THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2026

MODULE 2.05 – INDIA OPTION

SUGGESTED SOLUTIONS

PART A

Question 1

Part 1

Candidates should discuss provisions of domestic tax law and write off and that since such amounts have been claimed as deduction in earlier year, any write off of such amount be treated as income. Candidates should also discuss on potential issues in undertaking write off in financial year 2025-26 as compared to earlier year such as whether such amounts should have been written off in an earlier year.

Under section 41(1) of the Income-tax Act, 1961, where a deduction has been allowed in an earlier year in respect of a trading liability and subsequently the liability is remitted or ceases, the amount of benefit is taxable as business income in the year of remission or cessation. Accordingly, since Britton India claimed deductions for the travel and credit-card recharges in earlier years, their write-off in FY 2025-26 should be taxable under section 41(1), notwithstanding cessation of business. Explanation 1 further provides that unilateral write-off by the assessee constitutes cessation.

However, the timing requires careful consideration. Britton UK had already written off the corresponding receivables in its 2024 accounts. Although the creditor's accounting write-off alone may not extinguish the debtor's legal liability, the Revenue could argue that the liability had ceased earlier if Britton UK had legally waived/released the amounts. If cessation occurred in an earlier year, section 41(1) income should have been recognised then, potentially exposing Britton India to reassessment and interest/penalties. The legal and accounting evidence regarding the date of cessation should therefore be reviewed before the FY 2025-26 write-off.

Part 2

Candidates should discuss the applicability of transfer pricing provisions to an entity under liquidation which has stopped its operations.

Britton India and Britton UK are associated enterprises; therefore, section 92 of the Income-tax Act, 1961 requires income and expenditure arising from international transactions to be determined having regard to the arm's-length price (ALP). However, the mere fact that Britton India continues to incur administrative expenses after cessation of its business does not, by itself, create an international transaction.

Administrative and liquidation costs incurred locally by Britton India—such as statutory, legal, accounting and winding-up expenses—should generally not require a transfer-pricing adjustment merely because Britton UK is its parent. Nevertheless, if Britton UK continues to provide administrative, management or other services, or incurs costs which are recharged to Britton India, such transactions may constitute international transactions under section 92B and must be tested at ALP.

As Britton India stopped its operating activities in FY 2024-25, the existing cost-plus 15% model should not automatically continue. The functional profile and actual services provided must be reassessed. During liquidation, TP documentation and Form 3CEB obligations may continue where international transactions subsist, notwithstanding cessation of operations, until the company is legally liquidated.

Part 3

Candidates should discuss about requirement to file return of income in India, undertaking transfer pricing compliances. Since the timeline to file return of income has expired, candidates should discuss about updated return and the financial years up to which updated return can be filed. Candidates should also outline interest and penal consequences.

Britton India, being an Indian company, is required to file an Indian income-tax return under section 139(1), irrespective of whether it has taxable income or has incurred losses. Its failure to file returns from FY 2022-23 onwards therefore constitutes non-compliance. The relevant assessment years are AY 2023-24 onwards.

As Britton India undertakes international transactions with its UK parent, it is also subject to the Indian transfer-pricing provisions. It should have maintained prescribed transfer-pricing documentation under sections 92D/Rule 10D, undertaken an arm's-length analysis and obtained an accountant's report in Form 3CEB under section 92E. Form 3CEB is specifically prescribed for international transactions.

The failure to furnish Form 3CEB can attract a penalty under section 271BA of ₹1 lakh. Failure to maintain/furnish transfer-pricing documentation can attract penalties under sections 271AA/271G, potentially amounting to 2% of the relevant international transaction value, subject to the particular default. Accordingly, Britton India should reconstruct its transfer-pricing documentation for each outstanding year and obtain the relevant Form 3CEB.

The ordinary belated-return deadlines have expired. However, section 139(8A) permits an updated return (ITR-U) even where no original return was filed. The updated-return regime has been extended to 48 months from the end of the relevant assessment year. The tax department confirms that ITR-U remains available for earlier years subject to these statutory limits.

Consequently, as at September 2026, Britton India should consider filing ITR-U for AY 2023-24, AY 2024-25 and AY 2025-26, assuming the statutory conditions are satisfied. An updated return cannot generally create/increase a loss or reduce tax liability/refund.

Interest under sections 234A, 234B and 234C may arise on unpaid tax, depending on the final computation. A late-filing fee under section 234F may also apply where relevant. The additional tax payable with an updated return increases according to how late the ITR-U is filed (currently 25%, 50%, 60% or 70% of tax and interest, depending on the applicable period).

Britton India should therefore immediately regularise each outstanding year, prepare the transfer-pricing study and Form 3CEB, calculate tax/interest/additional tax, and file the permissible ITR-Us. Penalty exposure should be separately reviewed and, where appropriate, mitigated through reasonable-cause arguments.

<u>Part 4</u>

Candidates should discuss about taxability of different steams of income, requirement to file return of income in India, undertaking transfer pricing compliances. Since the timeline to file return of income has expired, candidates should talk about updated return and the financial years up to which updated return can be filed. Candidates should also outline interest and penal consequences.

Britton UK is a non-resident foreign company. Its business-support/service income is taxable in India only if it has a Permanent Establishment (“PE”) in India under Article 7 of the India–UK DTAA. The existence of Britton India as a wholly owned subsidiary does not, by itself, constitute a PE. However, the UK personnel’s activities in India should be reviewed against the DTAA’s service-PE provisions. If no PE exists, ordinary service income should not be taxable in India.

The brand licence fees and software licence recharges require separate analysis. To the extent they constitute consideration for the use/right to use copyright, trademark, process or similar rights, they may constitute royalty under section 9(1)(vi) and Article 13. The India–UK DTAA permits India to tax qualifying royalties, generally subject to the treaty rate/caps.

Similarly, technical support fees may constitute fees for technical services (“FTS”) under section 9(1)(vii) and Article 13, subject to the precise nature of services and treaty conditions. Article 13 permits source-country taxation of qualifying FTS.

Travel and credit-card recharges, if genuine reimbursements without any profit element, should generally not constitute separate income of Britton UK; however, the underlying nature and documentation must be established.

Accordingly, Britton UK should have considered Indian tax and withholding implications when receiving royalty/FTS and should have filed Indian returns where it had taxable Indian income. As a non-resident earning taxable Indian income, it may also have transfer-pricing obligations for international transactions with its associated enterprise, including obtaining Form 3CEB under section 92E where applicable.

Since returns have not been filed, the expired normal filing deadlines should be addressed through updated returns under section 139(8A). The current regime permits an updated return within 48 months from the end of the relevant assessment year.

Thus, as at September 2026, the relevant earlier years should be reviewed to determine which remain within the 48-month window; AY 2023-24, 2024-25 and 2025-26 remain capable of updated-return filing, subject to statutory conditions.

Interest under sections 234A/234B/234C, as applicable, and late-filing/other penalties may arise. Additional tax is also payable with an ITR-U, increasing according to the delay. Britton UK should therefore quantify each income stream, establish treaty eligibility/PE status, complete applicable transfer-pricing compliance and file ITR-Us for all permissible years.

Question 2

Part 1

Permanent establishment analysis

Under Indian domestic law, a non-resident is taxable on income accruing or arising in India or through a business connection in India under sections 5 and 9 of the Income-tax Act. “Business connection” expressly includes business conducted through a person habitually concluding contracts or securing orders for the non-resident.

The India–UK DTA may restrict India’s taxing rights: under Article 7, UK business profits are taxable in India only to the extent attributable to an Indian PE.

Option 1 – Installation and commissioning

Domestically, the 220-day installation and commissioning activity constitutes a business connection and the profits attributable to Indian operations may therefore be taxable.

Under Article 5(2)(j) of the India–UK DTA, a building site or construction, installation or assembly project, including related supervisory activity, constitutes a PE where it continues for more than six months. The project lasts 220 days (over six months), so Engineering Ltd will have an installation PE.

There is also a strong case for a fixed-place PE under Article 5(1): the exclusive project office is a fixed location at Engineering Ltd’s disposal through which its core installation business is conducted. In Formula One World Championship Ltd v CIT, the Supreme Court held that a fixed-place PE requires a fixed place at the enterprise’s disposal through which its business is carried on.

Accordingly, profits attributable to the installation/commissioning activities, including the relevant portion of the contract consideration, fall within Article 7. Profits from activities performed wholly outside India should not automatically be attributed merely because the contract is connected with India; attribution must reflect functions performed through the PE. Samsung Heavy Industries confirms that business-connection and PE concepts must be distinguished and that only profits properly attributable to the PE are taxable.

Option 2 – Indian authorised representative

Under domestic law, Heavy’s activities create a business connection because it habitually negotiates and concludes contracts for Engineering Ltd.

Under Article 5(4), Heavy would constitute a dependent-agent PE (DAPE) because it habitually exercises authority to conclude contracts on Engineering Ltd’s behalf. Further, Heavy works exclusively for Engineering Ltd, making the independent-agent exception in Article 5(5) unavailable. The position is strongly supported by Rolls Royce Plc v DDIT, where an Indian entity habitually securing orders for the UK enterprise constituted an agency PE under Article 5(4).

Therefore, the contract revenues attributable to Heavy’s Indian activities are taxable under Article 7, to the extent attributable to the DAPE. Heavy’s arm’s-length commission remuneration would be relevant to determining the appropriate attribution, but does not automatically eliminate the PE.

Option 3 – Technical advisory/troubleshooting

Domestic law may tax the receipts as fees for technical services under section 9(1)(vii), subject to the statutory conditions.

Under Article 5(2)(k), a service PE arises where services are furnished through employees/personnel for more than 90 days in a 12-month period, but the provision expressly excludes services taxable under Article 13. Engineering Ltd’s expected 120 days therefore exceeds the 90-day threshold.

However, Article 13 covers technical/consultancy services that, inter alia, make available technical knowledge, experience, skill, know-how or processes.

If the advisory/troubleshooting services satisfy this test, they are taxable under Article 13 rather than the service-PE limb; India may tax such FTS subject to the treaty’s gross withholding-rate limitation.

If they do not constitute Article 13 FTS, the 120-day presence creates a service PE under Article 5(2)(k).

Conclusion

Option 1 clearly creates an installation PE; Option 2 creates a DAPE; and Option 3 creates a service PE unless the services fall within Article 13 FTS. In each case, India's taxing right is confined to income appropriately attributable to the relevant PE under Article 7.

Part 2

Once a PE is established, Article 7 of the India–UK DTA permits India to tax only the profits attributable to that PE. The PE is treated, for profit-attribution purposes, as a separate and independent enterprise performing the functions carried out in India. The analysis therefore requires a functional, asset and risk (FAR) analysis of the Indian PE and allocation of the revenues and expenses connected with its Indian activities. The resulting profit should reflect what an independent enterprise undertaking comparable functions would have earned.

Transfer-pricing principles are relevant in determining the arm's-length remuneration for dealings between Engineering Ltd and an Indian associated enterprise/PE. The TNMM/cost-plus approach, where appropriate to the functions performed, may be used to determine the PE's arm's-length return.

The leading authority is DIT v Morgan Stanley & Co Inc (292 ITR 416, SC). The Supreme Court held that where an Indian PE/associated enterprise is remunerated at arm's length, taking into account all risk-taking functions of the multinational enterprise, ordinarily no further profits remain to be attributed to the PE. However, if the transfer-pricing analysis does not adequately capture functions performed or risks assumed in India, additional profit attribution may still be made. Sci API+1

This principle was reaffirmed in ADIT v E-Funds IT Solution Inc (399 ITR 34, SC): where the Indian entity's remuneration is accepted as arm's length after an appropriate transfer-pricing analysis, no further profits should ordinarily be attributed. Sci API

Accordingly, if Engineering Ltd pays tax upfront based on a robust transfer-pricing analysis that fully remunerates the Indian PE's functions and risks, it has a strong defence against a further attribution by the Indian tax authorities. However, arm's-length remuneration is not an absolute safe harbour.

This is demonstrated by Rolls Royce Plc, where the Delhi ITAT considered that a cost-plus remuneration to the Indian entity did not necessarily exhaust the profit attributable to the foreign enterprise's PE where the Indian activities also contributed to sales. Additional attribution could therefore arise where functions connected with the PE have not been adequately captured in the transfer-pricing analysis. Indian Kanoon

Therefore, Engineering Ltd should ensure that the transfer-pricing study comprehensively covers all Indian functions, assets and risks, including sales, installation, technical services and contract-negotiation activities, as applicable to each arrangement. If it does so, Morgan Stanley and E-Funds provide substantial support against additional profit attribution; otherwise, the authorities may attribute further profits under Article 7.

Part 3

Candidates should outline the compliance obligations where a PE is created in India such as filing of return of income, undertaking transfer pricing compliances etc.

Once Engineering Ltd has a PE in India, the PE's income attributable to its Indian activities becomes taxable in India under section 9 of the Income-tax Act read with Article 7 of the India–UK DTA. Engineering Ltd would therefore need to obtain an Indian PAN and file an annual return of income under section 139, reporting its worldwide income and claiming treaty relief where applicable.

The PE must maintain appropriate books and records in accordance with section 44AA and have its accounts audited under section 44AB, where the applicable turnover/gross-receipts thresholds are exceeded. The attributable profit should be determined using an appropriate FAR analysis and transfer-pricing methodology.

Where the PE's transactions with Engineering Ltd or other associated enterprises constitute international transactions, transfer-pricing provisions under sections 92 to 92F apply. Engineering Ltd would therefore need to maintain prescribed transfer-pricing documentation under section 92D, undertake an arm's-length analysis and obtain/file Form 3CEB under section 92E along with the return.

The PE must also comply with applicable withholding-tax provisions, including section 195 where payments to non-residents are made, and other procedural requirements such as advance-tax payments. Interest under sections 234A, 234B and 234C may arise for default or deferment of tax.

Finally, failure to comply may expose Engineering Ltd to late-filing fees, interest and penalties, including penalties relating to transfer-pricing documentation/reporting. Accordingly, PE registration, accounting segregation, transfer-pricing documentation and timely return filing should be implemented from the year in which the PE first arises.

PART B

Question 3

Part 1

Candidates should evaluate the taxability under both the options and discuss Indian GAAR provisions. Candidates should discuss taxability both under the domestic tax law as well as under India – Netherlands DTAA.

Worked for 39s

The key issue is that Option 1 potentially creates a basis step-up in Singapore, but it also carries a material GAAR risk. The dividend assumption should also be corrected.

Indian tax implications

Under domestic law, gains on transfer of shares of an Indian company accrue in India under section 9(1)(i). Since Chemicals India is an Indian company, the 74% shareholding is an Indian capital asset. The shares have been held since 2018 and would therefore generally constitute a long-term capital asset. For transfers on or after 23 July 2024, long-term gains on unlisted securities of a non-resident are taxable at 12.5%, without indexation, subject to applicable surcharge and cess.

Under the India–Netherlands DTAA, Article 13(5) generally allocates capital gains to the Netherlands. However, where shares in an Indian company represent at least a 10% interest and are sold to an Indian resident, India may tax the gains. As Tulip BV owns 74% and Industries India is the Indian purchaser, Option 2 is taxable in India under both domestic law and Article 13(5). The Indian tax would therefore apply to the gain calculated from Tulip BV's original acquisition cost.

Under Option 1, the first transfer by Tulip BV to Tulip SG is also taxable under domestic law. However, because the purchaser is Singapore-resident rather than Indian-resident, Article 13(5) of the India–Netherlands DTAA should allocate the gain exclusively to the Netherlands. The first transfer should therefore not be taxable in India, assuming the treaty conditions are satisfied and Chemicals India is not an Indian immovable-property-rich company.

The subsequent sale by Tulip SG to Industries India is taxable in India. Under the India–Singapore DTAA, gains from shares acquired on or after 1 April 2017 may be taxed in India; the transitional 50% rate applies only to acquisitions before 1 April 2019. Since Tulip SG acquires the shares immediately before disposal, its acquisition is post-2017 and the full Indian rate applies.

GAAR

Option 1 therefore appears more tax-efficient because the first transfer can create a Singapore tax basis equal to FMV, potentially leaving only a small gain taxable in India. However, GAAR under sections 95–98 is a significant risk. The Revenue could argue that the two immediate transfers constitute one arrangement whose main purpose is obtaining an Indian tax benefit and that the interposition of Tulip SG lacks commercial substance. Section 97 specifically targets transactions where the location of an asset or transaction lacks substantial commercial purpose other than obtaining a tax benefit.

Tulip SG's 25 employees and genuine treasury/shared-services activities provide evidence of substance, but may not be sufficient if the Singapore entity was inserted specifically for this divestment. The Supreme Court's Tiger Global decision confirms that a TRC or corporate form alone does not prevent GAAR scrutiny and that abusive arrangements can lose treaty benefits.

Dividend

The proposed dividend should be subject to 10% Indian withholding under Article 10, not 5%. The Supreme Court in Nestlé SA held that an MFN clause does not automatically alter a treaty rate without the requisite Indian notification; the subsequent Deccan Holdings decision confirms the 10% position for India–Netherlands dividends.

Conclusion

Option 1 is potentially preferable from an Indian tax perspective because only the post-transfer appreciation is exposed to Indian tax, but it should be implemented only after a robust GAAR analysis and documentation of genuine commercial reasons for the Singapore step. Option 2 is simpler but exposes the entire gain in Tulip BV to Indian capital gains tax.

Part 2

Candidates should discuss the Supreme Court ruling and circular issued by tax authorities to outline the applicable withholding tax rate under India – Netherlands DTAA. Candidates should discuss about treaty eligibility and furnishing of Form 10F, No PE declaration and tax residency certificate.

The dividend paid by Chemicals India to Tulip BV is taxable in India under section 115A, subject to the beneficial rate available under the India–Netherlands DTAA. Article 10 of the treaty ordinarily restricts Indian tax on dividends to 10% of the gross dividend where the Dutch recipient is the beneficial owner.

Tulip BV may seek to apply the 5% rate under the MFN clause in the Protocol, by importing the lower dividend rate contained in India's treaties with Slovenia, Lithuania or Colombia. However, this position has been substantially settled by the Supreme Court in Nestlé SA v Assessing Officer (2023). The Court held that a protocol/MFN clause does not automatically modify the treaty under Indian law; a separate notification under section 90(1) is required to incorporate the benefit into the existing treaty. The Supreme Court therefore rejected the approach adopted earlier by the Delhi High Court in Concentrix Services Netherlands BV and Optum Global Solutions International BV, which had permitted the 5% rate. Sci API+1

The CBDT had already expressed this position in Circular No. 3/2022 dated 3 February 2022, stating that the unilateral Dutch interpretation of the MFN clause could not automatically alter the India–Netherlands treaty and that the requisite conditions and notification had to be satisfied. Indian Kanoon+1

Accordingly, the applicable withholding rate should be 10%, rather than 5%, assuming Tulip BV is entitled to treaty benefits. The domestic-law rate should not be applied where the treaty provides the more beneficial 10% rate.

To establish treaty eligibility, Tulip BV should furnish a valid Tax Residency Certificate (TRC) from the Netherlands and the prescribed Form 10F, containing the required particulars. It should also provide a declaration confirming that it is the beneficial owner of the dividend and does not have a PE in India to which the shareholding is effectively connected. The treaty-benefit documentation should be available to Chemicals India at the time of withholding.

Thus, Chemicals India should withhold 10% (plus applicable surcharge and cess, where relevant) on the dividend paid to Tulip BV, rather than 5%. The 5% MFN position cannot presently be relied upon merely by reference to the Protocol.

Question 4

Part 1

Candidates should discuss the taxability of share sale from Palace Mauritius to Palace Singapore under the domestic tax law and India – Mauritius tax treaty. Candidates should discuss about Indian GAAR provisions and about treaty eligibility including documentation to be furnished for claiming tax treaty benefits. Candidates should also discuss about the compliance obligations on all the parties.

Indian tax implications

The proposed transfer is a sale of shares of an Indian company by Palace Mauritius to Palace Singapore. Under section 9(1)(i) of the Income-tax Act, gains arising from transfer of a capital asset situated in India are taxable in India. Therefore, absent treaty protection, the capital gain on the Palace India shares would be taxable in India.

However, the India–Mauritius DTAA is relevant. Under Article 13(4), gains derived by a Mauritius resident from the alienation of shares acquired before 1 April 2017 are taxable only in Mauritius. Consequently, the 60% block acquired in May 2013 should be protected from Indian capital gains tax, provided Palace Mauritius is entitled to treaty benefits. Shares acquired after 1 April 2017 do not receive this grandfathering. The 25% block acquired in September 2020 is therefore potentially taxable in India under Article 13(3A), subject to the treaty's applicable conditions and rate.

Palace Mauritius's TRC alone is not an absolute protection against Indian anti-abuse rules. The Supreme Court's decision in Union of India v Azadi Bachao Andolan supports treaty benefits where treaty residence is established, but subsequent developments, including GAAR under sections 95–102, permit the Revenue to challenge impermissible avoidance arrangements.

Here, GAAR risk is significant because Palace Mauritius has no employees, no operating business, minimal expenditure and merely holds Palace India's shares, while strategic decisions are made by Palace UK. The Revenue could contend that the Mauritius holding structure lacks commercial substance and that the transfer is an arrangement whose principal purpose is obtaining a tax benefit. If GAAR applies, treaty benefits can potentially be denied. Palace should therefore document commercial reasons for the Mauritius structure and demonstrate its actual management, governance and investment functions.

Compliance and documentation

Palace Mauritius should obtain/maintain a valid Mauritius TRC, prescribed Form 10F, and appropriate beneficial-ownership and no-PE declarations, together with evidence supporting treaty residence and substance. The parties should also maintain the share acquisition documents, valuation report and computation of capital gains.

Because the purchaser, Palace Singapore, is a non-resident, section 195 withholding should be considered by Palace Singapore if the consideration contains income chargeable to tax in India. Palace Mauritius should file an Indian return where taxable Indian capital gains arise and report the transaction appropriately. Palace Singapore should obtain a TAN, deduct and deposit applicable withholding tax, file the prescribed TDS return and issue the relevant withholding certificate.

The parties should also consider section 9(1)(i) indirect-transfer rules and valuation/reporting requirements. Since the transaction is a direct transfer of Palace India's shares, the primary tax issue is the direct Indian capital gain.

Conclusion

The 2013 tranche should generally remain grandfathered under the India–Mauritius DTAA, whereas the 2020 tranche is potentially taxable in India. The principal uncertainty is GAAR, given Palace Mauritius's limited substance. The transaction should therefore be supported by robust treaty-eligibility, commercial-purpose and valuation documentation.

Part 2

Candidates should discuss about factors and changes that will be undertaken by the group to add commercial substance in Mauritius.

If Palace UK intends to consolidate its Asia-Pacific investments under Palace Mauritius, it should strengthen Palace Mauritius's commercial and economic substance before undertaking a future disposal of Palace India. This is particularly important because Palace Mauritius currently has only one investment, no employees, limited expenditure and strategic decisions are taken by Palace UK. These facts could invite an Indian challenge under GAAR (sections 95–102) and potentially lead to denial of treaty benefits.

First, Palace Mauritius should have genuine decision-making autonomy. Strategic and investment decisions concerning Palace India should be made by its Mauritius board rather than routinely by Palace UK. Board meetings should genuinely occur in Mauritius, with substantive agendas, contemporaneous minutes and evidence that directors independently consider and approve acquisitions, financing, restructuring and disposals.

Second, Palace Mauritius should have adequate personnel and resources in Mauritius. It should employ appropriately qualified investment, finance and treasury personnel and incur genuine operating expenditure commensurate with its enlarged Asia-Pacific investment portfolio. Reliance solely on professional consultants should be reduced where commercially practical.

Third, Palace Mauritius should have real functions beyond passive holding. If it becomes the regional investment holding company, it should undertake genuine activities such as investment management, treasury, monitoring of portfolio companies, risk management, financial planning and regional coordination. Appropriate inter-company agreements should document these functions.

Fourth, the company should maintain adequate office premises, books, accounting systems and banking arrangements in Mauritius. Investment decisions, financing and cash management should, as far as commercially possible, be conducted through Mauritius rather than merely being administered from the UK.

Fifth, the group should ensure that capital and financing decisions are undertaken by Palace Mauritius. It should have adequate capitalisation and, where appropriate, raise or deploy financing itself rather than acting merely as a conduit for Palace UK.

The group should also avoid implementing the restructuring immediately before a sale of Palace India. A sustained period of genuine Mauritius operations and investment activity would provide stronger evidence that the restructuring has a commercial purpose independent of obtaining Indian tax benefits.

These measures are relevant because GAAR can apply where an arrangement is regarded as impermissible tax avoidance, including where the arrangement lacks commercial substance. The Supreme Court's decision in Azadi Bachao Andolan supports treaty benefits where residence is genuine, but a tax residency certificate does not prevent subsequent GAAR scrutiny.

Palace Mauritius should continue to maintain a valid Mauritius Tax Residency Certificate, file Form 10F, and retain evidence of beneficial ownership, board control, personnel, expenditure and commercial activities. It should also preserve contemporaneous documentation demonstrating the commercial rationale for consolidating Asia-Pacific investments in Mauritius.

Thus, the objective should not be merely to create formal substance, but to establish Mauritius as a genuine regional investment holding and management centre, with real people, functions, assets, risks and decision-making authority.

PART C

Question 5

Part 1

Candidates should discuss the exemption under section 47 of the Income-tax Act, 1961 as well as indirect transfer provisions under domestic tax law. Candidates should thereafter evaluate taxability under the tax treaty and conclude on the taxability.

Under section 9(1)(i) of the Income-tax Act, gains from transfer of a capital asset situated in India are taxable in India. The indirect-transfer provisions also apply where shares of a foreign company derive their value, directly or indirectly, substantially from assets located in India. However, Explanation 6 to section 9(1)(i) provides a 50% value threshold, together with the prescribed Indian asset-value threshold.

Here, Phoenix India contributes less than 3% of the value of Phoenix BV. Therefore, the shares of Phoenix BV do not derive their value substantially from Indian assets for purposes of the indirect-transfer rules. The transfer of Phoenix BV shares pursuant to the merger should consequently not trigger Indian capital gains tax in relation to Phoenix India.

Section 47 also contains specific exemptions for qualifying amalgamations/reorganisations. In particular, section 47(viab) can exempt a transfer of shares of an Indian company by a foreign amalgamating company to a foreign amalgamated company where the prescribed shareholder-continuity and foreign-tax-neutrality conditions are satisfied. However, the present transaction involves Phoenix Inc.'s holding in Phoenix BV and therefore the exemption must be examined carefully rather than assumed to apply directly to Phoenix India. In any event, the indirect-transfer threshold independently prevents taxation in respect of Phoenix India.

The India–US DTAA provides an additional treaty protection. Article 13 permits India to tax gains from shares where the shares derive their value principally from immovable property situated in India; otherwise, capital gains are generally taxable only in the residence state of the alienator. Phoenix India is a company, rather than Indian immovable property, and its value represents less than 3% of Phoenix BV. Accordingly, the indirect interest should not fall within the Indian taxing provision under Article 13.

Further, the merger is between US companies and the consideration consists of NewCo US shares issued to Phoenix Inc.'s shareholders. Subject to satisfaction of the domestic-law reorganisation conditions, this reinforces the non-recognition position.

Conclusion

The proposed merger should not result in Indian tax on the Phoenix India investment, principally because the 50% indirect-transfer threshold is not met. The India–US DTAA provides further protection against Indian taxation. The group should nevertheless retain valuation evidence demonstrating that Phoenix India represented less than 50% of Phoenix BV's value and satisfy all applicable section 47 conditions.

Part 2

Candidates should discuss the exemption under section 47 of the Income-tax Act, 1961. Candidates should also discuss the eligibility to carry forward business loss and unabsorbed depreciation by referring to section 79 and 32 of the Income-tax Act, 1961. Candidates can give reference to judicial precedents.

Indian tax implications – Tower India

The proposed merger involves Phoenix Inc., a US company, transferring its 45% shareholding in Tower India to NewCo US under a US amalgamation. Since Tower India is an Indian company, a transfer of its shares by a non-resident can ordinarily give rise to Indian capital gains under section 9(1)(i).

However, section 47(via) provides that a transfer, under a scheme of amalgamation, of shares held in an Indian company by an amalgamating foreign company to an amalgamated foreign company is not regarded as a transfer, provided:

- at least 25% of the shareholders of the amalgamating foreign company continue to be shareholders of the amalgamated foreign company; and
- the transfer does not attract capital-gains tax in the country in which the amalgamating company is incorporated.

On the facts, the US merger is tax-neutral in the US and Phoenix Inc.'s shareholders receive NewCo US shares. Assuming at least 25% of Phoenix Inc.'s shareholders continue as NewCo US shareholders, the conditions of section 47(via) should be satisfied. Consequently, the transfer of the 45% Tower India shares should not be regarded as a taxable transfer in India.

Impact on Tower India's losses

The merger is at the shareholder level and does not involve an amalgamation of Tower India. Therefore, Tower India itself continues as the same Indian company and its accumulated business losses and unabsorbed depreciation are not transferred to NewCo US.

Section 79 restricts carry-forward of accumulated business losses of a closely held company where there is a change in shareholding resulting in persons holding at least 51% of voting power no longer holding that level of voting power. Here, Phoenix Inc. holds only 45%, so its replacement by NewCo US cannot, by itself, cause the 51% threshold to be breached, assuming there is no other relevant change in Tower India's shareholding. The losses should therefore remain available, subject to the normal conditions.

Unabsorbed depreciation under section 32(2) is treated differently from business losses and can generally be carried forward without the section 79 restriction. Therefore, the proposed merger should not prejudice Tower India's unabsorbed depreciation. Section 72A, which governs transfer of accumulated losses and depreciation in specified amalgamations, is also not relevant because Tower India is not the amalgamating company.

Conclusion

Section 47(via) should exempt the transfer of Tower India shares, while Tower India's existing business losses and unabsorbed depreciation should continue unaffected.

Question 6

Candidates should outline the benefits of setting up an entity in GIFT IFSC and include reference to tax holiday, non-applicability of withholding tax on lease payments both by domestic entities to GIFT IFSC entity and by IFSC entity to Irish entity. Candidates should discuss about broad-based the tax benefits available in GIFT IFSC.

Establishing IFSC NewCo in GIFT City can provide a significant tax-efficient platform for Aviation Group's aircraft-leasing business. Aircraft leasing is a specifically recognised financial product under the IFSC framework, and IFSCA currently reports substantial aircraft-leasing activity in GIFT IFSC.

Benefits for IFSC NewCo

The principal benefit is the 100% profit-linked deduction under section 80LA. An eligible IFSC unit undertaking aircraft-leasing activities can claim a deduction of 100% of eligible business profits for any 10 consecutive assessment years out of the first 15 years. The deduction can therefore shelter substantial operating-lease and finance-lease income, subject to the statutory conditions.

Importantly, income arising from the transfer of an aircraft or aircraft engine leased by the IFSC unit is also eligible for the 100% deduction, subject to the applicable commencement-date conditions. The relevant sunset has been extended, with qualifying aircraft-leasing IFSC units generally required to commence operations by 31 March 2030.

The IFSC regime also provides relief from MAT where the company opts for the new corporate tax regime, avoiding an additional minimum-tax burden during the tax holiday period.

There is a particularly important withholding-tax benefit for Aviation Ireland. Under section 10(4F), royalty or interest income earned by a non-resident from the leasing of an aircraft or aircraft engine to an eligible IFSC unit is exempt from Indian tax where the statutory conditions, including the commencement deadline, are satisfied. The current sunset for qualifying IFSC aircraft-leasing operations is 31 March 2030.

Consequently, where Aviation Ireland leases aircraft to IFSC NewCo, the corresponding lease royalty/interest should not suffer Indian withholding tax, subject to satisfying section 10(4F). This is particularly valuable where existing aircraft are transferred from Aviation Ireland to NewCo and subsequently leased.

Benefits for Indian airlines

Indian airlines leasing aircraft from IFSC NewCo can also benefit from no withholding tax on qualifying lease payments made to the IFSC unit during its tax-holiday period, subject to the prescribed conditions and procedural requirements. This improves cash flow and removes the need for the airline to fund withholding on otherwise deductible lease expenditure. The IFSC tax framework expressly contemplates exemption from withholding on lease payments received by qualifying IFSC aircraft-leasing entities.

Broader IFSC advantages

The structure can centralise Aviation Group's aircraft ownership, financing, leasing and ancillary aviation functions in one regulated location. The IFSC framework is administered by IFSCA, which provides a dedicated regulatory regime for aircraft leasing.

Accordingly, IFSC NewCo obtains the principal 10-out-of-15-year tax holiday and aircraft-disposal relief; Aviation Ireland benefits from exemption from Indian tax/withholding on qualifying aircraft-lease royalty or interest received from NewCo; and Indian airlines benefit from relief from withholding on qualifying lease payments to NewCo. The precise benefits depend on NewCo obtaining the required IFSCA/SEZ approvals and satisfying the applicable commencement, activity and documentation conditions.

Question 7

Candidates should discuss the taxability of various streams of payment, the applicability of withholding tax, anticipate challenges that can be posed by authorities for each of the income streams including satisfaction of need / purpose test. Candidates should also discuss about applicability of section 94B to interest payments and capitalization of interest cost. Candidates should also discuss about compliance requirements and documentation needed to claim tax treaty benefits. Candidates should also discuss about undertaking transaction at arm's length price.

All four payments are transactions between associated enterprises and must satisfy the arm's-length principle under sections 92–92F. Steel India should maintain agreements, invoices, evidence of services/benefit, cost allocations and benchmarking documentation, and file Form 3CEB. The Indian payer must also consider section 195 withholding on amounts chargeable to Steel UK.

Management services

Payments for services rendered by Steel UK personnel may be taxable in India as fees for technical services (FTS) under section 9(1)(vii), particularly where the services are managerial, technical or consultancy services. Under the India–UK DTAA, however, FTS covers technical/consultancy services satisfying the treaty's conditions, including the "make available" test.

The principal challenge will be the benefit/need test. Steel India must demonstrate that identifiable services were actually rendered and that an independent enterprise would have been willing to pay for them. Shareholder activities—such as UK parent oversight undertaken merely in its capacity as shareholder—should not be charged. Cases such as Dresser-Rand and EKL Appliances indicate that the Revenue cannot simply determine an ALP of nil because it disagrees with commercial decisions, but evidence of actual services and arm's-length pricing remains essential.

IT-cost recharge

A genuine reimbursement of identifiable IT costs may not itself constitute FTS. However, where Steel UK provides access to software, systems or know-how, the payment may be characterised as royalty or FTS, depending on the rights granted. The Revenue may challenge a blanket allocation without demonstrating benefit to Steel India.

Accordingly, Steel India should maintain user records, allocation keys, third-party invoices and evidence that costs relate to its use.

Brand fee

A payment for use of the "Steel" trademark/brand is prima facie royalty under section 9(1)(vi) and Article 13 of the India–UK DTAA. The treaty caps Indian tax on qualifying trademark royalties at 15% of gross receipts; domestic law generally provides a 20% rate, so the treaty rate should be claimed where available.

The Revenue may challenge the fee if the brand generates no demonstrable benefit or if the royalty rate exceeds an arm's-length amount.

Interest

Interest paid to Steel UK is taxable in India under section 9(1)(viii) and Article 12, with the India–UK treaty generally limiting Indian tax to 15% of gross interest where Steel UK is beneficial owner.

Section 94B must also be considered. Where interest/similar expenditure payable to the non-resident AE exceeds ₹1 crore, deduction is restricted to the lower of AE interest or 30% of EBITDA; excess interest may be carried forward for eight years.

As the loan finances construction of the manufacturing plant, interest incurred up to the date the asset is first put to use should generally be capitalised, rather than immediately deducted.

Compliance

Steel India should deduct section 195 tax, deposit it, file TDS returns and issue certificates. Treaty rates require Steel UK to provide its UK tax-residency certificate, Form 10F and beneficial-ownership/treaty declarations. Both entities should maintain contemporaneous TP documentation and ensure all charges are demonstrably at arm's length.

Question 8

Candidates should calculate the applicable tax rate for each of the instruments under the domestic tax law depending on the period of holding with applicable surcharge and cess.

For an FPI, the special regime under section 115AD applies to income from securities and capital gains arising from their transfer. The rates below reflect the law applicable to transfers/income arising on or after 23 July 2024. The Finance (No. 2) Act, 2024 increased the relevant short-term rate to 20% and reduced the long-term rate to 12.5%.

Applicable rates

Investment / income	Indian tax rate	Effective rate incl. 15% surcharge + 4% cess*
Listed equity shares – held ≤12 months	20% STCG	23.92%
Listed equity shares – held >12 months	12.5% LTCG	14.95%
Unlisted equity shares – held >24 months	12.5% LTCG	14.95%
Listed bonds/debentures – capital gain, held >12 months	12.5% LTCG	14.95%
Interest on listed bonds/debentures	20%	23.92%
Government securities – interest	20%	23.92%
Government securities – LTCG, where applicable	12.5%	14.95%
Equity-oriented mutual-fund units – ≤12 months	20% STCG	23.92%
Equity-oriented mutual-fund units – >12 months	12.5% LTCG above ₹1.25 lakh	14.95%
Listed futures/options	30% STCG	35.88%
Dividends from listed shares	20%	23.92%

*The 15% surcharge cap applies to income covered by section 115AD, including relevant capital gains and dividend income; health and education cess is 4%. The enhanced 25%/37% surcharge does not apply to these specified categories.

Specific points

For listed equity shares and equity-oriented mutual funds, the STCG rate is 20% where the relevant securities transaction tax (STT) conditions are satisfied. LTCG is now 12.5%, with the section 112A exemption threshold increased to ₹1.25 lakh.

For unlisted shares, the long-term holding period is more than 24 months. For a non-resident/FPI, LTCG on unlisted securities is 12.5% without indexation.

Interest from bonds and Government securities is generally 20% under section 115AD. However, qualifying interest covered by section 194LD—for example, specified Government securities or rupee-denominated bonds within the prescribed conditions—may be subject to the concessional 5% rate.

For derivatives, CBDT has specifically clarified that, for an FPI, futures and options are treated as capital assets and the resulting gains fall within the special section 115AD regime. Since derivative gains are not STCG covered by section 111A, the applicable short-term rate is 30%, rather than 20%.

Thus, the principal FPI rates are 20% for qualifying STCG, 12.5% for LTCG, 20% for securities income/dividend, and 30% for short-term gains on derivatives, subject to the applicable treaty rate if the UK–India DTAA provides a more favourable outcome.

Question 9

Candidates should calculate capital gains by determine the correct nature of capital gains, period of holding, whether foreign exchange fluctuation benefits available, judicial precedent, discussion on Rule 115.

Crown Ltd ("Crown") is a UK-resident company and a non-resident for Indian tax purposes. Since it holds a UK tax residency certificate and is entitled to the India–UK DTAA, the treaty must be considered; however, Article 13 of the India–UK DTAA permits each Contracting State to tax capital gains in accordance with its domestic law. Thus, the absence of a permanent establishment in India does not prevent India from taxing gains arising from the sale of Indian shares.

Nature and period of holding

Under section 2(42A), an asset is generally short-term if held for not more than 24 months. The Finance (No. 2) Act, 2024 rationalised the holding periods to 12 months for listed securities and 24 months for other assets.

Both tranches were held for substantially more than 24 months:

- Tranche 1: 5 June 2019 to 15 November 2025 — over six years.
- Tranche 2: 12 August 2020 to 15 November 2025 — over five years.

Accordingly, irrespective of whether Apex's shares are listed or unlisted, the gains are long-term capital gains (LTCG).

Foreign-exchange computation under section 48

Crown is a non-resident and the Apex shares were acquired using US dollars. The first proviso to section 48 therefore applies. It requires the cost of acquisition and sale consideration to be converted into the same foreign currency initially utilised for acquiring the shares, the capital gain to be computed in that currency, and the resulting gain then reconverted into Indian rupees.

The fact that Tranche 2 was acquired through the secondary market does not prevent this benefit: what matters is that foreign currency was utilised to purchase the shares. Judicial authorities have recognised that the first proviso is intended to neutralise gains attributable merely to rupee depreciation. In Cairn UK Holdings Ltd. v. DIT, the Delhi High Court explained that the provision protects a non-resident investor by measuring the real gain in the foreign currency invested.

The same principle appears in Alcan Inc. v. DDIT.

The USD costs are:

Particulars	Tranche 1	Tranche 2
Shares	100,000	75,000
INR cost	₹20,000,000	₹26,250,000
USD remittance/cost	$256,410	$328,125

Total USD cost = $584,535.

Sale consideration = 175,000 × ₹950 = ₹166,250,000.

Rule 115 and conversion of sale consideration

Rule 115 prescribes the telegraphic transfer buying rate ("TTBR") for converting foreign-currency income into rupees. For capital gains, the specified date is the last day of the month immediately preceding the month of transfer. Thus, for a transfer on 15 November 2025, the relevant date is 31 October 2025.

The SBI TT buying rate for USD on 31 October 2025 was ₹88.20 per US$.

Therefore:

Sale consideration in USD

₹166,250,000 ÷ 88.20 = US$1,884,353.74

Less: Cost of acquisition = US$584,535.00

LTCG = US$1,299,818.74

Reconverting at ₹88.20:

Taxable LTCG = ₹114,644,012.87 (approximately ₹11.46 crore).

Indexation

The CII figures of 254, 272 and 363 are not relevant. First, the first proviso to section 48 expressly excludes a non-resident's foreign-currency share gains from the indexation mechanism. The courts have consistently held that the first and second provisos operate as alternative mechanisms: a taxpayer obtaining foreign-exchange neutralisation cannot simultaneously claim indexation. Cairn UK Holdings specifically affirmed this position.

Secondly, for transfers on or after 23 July 2024, the Finance (No. 2) Act, 2024 removed indexation generally and introduced a 12.5% LTCG rate under section 112.

Tax liability

Under section 112, LTCG of a foreign company on the transfer of a long-term capital asset after 23 July 2024 is taxable at 12.5%, without indexation.

Tax: ₹114,644,012.87 × 12.5% = ₹14,330,501.61

As the income exceeds ₹10 crore, a foreign company is subject to 5% surcharge.

Surcharge = ₹716,525.08

Tax + surcharge = ₹15,047,026.69

Health and Education Cess @ 4% = ₹601,881.07

Total Indian capital gains tax liability = ₹15,648,907.76, i.e. approximately ₹1.565 crore.

Thus, Crown's Apex-share disposal gives rise to LTCG of approximately ₹11.46 crore and Indian tax liability of approximately ₹1.565 crore, assuming no deductible transfer expenses and no other income or losses. The India–UK DTAA does not eliminate India's taxing right, while the section 48 first proviso provides the appropriate foreign-exchange-neutral computation.