

ELECTIVE PAPER 6C: INTERNATIONAL TAXATION

CASE STUDY - 3

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.*