


INTERNATIONAL TAXATION


International taxation: determination of tax on a person where the person has international presence and requires application of tax laws of all countries

Tax haven:


 **Example countries:** Dubai, Netherland, etc.

 Key Factors: Organisation for Economic Co-operation and Development [OECD]

- countries with no tax or less tax for inviting foreign investments
- Lack of transparency [secret rulings and negotiated tax rates]
- Lack of effective exchange of tax information with foreign tax authorities
- No requirement for a substantive local presence of the entity

 Methodology of business through tax havens

- Personal residency [relocating for high tax country to tax haven countries]
- Asset holding [trust formed in tax haven for holding assets or business]
- Trading and other business activity [business (requires no specific location or extensive labour) set up in tax havens]
- Financial intermediaries [mutual funds, banking, life insurance]. Customers are not benefited as local tax is applicable for their profit

 Counteracting harmful tax practices [some of the OECD's 19 recommendations]

- Adopt Controlling Foreign Corporations (CFC) or equivalent rules
An entity located in tax havens but controlled by parent company for deferral of tax. Such entity is called as CFC.

Conditions

1. A domestic taxpayer controls the CFC

2. The CFC is located in a low or no tax (otherwise black or gray not white) jurisdiction
3. The CFC earns the passive income like interest, dividend, capital gains, etc.
4. The CFC has not distributed such income to the parent company for long time to defer tax.

In the above cases, the undistributed income of CFC is treated as distributed to the shareholder and taxed in the home country

- Consider foreign information reporting rules
- Enter into Tax Information Exchange Agreement (TIEA)
- Application of provision of withholding tax while making payment to offshore recipients
- Curbing 'treaty shopping nations' of existing treaties with tax haven
- Mutual assistance of tax authorities in the recovery of cross border tax claims
- More international co-operation by establishing forum to avoid harmful tax practices
- Formulation and adoption of transfer pricing rules
- Providing access to banking information for tax purposes
- Considering coordinated enforcement regimes (joint audits, etc.)

Resident of Contracting State: An individual is a resident of both contracting states, then his status shall be determined as follows

- a. (Center of vital interest, permanent home) He shall be deemed to be resident only of the state in which he has a permanent home available to him; if he has a permanent home available to him in both states, he shall be deemed to be a resident only of the state with which his personal and economic relations are closer.
- b. If the state in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either

state, he shall be deemed to be a resident only of the state in which he has a habitual abode;

- c. If he has a habitual abode in both states or in neither of them, he shall be deemed to be a resident only of the state of which he is a national;
- d. If he is a national of both states or neither of them, the competent authorities of the contracting states shall settle the question by mutual agreement.

Where by reason of the aforesaid provisions, a person other than an individual is a resident of both contracting states, then it shall be deemed to be a resident only of the state in which its place of effective management is situated.

Double Tax Relief

Bilateral Relief

- Section 90: Agreement with foreign countries
- Section 90A: Adoption by Central Government of agreements between specified associations for double taxation relief

Unilateral Relief: Section 91: Countries with which no agreements exist

Bilateral Relief:

Section 90: Agreement with foreign countries (specified territory outside India)

The Central Government may enter into an agreement with the Government of any country outside India or specified territory outside India;

1. For the granting of relief in respect of – double taxation
2. For the avoidance of double taxation, without creating no tax or low tax through tax evasion
3. For exchange of information for prevention of evasion and avoidance of IT in case of investigation

4. For recovery of IT in case of requirement

And may make such provisions as may be necessary for implementing the agreement.

Note:

- 👤 The provisions of this Act shall apply to the extent more beneficial to that assessee except the provisions of Chapter X-A of the Act (i.e., GAAR).
- 👤 Relief is given to NR as per agreement else prescribed certificate is required
- 👤 Terms in agreement is as per definition in agreement or IT Act or notification
- 👤 Relief only when double taxation is applicable.
- 👤 If no tax, then no relief [UOI vs Azadi Bachao Andolan]
- 👤 Provisions of the agreement prevails over the Act [CIT vs Kulandagan Chettiar]
- 👤 Deduction = whichever is more beneficial

Section 90A: Adaptation by Central Government of agreements between specified associations for double taxation

Question 1: Mr. Ramesh, a resident Indian, has derived the following incomes for the previous year relevant to the A.Y. 2021-22:

- 1 Income from profession in India ₹2,44,000
 - 2 Income from profession in country A ₹4,50,000
- (Tax paid in foreign country @ 5%)

Compute Indian tax liability of the assessee assuming that as per treaty between India and Country A, ₹4,50,000 is taxable in India. However foreign tax can be set off against Indian tax liability.

Answer:

Computation of total income and tax of Mr.Ramesh for the A.Y 2021-22		
	Particulars	₹
	Income from profession in India	2,44,000
	Income from profession in Country A	4,50,000
	Gross total income	6,94,000
Less	Deduction u/ch. VIA	Nil
	Total income	6,94,000
	Tax on above	51,300
Add	Health and Education cess	2,052
	Tax and cess payable	53,352
Less	Relief u/s 90 [$₹4,50,000 \times 5\%$]	22,500
	Tax Payable in India (Rounded off u/s 2888)	30,850

Question 2: Shri Anuj, an ordinarily resident in India, provides following details of his income for the previous year relevant to the A.Y. 2021-22

Income from India	₹ 3,40,000
Income from Country Z	₹ 2,00,000
Investment in PPF	₹ 10,000

Further, it is to be noted that:

- India has avoidance of double taxation agreement of country Z. According to said agreement, income is taxable in the country in which it is earned and not in other country. However, in the other such income can be included for the purpose of computation of tax rate.
- Foreign income has been taxed in Country Z @ 20%

Compute Indian tax payable.

Answer:

Computation of total income and tax of Shri Anuj for the A.Y. 2021-22		
	Particulars	₹
	Income from India	3,40,000
	Income from County Z	2,00,000
	Gross Total Income	5,40,000
Less	Deduction u/s 80C [Investment in PPF]	10,000
	Total Income	5,30,000
	Tax on above	18,500
Add	Health and Education cess	740
	Tax and Cess payable	19,240
Less	Relief u/s 90 [$₹2,00,000 \times 3.63\%$]	7,260
	Tax Payable in India (Rounded off u/s 288B)	11,980

 **Unilateral Relief:**

Section 91: Countries with which no agreement exists

Any resident in India

- a. Has foreign income
- b. Paid tax on foreign income in such country
- c. India does not have any agreement u/s 90 with that foreign country

Then he shall be entitled to the deduction from the Indian income-tax

- i. Average Indian tax rate or
 - ii. Average such foreign tax rate
- Whichever is lower is deductible

Question 3: Mr. Ramesh, a resident Indian, has derived the following incomes for the previous year relevant to the A.Y. 2021-22:

- 1 Income from profession in India ₹2,44,000
- 2 Income from profession in country A ₹4,50,000
(Tax paid in foreign country @ 5%)

Compute Indian tax liability of the assessee assuming that India does not have any agreement with country A.

Answer:

Computation of total income and tax of Mr.Ramesh for the A.Y 2021-22		
	Particulars	₹
	Income from profession in India	2,44,000
	Income from profession in Country A	4,50,000
	Gross total income	6,94,000
Less	Deduction u/ch. VIA	Nil
	Total income	6,94,000
	Tax on above	51,300
Add	Health and Education cess	2,052
	Tax and cess payable	53,352
Less	Relief u/s 91 [₹4,50,000 × 5% ¹]	22,500
	Tax Payable in India (Rounded off u/s 2888)	30,850

Question 4: Shri Anuj, an ordinarily resident in India, provides following details of his income for the previous year relevant to the A.Y. 2021-22

- Income from India ₹ 3,40,000
- Income from Country Z ₹ 2,00,000
(Tax paid in foreign country @ 20%)

¹ WEL of Average Indian tax rate $\left(\frac{53,352}{6,94,000} \times 100\right) = 7.69\%$ or foreign tax rate (5%)

Investment in PPF

₹ 10,000

Compute Indian tax liability of the assessee assuming that India does not have any agreement with country Z.

Answer:

Computation of total income and tax of Shri Anuj for the A.Y. 2021-22		
	Particulars	₹
	Income from India	3,40,000
	Income from County Z [foreign tax rate – 20%]	2,00,000
	Gross Total Income	5,40,000
Less	Deduction u/s 80C [Investment in PPF]	10,000
	Total Income	5,30,000
	Tax on above	18,500
Add	Health and Education cess	740
	Tax and Cess payable	19,240
Less	Relief u/s 91 [₹2,00,000 × 3.63% ²]	7,260
	Tax Payable in India (Rounded off u/s 288B)	11,980

Rule 128: Foreign Tax Credit

Foreign Tax:

In respect of	Foreign Tax
A country or specified territory with which India has entered into an agreement u/s 90 or 90A	Tax covered under the said agreement

² WEL of Average Indian tax rate $\left(\frac{19,240}{5,30,000}\% = 3.63\%\right)$ or foreign tax rate (20%)

Any other country or specified territory	Tax payable under the law of that country or specified territory in the nature of IT referred to in the explanation to section 91.
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Foreign Tax Credit: Giving credit for foreign tax.

- ☞ Credit for foreign tax paid for more than one year
- ☞ No credit for interest, fee, penalty
- ☞ No credit for disputed tax [but allowed within 6 months from the settlement of dispute]

Foreign Tax Credit – note:

- ☞ Credit = WEL [Indian tax payable, foreign tax paid]
- ☞ Ignore = foreign tax paid – Indian tax payable [as per the provisions of agreement]
- ☞ TTBR on the last day of the month immediately preceding the month in which such tax has been paid is used for conversion to determine the credit

Tax payable under MAT or AMT [u/s 115JB or 115JC]

- ☞ Credit for foreign tax paid is allowed as per the normal provisions.

Documents Required for Credit

- ☞ Income statement from the foreign country
- ☞ Certificate of income and the amount of foreign tax
 - From the tax authority of the foreign country [specified territory] or
 - From the person responsible for deduction of such tax
 - Signed by the assessee: Valid
 - For tax payment – An acknowledgement of online payment or bank counter foil etc.
 - For TDS – Proof of deduction

Permanent Establishment:

A place of mgt	a branch	an office	a factory
A workshop	a mine	an oil well	a quarry
A warehouse	a farm, plantation		sale outlet
An installation		a building site	

PE is the base for imposing foreign tax.

Exclusions:

- a. The use of facilities solely for the purpose of storage or display of goods
- b. The maintenance of a stock of goods solely for the purpose of processing
- c. The maintenance of a stock of goods solely for the purpose of storage or display
- d. The maintenance of a fixed place of business solely for the purpose of purchasing goods or of collecting information for the enterprise.
- e. The maintenance of a fixed place of business solely for the purpose of advertising, for scientific research, for the supply of information etc.

Section 92: Computation of income from international transaction having regard to arm's length price (ALP)

1. Any income (including allowances for any expenses or interest) arising from an international transaction shall be computed having regard to the arm's length price.
2. Where in
 - ☞ an international transaction / or specific domestic transaction,
 - ☞ two or more associated enterprises
 - ☞ enter into a mutual agreement or arrangement
 - ☞ for the allocation or apportionment of, or any contribution to,
 - ☞ any cost or expense incurred or to be incurred
 - ☞ in connection with a benefit, service or facility provided or to be provided
 - ☞ to any one or more of such enterprises,

- ☞ the cost or expense allocated or apportioned to, or, as the case may be, contributed by,
 - ☞ any such enterprise shall be determined having regard to the arm's length price of such benefit, service or facility, as the case may be.
3. Not apply – in case ALP reduces the tax liability

Section 92(3): Taxable Income cannot be reduced on applying ALP

Question 5: Khazana Ltd is an Indian Company engaged in the business of developing and manufacturing Industrial components. Its Canadian Subsidiary Techpro Inc. supplies technical information and offers technical support to Khazana for manufacturing goods, for a consideration of Euro 1,00,000 per year.

Income of Khazana Ltd is ₹90 Lakhs. Determine the Taxable Income of Khazana Ltd if Techpro charges Euro 1,30,000 per year to other entities in India. What will be the answer if Techpro charges Euro 60,000 per year to other entities? (Rate per Euro may be taken at ₹50)

Answer: Computation of Total Income of Khazana Ltd.

Particulars	Option €1,00,000	Option €60,000
Actual Price paid [€1,00,000 × 50]	₹50,00,000	₹50,00,000
Less Price charged in Rupees (under ALP) [€1,30,000 × ₹50] / [€60,000 × ₹50]	₹65,00,000	₹30,00,000
Incremental Profit on adopting ALP [A]	(15,00,000)	20,00,000
Total Income before adjusting for ALP	90,00,000	90,00,000
Add In case of increase in profit on account of ALP	Nil	20,00,000
Total Income of Khazana Ltd	90,00,000	1,10,00,000

Note: U/s 92(3), Taxable Income cannot be reduced on applying ALP. Therefore, difference on account of ALP which reduces the Taxable Income is ignored.

Conditions for applicability of ALP in the international transactions

1. Two or more enterprises
2. They are associated enterprises or deemed associated enterprises
3. International transaction should be carried out by the associated enterprises

Section 92A: Associated enterprise and deemed to be an associated enterprise

1. Associated Enterprise – an enterprise

- a. which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise; or
- b. in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

{CMA Inter D15, 3 Marks}

2. Deemed to be an Associated Enterprises

- a. **one enterprise** holds, directly or indirectly, shares carrying not less than **twenty-six per cent** of the **voting power** in the other enterprise; or
- b. **any person** or enterprise holds, directly or indirectly, shares carrying not less than **twenty-six per cent** of the voting power in **each of such enterprises**; or

- c. a **loan advanced** by one enterprise to the other enterprise constitutes not less than **fifty-one per cent** of the book value of the **total assets** of the other enterprise; or
- d. one enterprise **guarantees** not less than **ten per cent of the total borrowings** of the other enterprise; or
- e. **more than half of the board of directors** or members of the governing board, or one or more executive directors or executive members of the governing board of one enterprise, are **appointed** by the other **enterprise**; or
- f. **more than half of the directors** or members of the governing board, or one or more of the executive directors or members of the governing board, of each of the two enterprises are **appointed by the same person** or persons; or
- g. the **manufacture or processing** of goods or articles or business carried out by one enterprise is **wholly dependent** on the use of knowhow, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights; or
- h. **ninety per cent** or more of the **raw materials** and consumables required for the manufacture or processing of goods or articles carried out by one enterprise, are **supplied by the other enterprise**, or by persons specified by the other enterprise, and the prices and other conditions relating to the supply are influenced by such other enterprise; or
- i. the **goods or articles manufactured** or processed **by one enterprise, are sold to the other enterprise** or to persons specified by the other enterprise, **and the prices** and other conditions relating thereto are **influenced** by such other enterprise; or

- j. where one enterprise is **controlled by an individual**, the other enterprise is also controlled by such individual or his relative or **jointly** by such individual and relative of such individual; or
- k. where one enterprise is **controlled by a Hindu undivided family**, the other enterprise is controlled by a member of such Hindu undivided family or by a relative of a member of such Hindu undivided family or **jointly** by such member and his relative; or
- l. where one enterprise is a firm, association of persons or body of individuals, the other enterprise holds not less than **ten per cent interest in such firm**, association of persons or body of individuals; or
- m. there exists between the two enterprises, any relationship of **mutual interest**, as may be prescribed.

Question 5: State whether the following transaction is international transaction between associated enterprises: A Co. Ltd. of Delhi has guaranteed a bank term loan of ₹25 crores (converted in Indian rupee) availed by Mckinsey Inc. of Hong Kong. The loan guaranteed is 11% of the total borrowings of Mckinsey Inc.³

{CMA inter D14 & D15, 3 Marks}

Question 6: State whether the following transaction is international transaction between associated enterprises: Four partners of FA LLP of Mumbai are directors in Beta Co. Ltd. of UK. There are 9 directors in the governing board of Beta Co. Ltd. During the year FA LLP exported goods to Beta co. Ltd. for ₹20 crores, which is 80% of its total turnover.⁴

{CMA inter D15, 3 Marks}

³ AE as loan guarantee \geq 10% total borrowings

⁴ Not AE as appointment of number of directors $<$ 50% total directors

Question 7: State whether the following transaction is international transaction between associated enterprises: Ramesh & Co. a partnership firm located in Bangalore is 100% dependent on raw materials supplied by Abdul LLP of Singapore. There is no other investment or financial interest between these two entities.⁵

{CMA inter D15, 3 Marks}

Question 8: P. Ltd., a foreign company gave loan to Q. Limited., an Indian company. When shall P. Ltd. be deemed to the associated enterprise of Q. Ltd.?⁶

{CMA inter D14 & J15, 1 mark}

Question 9: State whether the following are associated enterprises. One of them being non-resident: X Co. Ltd. holds 12% partnership right in X Traders (firm).⁷

{CMA inter D14, 1 mark}

Section 92B: International transaction / Deemed to be an international transaction

Purpose: Section 92, 92C, 92D & 92E

1. International transaction

- a. a transaction between
- b. two or more associated enterprises, either or both of whom are non-residents,
- c. in the nature of purchase, sale or lease
- d. of tangible or intangible property, or

⁵ AE as RM purchase \geq 10% total RM consumption

⁶ Called as AE if borrowings \geq 51% of book value of asset

⁷ AE as holding \geq 10% of partnership rights

- e. provision of services, or lending or borrowing money, or any other transaction
- f. having a bearing on the profits, income, losses or assets of such enterprises,
- g. and shall include a mutual agreement or arrangement between two or more associated enterprises for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises

2. Deemed to be an international transaction

- a. A transaction entered into by an enterprise with a person other than an associated enterprise shall be deemed to be a transaction entered into between two associated enterprises,
- b. if there exists a prior agreement in relation to the relevant transaction between such other person and the associated enterprise, or
- c. the terms of the relevant transaction are determined in substance between such other person and the associated enterprise.

It is immaterial whether such other person is a non-resident.

Section 92BA: Specified domestic transaction

Purpose: Section 92, 92C, 92D & 92E

- a. transaction not being an international transaction, namely:
 - b. any transaction referred to in section 80A;
 - c. any transfer of goods or services referred to in section 80-IA(8);
 - d. any business transacted between the assessee and other person as referred to in section 80-IA(10);
 - e. any transaction, referred to in any other section under Chapter VI-A or section 10AA, to which provisions of section 80-IA(8)/(10) are applicable;
- or

- f. any other transaction as may be prescribed, and where the aggregate of such transactions entered into by the assessee in the previous year exceeds a sum of ₹20 crore rupees.

Example: Sultan Ltd. took services of one of its group company, an associated enterprise enjoying tax holiday. The transaction is a specified domestic transaction. Sultan Ltd. paid ₹28,40,00,000 for the said service to the group company. The ALP of such service is ₹17,00,00,000. The ALP, i.e., the fair value of the service is ₹17,00,00,000 but by paying higher charges, Sultan Ltd. claimed a higher deduction and reduced its profit by ₹11,40,00,000. In this case the provisions of sec. 92 will be applicable and the income of Sultan Ltd. will be recomputed by taking into account the ALP of the specified domestic transaction.

In other words, the taxable income of Sultan Ltd. will have to be computed by allowing deduction of only ₹17,00,00,000 on account of service charges instead of the actually paid amount of ₹28,40,00,000.

If in the above example, the transaction is not a specified domestic transaction, then the provisions of sec. 92 will not apply.

Section 92C: Computation of arm's length price.

- 1 comparable uncontrolled price method [CUP];
- 2 resale price method;
- 3 cost plus method;
- 4 profit split method;
- 5 transactional net margin method;
- 6 such other method as may be prescribed by the Board.

Comparable Uncontrolled Price

Question 10: A Co Ltd. of Chennai and Sky Inc. of Singapore are associate enterprises. A Co Ltd. Imported 1,000 television sets at ₹16,000 per set without any warranty period. A Co Ltd. also imports similar TV sets from unrelated party Sign Inc. of Japan. It is imported at ₹15,000 per set with warranty time of 2 years. The cost of warranty in respect of goods imported from Sky Inc. for a period of 2 years would cost ₹2,000.

Compute arm's length price and the amount of increase in total income of A Co Ltd., as per CUP method.

{CMA Inter, D13, 4 Marks}

Answer:

Determination of the ALP under CUP method for A Co Ltd.		₹
	Purchase price of television set per unit from Sign Inc. (unrelated party) including warranty cost for 2 years	15,000
Less	Adjustment for warranty cost to arrive at price without warranty cost	2,000
	ALP	13,000
	Purchase price of television set per unit from Sky Inc. without warranty	16,000
(a)	Excess differential price per unit, liable for ALP adjustment	3,000
(b)	No. of television sets involved	1,000
	Reduction in purchase price, having an impact of increasing the total income ((a)×(b))	30,00,000

Question 11: Videsh Ltd., a US company has a subsidiary, Hind Ltd., in India sells mobile phones to Hind Ltd for resale in Indian. Videsh Led. Also sells mobile phones to Bharat Ltd. another phone reseller. It sold 48,000 mobile phones to Hind Ltd at ₹12,000 per unit. **The price fixed for Bharat Ltd. is**

₹11,000 per unit. The warranty in case of sale of mobile phones by Hind Ltd is handles by itself, whereas, for sale of mobile phones by Bharat Ltd., Videsh Ltd., is responsible for warranty for 6 months. Both Videsh Ltd. and Hind Ltd extended warranty at a standard rate of ₹500 per annum. On the above facts, how is the assessment of Hind Ltd going to be affected

{CMA Inter, J14, 6 Marks (similar)}

Answer:

	Price charged by Zenith Ltd. to Logitech Ltd.	11,000
Less	Cost of warranty included in the price (₹500 × 6/12)	250
	Arm's length price	10,750
	Price per unit charged to Intech Ltd.	12,000
	Difference per unit	1,250
	Number units supplied to Intech. Ltd.	48,000
	Addition to be made in the computation of total income	6,00,00,000

Question 12: J Inc., of Korea and CD Ltd., [an Indian Company] are associated enterprises. CD Ltd manufactures Cell Phones and sells them to J.K. & F Inc., a Company based at Nepal. During the year CD Ltd. supplied 2,50,000 Cellular Phones to J Inc. Korea at a price of ₹3,000 per unit and 35,000 units to JK & F Inc. at a price of ₹5,800 per unit. The transactions of CD Ltd with JK & F Inc. are comparable subject to the following considerations -

- Sales to J Inc. are on FOB basis, sales to JK & F Inc. are CIF basis. The freight and insurance paid by J Inc. for each unit @ ₹700.
- Sales to JK & F Inc. are under a free warranty for Two Years whereas sales to J Inc. are without any such warranty. The estimated cost of executing such warranty is ₹500.
- Since J Inc.'s order was huge in volume, quantity discount of ₹200 per unit was offered to it.

d. Compute the ALP and increase in the Total Income of CD Ltd, if any.

Answer:

(a) Computation of ALP of Products sold to J Inc. Korea by CD Ltd

Particulars	₹	₹
Price per Unit in a Comparable Uncontrolled Transaction		5,800
Less Adjustment for Differences		
(a) Freight and Insurance Charges	700	
(b) Estimated Warranty Costs		500
(c) Discount for Voluminous Purchase		(1,400)
	200	
Arm's Length Price for Cellular Phone sold to J Inc. Korea		4,400

(b) Computation of Increase in Total Income of CD Ltd

Particulars	₹
Arm's Length Price per Unit	4,400
Less Price at which actually sold to J Inc. Korea	(3,000)
Increase in Price per Unit	1,400
Number of Units sold to J Inc. Korea	2,50,000
Increase in Total Income of CD Ltd (2,50,000 × ₹1,400)	₹35
	Crores

Resale Price Method (RPM)

Question 13: Megabyte Inc of France and R Ltd of India are associated enterprises. R Ltd. imports 3,000 compressors for Air Conditioners from Megabyte Inc at ₹7,500 per unit and these are sold to Pleasure Cooling Solutions Ltd at a price of ₹11,000 per unit. R Ltd had also imported similar

products from Cold Inc., Poland and sold outside at a Gross Profit of 20% on Sales.

Megabyte offered a quantity discount of ₹1,500 per unit. Cold Inc could offer only ₹500 per unit as Quantity Discount. The freight and customs duty paid for imports from Cold Inc., Poland had cost R Ltd., ₹1,200 per piece. In respect of purchase from Megabyte Inc, R Ltd had to pay ₹200 only as freight charges. Determine the ALP and the amount of increase in Total Income of R Ltd.

{CMA inter D14, 5 marks (similar | MNO Ltd)}

Answer: Computation of Arm's Length Price

	Particulars	₹
A	Resale Price of Goods Purchased from Megabyte	11,000
Less	Adjustment for differences	
(a)	Normal GP margin @ 20% of sale price [20% × ₹11,000]	2,200
(b)	Incremental Qty Discount by Megabyte [₹1,500 – ₹500]	1,000
(c)	Difference in Purchase related Expenses [₹1,200 – ₹200]	1,000
	Arm's Length Price	6,800

B. Computation of Increase in Total Income of R Ltd

	Particulars	₹
	Price at which actually bought from Megabyte of France	7,500
Less	Arm's Length Price per unit under Resale Price Method	(6,800)
	Decrease in Purchase Price per Unit	700
	Number of Units purchased from Megabyte	1,000
	Increase in Total Income of R Ltd [3,000 Units × ₹700]	₹21,00,000

Question 14: MNO Ltd. and Roxy Inc. of USA are associated enterprises. MNO Ltd. imported 3,000 motor bikes from Roxy Inc. at ₹50,000 per bike. These are sold in India at ₹55,000 per bike. Also, MNO Ltd. imported exactly

similar motor bikes from Hold Inc. of Japan (unrelated party) and sold outside at a gross profit of 20% of sales.

Roxy ltd. offered a quantity discount of ₹1500 per motor vehicle. Hold Inc., however, offered only ₹500 per bike as quantity discount. The freight and insurance from Roxy USA cost MNO Ltd. ₹1500 per bike whereas in respect of purchase from Hold Inc. MNO Ltd. had to pay ₹500 as freight charges and there was no insurance cost on the assessee.

Determine arm's length price and amount of increase in total income of MNO Ltd.

{CMA inter D14, 5 Marks}

Answer: Computation of arm's length price of products bought from Roxy Inc. USA and MNO Ltd., India

Particulars	Amount (₹)
Resale price of goods purchased from Roxy Inc.	55,000
Less Adjustments for differences	
(a) GP margin @ 20% of sale price = 20% of ₹55,000	11,000
(b) Incremental Qty discount by Roxy Inc. (1,500 – 500)	1,000
(c) Difference in purchase related expenses (1,500 – 500)	1,000
Arm's length price	42,000

Computation of Increase in total income of MNO Ltd.

Particulars	Amount (₹)
Price at which actually bought from Roxy Inc. of USA	50,000
Less Arm's length price under resale price method	42,000
Decrease in purchase price per unit	8,000
Number of units purchased from Roxy Inc. = 3,000	
Increase in total income (3,000 units x ₹8,000)	240 lakhs

Cost Plus Method

Question 15: Brain Inc. London has 35% equity in Salem Ltd. is engaged in development of software and maintenance of customers across the globe, which includes Brain Inc.

During the year 2020-21, Salem Ltd. spent 2,000-man hours for developing and maintaining software for Brain Inc. and billed at ₹1,000 per hour. The cost incurred for executing maintenance work to Brain Inc. for Salem Ltd., amounts to ₹15,00,000. Similar such work was done for unrelated party Try Ltd. in which the profit was at 50%. Brain Inc. gives technical support to Salem Ltd., which can be valued at 8% gross profit. There is no such functional relationship with Try Ltd. Salem Ltd., gives credit period of 90 days the cost of which is 3% of the normal billing rate which is not given to other parties. Compute ALP under cost plus method in the hands of Salem Ltd., and the impact of the same on the total income.

{CMA inter D13, 6 Marks}

Answer:

Salem Ltd.	
Computation of ALP under Cost plus method	
Particulars	%
Normal gross profit mark up	50.0
Less 8% - Adjustment for differences (Technical support from Brain Inc.)	4.0
	46.0
Add Cost of credit to Brain Inc. 3% of normal bill (3% of 50)	1.5
Arm's length gross profit mark up	47.5
Cost of services provided to Brain Inc.	15,00,000
Arm's length billed value	28,57,143
$\left(\frac{\text{Cost}}{100 - \text{arm's length markup}}\right) \left(\frac{15,00,000}{100\% - 47.5\%}\right)$	
Less Billed amount	20,00,000

Increase in total income of Salem Ltd.

8,57,143

Question 16: Branco Inc., French Company, holds 45% of Equity in the Indian Company Chirag Technologies Ltd (CTL). CTL is engaged in development of software and maintenance of the same for customers across the globe. Its clientele includes Branco Inc.

During the year, CTL had spent 2,400 Man Hours for developing and maintaining software for Branco Inc., with each hour being billed at ₹1,300. Costs incurred by CTL for executing work for Branco Inc. amount to ₹20,00,000.

CTL had also undertaken developing software for Harsha Industries Ltd for which CTL had billed at ₹2,700 per Man Hour. The persons working for Harsha Industries Ltd and Branco were part of the same team and were of matching credentials and caliber. CTL had made a Gross Profit of 60% on the Harsha Industries work.

CTL's transactions with Branco Inc. are comparable to the transactions with Harsha Industries, subject to the following differences:

- a) Branco gives technical knowhow support to CTL which can be valued at 8% of the Normal Gross Profit. Harsha Industries does not provide any such support.
- b) Since the work for Branco involved huge number of man hours, a quantity discount of 14% of Normal Gross Profits was given.
- c) CTL had offered 90 Days credit to Branco the cost of which is measured at 2% of the Normal Billing Rate, no such discount was offered to Harsha Industries Ltd.

Compute ALP and the amount of increase in Total Income of Chirag Technologies Ltd.

Answer:

(A) Computation of Arm's Length Gross Profit Mark Up			
	Particulars	%	%
	Normal GP Mark Up		60
Less	Adjustment for Differences		
(a)	Technical Support 8% of Normal GP [8% of 60%]	4.8	
(b)	Quantity Discount 14% of Normal GP [14% of 60%]	8.4	(13.2)
			46.8
Add	Cost of Credit 2% of Normal Bill [2% × GP 60%]	1.2	1.2
	Arm's Length Gross Profit Mark-up		48

(B) Computation of Increase in Total Income of Branco Ltd

	Cost of services provided to CTL	20,00,000
	Arm's length Billed Value	38,46,154
	$= \frac{\text{Cost}}{100 - \text{Arm's Length Markup}} = \frac{\text{₹}20,00,000}{100 - 48\%}$	
Less	Billed amount [2,400 hours × ₹1,300 per hour]	31,20,000
	Therefore, Increase in Total Income of Branco	7,26,154
	Therefore, increase in Total Income of Branco	7,26,154

Profit Split Method (PSM)

Question: State possible cases in which Profit Split Method (PSM) is used for determination of ALP.

{CMA inter D13 & D14, 4 & 2 Marks}

Answer: In the following cases profit Split Method (PSM) could be applied –

- (a) Transactions involving transfer of unique intangibles.
- (b) Multiple inter-related international transactions which cannot be evaluated separately for determining the ALP of any one transaction.

As per OCED guidelines, a transactional profit method that identifies the combined profit to be split between the associated enterprises from a controlled transaction is known as profits split method. The profits are split between the associated enterprises based upon an economically valid basis that approximates the division of profit that would have been anticipated and reflected in an agreement made at arm's length.

Question 17: NBR Medical Equipment Inc. (NBR) of Canada has received an order from a leading UK based Hospital for development of a hi-tech medical equipment which will integrate the best of software and latest medical examination tool to meet varied requirements. The order was for 3,00,000 Euros. To execute the order, NBR joined hands with its subsidiary Precision Components Inc. (PCI) of USA and Bioinformatics India Ltd (BIL), an Indian Company. PCI holds 30% of BIL. NBR paid to PCI and BIL Euro 90,000 and Euro 1,00,000 respectively and kept the balance for itself. In the entire transaction, a profit of Euro 1,00,000 is earned. Bioinformatics India Ltd incurred a Total Cost of Euro 80,000 in execution of its work in the above contract. The relative contribution of NBR, PCI and BIL may be taken at 30%, 30% and 40% respectively. Compute the Arm's Length Price and the incremental Total Income of Bioinformatics India Ltd, if any due to adopting Arm's Length Price determined here under:

Particulars	Euros [€]
A Share of each of the Associates in the Value of the Order	<u>3,00,000</u>
Share of BIL (given)	1,00,000
Share of PCI (given)	90,000
Share of NBR	1,10,000
[Amount retained = 3,00,000 – 1,00,000 – 90,000]	
B Share of each of the Associates in the profit of the order	
Combined Total Profits	1,00,000

Share of BIL [Contribution of 40% × Total Profit € 1,00,000]	40,000
Share of PCI [Contribution of 30% × Total Profit € 1,00,000]	30,000
Share of NBR [Contribution of 30% × Total Profit € 1,00,000]	30,000

C Computation of Incremental Total Income of BIL

Total Cost to Bioinformatics India Ltd	80,000
Add: Share in the Profit to BIL (from B above)	40,000
Revenue of BIL on the basis of Arm's Length Price	1,20,000
Less: Revenue Actually received by BIL	(1,00,000)
Increase in Total Income of BIL	20,000

Transaction Net Margin Method (TNMM)

Question 18: Actual Profit and loss account of the assessee

	₹		₹
Opening stock – AE	100	Sales – AE	800
Opening stock – NAE	150	Sales – NAE	1,200
Purchases – AE	500	Closing stock – AE	120
Purchases – NAE	500	Closing stock – NAE	120
Gross profit	530		
	2280		2280
Expenses	200	Gross profit	530
Net profit	330		
	530		530

Comparable operating margin – 35%

AE – Associated Enterprise | NAE – Non-Associated Enterprises

Answer: Reverse working

	₹		₹
Opening stock – AE	100	Sales – AE	800
Purchases – AE {BF}	460	Closing stock – AE	120
Gross profit [from P/L]	360		
	920		920
Expenses $\left[200 \times \frac{800}{800+1200}\right]$	80	Gross profit {BF}	360
Net profit [Sale]	280	←{800 × 35%}	
	360		360

Residuary Method of determination of ALP [IT Rule 10AB]

{CMA Inter J15, 2 Marks}

Residuary method - any method which takes into account the price which has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transaction, with or between non-associated enterprises, under similar circumstances, considering all material facts.

S.92C(2): Morer than one ALP

Question 19: A Ltd., an Indian company, is a subsidiary company of B Inc., a company registered in the USA. It purchases raw material from B Inc. Purchase prices of raw material determined by the most appropriate methods are ₹9,800 and ₹10,200 per unit. A Ltd., however, pays (1) ₹10,200, (2) ₹10,300, (3) ₹10,400 (4) ₹9,600 (5) ₹9,700 and (6) ₹9,800. Determine the arm's length price in the six situations.

Answer:

Situations	1	2	3	4	5	6
1 Arithmetic means of prices	10,000	10,000	10,000	10,000	10,000	10,000
2 Actual transaction price	10,200	10,300	10,400	9,600	9,700	9,800
3 Difference [1 - 2]	200	300	400	400	300	200
4 3% of arithmetic mean	300	300	300	300	300	300
5 Arm's length price	10,200	10,300	10,000	9,600	9,700	9,800

Question 20: P Limited, an Indian company bought goods from its associated enterprise Q Limited of UK at ₹3,050 per unit. Using Resale Price method, which is found to be the most appropriate method, the arm's length prices determined are ₹3,000, ₹3,050, ₹2,900 and 2,950.

1. Compute the arm's length price assuming tolerance variation notified by the Central Government to be 3%.
2. Will your answer be different, if Q Limited paid ₹3,080 per unit to P. Limited?

{CMA inter J14, 6 Marks}

Answer: Arithmetical mean = $\frac{3,000+3,050+2,900+2,950}{4} = \frac{11,900}{4} = 2,975$

3% of Arithmetical mean = 89.25

1. ALP can be taken as ₹3,050
2. If Q Ltd. paid ₹3080, ALP would be taken as ₹2,975.

S.92CA: Reference to Transfer Pricing officer:

1. If AO considers it necessary, he may refer the computation of ALP to TPO with previous approval of CIT / PCIT

2. TPO shall gather material for computation of ALP & shall require assessee to produce evidence.
3. During the course of proceedings before TPO if any other international transaction (which was not referred by AO) comes to his knowledge, then TPO shall consider such other transaction also.
4. On the basis of material & evidence, TPO shall compute the ALP & pass an order computing ALP
5. Order of TPO is binding on AO
6. The TPO shall pass the order before 60 days prior to the last date for completion of Assessment allowed u/s 153 & 153B
7. If Assessment proceedings are stayed by any court or reference has been made u/s 90/90A, the time available to TPO for making an order [after excluding the time for which assessment proceedings were stayed or time taken for receipt of information u/s 90/90A] less than 60 days, then remaining period shall be extended to 60 days.
8. If any case referred to TPO then time limit allowed u/s 153 & 153B shall be increased by 1 year.
9. The CG may make a scheme, by notification in the Official Gazette, for the purpose of determination of the ALP, so as to impart greater efficiency, transparency and accountability by –
 - a. Eliminating the interface between the TPO and the assessee or any other person to the extent technologically feasible
 - b. Optimising utilisation of the resources through economies of scale and functional specification
 - c. Introducing a team-based determination of arm's length price with dynamic jurisdiction

The CG may, for the purpose of giving effect to the scheme, by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

Provided that no direction shall be issued after the 31st day of March, 2022.

Every notification issued shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

(Added by the Taxation and Other Laws (Relaxation & Amendment of certain provisions) Act, 2020 w.e.f. 01/11/2020)

S. 92CB: Safe Harbour Rules:

Safe harbour: means circumstances in which the income-tax authorities shall accept the transfer price declared by the assessee.

For: determination of income u/s 9(1)(i) or ALP,

Notified by: CBDT

S.92D: Maintenance of Information & Documents

1. Assessee entering into international transaction or specified domestic transaction required to maintain documents as specified by CBDT
2. Constituent entity of an international group, shall keep and maintain such information and document in respect of an international group as may be prescribed.
3. The AO or the CIT(A) may, in the course of any proceeding under this Act, require any person referred to point (1) to furnish any information or document referred therein, within a period of 30 days from the date of receipt of a notice. (It may be extended by further 30 days).
4. Constituent entity shall furnish the information and document referred therein to the authority prescribed u/s 286 within the time and manner as may be prescribed

Note:

- a. Documents are required to be maintained only if value of international transaction is more than 1 cr
- b. Documents are required to be kept for 8 years from the end of relevant A.Y.

Section 92E: Report of CA.

Assessee required to file report of CA in the Form No. 3CEB up to 31st Oct. of AY.

S	Default	Penalty
271AA	i. Failures to keep & maintain info & docs as per S.92D ii. Fails to report transactions iii. Fails to maintain / furnish correct info / document	2% of transactions value
	iv. Fails to furnish info & doc. (Master File)	₹500,000
271G	Failure to furnish info & documents as per S.92D	2% of transactions value
271BA	Failure to furnish report of CA as per S.92E	₹100,000
270A	Failure to report any transactions would constitute 'misreporting of income'	Penalty of 200% of taxes apply

Section 92CC: Advance Pricing Agreement (APA)

1. The CBDT with the approval of CG, may enter into APA with any person for determination;
 - a. ALP or specifying the manner in which the ALP is to be determined, in relation to an international transaction to be entered into by that person
 - b. Income referred to in section 9(1)(i), or specifying the manner in which said income is to be determined, as is reasonably attributable to the operations carried out in India by or on behalf of that person, being a NR
2. The manner of determination of the ALP referred u/s 92C or the methods provided by rules made under this Act, respectively, with such adjustments or variations, as may be necessary or expedience so to do.
3. APA is applicable for maximum consecutive 5 years

4. The APA shall be binding on
 - a. The person who entered into APA
 - b. The IT Authority till level of CIT / PCIT
5. APA shall not bind if there is change in law / facts
6. With the approval of CG, CBDT may declare an APA to be void-ab-initio, if it finds that the APA has been obtained fraud or misrepresentation of facts.
7. APA may apply for any period maximum 4 years preceding the first of the PY referred in APA (Roll back provision)
8. If APA apply then provisions of section 92C & 92CA does not apply.
9. Consequences of declaration of an APA as void ab initio: All the provisions of the Act shall apply to such person as if such APA had never been entered into. [60 days]
10. If an application is made by a purpose of the Act, shall be deemed to be pending.

11. Conditions for applying for rollback provisions:

The agreement shall contain rollback provision in respect of an international transaction subject to the following, namely: -

- a. The international transaction is same as the international transaction to which the agreement (other than the rollback provisions) applies:
- b. The return of income for the relevant rollback year has been or is furnished by the applicant before the due date as specified section 139(1)
- c. The report in respect of the international transaction has been furnished in accordance with the section 92E.
- d. The applicability of rollback provision, in respect of an international transaction, has been requested by the applicant for all the rollback years in which the said international transaction has been undertaken by the applicant.
- e. The applicant has made an application seeking rollback in Form 3CEDA

12. Non-applicability of rollback provisions: Rollback provision shall not be provided in respect of an international transaction for a rollback year, if [Rule 10MA]

- a. The determination of ALP of the said international transaction for the said year has been subject matter of an appeal before ITAT and the ITAT has passed an order disposing of such appeal at any time before signing of the agreement: or
- b. The application of rollback provision has the effect of reducing the total income or increasing the loss, as the case may be, of the applicant as declared in the return of income of the said year.

Section 92CD: Effect of APA

1. Where prior to the date of entering APA, any return of income has already been furnished for any PY to which APA applied, then such person shall furnish modified return as per APA within 3 months from the end of the month in which APA was entered into.
2. Where assessment for any PY to which APA applies are pending on the date of modified return, the AO shall complete assessment as per APA, AO will get extra one year for completion of assessment.
3. Where assessment for PY to which APA applies already completed before filing of modified return then AO shall pass an order modifying the total income of that PY within one year from the end of financial year in which time modified return was furnished

APA applicability

Amalgamation – No APA

Absorption – APA

Demerger – No APA for demerged co. but APA available for demerging co.

Section 92CE: Secondary Adjustment:

'Primary adjustment' to a transfer price means the determination of transfer price in accordance with the arm's length principle resulting in an increase in the total income or reduction in the loss, as the case may be, of the assessee.

Secondary adjustment means an adjustment in the books of accounts of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee.

Cases where secondary adjustment has to be made – the assessee shall be required to carry out secondary adjustment where the primary adjustment to transfer price:

- i. Has been made suo moto by the assessee in his return of income or
- ii. Made by the AO has been accepted by the assessee or
- iii. Is determined by an APA entered into by the assessee u/s 92CC on or after 1.4.17
- iv. Is made as per the safe harbour rules framed u/s 92CB or
- v. Is arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered into u/s 90 or 90A for avoidance of double taxation.

Non-repatriation of excess money by the associated enterprise deemed to be an advance – where, as a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss, as the case may be, of the assessee, the excess money or part thereof which is available with its associated enterprise, if not repatriated to India within the time as may be prescribed, shall be deemed to be an advance made by the assessee to such associated enterprise and the interest on such advance, shall be computed as the income of the assessee, in the prescribed manner. [repatriation from NRI only applicable].

Excess money = ALP – Actual price

Excess money or part thereof should be repatriate within: -

- a. If primary adjustment made by AO or Appellate Authority: 90 days from the date of order of AO or Appellate Authority.
- b. If primary adjustment due to APA:
 - i. 90 days from the date of filing of ROI u/s 139(1) if APA has entered into on or before due date of ROI u/s 139(1) of that PY
 - ii. 90 days from the end of the month in which APA was entered into after due date of ROI for relevant PY.
- c. If primary adjustment due to DTAA: 90 days from the date of giving effect by AO of DTAA
- d. If primary adjustment due to any other reason: 90 days from the due date of ROI u/s 139(1)

If excess money or part thereof not repatriated within the above time then interest shall be charged from: -

- a. If primary adjustment made by AO or Appellate Authority: from the date of order of AO or AA.
- b. If primary adjustment due to APA:
 - iii. from due date u/s 139(1) if APA has entered into on or before due date of ROI u/s 139(1) of that PY
 - iv. from the end of the month in which APA was entered into after due date of ROI for relevant PY.
- c. If primary adjustment due to DTAA: from the date of giving effect by AO of DTAA
- d. If primary adjustment due to any other reason: from the due date of ROI u/s 139(1)

If excess money not repatriated within above time limit, then interest income shall be computed as follows.

- a. Where the international transaction is denominated in Indian rupee
 - At the one-year marginal cost of fund lending rate of SBI as on 1st April of the relevant PY + 3.25%
- b. Where the international transaction is denominated in foreign currency
 - At six-month London Interbank Offered Rate (LIBOR) as on 30th September of the relevant PY + 3%

No requirement of secondary adjustment in certain cases: -

Such secondary adjustment, however, shall not be carried out if, the amount of primary adjustment made in the case of an assessee in any PY does not exceed ₹1 crore or the primary adjustment is made in respect of AY 2016-17 or on earlier AY.

Section 93CE(2A): Additional Income Tax instead of secondary adjustment added by FA 2019 w.e.f 01/09/2019

1. In a case where the excess money or part thereof has not been repatriated in time, the assessee will have the option to pay additional income tax at the rate of 18% on such excess money or part thereof in addition to the existing requirement of calculation of interest till the date of payment of this additional tax. The additional tax is proposed to be increased by a surcharge of 12% + 4% HEC
2. The tax so paid shall be the final payment of tax and no credit shall be allowed in respect of the amount of tax so paid.
3. The deduction in respect of the amount on which such tax has been paid, shall not be allowed under any other provisions of this Act, and
4. If the assessee pays the additional income-tax, he will not be required to make secondary adjustment or compute interest from the date of payment of such tax.

S.94A: Special provision in respect of transaction with person located in Notified Jurisdictional Area (NJA).

Due to lack of transparency in financial transactions as well as protection of personal information by certain countries like Switzerland / Cyprus, it was found very easy for many people of India to park their Black money in such countries & comfortably evade tax in India.

As per S.94A, CG may notify any country or territory outside India to be an NJA.

If Assessee enters in to transaction with any person located in NJA then:

1. All the parties shall be deemed to be associated enterprise as per 92A.
2. The transaction shall be deemed to be an international transaction as per 92B
3. The provision of transfer of pricing shall apply to assessee (except tolerance band of 3%).
4. Assessee have to submit documents & information required by IT Authority
5. If any payment made to person located in NJA then TDS rate will be highest of
 - i. 30%
 - ii. At the rate or rates in force
 - iii. At the rate specified in the relevant provisions of this act
6. If assessee received any sum from person located in NJA then assessee have to offer explanation about the source of the fund in the hands of that person or in hands of beneficial owner (if that person is not beneficial owner). If assessee doesn't offer explanation or explanation is not satisfactory, then such sum shall be treated as income of assessee.

S.94B: Limitation on interest deduction in certain cases

- a. Interest expenses or similar nature (like guarantee commission etc) incurred by an Indian company or a permanent establishment of a foreign

company in India in respect of any debt issued by a non-resident, being an associated enterprise shall be disallowed while calculating income under the head PGBP to the extent 'excess interest'.

This section not apply if interest paid in respect of a debt issued by a lender which is a PE in India of a NR, being a person engaged in the business of banking

- b. Calculation of Excess interest. WEL of
 - i. Total interest – 30% of EBITDA
 - ii. Interest paid to associated enterprise
- c. Where the debt is issued by a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise.
- d. Above provision is applicable only if interest to associate enterprise is more than ₹1 crore
- e. This section shall not apply to an Indian company or a permanent establishment of a foreign company which is engaged in the business of banking or insurance.
- f. The amount of interest expenditure disallowed under this provision, shall be carried forward to the following assessment years, and it shall be allowed as a deduction against the profits and gains, if any, of any business or profession for that AY to within the limit of this section. This interest can be carried forward up to eight AYs immediately succeeding the AY for which the excess interest expenditure was first computed.

Example 21: computation of interest expenses disallowed u/s 94B:

	Particulars	Case 1	Case 2	Case 3
	EBITDA of the Indian Borrower	100	100	100
A	30% of the above	30	30	30
B	Interest payable to associated enterprise	35	Nil	15
C	Interest payable to non-associated enterprise	Nil	35	20
D	Total interest expenses [B + C]	35	35	35
E	Total interest expenses incurred in excess of 30% of EBITDA	5	5	5
F	Excess interest disallowed u/ 94B WEL (E and B)	5	Nil	5