the Assessing Officer
- (d) GAAR came into force from 1.04.2012;

**2.2** Article 5 Para 4.1 of Model Tax Convention is known as:

- (a) Anti Avoidance Rule
- (b) Anti Fragmentation Rule
- (c) Anti Taxation Rule
- (d) Double Dip approach

**2.3** Which is an incorrect statement with regard to Base Erosion Anti-Abusive Tax [BEAT] introduced in USA through The Tax Cuts and Jobs Act, 2017:

- (a) BEAT covers all related party payments;
- (b) BEAT generally applies for payments towards services;
- (c) BEAT was introduced in USA to target payment to foreign related party whether with or without mark-up;
- (d) BEAT does not apply to payments which have suffered withholding tax at the rate of 30%;

**2.4** For A.Y.2020-21, under the provisions of the Income-tax Act, 1961, Pride Inc shall be:

- (a) Resident in India
- (b) Non-resident in India, since it is said to be engaged in active business outside India
- (c) Non-resident in India, since majority board meetings are held outside India
- (d) Non-resident in India, due to reasons stated in both (b) and (c) above.

**2.5** OECD is contemplating introduction of BIT tax for taxation income generated by websites, which does not have Permanent Establishment in Source Country. In such cases, as suggested by OECD, the tax would be levied based on:

- (a) Threshold turnover generated by the website in source country
- (b) Number of bytes used by the website;
- (c) Proportionate revenue generated in source country as a percentage of total global turnover;
- (d) A flat rate of 5 per cent on all payments received through such websites;

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

**2.6** You are required to discuss whether ABC and PQR have a Permanent Establishment in India by applying OECD Model Tax Convention? Will your answer change, if one looks at UN Model Tax Convention?

**(5 Marks)**

**2.7** Is the TPO in disallowing the entire foreign travel expense by determining Arms Length Price as NIL? **(3 Marks)**

**2.8** Determine the residential status of Pride Inc. for A.Y.2020-21 under the Income-tax Act, 1961. Advise Payer Ltd as to whether tax on fees for professional services paid to Pride Inc. has to be deducted under section 194J or section 195. **(5 Marks)**

**2.9** What are the situations when AAR will reject an application seeking ruling? **(2 Marks)**

**Case Study 3**

**Assets outside India**

Mr. Harsh resident aged 55 years is a partner in a firm registered in British Virgin Islands. Mr. Harsh and Mr. Lie of China are partners sharing profits and losses in the ratio of 60:40. Mr. Harsh has not disclosed this interest in the firm to income tax authorities in India. The balance sheet of firm as on 31st March of the previous year in Euro Millions is given below. You are required to ascertain tax liability to be paid by Harsh under BM Act;

<b>Liabilities</b>	<b>€</b>	<b>Assets</b>	<b>€</b>
Capital and Reserves		Drawings and Paintings (Market Value – 120)	50
Harsh	100	Building in Hawaii (Market Value – 160)	30
Lie	120	Bank account in HSBC	10
		Other Assets (Market Value – 165)	130
<b>Total</b>	<b>220</b>	<b>Total</b>	<b>220</b>

**Other Information:**

Market value of Drawings and Paintings as on 1st April is 110

Market value of Building as on 1st April is 150

Bank account in HSBC represents total deposits of 112 and total withdrawals of 102 over period of last 7 years since the date of its opening

Exchange rate for Euro = Rs. 95 (on 1st April)

Exchange rate for Euro = Rs. 96 (on 31st March)

**Foreign Subsidiary**

Ind Limited has a 100 per cent subsidiary outside India viz. US Limited. The said US Limited intends to repatriate its entire net tax profits to India. The US government has recently introduced a 5 per cent BEAT Tax [Base Erosion Anti Abusive Tax] over and above normal corporate tax of 21 per cent. Following profit and loss account is provided to you for the said purposes:

Particulars	USD in Thousands	Particulars	USD in Thousands
Royalty to Related parties	225	Gross Revenue	300
Service charges to related parties (without mark-up)	20	Other Income	20
Fees for technical services to related parties	10		
Net profit	65		
<b>Total</b>	<b>320</b>	<b>Total</b>	<b>320</b>

Assume that USD 1 – Rs. 80. Ind Limited wants to understand the net dividend that may be received from US Limited. It also wants to understand income tax implications of the said receipt in India.

**Non-resident Sportsman**

Mr. Trump is a non-resident sportsman, who is a resident of Country X. The said sportsman has earned an Income of Rs. 60,00,000 by participating in sports tournaments held in India. As per DTAA between India – Country X, the said income is taxable at the rate of 5 per cent. The sports event was hosted by ABC Limited, India. ABC requires your advise on the rates of withholding tax while making payments to Mr. Trump.

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

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

**3.1** In 2013, OECD's Committee on Fiscal Affairs set up a task force on the Taxation under Digital Economy. The said task force provided principles that should apply for taxation in a Digital Economy. Following is NOT one of the principle propounded:

- |                |                  |
|----------------|------------------|
| (a) Efficiency | (b) Neutrality   |
| (c) Modernity  | (d) Flexibility; |



3.2 Under BM Act, following term is not defined:

- (a) Participant
- (b) Previous Year
- (c) Assessee
- (d) Financial interest

3.3 The rate at which ABC Limited should withhold tax while making payment to Mr. Trump is:

- (a) 5%;
- (b) 20%;
- (c) 20.80%;
- (d) None of the above;

3.4 Which of the following statements is false:

- (a) ABC Limited can be treated as an agent of Mr. Trump by Income-tax authorities;
- (b) ABC Limited can be regarded as assessee in default in case it fails to withhold appropriate taxes at source under section 195;
- (c) ABC Limited can appeal against the decision of treating it as agent with Commissioner (Appeals);
- (d) There is no requirement for Mr. Trump to furnish return of income in India in case appropriate taxes are withheld at source;

3.5 A treaty benefit can be denied by tax authorities on certain specified grounds. Which of the following is not a ground for denying treaty benefit

- (a) Assessee does not produce Tax Residency Certificate;
- (b) Assessing Officer invokes GAAR;
- (c) Assessee is a tax resident of India and therefore, global income liable to tax under IT Act;
- (d) The source of income is in the same country where assessee is resident;

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

3.6 Determine the net remittable dividend by US Limited to Ind Limited?

**(4 Marks)**

3.7 Discuss the implications for Ind Limited on receipt of dividend?

**(1 Mark)**

3.8 Determine tax liability under BM Act for Mr. Harsh.

**(2 Marks)**

**3.9** Determine tax liability of Mr. Trump?

**(1 Marks)**

**3.10** Is Mr. Trump required to furnish return in India?

**(1 Marks)**

**3.11** Can ABC Limited be regarded as assessee in default in case it withholds tax at source at 5 per cent?

**(1 Mark)**

**3.12** You are required to analyse implications of ruling provided by Supreme Court in the case of PILCOM Limited vs. CIT in the light of amendment made under provisions of section 40(a)(i) and 201(1) by Finance [No.2] Act, 2019

**(5 Marks)**

**Case Study 4**

**1. XYZ Limited** India provides you with the following profit and loss account for the year ending 31 March 2020 and identifies certain issues for your guidance and advise:

<b>Particulars</b>	<b>Rs.</b>	<b>Particulars</b>	<b>Rs.</b>
To Advertising Expenses	3,20,000	By Sales	1,40,00,000
To Fees for technical services	6,20,000	By Dividend covered under section 115BBD	1,00,000
To Promotional expenses	2,00,000		
To Royalty charges	10,00,000		
To Dividend paid	6,20,000		
To Purchases from related parties	2,00,000		
To Discount to related parties	1,20,000		
To non-compete fees	3,00,000		
To Expenses on abandoned projects	1,00,000		
To Provision for Doubtful Debts	60,000		

To loss on sale of Machines	20,000		
To loss on sale of preference shares	3,60,000		
To Marked to Market loss	16,00,000		
To Commodity trading loss	32,00,000		
To Securities Transaction Tax	10,000		
To Rent	10,00,000		
To Sales Commission	6,00,000		
To Compounding fees	1,00,000		
To Tax paid outside India	3,00,000		
To Managerial Remuneration	1,00,000		
To Gift tax	60,000		
To Salary paid	16,00,000		
To Conference expenses	3,00,000		
To Interest paid	2,00,000		
To Bad Debts	6,00,000		
To Net profit	5,10,000		
<b>Total</b>	<b>1,21,00,000</b>	<b>Total</b>	<b>1,21,00,000</b>

## 2. GAAR:

- (a) An Indian company X Limited, is a closely held company and it is a subsidiary of Y Limited incorporated in Country C1. X Limited was regularly distributing dividend but stopped distributing dividend from 01.04.2003, the date when DDT was introduced in India. X Limited allowed its reserves to grow by not paying out dividends. As a result, no DDT was paid by the company. Subsequently, buy back of shares was offered by X Limited to its shareholder company Y Limited. Y Limited paid tax on capital gains arising on such transaction. The officer alleges that X Limited has purposely deferred the dividend in order to avoid taxation on such dividend for large number of years. Discuss

- (b) In the above question, let us presume, that there is a DTAA between India and Country C1, which provides that capital gains arising in India to a resident of Country C1 will not be taxed in India provided that the resident incurs \$200,000 annually as operating expenditure. The said shareholder Y Limited incurs an operating expenditure above that limit and is therefore, entitled to the treaty benefit. Y Limited therefore does not pay any tax on such capital gains. Can GAAR be invoked on the ground that avoid dividend distribution and subsequent arrangement of ploughing back profits to shareholder through a capital gains transaction which is not taxable in India, is mainly done in order to obtain tax benefits in India?
- (c) In the above question, let us presume that there are three shareholders of the company X Limited i.e. Y Limited (resident of country C1), D Limited and E Limited (resident of country C2). All three shareholders are associated enterprises. DTAA with country C2 provides India right of taxation of capital gains as per domestic law. After GAAR coming into force, X Limited makes an offer of buy back of shares to all its three shareholders. Only Company Y Limited accepts that offer and other shareholders decline. In the process, the accumulated reserves of X Limited are exhausted and Y Limited does not pay any tax in India. Examine.

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

**(1 x 8 = 8 Marks)**

- 4.1** The amount of Dividend Distribution Tax [DDT] payable by the company is:
- (a) 1,27,447 (b) 0  
(c) 1,06,891 (d) Indeterminate;
- 4.2** Out of total advertising expenses, an amount of Rs. 120,000 is paid to non-residents who do not have a PE in India. Equalisation levy on such amount is \_\_\_\_\_:
- (a) 7,200 (b) 6,000  
(c) 0 (d) Indeterminate
- 4.3** Which of the following benefits are not allowable to a non-resident, while computing her total income and tax liability for A.Y.2020-21 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 upto INR 12,500 from tax payable on her total income upto INR 5,00,000
- (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

**4.4** The term liable to tax vs. subjected to tax was first discussed by Supreme Court in the following decision:

- (a) UOI vs. Azadi Bachao Andolan
- (b) CIT vs. Vodafone International BV;
- (c) UOI vs. Samchar Patrika Limited;
- (d) CIT vs. Hannity Corporations Limited;

**4.5** Marked to Market Loss concept is covered in ICDS \_\_\_

- (i) 1;
- (ii) 3;
- (iii) 6;
- (iv) 9;
- (a) i and iii
- (b) i and iv
- (c) i, ii and iv
- (d) All the above

**4.6** The Assessing Officer finds discount allowed by XYZ Limited of Rs. 1,20,000 is unreasonable and highly disproportionate to the percentage of discount generally allowed to unrelated parties. He wants to invoke the provisions of section 40A(2)(b) to disallow the discount. In this context, the following statements are untrue:

- (1) The Assessing officer has to provide an opportunity of being heard before he invokes provisions of section 40A(2)(b) to disallow the discount expense;
- (2) The Assessing Officer cannot disallow the entire expense but has to work out the unreasonable portion of discount for disallowance;
- (3) The provisions of SDT will apply to the said transaction;
- (4) The provisions of Section 40A(2) will not apply
- (a) 1 and 4
- (b) Only 4
- (c) 3 and 4
- (d) 1, 2 and 3

- 4.7** The sales commission of Rs. 6,00,000 has been paid for conducting sales outside India by regular agents of the company. In this connection, tax deduction at source will occur under the following section(s):
- (a) Section 194H
  - (b) Section 195
  - (c) Section 195 or 194H depending on residential status of agent;
  - (d) No tax deduction required;
- 4.8** 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

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

- 4.9** XYZ Limited, India had a permanent establishment in USA which carries on business of extraction of oils in different areas of USA. It uses specialised machines which was purchased at a cost of Rs. 1,00,000. Currently, the machines are present in UK. The same is sold to a UK company for Rs. 80,000. The resultant loss is debited to the profit and loss. You are required to discuss in which jurisdiction the loss would be allowable relying upon the OECD model tax convention;

**(4 Marks)**

- 4.10** XYZ Limited may unfairly claim a "Double Dip" Benefit on such loss. In this context, you are required to examine the concept of Double Dip and the suggestions in this regard

**(4 Marks)**

**4.11** Discuss the concept of “Limitation of Benefit” Clause appearing in India – Mauritius DTAA and state under which Action Plan of BEPS, the same is covered

**(3 Marks)**

**4.12** You are required to discuss applicability of GAAR in the scenarios stated in 2(A), 2(B) and 2(C) above

**(2 x 3 = 6 Marks)**

### **Case Study 5**

You are an expert advisor in the field of International Taxation, trade practices and allied laws. The following 5 Case For Opinions [‘CFO’] have been provided to you for your analysis.

**CFO – 1:** M/s. Global Architects Inc a company incorporated in Country F1 is engaged in providing architectural design services all over the world. It receives an offer from Lovely Resorts Pvt Limited, an Indian company, for design and development of resorts all over India. India – F1 tax treaty provides that architectural services are technical services and payment for the same may be taxed in India. However, if such services are provided by a firm or individual, then such payment is taxable in India only if the firm has a fixed base in India or stay of partners / employees exceed 180 days. M/s. Global Architects intends to form a partnership firm with a third party (director of the company) having only nominal share in the firm. The firm intends to enter into agreement to carry out the services in India. The company wants to second its trained manpower to the firm. Thus, the partnership firm will claim the tax treaty benefit and no tax will be paid in India. The company intends to understand implications under GAAR.

**CFO – 2:** A company X Limited, has property that it proposes to transfer to a third party. Such a transfer would result in capital gains in its hands. Another company Y Limited (which is related to X Limited) has a carried forward capital loss. X Limited (instead of selling the property directly to third party) transfers the property to its above mentioned related party Y Limited at book value, which is less than fair market value of the property. Such a transfer does not result in any capital gains in the hands of X Limited (which would have resulted had the transfer been made to a third party). Soon after, the related party Y Limited, transfers the property

directly to a third party at fair market value and sets off the resulting capital gains with its carried forward capital loss.

- CFO – 3: Shri Corona Kumar is employed as a crew member in an Indian ship as per section 3(18) of the Merchant Shipping Act, 1958. His voyage details show that the date of joining the ship was entered in the Continuous Discharge Certificate (CDC) as 1.11.2018 and the date of signing off in the CDC as 03.05.2019. He remained in India before he flew by air to Colombo, Sri Lanka on 31.10.2019 and joined as crew of the ship again on 02.12.2019 at Colombo port which was the date of entry recorded in the CDC. He received salary income of ₹ 15 lakhs for the financial year 2019-20. He has remained in India for more than 500 days in 4 previous years preceding the previous year 2019-20. Assume that he was on 'eligible voyage' during the previous year 2019-20. Determine the residential status of Shri Corona Kumar and the taxability of his salary income earned in the previous year 2019-20.
- CFO – 4: Techno Engineering, GMBH, a German foreign company entered into an agreement for the execution of electrical work in India for Super Thermal Power Ltd. Separate payments were made towards drawings and designs by Super Thermal Power Ltd. to the German Company which were termed as “Engineering Fee”.
- The German Company is not having any permanent establishment (PE) in India for doing the business and operates from Germany only.
- Will the payment made towards drawings and designs by Super Thermal Power Ltd. to Techno Engineering be subject to tax in India, and if so, why?
- CFO – 5: In a contract for supply of equipment, the seller gives information so as to guide the buyer to install the equipment at site and thereafter to use. The Assessing Officer wants to treat a portion of total payment to such seller as royalty since such activity of seller has “imparted knowledge” in the buyer. Is the contention of Assessing Officer correct?



**Choose the correct alternative for the following MCQs:****(2 x 5=10 Marks)****5.1** Following statements are true in the context of section 9:

- (1) Section 9 follows a “look through” approach and not “look at” approach;
- (2) Section 9 does not require actual rendering of technical services in India for determining taxation of FTS;
- (3) Section 9 has extra territorial jurisdiction;
- (4) Section 9 creates deeming fictions;

- (a) 1, 2
- (b) 1, 2, 3
- (c) 1, 2, 4
- (d) 1, 2, 3, 4

**5.2** For constructing a hotel, an Indian company entered into a contract with a foreign contractor. The foreign company was also to provide various managerial and technical services. The Assessing Officer wants to tax this amount as FTS. However, the assessee claims that such services being in relation to construction project, the same cannot be regarded as FTS. In this context, the correct interpretation is as under:

- (a) There is no FTS rendered by the foreign company, hence, no taxation in India;
- (b) The services rendered are technical in nature but are covered in the exception below section 9(1)(vii);
- (c) The consideration paid for managerial and technical services was characterized as “FTS” since the exclusion dealt with consideration payable in relation to construction of a project and not with services rendered in this regard.
- (d) The services of foreign contractor creates a business connection in India;

**5.3** Interest, royalty and fees for technical services are covered under the following provisions / standards:

- (a) Section 115A
- (b) ICDS – IV
- (c) Both the above
- (d) Section 9A

**5.4** Following are the two tests which are important for determination of fixed place PE:

- (a) Permanence Test and Place of Disposal Test;
- (b) Location Test and Duration Test;
- (c) Agency Test and Construction Test;
- (d) None of the above;

**5.5** In CFO – 3 above, residential status of Shri Corona Kumar for the FY 2019-20 shall be:

- (a) Resident but not Ordinary Resident;
- (b) Resident and Ordinary Resident;
- (c) Non-Resident;
- (d) Insufficient data;

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

**5.6** Can GAAR be invoked for facts stated in CFO - 1? **(4 Marks)**

**5.7** Discuss applicability of GAAR for facts stated in CFO – 2 **(4 Marks)**

**5.8** Would the payments towards drawings and designs be taxable in India in the hands of Techno Engineering GMBH, the German company. **(3 Marks)**

**5.9** Determine whether contentions of Assessing Officer are correct in CFO – 5? Rely only on provisions of IT Act **(4 Marks)**