Answer-to-Question-_1_

Part 1

1. The write-off of the outstanding recharges due from Britton India to Britton UK will be recognised as Income attributable to Britton India that will be subject to tax in India.

2. It is noted that Britton India had undertaken the writeoff in the 2024 year, which was the point at which it derecognised the receivable. The indian authorities, on audit, could therefore reopen the 23/24 year, during which Britton India had claimed a deduction. The 23/24 year is still in scope of potential audit, particularly considering the failure to file.

3. The above is exacerbated by the fact that Britton India has not filed its tax return since 22/23

3. Undertaking this writeoff in 25/26 could continue to delay the liquidation process of Britton India in addition to the failure to do local compliances as set out below.

Part 2

1. The administrative costs incurred by Britton India concern liquidation administrative costs. Given that the management stopped operation of the business during 2024/2025, there does not appear to be an active contract under which Britton India can recharge administrative costs to Britton UK (unless the back office support services contract includes this).

2. It is unclear whether the administrative costs are being incurred by Britton UK and recharged to Britton India. If this is the case, they are likely to be disallowed at the level of Britton India as being shareholders costs, which cannot be charged to a subsidiary as they fail the benefits test.

3. Any such controlled transactions between the parties should have also be reported on form 3CEB and filed with the Income Tax return.

<u>Part 3</u>

1. Britton has failed to file tax returns for 22/23, 23/24, 24/25 and 25/26. The assessing officer will have imposed tax amounts for each of the related years, that Britton India will need to either settle or dispute, along with the related penalties and interest. Britton India should produce the filings for the relevant years and lodge them with the Indian authorities, containing all supporting information.

<u>Part 4</u>

1. Britton UK received 5 different forms of income from Britton India. Generally, the failure to provide Britton India with a TRC, Form 10F and the provision of a No PE declaration, will mean that Britton UK cannot avail itself of the rights under the UK-India DTAA. No TDS has currently been recognised under s.195 ITA. As a result, to the extent that Income is recognised, it will be assessed on Britton India, who will be required to remit funds to the Indian authorities.

Assessing each of the Income Streams in turn:
(a) Travel and out of pocket expenses are not income and are mere recharges. They are not considered under s.195 and can be repaid without TDS.
(b) Similarly, corporate credit card expenses incurred by Britton UK personnel for Indian operations may also be considered not to fall within the category of income and may be recharged gross without TDS to Britton UK.
(c) Brand Licence fees constitute a royalty under s.195 and therefore in the absence of a TRC or information permitting the treaty rates, Britton India will be subject to a charge of 20% + Surcharge + HE Cess on the amount.
(d) Software licence recharges also constitute a royalty under s.195, with the same consequence as the above.
(e) Technical support services rendered by Britton UK to Britton India may be interrogated by the Indian authorities to determine whether they constitute activities of the shareholder that may not be recharged. To the extent that they are, TDS will be imposed at a level of 20% + S/C + Cess.

2. As TDS has not been withheld by Britton India, Britton UK will also

be required to file an Income Tax return in India related to the above and to directly account for the sums.

3. In addition to the above, it is not clear whether GST has been accounted for on the charges so made in relation to the Royalties (as they are taxable supplies). Britton India should have accounted for GST in its GST returns and may have an accumulated ITC that has not yet been resolved. This would need to be ascertained and evaluated prior to liquidation if it is the case.

Answer-to-Question-2

Part 1

As a general note, in order to benefit from the benefits under the Treaty, Engineering Ltd will need to provide a Tax Residency Certificate and a Form 10F.

Analysis of each of the propesed options:

Option 1

Under Article 5 of the UK-India DTAA, a permanent establishment will be established under this option according to a number of different aspects.

- Fixed Place of Business PE: Engineering Ltd staff have exclusive access to a fixed place of business at the Project Site.
- Installation PE: The minimum level of 6 months has been exceeded in this case, given that the worksite and installation will continue for 220 days.

The work is clearly not preparatory or incidental to the operation of the production line.
There is therefore little doubt that under the treaty and under s.9 ITA under the local law, that a PE will be constituted.

Option 2

In this case, a new entity will be created (which will have its own tax compliance obligations), which will exclusively conclude contracts on behalf of Engineering Ltd.

This case falls squarely within the framework of a Dependent Agent PE, identified within Article 5.4(a) and (c) given the common control of Heavy Pvt Ltd with Engineering Ltd.

Option 3

In this case, as senior engineerings are providing troubleshooting servics and technical advisory services and are not specified to be located at any particular premises in India, it might be assumed that these services fall outside the ambit of Article 5.

However, typically, advisory works and troubleshooting services contain an aspect of sales in addition to service delivery and the Engineers would also potentially act as dependent agents (as they are employed) involved in sales activity.

In addition, under Article 5.2(k) of the DTAA, the furnishing of services by an enterprise that continue for a period of greater than 90 days within a 12 month period. As, in this case, the days incurred are approximately 120 days, it is highly likely that a services PE could be imputed in this case.

Part 2

Profits will be imputed to the PE in India in line with Article 7 of the DTAA. Following the process described in that article, and in line with s.90 of the ITA in India, the profits will be established in line with the local rules. Under Article 7:

- the enterprise will need to attribute group profits to its operations in India: In this csae, this would be the group attribution of profits from contracts that Engineering Ltd is completing in India.
- in ascertaining the profits, the Permanent Establishment will be considered an independent entity for the purposes of the rules and any recharges or other costs attributed considered under the Arms Length basis. The PE will need to prepare documentation and compliances e.g. 3CEB in order to demonstrate the arms length nature of the contract.

- Further, given that under each of the scenarios above, there may be greater or lesser involvement of the local staff in concluding contracts, a proportion of profits attributed to the negotiation, attribution or fulfilment of contracts will need to be provide.
- Under paragraph 5, a deduction wil be allowed for executive and administrative costs associated with the PE. It will also be necessary to evaluate any group IP costs which should also be attributed to the PE.

<u>Part 3</u>

The compliances in respect of a PE are similar to those of a resident company.

- PAN and TAN will need to be obtained in Indian for the New Indian PE
- Income Tax Return - tax will be paid at the Foreign Company rate of 35% + S/C + Cess
- GST registration and returns will be required on a monthly or quarterly basis.
- TDS returns e.g. Form 27xx returns will need to be provided.
- Cash repatrition will be subject to FEMA approvals and authorisations.
- Transfer Pricing compliances will also need to be completed, namely Form 3CEB.
- If turnover exceeds INR 10 Crore, it may also be required to undertake a tax audit.

For Engineering Ltd, it will need to maintain TRC information, Form 10F and, to the extent that TDS returns are not completed locally, may also in its own right need to complete Income Tax returns in India.

Answer-to-Question- 3

<u>Part 1</u>

Set out below are the Indian tax implications of the two options proposed by Tulip BV.

Option 1

Analysis of Step 1

First of all, it will be necessary, for the correct Indian tax interpretation, as to whether both or either Tulip BV and Tulip Pte Ltd will benefit from the protections under the treaty.

Tulip BV treaty benefits available

In order to benefit from the Treaty protections (namely the exclusion of Indian taxing rights on the sale under Article XX), it would be necessary to establish a Tax Residency Certificate and a Form 10F from Tulip BV. To the extent that Tulip BV is a tax-transparent entity, it would be the ultimate owner Tulip UK that would be required to adopt this.

Further, it would need to be demonstrated that the Limitation of Benefits / GAAR rules are not in scope becauase of the lack of substance at the level of Tulip BV, given that it has no other activities, no operating business and no employees. There is a strong position that the Indian authorities would contest the ownership position of Tulip BV and protection may not be available under the treaty.

Tulip PTE Limited

By contrast, the Singapore entity will potentially benefits from the treaty benefits , given that its has substance in Singapore, provided relevant compliances such as the TRC and Form 10F are supplied.

Indirect transfers in Indian shares rules

As the treaty rules are not engaged, it is necessary to look at the local rules.

The Indirect transfers in Indian shares rules are engaged where there is a transction which indirectly transfers Indian shares and the following criteria are met:
(a) Value of Indian assets associated with the transaction are 50% or more.

(b) Total value of the Indian assets are greater than INR 20 crore

In thie case, there are no details of the total value of the assets concerned, but it is assumed that the requirements are met and it is clear that the total value of the Indian assets

Tax applicable and buyer/seller compliances.

The Seller in the transaction will be required to pay, in relation to the transfer of the 74% stake, the foreign rate of Indian tax at 35% + Surcharge + HE Cess on the sale. This will need to be filed directly by either Tulip BV, or (potentially) Tulip UK if it is imputed to be the actual vendor in this case.

The buyer (Tulip SG) will also be required to withhold tax (TDS) on the purchase consideration provided at FMV, which it will need to remit to the Indian authorities.

Analysis of Step 2

The further step of the sale of the stake from Tuplic SG to Industries Pvt Ltd will be a direct sale of the underlying asset at FMV. It may be assumed that there will be no gain attributable to Step 2 in the transaction

Furthermore as Tulip SG benefits from the Singapore-India DTAA, the rules are contained in Article 13 of the DTAA.   Paragraph 4B specifies that the gains arising from the alienation of shares acquired on or after 1 pril 2017 may be taxed in the state where the company whose shares are being sold is resident. This means that the shares in Chemicals India sold by Tulip SG can be taxed in India. To the extent that there is a gain payable in India, however, a foreign tax credit may be available to Tulip SG to net against taxes payable on its operations in Singapore.

Contemporaneous records should be maintained as it is likely that any discrepancies (e.g. FX differences) could be used by the Indian authorities to tax this option twice.

Option 2

Under this option, Tulip BV would sell its 74% stake in Chemicals India to Industries India at FMV.

As established above, there is a risk that the Indian authorities would deny Tulip BV the benefit of the DTAA protections as a result of the GAAR principles in that the company is potentially a shell company set in between India and the United Kingdom (a dutch mixer company).

In the event of a direct sale, therefore, it may be assumed that there would be a foreign company tax charge of 35% + Surcharge + Cess, with the local indian company being required to manage any TDS on its own side. Tulip BV (and potentially Tulip UK) will need to maintain compliances in that respect.

Recommendation

The two step transaction, even though, SG benefits from having substance and potentially being able to take advantage of the treaty, is not significantly helpful and actually may give the Indian authorities two bites at the transaction (first on the intermediate transaction and second on the final sale transction). FMV valuations may need to be obtained for each step of the transaction.

As such, Option 1 is to be preferred, with an emphasis on being able to demonstrate substance in Netherlands through the presentation of sufficient evidence to the Indian authorities potentially enabling the company to benefit from the protections under the Treaty.

<u>Part 2</u>

The rules concerning the most favoured nation clauses have been confirmed in the Nestle SA case and in CBDT circulars over the years. In essence, the MFN rules apply only by comparing:

- the date of the singature to the DTAA with
- the date of the entry into the OECD between the relevant countries.

In this case, the DTAA was in place between the Republic of India on the 1989. It would be necessary to evaluate whether each parties were also members of the OECD at that point in time.

Further, Tulip BV will only be able to obtain the benefit of the treaty if it demonstrates to the satisfication of the Indian authorities both the TRC (and if it is a tax transparent entity, it may well be the TRC of the owners, namely Tulip UK)and the non-application of the GAAR. As there is not evidence in this case, the dividend, under Indian s.195 should be withheld at the standard rate of 20% + HE cess + surcharge.

Answer-to-Question- 7

The following sets out Indian tax obligations and potential challenges and compliance obligations in respect of each of the Options.

Option 1

Indian tax considerations and potential challenges

- These costs will be potentially subject to TP adjustment level of Steel India to the extent that they relate to shareholder activities that cannot be recharged according to the OECDs TPGs.
- This is likely to cover the senior strategic guidance, oversight of operation and financial controllership.
- To the extent that HR support consists in services performed to the Indian subsidiary, this will need to be evaluated based upon the Arms Length principle

Compliance obligations

To the extent that costs will be allowable, the costs (including any markup) will need to be demonstrated through the provision of detailed costings and invoices, which will need to be supplied by 3CEB.

Steel UK should obtain the benefits of the treaty through the provision of a TRC and a Form 10F and should put in place a No PE Declaration.

To the extent that any charges should not be required, it will not be necessary for TDS in India. To the extent that the HR support is chargeable, this will only be withheld under Article 13 Technical services / s.195 if it passes the make available test or which are ancillary to the enjoyment of property rights. It is unlikely that this would apply in this case, so therefore the payment would not be taxed.

To the extent that the HR service would be payable, GST reverse charge mechanism would need to be invoked, leading to an Input Tax Credit being recognised and the recognition of an 18% GST charge. This can be recovered in the event that there are relevant taxable sales but will need to be filed in GSTR 1 / 3B in the relevant states accordingly.

<u>Option 2: recharge of information technology costs</u>

Transfer pricing

To the extent that the TSIS charges can be adequately documented on an invoice by invoice basis concerning the ERP system, cybersecurity system, email and collaboration tools, these can be recharged through on a cost for cost basis.

The difficulty may be in disaggregating global supply contracts (e.g. with Microsoft or Oracle) and attributing specific licences or products with the Indian operations. In the absence of this being achieved, the TPO could disallow the charges on the basis of the evidence not being provided.

Compliances

3CEB should be documented along with invoice and documentary evidence in detail of the underlying cost and any allocation mechanism should be able to stand up to scrutiny by the auathorities.

From a GST perspective, the TSIS recharges will constitute an acquisition / supply for GST purposes and will therefore be subject to the reverse charge GST on their acquisition, requiring a 18% payment and returns per the above. This ITC can be recovered against future eligible taxable sales.

As these are recharges without markup, no TDS will be required.

<u>Option 3</u>

Characterisation

The royalty payment for the use of the Copyrighted product (i.e. the Steel brand name) will be treated as a Royalty for the purposes of the treaty. In the UK-India DTAA this should be withheld at a rate of 15% as falling within Article 13.2.a.ii (i.e. it does not relate to the use of industrial, commercial or scientific equipment or constitute technical services related thereto.

If the treaty benefits are not made out, the rate applicable will be the default rate under s.195, being 20% + S/C + HE Cess.

The TPO will also look to validate that the rate applicable to the Royalty is justified and will require the demonstration of a benchmarking report justifying that the Royalty rate is comparable under an appropriate mechanism (ideally through search of the relevant databases under CUP).

Compliances

As with the above, it will be necessary to supply form 3CEP.

TDS will need to be withheld at either the treaty rate (if this is made out) or the default rate and remitted to the state.

Steel UK will potentially be able to claim a foreign tax credit in its corporation tax return with HMRC to the extent that it pays TDS / WHT under these provsiions.

The payment of the royalty will also be subject to Reverse Charge GST.

<u>Option 4 Interst</u>

Tax Considerations

There are several points of consideration and challenge in respect of interest to enable a deduction for interest costs in India, these are: - Thin capitalisation rules (s.94), which will may limit per BEPS rules

the deduction of interest at the level of India potentially to a limit of 30% of EBITDA of Steel India. To the extent that the loan it outsized relative to the local entity, it could be disallowed in its entirey.
- Further, the TPO will also review the rate of interest applicable to the loan considering multiple factors, including the availability of any parent guarantee, the currency applicable to the loan and the market applicable to the borrower. In this sense it will follow SC guidance in the case of Tata which held that the prevailing interest rates in the country of the borrower (i.e. India) and the currency (Rupees) will be taken into account.

In addition, the availability of a direct deduction will also be influenced as to the extent to which the Interest incurred is deemed to be related to a revenue spend or a capital spend, given the intended use of the loan to construct a manufacturing plant. The local tax authority, instead of allowing a full deduction, may require capitalisation of a part of the interest, which will then be allowed under the depreciation rules applicable to that asset.

TDS will need to be withheld on the payment of interest to the level set out in the DTAA (to the extent that treaty protection is available). This will be at a rate of 10%.

Compliances

From a GST perspective, the payment of interest will not have an immediate GST impact.

Form 3CEB - with benchmarking information provided concerning the rate of interest and the currency of the loan.

TDS returns will need to be prepared for the payment of the interest (irrespective of whether the interest is capitalised).

The Income Tax return will need to be provided.

Potentially further FEMA / RBI compliances concerning the interest rate applicable.

Board of directors compliances demonstrating agreement to the written terms of the loan.

Answer-to-Question-5

Part 1

Availability of treaty benefits

Phoenix BV

The Indirect transfers of Indian shares rules are overriden where a company can take the benefit of a DTAA and apply the rules under the related Capital Gains clause (e.g. Article 13) in the treaty. In order to demonstrate this, Phoenix BV will need to demonstrate to the satisfaction of the Indian authorities that the company is not just a brass plate and has substance and operations as an investmetn company (i.e. it is not just a conduit company). To the extent that it is not able to do the same, there is a risk that it could be caught under the GAAR and treaty benefits denied.

To the extent that treaty benefits were denied, the Indian authorities could look through to the ultimate transaction bewteen Phoenix Inc and NewCo Analytics Inc, which is a tax free transaction most likely under s. 351 IRC in the US.

However, the indirect transfer rules only apply to the extent that the following criteria are met:
- the contribution to the asset value of the entity is greater than 50% of the global total.
- the total amount of assets concerned is greater than INR 20 Crore.

In this case, Phoenix India constitutes only 3% of the total value, meaning that the the Indirect transfer rules are not engaged and a tax charge and related compliances are not required in India.

Part 2

In this case there is a direct shareholding of Phoenix Inc in Tower India. As a result of the operation of the merger, these will stand transferred to the ownership of NewCo US (given that Phoenix Inc will cease to exist).

In order to benefit from the US-India DTAA, it will be necessary to provide (for the seller and the buyer in the US) with the Tax Residency certificate and Form 10F applicable. To the extent that this can be provided, it is possible that there would be a full exemption on the transfer of the shares under the provisions of Article 13 of the DTAA, which provides US the taxing right in relation to the taxing rights in this case.

In the evidence that a residency certificate cnanot be provided, the Indian tax authorities could impose requirements on both the buyer and seller in the transaction (i.e. a gain calculation (even if exempt under US law) with a tax charge at 35% + S/C + CESS) and a requirement of the buyer to remit funds under the TDS mechanism.

In relation to the losses and unabsorbed depreciation. Phoenix Inc has a significant, but on the face of it, a non-controlling stake in Tower India, however, this would need to be evaluated in a review of the shareholders agreement and the articles of association.

As a result of the transfer, any b/f losses may be restricted to the extent that there is a change of control of the Indian entity. It may be necessary to demonstrate that, as a result of the restructure being only within the group, that there should be no restriction of losses at the level of Tower India.