

ELECTIVE PAPER 6C: INTERNATIONAL TAXATION

CASE STUDY - 2

Mr. Abhinav, a citizen of India, aged 48 years, for the first time, moved for employment purpose to Country "X", a country outside India, on 1st September, 2013. He was employed with a consulting firm in Country "X". Since then, he has visited India during the P.Y.2013-14, 2014-15, 2015-16, 2016-17, 2017-18 for 30 days, 50 days, 50 days, 170 days and 150 days, respectively, for both personal and professional purposes. His family comprises of himself, his spouse Mrs. Archana (aged 45 years); his mother, Mrs. Kamala (aged 81 years); and his two sons, Rohan and Kapil, aged 19 years and 15 years, respectively. In addition, Mr. Abhinav's unmarried sister Ms.Geetha, aged 42 years, is living with his family in Country "X" since September, 2013. Ms. Geetha and Mrs. Kamala have been visiting India during the P.Y.2013-14, 2014-15, 2015-16, 2016-17, 2017-18 for 50 days, 50 days, 120 days, 150 days and 150 days, respectively.

In the year 2016-17, Mr. Abhinav resigned from his job and started his own consultancy in Country "X" for providing technical services. He entered into an agreement with ABC Ltd, an Indian company, on 01.06.2016 and pursuant to the agreement, Fees for Technical Services (FTS) of INR 10,00,000, is payable to Mr. Abhinav every year for a period of five years. The agreement is approved by the Central Government. Mr. Abhinav also entered into an agreement with the Government of Country "Y" for provision of technical services for a period of three years. The FTS payable to Mr. Abhinav every year for a period of three years under this agreement in foreign currency is equivalent to INR 15,00,000.

During the previous year 2016-17, Mr. Abhinav became partner in a partnership firm M/s Lotus & Co., India and contributed INR 50 lakhs towards capital. He was paid interest @10% as interest on capital and profit share of INR 4 lakhs every year by the firm.

His friend Mr. George, a citizen and resident of Country "X", borrowed money from Mr. Abhinav and invested the same in bonds issued by MNO Ltd., an Indian Company in April, 2017. Mr. George visited India during the P.Y.2017-18 for the period from 10th April, 2017 to 15th May, 2017. During the previous year 2017-18, interest on borrowings in foreign currency equivalent to INR 1,95,000 was paid by Mr. George to Mr. Abhinav in his bank account in Country "X".

Mr. Abhinav also earned income of foreign currency equivalent to INR 3,00,000 from his house property in Country 'X' deposited in an Indian Bank at Country 'X' and subsequently brought to India. Also, he had paid property tax of foreign currency equivalent to INR 3,000 on the said property. During the previous year 2017-18, the rental income earned was invested in deposits in India in the ratio of 30:20:50 in NRO savings

account, 5 year fixed deposits and NRE savings account. Interest earned on such deposits is INR 4,000, 5,000 and 9,000, respectively.

On 30.06.2017, he sold shares of Prime Pvt. Ltd., India for INR 12,00,000 and of Hello Pvt. Ltd., India for INR 9,30,000 net of transfer expenses. These shares were purchased by him in convertible foreign currency on 01.12.2014 at a cost of INR 6,20,000 and on 01.01.2017 at a cost of INR 7,50,000 respectively. On 31.10.2017, he invested the sale proceeds of INR 10,50,000 in purchase of shares of Cheers Pvt. Ltd., India.

Further, on 01.12.2017, Mr. Abhinav sold 2000 shares of PQR Pvt. Ltd., India, for INR 15 each. 1500 of such shares were acquired on 01.10.2015 @ INR 10 each and 500 shares were acquired on 31.10.2016 @INR 12 each.

In April, 2017, he had taken a loan of INR 50 lakhs @10% from SBI for construction of residential house in Pune. The construction is completed in May, 2018. He prepaid INR 3 lakhs in March, 2018 to the bank.

He had also purchased the following capital assets in April, 2017 and he transferred the same outside India to Mr. Thomas, a resident of Country "X", in March, 2018 –

- Rupee Denominated Bonds of INR 1,00,000 of LMN Ltd., an Indian Company, issued outside India, for INR 2,00,000.
- Government Securities of INR 1,00,000 through an intermediary dealing in settlement of securities, for INR 1,50,000

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

Mrs. Archana, a painter by profession, earned income of INR 3,00,000 from exhibition conducted in Mumbai. Rohan and Kapil are pursuing education in Country 'X'. Mr. Abhinav paid foreign currency equivalent to INR 60,000 to Cathedral School, Country 'X,' towards their annual tuition fees. Kapil won an excellence award of INR 25,000 at the Science Olympiad held in Mumbai in February, 2018.

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

QUESTIONS

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

OBJECTIVE TYPE QUESTIONS

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

- Based on the above facts, Mr. Abhinav's residential status in India for P.Y.2017-18 and P.Y.2013-14 is -
 - Non-resident for both the years
 - Non-resident for P.Y.2017-18 and Resident but not ordinarily resident for P.Y.2013-14
 - Resident but not ordinarily resident for P.Y.2017-18 and Resident for P.Y.2013-14
 - Non-resident for P.Y.2017-18 and Resident and ordinarily resident for P.Y.2013-14.

(Note – Assume that the rules for determining residential status for A.Y.2014-15 were the same as it is for A.Y.2018-19)
- Which of the following benefits are not allowable to Ms. Geetha, while computing her total income and tax liability for A.Y.2018-19 under the Income-tax Act, 1961?
 - Deduction of 30% of gross annual value while computing her income from house property in Bangalore, India
 - Tax rebate of INR 2,500 from tax payable on her total income of INR 3,40,000
 - Deduction for donation made by her to Prime Minister's National Relief Fund
 - Deduction for interest earned by her on NRO savings account.
- Unexhausted basic exemption limit, if any, of Mr.Thomas, for A.Y.2018-19 can be adjusted against –
 - Only LTCG taxable@20%
 - Only STCG taxable@15%
 - Both (a) and (b)
 - Neither (a) nor (b)
- Had Ms. Geetha been seconded on employment outside India by the Indian Government, which of the following emoluments paid to her by the Indian Government shall be taxable under the Income-tax Act, 1961:
 - Basic Salary paid outside India

- (b) Allowances and Perquisites paid outside India
 - (c) Both (a) and (b), since emoluments are paid to her by the Indian Government
 - (d) Neither (a) nor (b), since she has rendered services outside India
5. Ms. Geetha is an enthusiastic sports person and is keen on contributing an article on a game of Soccer in a leading newspaper in India. She approaches you to enquire on taxability of such income for A.Y.2018-19. As per the provisions of Income-tax Act, 1961, such income shall be taxable in her hands at -
- (a) 5%
 - (b) 10%
 - (c) 20%
 - (d) Normal tax slab rates
- (Note – The above tax rates are excluding cess and surcharge, if any)*
6. Ms. Geetha shall be mandatorily required to file return of income in India for A.Y.2018-19, -
- (a) if she holds assets outside India even though she does not have taxable income in India
 - (b) if she has income exceeding the basic exemption limit but after taking into account deduction under Chapter VI-A, her income falls below the basic exemption limit
 - (c) if she has income, without giving effect to deduction under Chapter VI-A, below the basic exemption limit and tax credit appearing in Form 26AS, in respect of which she does not wish to claim the refund
 - (d) in all the above situations
7. In December, 2014, Ms. Geetha bought, in foreign currency, 500 Global Depository Receipts of PQR Ltd, an Indian Company, which were issued in accordance with the notified scheme of the Central Government. In January, 2018, she sold 300 GDRs outside India to Mr. Frank, a citizen and resident of Country 'X' and 200 GDRs to Mr. Kamal, a Resident but not ordinarily resident in India. Comment on the tax consequences of such sale transaction under the Income-tax Act, 1961 -
- (a) Capital gains arising on sale of 500 GDRs shall be subject to tax @20% with indexation benefit in India

- (b) No capital gains would arise on sale of 500 GDRs in India, since the GDRs are purchased in foreign currency
 - (c) No capital gains would arise on sale of 300 GDRs, but capital gains arising on sale of 200 GDRs shall be taxed in India @10% without indexation benefit
 - (d) No capital gains would arise on sale of 300 GDRs, but capital gains arising on sale of 200 GDRs shall be taxed @20% with indexation benefit in India
8. Benefit of presumptive taxation under the Income-tax Act, 1961 would not be available to Mr. George for A.Y.2018-19, in respect of the related Indian income, if he is engaged in the business of -
- (a) Operation of Ships
 - (b) Operation of Aircrafts
 - (c) Civil Construction in connection with an approved turnkey project
 - (d) Plying, hiring or leasing of goods carriages.
9. Interest income earned by Mr. George during the P.Y.2017-18 on bonds, issued by MNO Ltd., an Indian company, under a scheme notified by the Central Government, which were purchased by him in convertible foreign currency, is -
- (a) taxable@10%
 - (b) taxable@15%
 - (c) taxable@20%
 - (d) not taxable
- (Note – The above tax rates are excluding cess and surcharge, if any)*
10. An agent, in relation to income which is deemed to accrue or arise in India to a non-resident, is considered as a representative assessee. However, an agent, in relation to a non-resident person does not include -
- (a) An employee in India of the non-resident
 - (b) A trustee in India of the non-resident
 - (c) A broker in India dealing with the non-resident person only through a non-resident broker, where both non-residents carry on transactions in the ordinary course of business
 - (d) A person in India having business connection with the non-resident

DESCRIPTIVE QUESTIONS

1. (i) Examine the tax consequence of fees for technical services (FTS) received by Mr. Abhinav, a resident of Country "X", from ABC Ltd. for Assessment Year 2018-19, if -
 - (a) India has no Double Tax Avoidance Agreement (DTAA) with Country "X"
 - (b) India has a DTAA with Country "X", which provides for taxation of such FTS @5%.
 - (c) India has a DTAA with Country "X", which provides for taxation of such FTS @15%.
(3 Marks)
- (ii) In case Mr. Abhinav fails to furnish the PAN details to ABC Ltd., at what rate should ABC Ltd. deduct tax at source, considering that Mr. Abhinav is a resident of a Country 'X', with which India has no DTAA?
(4 Marks)
- (iii) If Mr. Abhinav has a fixed place of profession in India and the contract in respect of FTS with ABC Ltd. is effectively connected with such fixed place of profession in India, how would the FTS be computed in such a case and what are the related requirements under the Income-tax Act, 1961?
(3 Marks)
2. (i) Chapter XVII-B requires tax deduction at source by a resident making payment to either a resident or a non-resident. It does not require tax deduction at source by non-residents, who do not have any place of business or business connection in India. Examine the correctness or otherwise of this statement.
(3 Marks)
- (ii) As a tax consultant for M/s Lotus & Co., India, you need to advise the firm regarding tax deduction at source on the payments (i.e. interest on capital and share of profit) made to Mr. Abhinav during the previous year 2017-18, considering that Mr. Abhinav is a resident of Country 'X', with which India has no DTAA. In case tax is not deductible at source, is there any other related requirement to be complied with by the firm?
(4 Marks)
- (iii) If India has a DTAA with Country 'X' providing for deduction of tax at 10%, then, what is the remedy available in case M/s Lotus & Co., India has deducted tax at the requisite rate provided under the Income-tax Act, 1961?
(3 Marks)
3. Using the information given in the facts of the case, compute Mr. Abhinav's total income and tax liability for the Assessment Year 2018-19, assuming that he is a resident of Country X, with which India has no DTAA and he opts for computing his income in accordance with the provisions of Chapter XII-A of the Income-tax Act, 1961. You may ignore the amount of advance tax and TDS credit appearing in Form 26AS. Also, ignore the effect of first proviso to section 48, wherever applicable.
(10 Marks)

EXHIBIT I

COST INFLATION INDICES

Financial Year	Cost Inflation Index
2001-02	100
2002-03	105
2003-04	109
2004-05	113
2005-06	117
2006-07	122
2007-08	129
2008-09	137
2009-10	148
2010-11	167
2011-12	184
2012-13	200
2013-14	220
2014-15	240
2015-16	254
2016-17	264
2017-18	272

EXHIBIT - II

PART II OF THE FIRST SCHEDULE TO THE FINANCE ACT, 2017

RATES FOR DEDUCTION OF TAX AT SOURCE IN CERTAIN CASES

In every case in which under the provisions of sections 193, 194, 194A, 194B, 194BB, 194D, 194LBA, 194LBB, 194LBC and 195 of the Income-tax Act, tax is to be deducted at the rates in force, deduction shall be made from the income subject to the deduction at the following rates:—

	<i>Rate of income-tax</i>
1. In the case of a person other than a company—	
(a) where the person is resident in India—	
(i) on income by way of interest other than "Interest on securities"	10 per cent;
(ii) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort	30 per cent;
(iii) on income by way of winnings from horse races	30 per cent;
(iv) on income by way of insurance commission	5 per cent;
(v) on income by way of interest payable on—	10 per cent;
(A) any debentures or securities for money issued by or on behalf of any local authority or a corporation established by a Central, State or Provincial Act;	
(B) any debentures issued by a company where such debentures are listed on a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and any rules made thereunder;	
(C) any security of the Central or State Government;	
(vi) on any other income	10 per cent;
(b) where the person is not resident in India—	
(i) in the case of a non-resident Indian—	
(A) on any investment income	20 per cent;
(B) on income by way of long-term capital gains referred to in section 115E or sub-clause (iii) of clause (c) of sub-section (1) of section 112	10 per cent;
(C) on income by way of short-term capital gains referred to in section 111A	15 per cent;
(D) on other income by way of long-term capital gains [not being long-term capital gains referred to in clauses (33), (36) and (38) of section 10]	20 per cent;
(E) on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency (not being income by way of interest referred to in section 194LB or section 194LC)	20 per cent;
(F) on income by way of royalty payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern where such royalty is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book on a subject referred to in the first proviso to sub-section (1A) of section 115A of the Income-tax Act, to the Indian concern, or in respect of any computer software referred to in the second proviso to sub-section (1A) of section 115A of the Income-tax Act, to a person resident in India	10 per cent;
(G) on income by way of royalty [not being royalty of the nature	10 per cent;

referred to in sub-item (b)(i)(F)] payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy

- (H) on income by way of fees for technical services payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy 10 per cent;
- (I) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort 30 per cent;
- (J) on income by way of winnings from horse races 30 per cent;
- (K) on the whole of the other income 30 per cent;
- (ii) in the case of any other person—
- (A) on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency (not being income by way of interest referred to in section 194LB or section 194LC) 20 per cent;
- (B) on income by way of royalty payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern where such royalty is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book on a subject referred to in the first proviso to sub-section (1A) of section 115A of the Income-tax Act, to the Indian concern, or in respect of any computer software referred to in the second proviso to sub-section (1A) of section 115A of the Income-tax Act, to a person resident in India 10 per cent;
- (C) on income by way of royalty [not being royalty of the nature referred to in sub-item (b)(ii)(B)] payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy 10 per cent;
- (D) on income by way of fees for technical services payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a 10 per cent;

matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy

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| (E) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort | 30 per cent; |
| (F) on income by way of winnings from horse races | 30 per cent; |
| (G) on income by way of short-term capital gains referred to in section 111A | 15 per cent; |
| (H) on income by way of long-term capital gains referred to in sub-clause (iii) of clause (c) of sub-section (1) of section 112 | 10 per cent; |
| (I) on income by way of other long-term capital gains [not being long-term capital gains referred to in clauses (33), (36) and (38) of section 10] | 20 per cent; |
| (J) on the whole of the other income | 30 per cent; |

2. In the case of a company—

(a) where the company is a domestic company—

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| (i) on income by way of interest other than "Interest on securities" | 10 per cent; |
| (ii) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort | 30 per cent; |
| (iii) on income by way of winnings from horse races | 30 per cent; |
| (iv) on any other income | 10 per cent; |

(b) where the company is not a domestic company—

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| (i) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort | 30 per cent; |
| (ii) on income by way of winnings from horse races | 30 per cent; |
| (iii) on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency (not being income by way of interest referred to in section 194LB or section 194LC) | 20 per cent; |
| (iv) on income by way of royalty payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1976 where such royalty is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book on a subject referred to in the first proviso to sub-section (1A) of section 115A of the Income-tax Act, to the Indian concern, or in respect of any computer software referred to in the second proviso to sub-section (1A) of section 115A of the Income-tax Act, to a person resident in India | 10 per cent; |
| (v) on income by way of royalty [not being royalty of the nature referred to in sub-item (b)(iv)] payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter | |

included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—

(A) where the agreement is made after the 31st day of March, 1961 but before the 1st day of April, 1976 50 per cent;

(B) where the agreement is made after the 31st day of March, 1976 10 per cent;

(vi) on income by way of fees for technical services payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—

(A) where the agreement is made after the 29th day of February, 1964 but before the 1st day of April, 1976 50 per cent;

(B) where the agreement is made after the 31st day of March, 1976 10 per cent;

(vii) on income by way of short-term capital gains referred to in section 111A 15 per cent;

(viii) on income by way of long-term capital gains referred to in sub-clause (iii) of clause (c) of sub-section (1) of section 112 10 per cent;

(ix) on income by way of other long-term capital gains [not being long-term capital gains referred to in clauses (33), (36) and (38) of section 10] 20 per cent;

(x) on any other income 40 per cent

Explanation.—For the purposes of item 1(b)(i) of this Part, "investment income" and "non-resident Indian" shall have the meanings assigned to them in Chapter XII-A of the Income-tax Act.

Surcharge on income-tax

The amount of income-tax deducted in accordance with the provisions of—

(i) item 1 of this Part, shall be increased by a surcharge, for the purposes of the Union,—

(a) in the case of every individual or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, being a non-resident, calculated,—

I. at the rate of ten per cent of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds fifty lakh rupees but does not exceed one crore rupees;

II. at the rate of fifteen per cent of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees; and

(b) in the case of every co-operative society or firm, being a non-resident, calculated at the rate of twelve per cent, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees;

(ii) item 2 of this Part shall be increased by a surcharge, for purposes of the Union, in the case of every company other than a domestic company, calculated,—

(a) at the rate of two per cent of such income-tax where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees but does not exceed ten crore rupees; and

(b) at the rate of five per cent of such income-tax where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds ten crore rupees.