



WHIP
WHISTLE FOR PUBLIC INTEREST

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24/09/2019
Paras Jain
Advocate

New Delhi

24th September, 2019

To

24th September, 2019

President
Institute of Chartered Accountants of India
ICAI Bhawan
Indraprastha Marg
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New Delhi-110002

Vice-President
Institute of Chartered Accountants of India
ICAI Bhawan
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Secretary
Examination Committee
Institute of Chartered Accountants of India
ICAI Bhawan
Indraprastha Marg
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Secretary
Ethical Standards Board
Institute of Chartered Accountants of India
ICAI Bhawan
Indraprastha Marg
Post Box No. 7100
New Delhi-110002

Sub: Request to rectify mistakes committed by an Examiner of the professional body Institute of Chartered Accountant of India (ICAI) in the evaluation of answer-script of a Student Shri Mridul Arora, CA Final Student (New Syllabus)

Ref: Student Name: Mridul Arora
Student Registration No.: CRO0551312
Roll No.: 220704
Question Number & Subject: Q. No. 2(a) of Case Study 2 of International Taxation
Exam Details: CA-Final (New Course)-Both Groups-May, 2019 Attempt



Page 1 of 4

Dear Sir/Madam,

We are a responsible group of law students and young lawyers, which has been protecting the rights of students in providing them access to their answer-scripts under the transparency law Right to Information (RTI) Act, 2005, for the last five years.

For the first time, it is noticed that ICAI has provided students access to their answer-scripts under the RTI Act at free of cost. As a result, students have got the freedom of information of verifying their marks allotted by the competent & professional examiners holding required knowledge of the subject(s).

Before we come to the facts of the present case, we believe that the ICAI, being an independent & professional body, will act objectively, responsibly and fairly in the interest of all its members and students spreading across India, otherwise it may cause serious and irreparable damage to all.

One Student (CA Final-New Syllabus)-Shri Mridul Arora has approached us with his answer-script of the subject namely "**International Taxation-Paper 6C**", which he has obtained under the RTI Act, 2005 from the ICAI. On comparing the **Answers to Question No. 2(a) of CASE STUDY 2** written in the said answer-script with the respective Suggested Answers provided by the ICAI, one may easily notice unprofessionalism and gross negligence on the part of the examiner of the ICAI in evaluating and marking several right answers as wrong answers leading to the final result as "**FAIL**". This may conveniently be shown in the following table:

Answers to Question No. 2(a) of the Case Study 2-"International Taxation-CA Final (New)"

(Multiple-Choice Questions)

Question No. 2 (a)	Suggested Answers given by ICAI (Option)-Column A	Answers given by Shri Mridul Arora (Option)-Column B	Correct/Incorrect Answer on comparison of Column A & B	Marks deserve to be awarded
i)	D	A	Incorrect	Nil
ii)	B	B	Correct	2 marks
iii)	C	C	Correct	2 marks
iv)	B	B	Correct	2 marks
v)	B	B	Correct	2 marks
vi)	A	A	Correct	2 marks
vii)	D	A	Incorrect	Nil
viii)	No answer provided by ICAI with leaving a remark that none of the option is correct. In this case, any option shall be treated as correct.	B	Correct	2 marks
ix)	C	C	Correct	2 marks
x)	D	C	Incorrect	Nil
Total Marks deserve to be awarded				14 marks

If the above table is scrupulously observed by any competent professional or a prudent person, it may easily be concluded that this Student undoubtedly deserves **14 Marks** in this MCQ Question out of **20 Marks**, whereas the Examiner has awarded only **4 Marks**, which is completely an act of gross negligence and unprofessional evaluation at the final level of professional examination of ICAI.

It is undeniable fact that the students of ICAI put their sincere and rigorous efforts in preparing for the examinations throughout the year. If students are not given deserving marks like in the present case, it shall only discourage students leaving only with the option to quit their dreams of becoming the member of this profession.

We strongly believe that the concerned and responsible officers of ICAI including the **President, Vice-President, Secretary (Examination Committee & Ethical Standards Board)** shall take highest ethical and professional, approach and decision, in reevaluating this answer-script in the present case and award the deserving marks as per suggested answers given by ICAI as shown in table above.

It is kindly requested to provide this student an opportunity of being heard as a matter of his right of **Principle of Natural Justice** before taking final decision in this regard, so that there shall not be a case of *miscarriage of justice*.

We sincerely hope that the concerned authority & officers will take appropriate action on our aforesaid request within a reasonable time period of one week, failing to which we shall be compelled to initiate our legal action.

This is our noble endeavour to protect, the integrity of this Professional Institution as well as the genuine right of this student of getting deserving marks. Should you require any further information, please feel free to contact the undersigned. It would be our pleasure to assist you further.

Annexures:

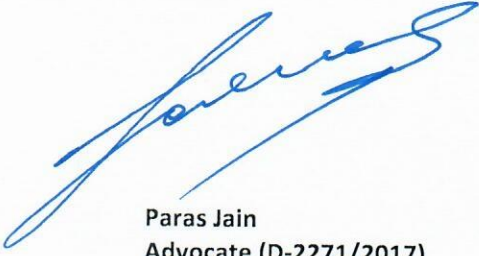
1. True Copy of the Answer-script of International Taxation (CA Final-New Syllabus)-
Relevant Page No. 17- Answer to Question No. 2(a) of the Case Study No. 2

2. True Copy of the respective Suggested Answers given by the ICAI. — Page No. 21



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Yours Faithfully



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GRAPH PAPER IS ON THE PENULTIMATE PAGE

Book No. 1 (containing 28 pages)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

CA FINAL (NEW) Examination

Group No. II Paper No. 6C

Subject International taxation

Number of Answer Books used : Main + additional sheets

For use by ICAI only

820204-C



Q.No.	To be ticked (✓) by the candidate against the Questions answered	Marks Awarded (To be filled by examiner)					Total
		a	b	c	d	e	
1							
2		4	4½	3½			14
3		8	9				17
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
Total							31

07 JUN 2019

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Use only Blue / Black Ball Point Pen to write and shade the circles. **AVOID RED PEN.** Write the marks in the boxes before shading the respective circles.

Total Marks awarded

3	1
0	0
1	0
2	0
3	0
4	0
5	0
6	0
7	0
8	0
9	0

Total Marks awarded (in words)

Thirty one

Examiner's Signature

T/c
[Handwritten signature]



Case Study 2

MCQs

2 (a)

(i) ✓ (A)

(ii) ✗ (B)

(iii) ✗ (C)

(iv) ✗ (B)

(v) ✗ (B)

(vi) ✗ ~~(C)~~ (A)

(vii) ✗ (A)

(viii) ✗ (B)

(ix) ✓ (C)

(x) ✗ (C)

(4)

T/c
Sany

8 21.

PAPER – 6C: INTERNATIONAL TAXATION

(b) Descriptive questions:

- (i) The management of DAS Martin wishes to know whether the proposed transfer of shares in HPL to Das Singapore can be regarded as a device or scheme to avoid income-tax in India and whether GAAR can be invoked. **(5 marks)**
- (ii) Examine whether the gains arising from the transfer will be taxable in India, when the former does not have a PE in India, per Article 13 - India Nation L DTAA (Exhibit 1) and in light of the provisions of Article 13 of the said Treaty. **(4 marks)**
- (iii) State whether the provisions of section 92 to section 92F of the Income-tax Act, 1961 ("the Act") relating to transfer pricing would still be applicable in respect of the transfer of shares by DSA Mauritius to DSA Singapore³. **(3 marks)**
- (iv) Examine whether the sale consideration receivable by DAS Martin should suffer any withholding tax in India as per section 195 of the Act. **(3 marks)**
- (v) Is DAS Martin required to file return of income in India under section 139(1) of the Act? **(4 marks)**
- (c) In respect of the payments made by HPL to DAS Martin, discuss the applicability of equalization levy. **(5 marks)**
- (d) Can KTS Singapore be considered to have a PE in India, in terms of the India Singapore DTAA and can the profits from the installation projects undertaken in India be taxed in India? **(6 marks)**

Solution to Case Study 2

Answer to Q.(a)

Q. No.	Answer
(i)	(D)
(ii)	(B)
(iii)	(C)
(iv)	(B)
(v)	(B)

Q. No.	Answer
(vi)	(A)
(vii)	(D)
(viii)	- ⁴
(ix)	(C)
(x)	(D)

³ To be read as DAS Martin to DAS Singapore

⁴ As per para 3 of Article 4 of the OECD and UN Model Convention, 2017, if DAS Martin happens to be a resident of two contracting states, the competent authorities of the Contracting States, i.e., Nation M and Nation L shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the place where it is incorporated and any other relevant factor. As per para 4 of Article 4 of the US Model Convention 2016, where by reason of the provisions of paragraph 1 of this Article, a company is a resident of both Contracting States, such company shall not be treated as a resident of either Contracting State for purposes of its claiming the benefits provided by this Convention. Therefore, none of the options are correct.

The
answer