

THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2025

MODULE 2.05 – INDIA OPTION

SUGGESTED SOLUTIONS

PART A

Question 1

Part 1

Candidates to analyse provisions of domestic tax law (Section 9), applicability of Article 5 of India – UK tax treaty, discussion of Supreme Court ruling in the case of Formula One (80 Taxmann.com 347) and taxability of income from grant of broadcasting rights under domestic tax law and tax treaty.

Domestic Tax Law:

- Income from ticket sales, sponsorships, ads, broadcasting rights, merchandise, and participation fees is taxable in India, as it accrues from business carried out in India.
- Presence of staff and venue arrangements create a business connection.
- Payments from Indian sponsors/platforms may be subject to withholding tax (TDS).
- GST registration is required for ticketing, sponsorship, advertising, and merchandise sales.

India–UK DTA:

- Gamer plc will have a Permanent Establishment (PE) in India (fixed venue + staff presence).
- India can tax business profits attributable to this PE.
- Expenses relating to the Indian event are deductible.
- Ticket sales, sponsorships, ads, merchandise, Indian broadcasting rights -> taxable in India.
- Broadcasting rights sold abroad -> only the portion linked to Indian operations may be taxed.
- UK will give foreign tax credit for Indian taxes paid.

Compliance:

- Obtain PAN in India.
- File corporate income-tax return.
- Comply with withholding tax and GST rules.

Gamer plc will be treated as having a PE in India. Profits from the Indian event will be taxable in India, with credit available in the UK.

Part 2

Candidates should discuss the applicability of withholding tax provisions where PE is created in India. candidates should also refer to CBDT circular 726 of 1995 to evaluate the applicability of withholding tax on payment to professionals.

Indian Service Providers:

- Payments to professionals (lawyers, consultants, designers, etc.) -> TDS @ 10% (Section 194J).
- Payments under contracts (event management, catering, logistics, security, etc.) -> TDS @ 1–2% (Section 194C).
- TDS applies if a payment > ₹30,000 or annual total > ₹1,00,000 per vendor.

Foreign Service Providers:

- Payments to non-residents -> TDS under Section 195 at applicable rates.
- DTA (e.g., India–UK) may reduce rate (usually 10–15% for fees/royalties).
- If services are performed fully outside India and not linked to Indian operations -> may not be taxable, but clearance from tax authorities is advisable.

Compliance Steps:

- Obtain TAN in India.
- Deduct and deposit TDS.
- File quarterly TDS returns and issue certificates (Form 16A).

In short: Gamer plc must deduct and pay TDS on payments to Indian and foreign professional service providers when linked to the Indian event, with DTA relief available for non-residents.

Part 3

Candidates should discuss about requirement to file return of income in India, undertaking transfer pricing analysis for determination of profits to be attributable to PE, filing of Form 52A.

Direct Tax:

- Obtain PAN (for income tax) and TAN (for TDS).
- File annual corporate income-tax return; pay advance tax if liability > ₹10,000.
- TDS compliance: deduct, deposit, and file quarterly returns.
- Transfer pricing report (Form 3CEB) if related-party transactions.
- Tax audit if turnover > ₹10 crore.

Indirect Tax (GST):

- Obtain GST registration.
- File monthly/quarterly GST returns.
- Pay GST on tickets, sponsorships, ads, merchandise, and broadcasting rights attributable to India.

Question 2

Candidates to evaluate the taxability of each stream of income under domestic tax law and tax treaty. Reference should also be given to judicial precedents. candidates should give reference to MOU between India and US to conclude on the taxability of various streams of income. Reference should also be made discuss application of PE rules to Mercury Power. candidates should also refer to OECD commentary on inclusion of time spent by contractor for the purpose of calculating duration for determination of PE. candidates should also discuss on the income streams which will be covered under PE rules.

Candidates should also outline the rate of tax applicable on each stream of income.

Evaluation of income streams

Invoice 1:

- Domestic law: Since title and risk pass outside India (FOB New York), offshore supply not taxable in India (Supreme Court: Ishikawajima-Harima & others).
- DTA: Business profits taxable in US unless attributable to Indian PE. Offshore supply happens entirely outside India -> not attributable.
- Tax rate: Not taxable in India.

Invoice 2:

- Domestic law: Treated as royalty / fees for technical services (FTS) u/s 9(1)(vi)/(vii). Deemed to accrue in India if used in India.
- DTA (India–US, Art. 12): Royalty/FTS taxable in India @ 15% (gross).
- Tax rate: 15% + surcharge + cess (as per DTA).

Invoice 3:

- Performed in India, through PE/subcontractor.
- Domestic law: Taxable as business income.
- DTA: Attributable to PE -> profits taxable in India under Article 7.
- Tax rate: Foreign company rate = 40% + surcharge + cess on net income (after expenses).

Invoice 4:

- Performed in India, through project office/PE.
- Same treatment as invoice 3 -> business income taxable in India.
- Tax rate: 40% + surcharge + cess (on net basis).

Invoice 5:

- Performed in India.
- Domestic law: FTS taxable. But since rendered through PE/project office, falls under business profits rules.
- DTA: Where FTS is attributable to a PE, Article 7 applies (net basis, not gross).
- Tax rate: 40% + surcharge + cess (on net basis).

Overall

Offshore supply of goods -> not taxable.

Offshore designs/know-how -> taxable as royalty/FTS @ 15% gross.

Onshore activities (erection, installation, training/testing) -> attributable to PE -> taxable @ 40% (net basis) plus surcharge & cess.

PART B

Question 3

Part 1

Candidates to evaluate the taxability of each category under domestic tax law and tax treaty. Candidates should also make assumption that MedTech Plc is eligible for tax treaty benefits and will share prescribed documents. Reference should refer to Supreme Court ruling in the case of Engineering Analysis to conclude on non-taxability for payments made for license of software and software embedded in hardware. candidates should give reference to MOU between India and US. With respect to taxability of installation, training, on-call support and maintenance services, candidates should evaluate applicability of fees for included services.

Category 1

Domestic law:

- Payments for SaaS are generally treated as royalty (use of software, access to intellectual property) under Section 9(1)(vi).
- Even if hosted outside India, “right to use” is given to Indian users -> taxable in India.

DTA (India–UK, Article 13):

- Covers royalties including use of software.
- Taxable in India at 10–15% (generally 10% under India–UK DTA) on gross basis.

Tax:

- Royalty – 10% + surcharge + cess (gross).

Category 2

Domestic law:

- Hardware supplied on outright sale basis, if title and delivery occur outside India (e.g. FOB/CIF), is not taxable in India (Supreme Court: Ishikawajima-Harima principle).
- If delivered in India, it may be subject to Indian taxation as business income, but only if MedTech has a PE in India.

DTA:

- Business profits taxable in India only if MedTech has a Permanent Establishment (PE).
- If no PE -> not taxable in India.

Tax:

- Not taxable in India, unless PE exists.

Category 3

Domestic law:

- Falls within fees for technical services (FTS) / royalty, since technical designs, customised software and know-how are provided.
- Deemed to accrue in India if services are utilised in India.

DTA (Art. 13 – Fees for technical services):

- India can tax such FTS.
- Tax rate capped at 10% gross under the India–UK treaty.

Tax:

- FTS – 10% + surcharge + cess (gross).

Category 4

Domestic law:

- Installation and training rendered in India -> taxable as business income.
- Treated as FTS under Sec. 9(1)(vii).

DTA:

- If MedTech does not have a PE in India -> FTS taxable at 10% gross.
- If a PE exists (e.g. installation site office) -> profits taxed on net basis at 40% (foreign company rate).

Tax:

- Normally FTS – 10% (gross); if PE exists -> Business income – 40% (net).

Category 5

Domestic law:

- Ongoing technical support and maintenance = FTS under Sec. 9(1)(vii).
- Taxable in India, since services are used in India.

DTA:

- Treated as FTS under Art. 13.
- Taxable in India at 10% gross.

Tax:

- FTS – 10% + surcharge + cess (gross).

Overall

Royalty/FTS (Categories 1, 3, 4, 5) -> taxable in India @ 10% gross under the India–UK DTA, unless MedTech has a PE in India (then 40% net).

Hardware supply (Category 2) -> not taxable in India if supplied offshore, unless MedTech has a PE in India.

Part 2

Candidates should discuss the taxability of various categories under the domestic tax law and conclude that such services will be taxable as royalty/ fees for technical services and shall be subject to withholding tax at 20% (plus applicable surcharge and cess).

TRC is mandatory to claim India–UK DTA benefits.

Without TRC -> treaty relief is denied, and only Indian domestic law rates apply.

Without a UK TRC, MedTech pays slightly higher withholding (20% + SC + cess). Offshore hardware sales remain non-taxable unless linked to a PE in India.

Question 4

Candidates should discuss the taxability of subscription income and advertisement income from foreign advertisers up to 31 July 2024 under equalisation levy provisions as outlined in Finance Act, 2020 i.e. income which is subjected to 2% equalisation levy.

For income post 31 July 2024, candidates should discuss the applicability of SEP provisions and outline the conditions to conclude that SEP provisions become applicable. Thereafter the candidates should discuss the eligibility of Music LLC to claim tax treaty benefits. candidates should outline the ruling of Delhi Tribunal in the case of General Motors Company. candidates will be evaluated on the reasoning outlined. Where candidates are outlining tax treaty benefit is available reference to Article 12(5)(d) of India – USA tax treaty.

With respect to income from Indian advertisers, candidates should discuss applicability of 6% equalisation levy as per Finance Act, 2016.

Indian Domestic Tax Law

Under Section 9(1)(i) and 9(1)(vii) of the Income-tax Act:

- Income is taxable in India if it accrues or arises in India or is received in India.

Business connection / Permanent Establishment (PE) (Sec. 9(1)(i)):

- A foreign company is deemed to have business connection in India if it enables systematic exploitation of its digital platform in India.
- Indian tax authorities may treat Music LLC as having a “Significant Economic Presence” (SEP) in India, as per Finance Act 2021 (digital taxation rules):
 - Active Indian users > 1 million
 - Monetisation via subscriptions and ads

Subscription revenue:

- Revenue from Indian users is deemed to arise in India; constitutes business income.
- Taxable in India
- Net business income attributable to India

Ads from Indian brands:

- Income arises from Indian source; also likely treated as business income.
- Taxable in India
- Net business income attributable to India

Ads from Indian brands:

- Payment received from India but service consumed outside India; may not constitute Indian-source income.
- Not taxable in India

Ads from foreign brands:

- Service consumed in India -> income deemed to accrue in India; taxable as business income.
- Taxable in India
- Net business income attributable to India

Note: Digital taxation rules (Significant Economic Presence) allow India to tax foreign companies without a physical PE, if revenues arise from Indian users.

India-US DTA

Article 7 (Business Profits):

- Profits of a US company are taxable in India only if there is a PE in India.
- Music LLC has no physical PE, but under SEP rules, India may argue that a digital PE exists, making Article 7 applicable.

Article 12 (Royalties / FTS):

- Subscription fees and ad revenue are not royalties or FTS (no IP transfer or technical service provided to India), so Art. 12 unlikely to apply.
- Practically: India may treat the subscription and India-facing ad revenue as business profits attributable to a digital PE, taxable under domestic law and arguably under Article 7 of the DTA.

PART C

Question 5

Part 1

Candidates should discuss the applicability of indirect transfer provisions under domestic tax law and outline the conditions. candidates should thereafter evaluate taxability under the tax treaty and conclude on the taxability.

Candidates should outline the withholding tax obligation of Logistics Netherlands, return filing and transfer pricing obligation on Logistics Plc. candidates should also outline compliance obligation on Logistics India for filing of Form 49D along with its timelines.

Indian tax implications:

- Treated as an indirect transfer of Indian shares under Section 9(1)(i).
- Capital gains attributable to the Indian shares may be taxable in India.
- Rate: 40% on net gain + surcharge and cess, subject to India–UK DTA relief.

Compliance obligations:

- Seller (Logistics plc): File Indian tax return, disclose indirect transfer, maintain FMV and TRC documentation.
- Buyer (Logistics USA Inc.): Deduct TDS under Section 195, deposit with Indian tax authorities, issue withholding certificate.

Step 1 potentially triggers Indian capital gains tax on the portion of gain linked to Indian shares, with TDS obligations on the buyer and reporting obligations on the seller.

Part 2

Candidates should discuss the taxability under domestic tax law and tax treaty and conclude on the taxability in the hands of Logistics Mauritius. candidates should discuss applicability of section 50D of the domestic tax law on Logistics Mauritius.

Candidates should evaluate the applicability of section 56(2)(x) of the domestic tax law in the hands of Logistics USA Inc and under Article 23 of India – US Tax Treaty. candidates should discuss the withholding tax obligation of Logistics USA Inc, return filing and transfer pricing obligation on Logistics Mauritius and Logistics USA Inc.

Indian Tax implications:

- Capital Gains
 - Sale of Indian shares by a foreign company is taxable in India.
 - Here, sale price < book value -> no capital gains -> no Indian tax liability for LM.
- FMV Consideration
 - Large discount (40% below FMV) could trigger GAAR/transfer pricing scrutiny, though no tax arises currently.
- DTA
 - LM qualifies as a Mauritius resident; treaty benefits ensure India cannot tax capital gains (not relevant here since gains are nil).

Compliance obligations:

- LIPL
 - FEMA reporting for inbound investment; update share register; ROC filings.
- LM
 - No Indian tax filing required; maintain corporate records.

- LU
 - Ensure proper filings for foreign investment in India.

Key risks for SeaCargo:

- Undervaluation of shares may attract regulatory scrutiny.
- Need to verify DTA eligibility and compliance filings.

No direct Indian tax arises, but compliance and regulatory risks exist due to undervaluation.

Question 6

Part 1

Candidates to analysis applicability of section 80LA and outline the benefits. candidates should also discuss applicability of withholding tax on dividends distributed to shareholders and taxation of interest payments. candidates should outline the tax rate applicable to such company in IFSC including applicability of minimum alternate tax.

Lower Corporate Tax:

- Profits from eligible IFSC activities taxed at 15% (vs 30% for standard domestic companies).

Tax-efficient Distributions:

- No Dividend Distribution Tax (DDT) and lower withholding taxes on payments to US investors.

Capital Gains Advantages:

- Preferential or tax-exempt treatment on gains from sale of securities in IFSC.

Exemptions on Transaction Taxes:

- No Securities Transaction Tax (STT) or Commodity Transaction Tax for trades via IFSC.

100% Foreign Ownership & Repatriation:

- Profits and capital can be freely repatriated to the US parent.

Overall:

- The IFSC setup allows Fund Group to operate tax-efficiently while managing bookkeeping, fund management, and investment in Indian unlisted securities for US investors.

Part 2

Candidates to discuss the tax status for the investor, taxation of capital gains, dividend income, interest income. candidates to also discuss eligibility of investor to claim tax treaty benefits along with requirement to obtain tax registration and file return of income.

Capital Gains & Dividends:

- Capital gains and profit distributions are tax-exempt or subject to low Indian taxes.

No Transaction Taxes:

- Trades through IFSC are exempt from Securities Transaction Tax (STT) and no Dividend Distribution Tax (DDT) applies.

Repatriation:

- Profits and capital can be freely repatriated to the US without Indian exchange control restrictions.

Lower Withholding Tax:

- Interest, dividends, or fees paid to foreign investors attract reduced withholding tax (0–10%).

Overall:

- Investing through an IFSC non-retail scheme provides US investors with tax-efficient returns, lower transaction costs, and easy repatriation.

Question 7

Candidates should outline the comparative analysis on various parameters outlined in the question. candidates should evaluate the applicability of PE rules to branch and liaison office considering the nature of activities proposed to be carried out by Engineering Valves Plc. On ease of operations, considering that the employees will carry out sales activities, candidates to discuss challenges applicable to liaison office. candidates should also discuss applicability of TP rules and mention about attribution of profits.

Company (Private Ltd):

- Tax Rate: 25–30%
- Cash Extraction: High (via dividends)
- Compliance: High (ROC, GST, TP, audits)
- Key Pros: Full operations, limited liability
- Key Cons: Higher compliance, formal cash repatriation

LLP:

- Tax Rate: 30%
- Cash Extraction: Very High (profit share)
- Compliance: Moderate (audits, tax filing)
- Key Pros: Flexible profit distribution, simple compliance
- Key Cons: Limited capital raising, less suitable for hiring

Branch Office:

- Tax Rate: 40% (PE of foreign)
- Cash Extraction: Moderate (RBI approval needed)
- Compliance: Moderate (tax, ROC, RBI reporting)
- Key Pros: Can operate under parent control
- Key Cons: High tax risk, less flexible cash repatriation

Liaison Office:

- Tax Rate: Not taxable
- Cash Extraction: Low (no profits)
- Compliance: Low (RBI reporting)
- Key Pros: Minimal tax obligations
- Key Cons: Cannot generate revenue, very limited operations

Overall

Private Limited Company:

- Best for full operations, sales and lead generation.

LLP:

- Good for simple compliance and flexible profit extraction.

Branch Office:

- Limited operations, higher tax risk.

Liaison Office:

- Only marketing/lead generation; cannot earn revenue.

Question 8Part 1

Candidates should discuss the taxability of payments under domestic tax law and whether such payments fall within the purview of income. candidates should refer to Supreme Court ruling in case of GE India Technology Center Private Limited (327 ITR 456).

Candidates should discuss whether such expenses will be allowed as deduction under the provisions of the domestic tax law. candidates should also discuss on whether such expenses can fall within purview of prior period expense.

Candidates should also discuss applicability of transfer pricing provisions and considering necessary cost in cost base for the purpose of charging markup.

Travel Expenses:

- Deductibility: Deductible as business expense in year of payment
- Transfer Pricing: No markup; ALP = actual cost
- Withholding Tax (TDS): None
- GST: Usually no GST
- Key Notes: Should document purpose and authorisation

Management Support Services:

- Deductibility: Deductible if arm's length and genuine
- Transfer Pricing: Must comply with ALP; cost-plus or CUP method recommended
- Withholding Tax (TDS): May attract TDS under Section 195; treaty relief possible
- GST: Reverse charge may apply if import of services
- Key Notes: Documentation and justification for past-year charges essential

Overall:

- Cross charges are deductible business expenses if properly documented.
- Travel reimbursement: straightforward, no TDS or markup.
- Management services: requires ALP compliance; may trigger TDS and reverse-charge GST.
- Filing an Advance Pricing Agreement (APA) is recommended to secure certainty on prior-year charges and avoid disputes.

Part 2

Candidates evaluate the applicability of withholding tax on each payments considering the evaluation done in Part 1, provisions of domestic tax law and India – UK tax treaty.

Travel Expenses:

- TDS Applicability: No TDS
- Notes: Pure reimbursement of actual costs; no markup; properly documented.

Management Support Services:

- TDS Applicability: Yes, 10–15%
- Notes: Non-resident services; arm's length pricing required; India-UK DTA may reduce the rate.

Overall:

- Reimbursements of actual expenses are not taxable in India.
- Payments for management services require TDS, but DTA benefits and APA can help reduce tax risk.

Part 3

Candidates should discuss whether the software access is a part of contractual obligation of GS UK to enable GS India to work upon and may not warrant a separate consideration. Reference to example of a tailor who is giving an option to stitch the clothes provided by a customer or provide readymade garments. In the first instance, the tailor charges only for labour whereas in second instance, the tailor charges for labour and material. candidates can

conclude that no cost can be associated for access to such software on which GS India has to work upon, like a tailor and hence should not form part of cost base.

Transfer Pricing:

- Must include software access value in ALP calculation; could affect GS India's cost-plus markup.

Withholding Tax (TDS) :

- If GS UK charges a fee -> 10–15% TDS on royalty/technical service; if free -> no TDS.

GST:

- Payment -> reverse charge GST applies; if free -> generally no GST.

Accounting:

- Costs may need to be capitalised or included in service cost base.

Risk:

- Free access could be viewed as a benefit in kind by tax authorities; proper documentation essential.

Overall:

- Paid access: TDS and GST apply; include in TP.
- Free access: No TDS or GST, but TP implications remain.
- Filing an APA is recommended to ensure arm's length treatment and avoid disputes.

Question 9

Part 1

Candidates to outline dos and don'ts for secondment of employee to India such as movement of payroll, control and supervisions with AC India, decision to terminate with AC India, seconded employee to work as employee of AC India and not AC UK etc.

Indian Income Tax:

- Salary and stock options taxable in India if employee stays ≥ 183 days; TDS may apply on reimbursed salary.

PE Risk:

- Low if employee only provides support/marketing; high if employee concludes contracts or binds AC UK.

Checks & Balances:

- Restrict employee authority to advisory/marketing only
- Keep employment contract and payroll in UK
- Maintain formal secondment agreement
- Limit stay to < 183 days
- Avoid using AC India office as fixed place of business

Stock Options / Benefits:

- Potential Indian tax on vesting/exercise if in India; proper documentation required

Reimbursement Structure:

- AC India may reimburse AC UK for salary/expenses without creating employment relationship; document all payments

Overall:

- Secondment is low PE risk if employee's role is support-only, authority is limited, and duration is short.
- Indian income tax applies based on days spent in India; proper documentation and agreements mitigate risk.

Part 2

Candidates to discuss the deductibility of employee stock option cost by evaluating judicial precedents like the Karnataka High Court ruling in the case of Biocon. candidates should also evaluate the applicability of withholding tax on payments made by AC India to AC UK towards employee stock option cost. candidates should also outline judicial precedents.

Deductibility:

- Allowed as a business expense if properly documented and arm's length allocation to India-based work is maintained.

Transfer Pricing:

- Must comply with ALP; cost allocation to Indian duties should be supported.

Withholding Tax (TDS):

- Generally no TDS if pure reimbursement; TDS may apply if marked-up or treated as compensation.

Documentation:

- Maintain secondment agreement, stock option details, invoices, and cost allocation.

APA Consideration:

- Recommended to confirm ALP and avoid future disputes.

AC India can deduct cross-charged ESO costs; TDS usually does not apply if it's a pure reimbursement, but proper documentation and transfer pricing compliance are essential.