

NATIONAL LAW UNIVERSITY, DELHI
LL.M. Degree Programme, I-Semester (Batch of 2019)
End-Semester Examination, December - 2019
Paper: International Taxation

Time: 3:00 Hours

Total Marks: 50

Instructions:

1. All questions are Compulsory.
2. Read the questions carefully and answer.
3. No clarification shall be sought on the question paper.

Q.1 XYZ was incorporated under the Companies Act 1956 and ABC a French company held 80 per cent shares of XYZ and shares of ABC were held by two French companies namely MD and GIMA along with a person namely 'H'. A share purchase agreement (SPA) was entered into between MD/GIMA and Vikram (a French company), in terms of which shares of ABC were transferred to Vikram. MA and GIMD applied for an advance ruling to AAR who ruled that the transaction involved in the SPA was only for acquisition of the control, management and business interests in XYZ, the Indian company and was not a mere divestment of ABC shares, a French company. As a result, capital assets in India were transferred and capital gains had accrued to MA/GIMD, in India and as per Article 14(5) of the India-France DTAA such transaction was held to be taxable in India since that right was allocated to India. Revenue authorities sought to tax capital gain arising from a transaction in issue on basis of retrospective amendments made in Explanation 2 to section 2(47) and Explanations 4 and 5 to section 9 by Finance Act, 2012.

Write down at least two grounds on the basis of which the three companies i.e. MA, GIMD and Vikram can file writ petition challenging the order passed by the AAR, and also explain whether since retrospective amendments sought to be relied upon by the revenue were not fortified by a non-obstante clause expressed to override tax treaties, the contention raised by revenue was to be set aside? **(20 Marks)**

Q.2 (a) Examine the term 'Fixed Place of Business' in reference to 'Permanent Establishment' **(5 Marks)**

(b) A painter Suhail, who is a resident of Dubai, works successively under a series of unrelated contracts in a large office building for a number of different clients in Mumbai, India. Suhail was not free to access office building other than official hours and nor is allowed to call anyone from the telephone. In the light of the above fact, explain with the help of decided cases, whether Suhail is having a permanent establishment in India.

(10 Marks)

Q.3 Explain whether there is an establishment of a permanent establishment or not, where a Company 'X' (a US Company) maintains a fixed place of business of the delivery of spare parts to customers for machinery supplied to those customers where, in addition, it maintains or repairs such machinery.

In light of the above facts, explain with the help of decided cases, whether 'X' is having a permanent establishment in India? **(15 Marks)**