

Roll No.....

Total No. of questions – 5

Total number of printed pages - 30

Time allowed – 4 Hours

Maximum marks – 100

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 2021-22, unless stated otherwise in the questions / case studies.

**Case Study 1**

**Feku Limited**

- 1) Feku Ltd of Japan (Japco) is a leading contractor engaged in the execution of highrise infrastructure projects. In response to a tender of Government of India (GoI) for constructing natural gas repository, Japco, in association with Hydra Car's Boon Infrastructure Ltd (HCB), an Indian Company, constituted a consortium to bid for the project. Consideration in respect of each of the components viz. offshore supply, offshore services, onshore supply and onshore services was mentioned separately in the bid document.
- 2) Japco and HCB entered into Joint Venture agreement prior to submission of the bid. This internal agreement was furnished to GOI as part of the bid.
- 3) The features governing relationship between the JV parties are broadly as under:
  - It is envisaged that while the work of offshore supply and offshore service is to be the sole responsibility of Japco, work of onshore supply and onshore service is to be shared by HCB and Japco.
  - In the JV agreement, there is clarity on the basis on which onshore supply/service work would be divided as also about the basis on which the consideration in respect of such shared/allocated work would be determined.

- The agreement is clear on the point that the parties have collaborated with the sole object of fulfilling contractual obligations to the extent mandated by GOI and they have no other intention to carry on business in common with each other.
- Role and responsibilities of each consortium member are separately and clearly identified. No one has the authority to bind the other except as specified.
- Each party is to make independent arrangement for execution of its part of work; each is responsible for own cost, insurance, providing guarantee, etc.
- While each one is jointly and severally liable to GOI in respect of the project, there is mutual indemnification covenant for ensuring that loss caused to the non-defaulting party is duly indemnified by the other.
- In the event of bankruptcy or default by one, the other party has to complete the project by taking over the responsibility such that at any time GOI is able to proceed against any of the member.
- Japco is appointed by JV as a Lead member for central contact point for correspondence, negotiation, etc. Japco, as a lead member, can sign all the documents on behalf of JV

as per accepted norms and keep HCB informed through periodic meetings.

- 4) The consortium was declared as successful bidder. Having regard to the condition of bid document, joint bank account has been opened to receive the consideration. The banker is given standing instructions to immediately transfer respective share of consideration to the individual account of each party.
- 5) In respect of its own share of work, Japco operated as under:
  - i. The work of sourcing offshore supply is retained by Japco to itself. In order to comprehend the exact specifications and to oversee installation, the personnel of Japco spent 30 mandays in India during F.Y.2020-21 and about 60 mandays are likely to be spent in the next year. Deliveries of the supplies are to be effected outside India on high seas basis. However, Gol has power of inspection and rejection till the facility becomes operational as guaranteed.
  - ii. To provide offshore services, Japco assigned the responsibilities and rewards of the segment to its wholly owned subsidiary Theechu Ltd, a Thailand company, for no consideration. Theechu Ltd has adequate infrastructure and talent to execute the work. The assignment was consented to by Gol subject to a covenant that the ultimate responsibility will continue to vest with Japco should there be any breach or violation of the terms of the tender. Japco has retained a

corresponding right of indemnification from Theechu in respect of damages, if any, incurred by Japco as a result of default of Theechu.

- iii. The portion of work related to onshore supply (to the extent it constituted responsibility of Japco) was assigned for a considerable fee to an Indian subsidiary (ICo1) floated by Japco just a day prior to the day of assignment. The consideration payable by the subsidiary was shown as capital contribution. Japco believes that the assignment consideration is not liable to tax in its hands and does also believe that it will constitute tax admissible expenditure in the hands of ICo1.
  
- iv. The portion of work related to onshore services (to the extent it constituted responsibility of Japco) was assigned to another Indian subsidiary (ICo2) which has a track record of handling small jobs of much a simpler nature. It is also expected that given the more specialized nature of services, a couple of key personnel of Japco will remain in India for a period of about two years not only to supervise work of ICo2, but also to provide adequate handholding and training to the personnel of ICo2. Japco does not propose to charge any amount in respect of services rendered by its personnel to ICo2. JapCo personnel have been provided with regular cabins in the work place of ICo2 and have been permitted to attend their continuing obligations in relation to other projects in and outside India.

Choose the correct alternative for the following MCQs: (2X5=10 Marks)

1.1 Which of the following statements is false in the context of Multilateral Instrument (MLI) introduced by OECD:

- (A) MLI is introduced under Action Plan 15
- (B) MLI intends to eliminate dispute on account of different terms being used differently in each DTAA;
- (C) BEPS MLI will replace existing tax treaties;
- (D) BEPS MLI will operate along with existing DTAA by modifying the application of provisions under DTAA;

1.2 Which is not a key organ of MLI:

- (A) Covered Tax Agreement
- (B) Incompatibility clause
- (C) Reservation Clauses
- (D) Minimum Standard

1.3 Which of the following statements is true in the context of General Anti Avoidance Rule:

- (A) If the arrangement is covered under section 96, then the arrangement will be disregarded by application of GAAR and necessary consequences will follow which may result in

assessment of notional income or disallowance of real expenditure;

- (B) If the arrangement is covered under section 96, then the arrangement will be disregarded by application of GAAR but taxation authorities cannot tax notional income;
- (C) If the arrangement is covered under section 96, then the arrangement will be disregarded by application of GAAR but status of assessee cannot be changed;
- (D) None of the above;

1.4 Can GAAR be invoked for difference in interpretation between assessee and tax authority? [Choose correct option]

- (A) Yes, there is no restriction for invoking GAAR in such cases;
- (B) No, GAAR cannot be invoked in such cases;
- (C) Although there is no clarity in law for such scenario, but on account of vetting by Pr. CIT and then by approving panel, arbitrary invocation of GAAR will certainly not take place;
- (D) GAAR cannot be invoked only for question of fact and not question of law;

1.5 Data of current year and two preceding years can be considered for benchmarking under which of the following methods:

- (A) Resale Price Method
- (B) Cost Plus Method
- (C) Transaction Net Margin Method

(D) All the above methods

You are required to answer the following issues:

1.6 Whether income received from Gol will be taxable in the hands of the JV or its members? [5 Marks]

1.7 Will your answer change in case Feku Limited Japan and HCB are associated enterprises? [2 Marks]

1.8 Assuming income is not taxable in the hands JV as a unit of assessment, determine taxability and tax implications in India with regard to the following transactions pertaining to Feku Group. **ignore provisions of DTAA**

- Offshore supply
- Offshore services
- Onshore supply
- Onshore services

[6 Marks]

1.9 With regard to activities conducted by Japco in relation to onshore supply in India, can the tax authorities invoke provisions of GAAR?

[2 Marks]



## **Case Study 2.**

- 2.1 Shoppers Paradise Ltd (SPL) is engaged in the business of telemarketing of various health products. It has a chain of retail outlets. SPL has obligation to effect certain foreign remittances. All such contracts of SPL with the payees are on net of tax basis i.e. the payees are tax protected. Till today, SPL has adopted conservative stand of deducting tax after suitable grossing up, at rates advised by their adviser in respect of all the remittances discussed in para 2.3 herein.
- 2.2 SPL's new accountant is worried about implications of section 206AA of the Act as also about growing hazards and is of the view that SPL should have a relook at tax withholding compliances. Out of caution, the accountant had approached all the payees requesting them to furnish their PAN in India. As expected, each of them not only declined to accede to the request but did also indicate their unwillingness to continue their relations if the insistence endured.
- 2.3 In this background, the accountant has requested for your cool and calm thoughts on the applicable withholding tax compliance in respect of each of the following remittances:
- a) SPL has signed an agreement with an Indian agent of Sab Se Set Inc, a channel company from Singapore for placement of advertisements on TV channels which have large footprint area in India. SPL has not been deducting tax at source on payments of service fee on the basis of representation of the

agent that he works as an independent agent on behalf of multiple channels and that his role in India is limited to coordinate and liaise with advertisers like SPL. The Indian agent has made available a certificate from the channel company to confirm that the company has no PE in India. The Indian agent (who holds PAN) has agreed that tax can be deducted @1% in terms of section 194C of the Act while making payment to him.

- b) SPL has a non-executive director who is tax resident of Malaysia. The non-executive director is being paid directors' fees for attending various Board meetings in and outside India. Tax @10% has been deducted at source under section 194-J of the Act.
- c) In order to equip newly recruited employees with various soft skills and other techniques of relevance to SPL's business, SPL sends the employees for training workshops conducted by a reputed company which owns business training institute. The Institute is headquartered in Hong Kong but conducts the courses in Netherlands. The remittance is made to Netherlands.
- d) Business guru of renowned fame from USA comes to India once a year and gives training to top cadre personnel of SPL for a day to equip company leadership to face challenges of the business. This is done after his understanding specific needs of SPL.

- e) SPL engaged eRetail Empowerment Inc of Singapore, to provide training to its employees for better management and control of its supply chain and inventory. Employees of the eRetail would be in India to install the software on the server of SPL and on the individual machines of various employees of SPL after introducing various security measures such as password protection, firewalls, default back-up system, etc. Two training sessions would be held in India. In all, about 10 professionals would be present in India for about a week.
  
- f) For designing of its one of the state-of-the-art outlets which SPL is planning to set up, SPL is in active negotiations with a renowned architecture firm primarily based at USA and has been organized as a firm in USA. The engagement will involve understanding of the specific requirements of SPL and will involve tailor made designs. The work is to be performed largely outside India. USA firm is assessed as a 'transparent entity' and its income is taxed in the hands of its partners.

The service provider has indicated that the job engagement can be contracted with any of their affiliates in EU since each affiliate is as equally placed. The service provider has indicated that SPL can think of contracting with its affiliate from Finland, France, Netherlands, etc having regard to more beneficial treaty provisions read with MFN protocols and has left the choice to SPL.

Choose the correct alternative for the following MCQs: (2X5=10 Marks)

2.1 Which of the following statement is false in the context of taxing royalty income in India under provisions of Income-tax Act, 1961:

- (A) It is immaterial whether the possession or control of right, property or equipment is with the payer;
- (B) It is immaterial whether or not the payer directly uses the right, property or information;
- (C) The location of right, property or information is irrelevant;
- (D) Royalty cannot be taxed in India in absence of a permanent establishment in India

2.2 Arms' length range is used when number of comparables is more than \_\_\_\_ :

- (A) 2
- (B) 6
- (C) 5
- (D) 8

2.3 Unexhausted basic exemption limit, if any, of a non-resident can be adjusted against –

- (A) Only LTCG taxable@20%
- (B) Only STCG taxable@15%
- (C) Both (a) and (b)
- (D) Neither (a) nor (b)

2.4 Which of the following statements is true:

- (1) Under IT Act, a company whose place of effective management is in India can still be regarded as non-resident if it is incorporated outside India;
  - (2) The first tie-breaker test is to look at habitual abode of an Individual
  - (3) It is only under UN Model Tax Convention that “place of incorporation” is considered as a criteria for determination of residential status;
  - (4) Both OECD and UN Model Tax Conventions have the same set of tie-breaker tests for an Individual
- (A) All statements are true
  - (B) Only 1, 3 and 4
  - (C) Only 3 and 4
  - (D) Only 3 above

2.5 As per Delhi High Court decision in the case of Alcatel Lucent Canada, following point/s is/are true with regard to taxability of income from sale of software in India –

- (A) Income from software cannot be taxed in India in absence of Permanent Establishment in India;
- (B) When software is embedded in hardware, which is sold to a customer, there is no need to bifurcate the software and hardware portions;

(C) In case the software does not have an Independent Functional Existence, then the same cannot be bifurcated from the hardware for the purposes of taxability;

(D) All the above are true;

You are required to answer the following issues:

2.6 You are required to discuss the withholding tax provisions in case of payments made to Sab se Set Inc. You can rely on OECD Model Convention for analysing DTAA impact?

[5 Marks]

2.7 With regard to the proposed engaged with architecture firm for state of the arts outlets, you are requested to analyse whether such payment would be taxable in India within the provisions of Income-tax Act, 1961.

[2 Marks]

2.8 The US architecture firm proposes to SPL to engage services of its European Counterparts on the basis that India has more favourable tax treaty with such European countries. Can this be the ground for invoking GAAR?

[3 Marks]

2.9 With regard to payment by SPL to eRetail Empowerment Inc, what would be your advise to eRetail Empowerment Inc on taxability of income received under:

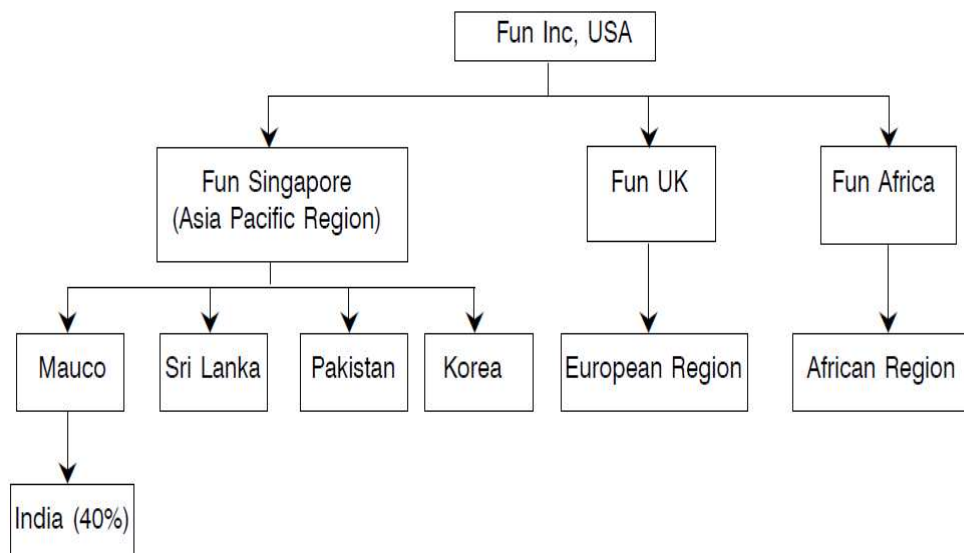
- Income tax Act
- UN Model Convention
- OECD Model Convention

[5 Marks]

### Case Study 3.

Fun Group, a renowned business group in the field of entertainment headed by Fun Inc. of USA, has the following business structure for its international operations.

The structure comprises of Fun Singapore (heading the Asia Pacific region), Fun UK, (heading the European region) and Fun Africa (heading the African region).



Fun Singapore has an independent Board comprised of people who are employees of Fun US, apart from a couple of professionals at Singapore. The details of expenditure incurred by Fun Singapore in the recent years are as under:

(‘000 S \$)

	31.03.08	31.03.09	31.03.10
Audit fees	25	50	75
Directors’ fees (including for meetings outside Singapore)	50	50	50
Executive, General and Administration Expenses(including compliance cost etc)	150	150	200
Cost sharing contribution as per Global Policy to USCO	50	50	50
Total	275	300	375

Fun Singapore acquired stake in Indian Company from another Singapore Company before 31 March 2007. The seller had held the stake through MauCo, a company incorporated in Mauritius and Fun Singapore acquired shares of MauCo for cost of \$ 1 crore.

In order to be a world leader in the field of entertainment, Fun group believes that it should hold 100% interest in any company within the group. After various rounds of negotiations, the group was unsuccessful in striking a deal of acquiring shares from the other shareholder of ICO. Hence, Fun Group decided to exit. Fun Singapore thereupon agreed to transfer shares of MauCo to another Mauritius Company, Mickey Co Ltd, which holds 60% interest in the Indian company. The consideration payable was



inclusive of control premium, which Mickey Co, was willing to pay. The transfer is proposed to take place on 28<sup>th</sup> February 2021. Mauritius follows calendar year for preparation of financial statements. The book value of assets as on date of transfer and 31<sup>st</sup> December 2020 is the same.

The news of transfer was well advertised in diverse public media. Decision to transfer was taken at a Board meeting in Hong Kong, but was approved by President operations in US. The news also featured on the website of Fun Group and in the regulatory filing that Fun US did in the US. The transfer was accompanied by non-compete covenant on the part of Fun Mauritius, Fun Singapore and Fun US agreeing not to compete in the same line of business in the territory of India for a period of 2 years. No separate consideration was specified in respect of no compete covenants.

Choose the correct alternative for the following MCQs: (2X5=10 Marks)

- 3.1 The provisions relating to taxation of indirect transfer of shares of an Indian company were introduced vide Finance Act, 2012, as a consequence of which of the following decisions of the Supreme Court –
- (A) McDowell & Co. Ltd. v. CTO
  - (B) Vodafone International Holdings B.V. vs. UOI
  - (C) Union Of India vs Azadi Bachao Andolan
  - (D) CIT Vs Yokogawa India Limited

3.2 Based on the facts in the case, where Fun Singapore proposes to transfer shares of MauCo, which of the following Double Taxation Avoidance Agreements ('DTAA'), would be applicable for analysing the taxability in the hands of Fun Singapore in India -

- (A) US-Singapore DTAA
- (B) India- Singapore DTAA
- (C) India-US DTAA
- (D) None of the DTAAAs are applicable

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

- (A) 30th June 2020
- (B) 31st December 2020
- (C) 31st March 2020
- (D) 31st May 2020

3.4 Assuming the transfer of shares of MauCo by Fun Singapore is taxable in India and ignoring DTAA provisions, if any, what would be the rate of tax on the gains arising from such transfer:

- (A) 10%
- (B) 20%
- (C) 30%

(D) 40%

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

3.5 Mauco had acquired shares in Indian company for \$ 40 lakhs. This constitutes 60% of its total assets. In case Mauco transfers shares in Indian company and earns capital gains of Rs. 25 lakhs, then \_\_\_\_\_ is the proportionate amount taxable in India:

(A) INR 15 lakhs

(B) INR 25 lakhs

(C) INR 0

(D) Inadequate data provided in question

You are required to answer the following issues:

3.6 Discuss obligations of Indian company whose shares are being indirectly transferred by Fun Singapore to Mickey Co Limited?

[4 Marks]

3.7 Compute capital gains and tax arising to Fun Singapore if any based on the following details:

- Fun Singapore acquired shares in Mauco on 31 March 2007 for \$ 1 crore

- Fun Singapore sold the shares to Mickey Co Limited on 28 Feb 2021 for \$ 1.50 crore

- Mauco's 60% of total assets are located in India and its absolute value is more than 10 crores;

- The rate of exchange is as under:

31.12.2020 = \$1 – Rs. 70

31.01.2021 = \$1 – Rs. 72

28.02.2021 = \$1 – Rs. 71

[4 Marks]

3.8 What shall be the compliance(s) applicable to Mickey Limited Mauritius. [3 Marks]

3.9 You are required to discuss on what grounds the tax officer can challenge treaty benefit to Fun Singapore. What can be the defence for Fun Singapore in such scenario?

[4 Marks]

## **Case Study 4.**

- 4.1 The family of Aaram Kumar (A), an Indian resident, is in the business of trading in and manufacture of medical equipments. For the purpose, they have formed a company in India (Ind Co). The shares are held equally by A and by his brother's wife.
- 4.2 With a view to explore overseas market, 100% shares of a South African Company (SA Co) were acquired within the fold of Mauritius Co (Mau Co) which was set up as a step-down subsidiary of Ind Co. Mr. A is the CEO of Ind Co and is also a director of Mau Co and SA Co. Mr. A resides in India for most part of the year.
- 4.3 SA Co is in the business of sale and purchase of medical equipments globally. Mau Co is a pure holding company in Mauritius and presently holds SA Co as its only investment. Mau Co has obtained a tax residency certificate (TRC) from the Mauritius tax authorities confirming that it is a tax resident of Mauritius under the Mauritius domestic tax law for calendar years 2019 and 2020 and is confident of obtaining the same for calendar year 2021 as well.
- 4.4 In December 2020, Mau Co. received dividends from SA Co and has also earned significant profits from resale of products procured from Ind Co and reselling to SA Co.
- 4.5 Mr. A believes that he is most diligent in complying with his tax obligations in India and overseas. He has declined the request of

his tax advisor to review tax affairs of SA Co and Mau Co on the ground that these are foreign companies and can have no tax implications in India.

4.6 On being promised free advice, Mr. A has since disclosed following pointers, based on which he has solicited views on residential status of the two overseas companies as per current tax law provisions:

- Mr. A actively participates in the decision making process of Mau Co / SA Co while being in India.
- At least one meeting of the BOD of Mau Co / SA Co takes place in India. However, the minutes of the meeting are signed in the respective jurisdiction.
- Fund requirements of Mau Co / SA Co are primarily sourced and solicited with the assistance of employees of Ind Co.
- Key agreements with the customers are agreed to in India, but, are formally executed outside India.
- Mauco/ SA Co did always have two employees to manage compliances.

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

Choose the correct alternative for the following MCQs: (2X5=10 Marks)

4.1 Which of the following is irrelevant in the context of deciding PoEM of a company incorporated outside India:

- (A) Decision of Board to follow objective principles of global policy of the group;
- (B) Substance over form;

- (C) Place of Board Meetings;
  - (D) Involvement of shareholders;
- 4.2 An applicant, who has sought for an advance ruling, may withdraw the application within \_\_\_\_\_.
- (a) 30 days from the date of the application
  - (b) 30 days from the end of the month in which the application has been made
  - (c) 60 days from the date of the application.
  - (d) 60 days from the end of the month in which the application has been made
- 4.3 Tax treaty cannot be used for the following -
- (A) Obtaining relief from double taxation
  - (B) claim reduced taxation through tax evasion
  - (C) Preventing Double Taxation
  - (D) Exchange of information
- 4.4 If X Ltd. had entered into an agreement for sale of 1000 units of non-core auto components to Mr. Rajiv, an unrelated party, on 13.7.2020, and Mr. Rajiv had entered into an agreement for sale of such components with Gigo Inc. [an AE of X Limited] on 8.7.2020, which of the following statements is correct?
- (A) Transfer pricing provisions would not be attracted since X Ltd. and Mr. Rajiv are not associated enterprises;
  - (B) Transaction between X Ltd. and Mr. Rajiv would be deemed to be an international transaction between associated enterprises, only if Mr. Rajiv is a non-resident.

(C) Transaction between X Inc. and Mr. Rajiv would be deemed to be an international transaction between associated enterprises, only if Mr. Rajiv is a non-resident.

(D) Transaction between X Ltd. and Mr. Rajiv would be deemed to be an international transaction between associated enterprises, whether or not Mr. Rajiv is a non-resident.

- 4.5 Let us suppose Alpha Ltd. has entered into an advance pricing agreement (APA) in respect of its transactions with Xylo Inc. for the P.Y.2019-20. The company decides to make an application for roll back of the said APA. However, rollback provision shall not be available in respect of the said transaction for a rollback year, if –
- (i) such application has the effect of reducing total income declared in the return of income of the said year;
  - (ii) determination of the arm's length price of the said transactions for the said year has been the subject matter of appeal before Commissioner (Appeals) and the Commissioner (Appeals) has passed an order disposing of such appeal at any time before signing of the agreement;
  - (iii) determination of the arm's length price of the said transactions for the said year has been the subject matter of appeal before the Appellate Tribunal and the Appellate Tribunal has passed an order disposing of such appeal at any time before signing of the agreement
  - (iv) return of income for the relevant roll back year has been furnished by the company under section 139(4)

The most appropriate answer in this case would be:

(A) (i) and (ii) above.

(B) (i) and (iii) above



(C) (i), (ii) and (iv) above

(D) (i), (iii) and (iv) above.

You are required to answer the following issues:

4.6 Mr. A believes that his control over SA Co and Mau Co is in the capacity of a shareholder and that shareholder decisions are not relevant for determination of PoEM. Please provide a written opinion in this matter to Mr. A.

[4 Marks]

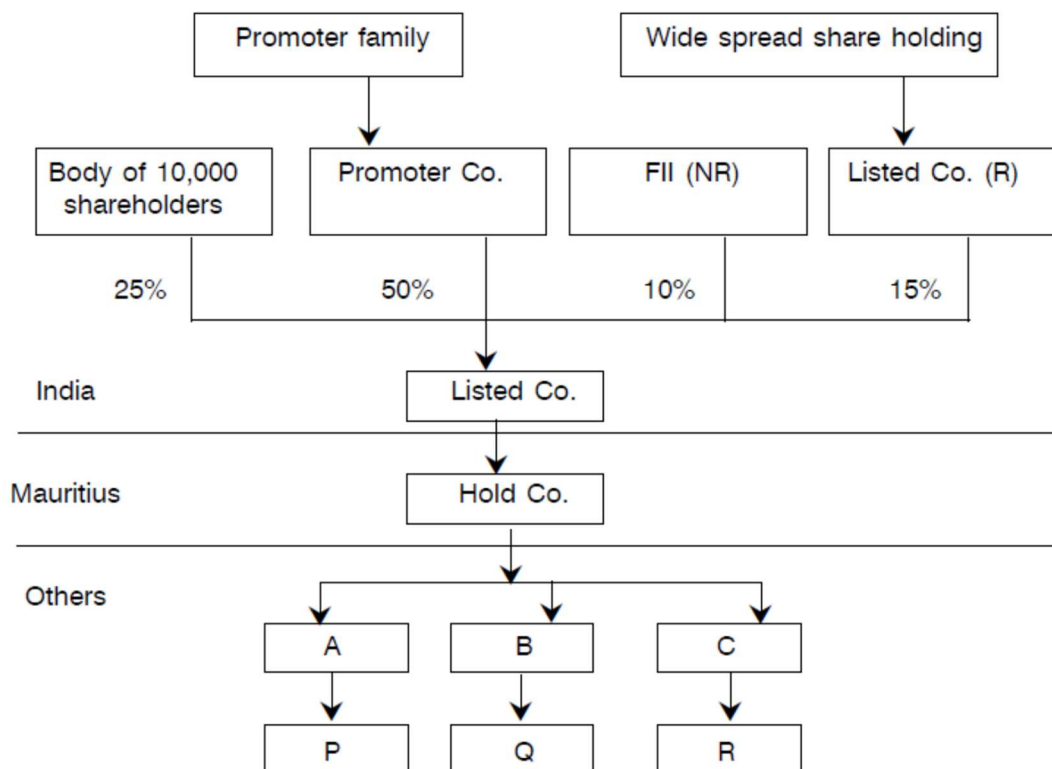
4.7 You are required to critically analyse the residential status of Mauco based on facts provided in case study.

[6 Marks]

4.8 Suppose it is found that PoEM of SACo is outside India. Now SACo maintains an exclusive technical research establishment in South Africa and the Indian company was required to pay to SACo proportionate costs incurred by Indian company in the acquisition, discovery and development of information, processes and inventions. The result of the research was for the benefit of all affiliates including Indian company. The tax officer opines that the payment made by Indian company is fees for technical services, which is liable to tax in India in the hands of the SACo. Analyse?

[5 Marks]

## Case Study 5



5.1 You are required to appreciate the shareholding pattern provided in the chart above. Till date, the group has been advised to channelize all their overseas acquisitions/ventures through Mauritius Company (Holdco) which has been organized as an ordinary company in Mauritius. Over years, Holdco has also acted as a trader for procuring goods from India and exporting to South African countries. This business segment involves Mauco's dealings with unrelated parties.

Mauco has huge borrowings and till date has incurred accumulated losses.

5.2 The details of relevance in respect of downstream investments held through Holdco are as under:

- i. Company P owns IPR in respect of a patent owned by P which can be used for manufacture of drugs and pharmaceuticals. P is likely to earn licence fee of \$ 100,000 from international customers in the financial year (FY) 2021-2022. From profit for FY 2021-22, it would declare interim dividend of \$ 75,000 to A. In respect of such dividend income, A is not likely to pay any tax in its home country in view of benefit of participation exemption available to A in its home country. A is an operating company and for FY 2021- 22, it is likely to have turnover of about \$10M and net profit (including expected dividend from P) of about \$100,000.
  
- ii. The acquisition of Q by B was a highly leveraged acquisition. Q is an operating company engaged in the trading business in Belgium. Q is likely to earn income of \$ 300,000 for FY 2021-22. Q is likely to plough back profits for meeting its expansion needs.

B is also located in Belgium. Belgium permits furnishing of annual return on a fiscal unity basis i.e B will file consolidated tax return wherein Q's income will also be offered to tax. Accordingly, B is likely to report income of \$ 100,000 (after setting off its interest expenditure of \$ 200,000 against income of \$ 300,000 of Q). On such taxable income of \$ 100,000, tax will be paid by B at the rate of 30%.

- iii. Equity shares of C are listed in a recognized stock exchange in Singapore. Preference shares of C are not listed. R (subsidiary of C and a company registered in Cayman Island) is engaged in the business of owning shipping containers and hiring out the same on rental basis. Considering that R is 'cash cow' of the group, business model adopted till date (and as desired to be followed in the future) is that income of R is upstreamed to C and from C to Holdco at the earliest possible opportunity. Listed company C has no other meaningful activity.
- iv. Holdco in Mauritius earned capital gain income of \$ 1,000,000 apart from dividend income, if any. Given however huge trading loss, the company reported net loss.
- v. Certain incriminating documents found in the course of search suggest that during FY 2020-21, the effective control and management of Holdco was in India. It was also found that part of the control and management of some of the underlying companies was also in India.

**5.3 In this background, kindly answer the following questions:**

Choose the correct alternative for the following MCQs: (2X5=10 Marks)

5.1 Correlative adjustment envisaged in Article 9 of UN Model Convention prevents \_\_\_\_\_:

- (a) Juridical double taxation
- (b) Territorial double taxation
- (c) Economic double taxation
- (d) Municipal double taxation

- 5.2 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.
- 5.3 Which of the following statement is false in the context of Article 7 of UN Model Convention -
- (a) This article contains Force of Attraction Rule;
  - (b) Article 7 can be applied only when a non-resident has Permanent Establishment in India
  - (c) Article 7 can be used to apply MAT to a PE of non-resident in India
  - (d) Article 7 restricts rights of residence state to apply CFC regulations;
- 5.4 As per OECD report, determination of PE in Source Country should be analysed from the perspective that such place should conduct \_\_\_\_\_ activity for the enterprise:
- (a) Core
  - (b) Productive
  - (c) Enterprising
  - (d) Entertaining
- 5.5 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.

You are required to answer the following issues:

- 5.6 Out of operating companies: i.e. A, B, C, P, Q, R, which of the company in your opinion is most exposed to being treated as Indian resident on account of location of PoEM being in India?  
[6 Marks]
- 5.7 During Search u/s. 132, the tax officer opines that PoEM of Holdco is in India. The officer observes that holdco has assets outside India and accordingly, he wants to invoke the provisions of Black Money law against Holdco. You are required to discuss the correctness of this action?  
[4 Marks]
- 5.8 In your opinion, can tax officer invoke GAAR in the current case study?  
[2 1/2 Marks]
- 5.9 What are the impacts due to BEPS? What are the indicators of BEPS under Action plan 11?  
[2 1/2 Marks]