

Answer-to-Question-_1_

Part 1

A. Taxability under Income Tax Act, 1961 (ITA)

- 1) Gamer Plc is organizing a live event in India. It has a physical presence of employee staff for at least 41 days and contracts with Indian vendors. These activities constitute business connection in India. Based on explanation 2 to Section 9 of the ITA, income shall be deemed to accrue or arise in India.
- 2) If PE exists the Significant Economic Presence (SEP) provisions will not apply due to Article 7 override in DTAA.
- 3) Income attributable to the business connection or PE is taxable in India. Thus, income source via ticket sales, participation fees, sale of broadcasting rights to Indian platforms, advertisements, sponsorships and merchandise sold in India will be taxable in India.
- 4) Tax rates to foreign companies applicable shall be applicable which 40% plus applicable surcharge and cess.

B. Taxability under India UK DTAA

- 1) Physical venue is in India under control for at least 41 days and core business activity of gaming event, branding and vendor management shall be conducted from that venue. Thus, Fixed place PE is constituted under Article 5 of India UK DTAA.
- 2) However no service PE is constituted considering stay in India is less than 90 days (i.e. 41 days) under Article 5 of India UK DTAA. Further, construction/ installation PE is not applicable.
- 3) Under Article 7 of India UK DTAA only the profits attributable to the PE are taxable in India. Attribution should follow arm's length principle under OECD guidelines.
- 4) DTAA relief can be claimed if Tax Residency Certificate (TRC) is received from UK authorities, Form 10F and No PE declaration is provided.

Part 2

- 1) Section 195 of the ITA applies to non- resident if the payment is from income deemed to accrue or arise in India as per supreme court ruling in the case of GE India Technology.
- 2) Payments to any non-resident service provider may be subject to the withholding tax at applicable rates under Section 195 of the ITA if services are utilized in India or performance occurs in India.
- 3) Provisions of Section 194J of the ITA shall be applicable if the payments are made to Indian resident professionals as fees for technical services, professional services or consultancy services and such payments in aggregate exceeds INR 30,000 per annum to each payee and withhold tax @ 10%.
- 4) Provisions of Section 194C of the ITA shall be applicable if the payments are made to Indian resident contractors and such payments exceeds INR 30,000 or INR 100,000 (in aggregate) per annum to each payee and withhold tax @ 1%/2% as applicable.

Part 3

- 1) PAN must be obtained mandatory via application under Form 49AA.
- 2) TAN must be obtained mandatory for TDS via TAN application.
- 3) Income Tax return (ITR) is required to be filed mandatory considering the income is taxable in India under ITR 6.
- 4) Deduct, deposit and report TDS under Form 26Q/27Q, Form 16A and Form 15CA/CB for TDS compliance.
- 5) Obtain GST Registration under GSTR 5 considering NRTP.
- 6) Comply with FEMA/RBI compliance and maintain remittance documentation.

Answer-to-Question-_2_

A. Phase 1 - Offshore Activities

1) Design, plans, specification and technical drawings:

- May be considered as fees for technical services (FTS) under Section 9 of the ITA.
- Under Article 12 of the India US DTAA, FTS is taxable only if make available test is satisfied. If technical knowledge is made available (i. e. Indian customer can use knowledge independently) then such FTS shall be taxable otherwise such FTS shall not be taxable in India.
- Tax rate shall be @10% on gross basis under DTAA.

2) Manufacture and supply of turbines and heavy machinery on FOB basis at US port:

- Offshore sales of goods is not taxable in India considering there is no business connection under Section 9 of the ITA and there is no PE at the time of sale.
- Further, goods are delivered outside India and title is transferred outside India and thus, Offshore sales of goods is not taxable in India.

3) Provision of technical know-how and training services:

- May be considered as fees for technical services (FTS) under Section 9 of the ITA.
- Under Article 12 of the India US DTAA, FTS is taxable only if make available test is satisfied. If technical knowledge is made available (i. e. Indian customer can use knowledge independently) then such FTS shall be taxable otherwise such FTS shall not be taxable in India.
- If know-how is made available and constitutes information concerning industrial, commercial or scientific experience then it qualifies as royalty.
- Tax rate shall be @10% under DTAA.

B. Phase 2 - Onshore Activities

1) Permanent Establishment (PE)

- Once project office becomes functional and galaxy Inc personnel are present for 165 days, a fixed place PE and/or Service PE arises in India under Article 5 of the India US DTAA.

- Installation and related services are closely connected to the project and thereby taxable under business income through PE.
- Further, though Mercury Power is a subcontractor, if Galaxy Inc. exercises control and provides direction then this supports existence of PE and indicates project supervision is by Galaxy Inc. which is taxable under business profits via PE.

2) Installation of Machinery, Supervision, Testing and Training Services:

- These services are in the nature of business profits potentially via PE.
- Business income attributable to PE is taxable in India.
- Tax @40% plus applicable surcharge and cess on net profits attributable to PE under the provisions of the ITA shall be applicable.
- Galaxy Inc. maintain books of accounts and must file ITR in India.

Answer-to-Question-4

A. Subscription Revenue from Indian users

1) Section 9 of the ITA

- Music LLC has no physical presence in India.
- Further, streaming does not constitute technical services provided to customer.
- Subscription fee may be argued as royalty if platform allows download or use of copyright protected music. However, it is pure streaming service without download rights and thus its not royalty.

2) India US DTAA

- Subscription revenue under Article 12 of India US DTAA suggests no royalty characterization for passive streaming.
- It is not making available any technical knowledge and thus not a FTS under Article 12 of India US DTAA.

3) Equalisation Levy (EL)

- EL @ 2% under Section 165A applicable on e-commerce supply of goods and services made to an Indian resident by a non resident e-commerce

operator.

- EL @ 2% applicable on INR 240 million (INR 20 million * 12 months) = INR 4.8 million.

B. Advertisement income from Indian brands for Indian audience

1) Section 9 of the ITA

- Source based rules triggers taxability of such income in India.
- Treated as business income but taxable only if PE exists.

2) India US DTAA

- Under Article 7 of India US DTAA such income shall be taxable in India only if Music LLC has PE in India.
- Considering no PE in India and therefore not taxable in India.

3) Equalisation Levy (EL)

- EL @ 6% under Section 165 of the ITA applicable for Indian businesses making payment for online advertisement.
- However, provisions of Section 165A of the ITA shall be applicable considering Music LLC provides digital ad services directly.
- EL @ 2% applicable on INR 96 million (INR 8 million * 12 months) = INR 1.92 million.

C. Advertisement income from Indian brands for non-Indian audience

1) Section 9 of the ITA

- Based on CBDT circular No. 5 of 2016 income should arise from targeting Indian audience.
- Indian brands are payers but target audience is outside India. Thus, nexus to Indian territory is weak.
- Therefore, no income arising from operations in India.

2) India US DTAA

- Under Article 7 of India US DTAA such income shall be taxable in India only if Music LLC has PE in India.
- Considering no PE in India and therefore not taxable in India.

3) Equalisation Levy (EL)

- EL @ 2% under Section 165A applicable on e-commerce supply of goods and services made to an Indian resident by a non resident e-commerce

operator.

- EL @ 2% applicable on INR 36 million (INR 3 million * 12 months) = INR 0.72 million.

D. Advertisement income from Foreign brands for Indian audience

1) Section 9 of the ITA

- Advertisers are non resident but services are rendered to Indian users. This provides sufficient evidence for nexus in India
- Treated as business income but taxable only if PE exists.

2) India US DTAA

- Under Article 7 of India US DTAA such income shall be taxable in India only if Music LLC has PE in India.
- Considering no PE in India and therefore not taxable in India.

3) Equalisation Levy (EL)

- EL @ 2% under Section 165A applicable on e-commerce supply of goods and services made to an Indian resident by a non resident e-commerce operator.
- EL @ 2% applicable on INR 96 million (INR 8 million * 12 months) = INR 1.92 million.

Total Equalisation Levy = INR 9.36 million

Answer-to-Question-_6_

Part 1

1) Corporate Tax Holidays (Section 80LA of the ITA)- 100% tax exemption on profits derived from eligible services for first 10 consecutive assessment years (AYs) out of 15 AYs at the option of the IFSC unit.

2) Reduced Minimum Alternate tax (MAT) / Alternate Minimum Tax (AMT)
Rate applicable at the rate of 9% (instead of 15%) if the IFSC unit opts for Section 115JB or Section 115JC of the ITA.

- 3) Exemption on Dividend, Interest and Capital Gains under Section 10(34A), Section 10(4E) and Section 10(4D) respectively of the ITA.
- 4) No Goods and Service Tax (GST)- Services provided by IFSC unit to entities located outside India are treated as export of services and accordingly no GST charged.
- 5) No Stamp Duty on instruments executed by IFSC units in relation to their business.
- 6) Single window clearance by IFSCA.

Part 2

- 1) Exemption from capital gains tax for non residents as per Section 10(4D) of the ITA.
- 2) Exemption for income from offshore investments as per Section 10(4E)/(4F) of the ITA.
- 3) No withholding tax (TDS) on distributions to non-residents as per the proviso to Section 194LBB of the ITA.
- 4) No GST on Fund management services to Alternate Investment Funds (AIFs) in IFSC.
- 5) No Capital gain tax on swap of units as per Section 47 of the ITA.
- 6) No Stamp Duty on instruments executed by IFSC AIFs or between IFSC entities.
- 7) Exemption on Income from specified funds as per Section 80LA of the ITA.

Answer-to-Question-_7_

A. The Company (Indian Subsidiary being a private limited company)

1. Rate of tax - Tax@22% plus Surcharge(SC)@10% plus Health and education cess(HEC)@4% = 25.17% if opting for Section 115BAA of the ITA and no exemptions.

2. Withholding tax(WHT) on dividend/cash extraction - WHT@10% under the ITA which can be reduced to 5% under India UK DTAA

3. Ease of cash extraction - Dividends require compliance with FEMA and board approval.

4. Compliance obligation

- ROC filings
- tax audit
- GST compliance
- TDS compliance
- Transfer pricing compliance
- FEMA compliance
- board meetings under companies Act, 2013 compliance.

5. Ease if operating under Indian tax law - Activities are fully permitted and there is no restrictions

6. Tax risks - treated as resident entity and there is no risk of PE exposure.

7. Other parameters

- Easy to raise funds, hire, scale
- Preferred by Indian vendors

B. Limited Liability Partnership (LLP)

1. Rate of tax - Tax@30% plus SC@12% plus HEC@4% = 34.94%.

2. WHT on dividend/cash extraction - No dividend distribution tax and profit share exempt in partners hand. Further, no WHT.

3. Ease of cash extraction - Profits are credited directly to the partner and there is no dividend formalities.

4. Compliance obligation

- LLP compliance

- income tax compliance
- FEMA compliance
- FDI approvals if required

5. Ease if operating under Indian tax law - Full operational freedom and FDI routes may complicate set up.

6. Tax risks - If structured properly tax risk is minimum and FDI conditions must be watched.

7. Other parameters - FDI in LLP is only under approval route and external borrowings not allowed.

C. Branch Office (BO)

1. Rate of tax - Tax@40% plus SC@2% plus HEC@4% = 43.68%.

2. WHT on dividend/cash extraction - Subject to DTAA rate (10% - 15%) on repatriated profits

3. Ease of cash extraction - Requires RBI/FEMA compliance for each transfer.

4. Compliance obligation

- RBI set up required
- FEMA reporting required
- tax filing compliance
- TP compliance

5. Ease if operating under Indian tax law - Permitted activities are limited and are subject to RBI scrutiny.

6. Tax risks - Higher tax rates and there exists a PE exposure under DTAA.

7. Other parameters - Set up takes time and high operational boundaries exists.

D. Liaison Office (LO)

1. Rate of tax - not taxable considering no income is permitted.

2. WHT on dividend/cash extraction - No repatriation allowed considering no profits.

3. Ease of cash extraction - No repatriation allowed considering no profits.

4. Compliance obligation

- Annual activity report required to be submitted before RBI.
- Limited financial reporting requirement.

5. Ease if operating under Indian tax law - No commercial activities can be conducted and such office can only be used for communication.

6. Tax risks - It has a low tax risk considering no income, however, if overstepping mandate then PE/tax risk may arise.

7. Other parameters - LO is suitable only for market research or coordination.