SUGGESTED ANSWERS TO
THE QUESTIONS SET AT
CA MEMBERSHIP EXAMINATIONS
MARCH 2026

The Institute of Chartered Accountants of Nepal (ICAN)
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Corporate Laws

Attempt all questions.

1. **Answer the following questions:**

a) **World Ltd. is a subsidiary company of Universe Ltd., where Universe Ltd. holds 70% of the issued share capital of World Ltd. World Ltd. is engaged in the energy sector business and has recently achieved financial closure for a term loan facility of NPR 50 crores from Griha Bank Ltd. To secure the loan, Universe Ltd. issued a corporate guarantee for the entire NPR 50 crores, and such decision was passed by a general meeting of Universe Ltd.**

As per the latest audited financial statements of Universe Ltd., the company has the following financial position:

- Paid-up share capital: NPR 100 crores
- Free reserves: NPR 30 crores

With reference to the provisions relating to transactions between associated companies and restrictions on inter-corporate loans, guarantees and securities under the Companies Act, 2063 answer the following: **4+5+1=10**

(i) Whether a holding company can provide a corporate guarantee for its subsidiary company under the Companies Act, 2063. Explain with reference to the relevant statutory provisions.

(ii) Examine whether the corporate guarantee issued by Universe Ltd. in favor of Griha Bank Ltd. is valid.

(iii) If World Ltd. defaults in repayment of the loan, state whether there is any statutory limitation on the liability of Universe Ltd. to pay the outstanding guaranteed amount.

Answer:1(a)

(i) As per Section 175 (1) of Companies Act, 2063, Where an agreement or arrangement is made between the following companies whereby any company directly or indirectly provides loan or other kinds of financial assistance, pays any liability, provides guarantee or any other kind of security to another company or any other transactions other than an ordinary business transaction is done between them, it shall be deemed to be a transaction between the associated companies:

(a) Any company and its holding company;

(b) Any company and any subsidiary company of its holding company;

(c) A subsidiary company of any company and the holding company of such company;

(d) A subsidiary company of any company and another subsidiary company of its holding company.

As per Section 175(2), where any transactions as referred to in sub section (1) is carried on, the associated company shall give a notice on such transactions, also setting out a following detail to its shareholders and the Office as soon as possible:

(a) Date of transaction and the parties involved in the transactions;

(b) Nature of transaction and where transaction such as provision of a loan, provision of financial assistance and furnishing security has taken place under such transaction, the amount or the value thereof.

Hence, holding company can provide a corporate guarantee for its subsidiary company and follow the reporting requirement as per Section 175(2) of the Act.

ii) As per Section 176(1) of the Act, no company shall, where directly or indirectly, lend money to another company in excess of an amount that is sixty percent of its paid-up capital and free reserves or an amount to be set by hundred percent of its free reserves, whichever is the higher, give guarantee for a loan borrowed by another company or make investment in the securities of another company in excess of the said amount without passing special resolution in general meeting.

In the given case, 60% of paid capital and free reserve is NPR. 78 crore. The maximum amount for which Universe Ltd. can give corporate guarantee to World Ltd. is NPR. 78 without passing special resolution in general meeting. Since the corporate guarantee amount is NPR. 50 crore which is less than the allowable limit of NPR. 78 Crore, the corporate guarantee is valid as per Section 176 of the Act.

iii) Once the guarantee is validly issued and World Ltd. defaults, the liability of Universe Ltd. is governed by the terms of the guarantee agreement. Section 176 restricts only the granting of a guarantee, not the extent of liability once the guarantee is invoked. Therefore, the bank may recover up to the entire guaranteed amount of NPR 50 crores from universe Ltd.

b) Gajur Finance Company Ltd has a strong financial position, including a paid-up capital of NPR 8.5 Arab. Therefore, the chairperson has scheduled a board of directors meeting next week, with one of the main agenda to consider upgrading the finance company to a higher class. The chairperson intends to propose that the finance company be upgraded to a commercial bank, aiming to expand its operations and enhance market presence.

In light of the Banks & Financial Institutions Act, 2073, advise the chairperson on the following matters: 6.5+3.5=10

(i) Whether Gajur Finance Company Ltd is eligible for an upgrade to a commercial bank.

(ii) Whether Gajur Finance Company Ltd can be merged with a commercial bank.

<u>Answer:1(b)</u>

(i) Provisions regarding the conversion of a licensed institution into higher class of bank or financial institution are provided under Section 38 of the Banks & Financial Institutions Act, 2073, which are as follows:

(1) If a bank or financial institution of lower class wishes to be converted into a bank or financial institution of one level higher class, it shall submit an application to the Rastra Bank along with the details as specified by the Rastra Bank.

Provided that class "D" institutions cannot be converted into a higher class.

(2) If the Rastra Bank deems appropriate, upon carrying out inquiry into the application and details enclosed with the application as set forth in Sub-Section (1), to convert a bank or financial institution as a bank or financial institution of a higher class, it may grant prior approval subject to the following terms and conditions:-

(a) That it has met the paid up capital requirement for a bank or financial institution of a higher class as prescribed by the Rastra Bank,

(b) That it has been continuously maintaining the capital fund adequacy according to the Rastra Bank directives for the last five years, that it is in profit continuously for the last five years, and the average non-performing loans of the last five years are within the limits as prescribed by the Rastra Bank,

(c) That the preliminary expenses have already been written off,

(d) That the shares to be issued publicly have been issued and already been allotted,

(e) That the General Meeting has already passed a special resolution for conversion into an upper-class bank or financial institution,

(f) That it has met all the conditions as prescribed by the Rastra Bank.

(3) The Rastra Bank shall issue a license of an upper-class bank or financial institution pursuant to this Act requiring to make amendments to the Memorandum of Association and the Articles of Association, of the bank or financial institution according to the prevailing laws having obtained prior approval pursuant to Sub-Section (2).

In the given case, the chairperson of Gajur Finance Company Ltd intends to propose in the upcoming board of directors meeting that the finance company be upgraded to a commercial bank. However, as per Sec 38(1) of the Act, a financial institution of lower class may be converted into a bank or financial institution of one level higher class only.
Furthermore, a finance company is a "C" class financial institution as provided under Sec 32(5) of the Act.

Hence, a "C" class financial institution, Gajur Finance Company Ltd, cannot be directly upgraded to a "A" class commercial bank directly as it is more than one level higher class.

(ii) As per Section 69 of the Act, a bank or financial institution may be merged with another bank or financial institution or a bank or financial institution may acquire another bank or financial institution by fulfilling the procedures prescribed by this Act and the Nepal Rastra Bank Act.

However, a class "D" financial institution may be merged with or such institution may acquire another institution of the same class.
Provided that, an infrastructure development bank and a bank or financial institution may not be merged into each other and none of them may acquire the other.

As per Section 2(gg) of the Act, "Bank" means and includes corporate body incorporated to carry out banking and financial transactions as referred to in Sub-Section (1) of Section 49 and a branch office of a foreign bank located in Nepal, a branch office opened outside of Nepal by a bank incorporated in Nepal and an Infrastructure Development Bank to performing the functions as referred to the Section 49 (5) and a branch office of the same bank.

As per Section 2(ss) of the Act, "Financial institution" means and includes a corporate body incorporated to carry out banking and financial transactions as referred to in to sub-sections (2), (3) or (4) of Section 49 and a branch office of a development bank, finance company, micro finance institution or a branch office of a foreign financial institution located in Nepal and also a branch office opened abroad by a financial institution incorporated in Nepal.

Gajur Finance Company Ltd is a financial institution as defined under Sec 2(ss) of the Act. However, it is neither a "D" class financial institution nor an infrastructure development bank. Instead, it is a "C" class financial institution as provided under Sec 32(5) of the Act.

Hence, Gajur Finance Company Ltd may be merged with a commercial bank in compliance with applicable provisions of the Act.

2. Answer the following questions:

a) Mr. Rohan, the Managing Director of Goa Enterprises Ltd, India, recently received information during a business visit to Butwal about an international bidding invitation. This invitation, issued by a newly established public entity of Butwal, pertains to the supply of equipment that his company specializes in. Although Rohan has never participated in an international bid of a public entity in Nepal, he is eager to submit a bid and wants to ensure that his bid meets all requirements to avoid disqualification at *prima facie*. Therefore, he approached you for legal clarity.

Based on the Public Procurement Act, 2063: **(4+3=7)**

i) Clarify him the typical circumstances under which public entities invite bids at the international level.

ii) Alert him to the non-compliances that could result an international bid being rejected from the further evaluation process.

Answer:2(a)

i) The circumstances under which public entities invite bids at the international level are provided under Sec 15(1) of the Public Procurement Act 2063, which are as follows:

While making invitation to bid pursuant to this Act, an international level bid shall be invited in any of the following condition.

(a) Where the goods or construction works as requisitioned by a public entity are not available under competitive price from more than one construction entrepreneur or supplier within the state of Nepal,

(b) Where no bid was submitted in response to invitation to national level bidding for the procurement of goods, construction works or other services, and the same has to be procured from abroad,

(c) Where under an agreement entered into with a donor party, foreign goods or construction works have to be procured from foreign assistance source,

(d) Where the public entity has certified that the goods or construction works, being of complex and special nature, have to be procured through an international level bidding.

ii) The non-compliances that could result in an international bid being rejected from the further evaluation process are provided under Sec 24 of the Act, which are as follows:

(a) Where it is not sealed,

(b) Where it is not submitted within the time frame,

(c) The bids withdrawn pursuant to Section 19,

(d) If it is not in accordance with Sub-section (2) of Section 23,

(e) The bids submitted by mutual collusion pursuant to Sub-section (6) of Section 26,

(f) The bids cancelled pursuant to Sub-section (7) of Section 23.

b) Sunaulo Saving and Credit Cooperative Society Limited is preparing for its annual financial audit. However, the management is uncertain about the legal requirements related to audit and appointment of auditors under the Cooperative Act, 2074. As a compliance officer, you are requested to advice to the management of the cooperative society regarding audit and appointment of auditors and disqualification of auditor. **7**

<u>Answer:2(b)</u>

Section 75 Auditing

A Cooperative Society shall get its accounts of each fiscal year audited within three months from the expiry of the fiscal year by an auditor licensed according to the prevailing laws.
In case any Cooperative Society is found not to have audited within this period, the Registrar or the authority authorized by the Registrar may cause the auditing of such Cooperative Society by a licensed auditor. The amount including remuneration to be paid to the auditor shall be borne by the concerned Cooperative Society.

The audit report shall be submitted to the General Meeting for approval. In case the auditing report submitted in the General Meeting could not be approved by the General Meeting, the General Meeting may appoint another auditor.
The Cooperative Bank shall submit the audit report to the Nepal Rastra Bank as well after completion of the audit.
Section 76 provides the provision for appointment of auditor. The General Meeting shall appoint one auditor from amongst the auditors licensed according to the prevailing laws for carrying out audit of a Cooperative Society. Remuneration and facilities of auditor appointed by the General Meeting shall be as fixed by the General Meeting.
The same person, firm or company shall not be appointed as an auditor for more than a consecutive period of three years.

The section 77 of Act states about the disqualification of auditor. The following person shall not be appointed as an auditor and if already appointed shall not hold his/her office:

a) Director of Cooperative Society
b) Member of the concerned Cooperative Society,
c) Consultant or employee drawing regular salary from the Cooperative Society,
d) One who has not completed a period of three years after having been convicted of an offence relating to auditing,
e) One who has not been declared bankrupt,
f) One who has not completed a period of five years after having been convicted of the offence of corruption, cheating, or any other offence involving moral turpitude,
g) A person, firm or company referred to in sub-section (3) of section 76 (same person, firm or company shall not be appointed as an auditor for more than a consecutive period of three years),
h) A person having conflict of interests with the concerned Organization or Association.

c) Mr. X is a Chartered Accountant holding a Certificate of Practice (CoP). He recently accepted an appointment to audit Sunrise Traders Pvt. Ltd., a company in which his business partner holds significant shares. During the audit, Mr. X relied solely on the information provided by the management without performing independent verification. He also promised a potential client that he could secure their business through referrals from influential government officials. Based on the provisions of professional conduct under the relevant Act and Regulations: **4.5+1.5=6**

i) Identify and explain three violations committed by Mr. X. as per Nepal Chartered Accountants Act, 2053

ii) Discuss the ethical and legal implications of these violations for a member holding a Certificate of Practice.

<u>Answer:2(c)</u>

i) Mr. X, a Chartered Accountant with a Certificate of Practice (CoP), accepted an audit of a company where his business partner holds significant shares. He relied solely on management provided information without verification, promised to influence government officials for securing business. He has committed the following violations as below:

a) Conflict of Interest / Non-Disclosure of Partner's Interest

As per Section 34 (7) of Nepal Chartered Accountants Act, 2053, member holding Certificate of Practice shall, while certifying financial statements or making report thereon of any corporate body in which he or his partner has interest, clearly mention the extent of his or his partner's interest therein.

Mr. X's business partner holds shares in Sunrise Traders Pvt. Ltd., and he failed to disclose this in the audit report. This creates a potential conflict of interest, compromising the independence and objectivity of the audit.

b) Failure to Verify Information / Lack of Due Care

As per Section 34(6) of the act, members holding Certificate of Practice shall not certify any financial statement or give report of any type until they or their partner or employee checks and verifies it. As per Section 34(14), one should have obtained sufficient information prior to give audit opinion.

Mr. X relied solely on management provided data without independent verification, violating the principle of due professional care.

c) Attempting to Influence Clients Through Improper Means

As per Section 34(4) of the Act, one shall not, directly or indirectly, influence any person by way of fear, threat, terror or enticement in order to secure any professional business.

Promising to secure business through referrals from government officials amounts to enticement and unethical influence.

ii) The Ethical and Legal Implications of these violations for a member holding a Certificate of Practice are as below:

a) Violation of Professional Ethics:
Mr. X has compromised independence, integrity, and objectivity, which are fundamental principles for auditors. This damages the credibility of the professional accountants

b) Legal Consequences:
Non-disclosure of partner's interest or misrepresentation in financial statements may attract disciplinary action under the Institute's regulations or the Act.

c) Professional Sanctions:
The Institute may impose sanctions such as warning, suspension, or revocation of Certificate of Practice. Mr. X may be barred from auditing certain entities for a period.

Mr. X has committed multiple serious violations of professional conduct by failing to disclose partner interest, neglecting verification of information, attempting unethical influence, and considering sharing fees with a non-member. These actions have significant ethical, legal, and professional consequences.

3. Answer the following questions:

a) There have been time bound amendments in Money Laundering Prevention laws considering the attention drawn by mutual evaluations conducted by Asia Pacific Group on Money Laundering. You are required to answer the following questions as per the provisions of Money Laundering Prevention Act, 2064: 5.5+1.5=7

i) Explain the provision for making complaints relating to offenses under the Act.

ii) Who is the authority to make preliminary investigation and enquiry?

Answer:3(a)

(i) Pursuant to section 13(1) of Money Laundering Prevention Act, 2064, if Any person, who knows that someone has committed, is going to commit or is committing the following offences, shall submit a complaint or information or notice to the following offices as soon as possible through written or oral or electronic medium:

Offense	Office
i) Offence relates to financing on terrorist activities or proliferation and extension of weapons of mass destruction	Police office
ii) Being related to the predicate offence	Office that investigates the predicate offence as per prevailing law
iii) Matter being of money laundering that does not connect with the predicate offence	Department

Pursuant to sub-section (1a), in case any complaint or notice/information pursuant to Sub-section (1) is received by the other authorities or offices other than the authorized offices or bodies for making investigation, such offices or authorities shall have to register the complaint or notice/information and communicate to the concerned offices or authorities for necessary actions.

Pursuant to sub-section (2), if the complaint, application, information or notice pursuant to Sub-section (1) is received in written, the Investigation Office shall have to register such notices and in case received in oral form, such complaint, notice or information shall be transcribed and registered. Provided that, in case the complaint has been received in the condition of keeping name, address of the complainant as confidential, the complaint shall be registered with the code designated by the Chief of the Complaint Recipient Office.

Pursuant to sub-section (3), notwithstanding whatever written in Sub-sections (1) or (2), information should be officially registered as complaint if any staff of the Department knows by any means that certain person(s) has committed or is committing or is going to commit money laundering or terrorist financing.

Pursuant to subsection 4 complainer making complain pursuant to sub-section (1) or (2) may be asked to endorse the complaint if so required.
Pursuant to subsection 5 if the complainer endorsing the complaint requests for confidentiality of name, address, it shall be kept confidential.

iii) Pursuant to Section 14 of the Act, the Chief of Complaint Recipient Office shall make or cause to make preliminary inquiry if he receives complaint pursuant to Section 13 or information pursuant to Section 10 (Suspicious Transaction Reports disseminated from Financial Intelligence Unit.
The Chief of Complaint Recipient Office, while conducting preliminary inquiry on the complaint or information as above may require any of his/her staffs conduct preliminary investigation by allowing adequate time, if he considers so due to the nature of complaint or information.
The officer designated for the preliminary investigation may exercise the powers of the investigation officer pursuant to this Act.

b) Mountain Life Insurance Ltd. has recently received its operating license from the Nepal Insurance Authority. The company has the following shareholding structure:

- **Promoters 60%**
- **Himal Bank Ltd. 20%**
- **Foreign Strategic Partner (ABC Insurance Co., India) 20%**
  The promoters initially appointed 6 directors before the first AGM. The board includes:
- **3 directors including Mr Ram krishan and Mr Saroj Krishna which are related as father and son**
- **2 directors, one each nominated by the Himal Bank Ltd., and ABC Insurance Co., India**
- **1 independent professional director (appointed by the board)**
  After 6 months, one promoter director resigned. The Board appointed another director from promoter side as replacement after 40 days from the date of resignation. Further, the Board elects the independent director as Chairperson.
  As a legal/compliance advisor, examine the above case in light of Section 47 of the Insurance Act and answer the following: **4+3=7**

i. **States the provision of the formation of board of directors under Section 47 of insurance Act, 2079.**

ii. **Whether the formation of the Board complies with the legal provisions? States the compliance issues. if any.**

Answer:3(b)

i. Formation of Board of Directors (Section 47)

1) Notwithstanding anything mentioned in prevailing laws, every insurance company shall have a Board of Directors, along with one independent director, consisting of not less than five and not more than seven Directors.
2) The directors of insurance company shall be appointed by the general meeting of the insurance company. However,
   a) BOD should be appointed by promoters until the first annual general meeting.
   b) In the event of any vacancy in the post of a director prior to the holding of the AGM, Board of Directors should appoint the director, till next General Meeting.
   c) In case shares is held by Government of Nepal or province government or another insurance company or another corporate body or company or foreign insurer- The concerned Government of Nepal or province government or another insurance company or another corporate body or company or foreign insurer may appoint director(s) in a number proportionate to the value of the shares held by it. The concerned Government of Nepal or province government or another insurance company or another corporate body or company or foreign insurer shall also appoint an Alternate Director to work in absence of such Director
3) No two or more persons from the same family can become director in same insurance company or similar insurance company.
4) The board of directors shall appoint at least one independent (professional) director from the persons with qualification and experience provided under section 49, and inform about such appointment to the first annual general meeting.
5) A director chosen by the directors from among themselves by a majority decision shall be the chairperson of the Board of directors. however, independent (professional) director cannot be chairperson of Board of Directors.
6) The person appointed as Chairperson of board of directors shall take oath of honesty and secrecy before the Chairperson of Nepal Insurance Authority and the members of board of directors shall take oath of honesty and secrecy before the Chairman of the board of directors, in the format as provided in annexure.
7) In case the office of the board of directors become vacant due to any reasons, the board of directors shall appoint another person as member until; next General meeting, within thirty five days of such vacancy.

ii. Compliance issues

The formation of the board does not comply with legal provisions. The instances indicate the violations:

- As per Section 47(3), No two or more persons from the same family can become director in same insurance company or similar insurance company. In this case, Mr. Ram Krishna and Mr. Saroj Krishna which are related as father and son, are serving on the same board. This constitutes a violation of Section 47(3).
- Under section 47(5), independent (professional) director cannot be chairperson of Board of Directors. However, in this case, the Board elected an independent director as Chairperson, which is contrary to the legal provision.
- As per section 47(7), The board can fill the vacant position of director until next AGM, and such appointment must be made within 35 days of such vacancy. However, in this case, the replacement director was appointed after 40 days.

c) **Nepal Rastra Bank serves as a banker, advisor, and financial agent of the Government of Nepal. In this context, assess its advisory role and role concerning the external borrowing to be obtained by the Government of Nepal and private sector as provided under the Nepal Rastra Bank Act, 2058.**

Answer:3(c)

Nepal Rastra Bank is a Banker, Advisor and Financial Agent of Government of Nepal.

1) As per Section 69 of the Nepal Rastra Bank Act, 2058, Nepal Rastra Bank acts as the banker, financial agent, and advisor to the Government of Nepal.
2) Government of Nepal shall consult the Bank on any matters that are within the jurisdiction of it competence. It shall be the duty of bank to advise on matter consulted by the government of Nepal.
3) Government of Nepal shall while preparing annual budget, consult the bank on the domestic debt including overdraft.
4) The bank shall submit a prebudget review report to Government of Nepal each year on the economic and financial matter.

Nepal Rastra Bank (NRB) plays a pivotal advisory and consultative role in guiding the Government of Nepal on matters related to external borrowing and foreign liabilities.

1) As per Section 70 of the Act, Government of Nepal may consult NRB while taking loan from external sectors.
2) Such consultation includes the subjects such as amount of loan, the terms and conditions of the loan and the repayment of loan.
3) In addition, the Government of Nepal shall inform the NRB when external loans have been received.
4) Moreover, the NRB is involved when the Government of Nepal shall consult the bank while grant approval to private and public institutions to raise foreign liabilities.
5) The Government of Nepal, public institution or private sector for shall inform about agreement concluded having created liability on foreign exchange transparency and accountability in debt management.

Through these advisory mechanisms, the NRB provides a safeguard against reckless borrowing, supports informed policymaking, and contributes to the strategic allocation of financial resources, which collectively enhances the Government's ability to maintain fiscal discipline and manage external obligations effectively.

4. Answer the following questions:

a) **Ms. Sita, experienced in renewable energy projects, intends to establish a new company with her friends and launch a collective investment scheme (CIS) to pool funds from investors for a new green energy initiative. Specifically, she wants to fully understand and comply with all regulatory requirements related to the CIS.** **8**
Therefore, in light of the Securities Act, 2063, advise Ms. Sita on the substantive and procedural provisions she should follow to obtain permission for operating a collective investment scheme.

Answer:4(a)

The substantive provisions regarding the permission to be obtained for operating a collective investment scheme are prescribed under Sec 71 of the Securities Act, 2063, which are as follows:

As per Sec 71(1) of the Act, no one shall operate a collective investment scheme or carry out or cause to be carried out any of the following acts without obtaining a permission from the Board pursuant to this Act:-

(a) To make an advertisement making an invitation to participate in the collective investment scheme or to make an offer containing any kind of information for participating in such a scheme whether directly or indirectly,

(b) To provide opinion, advice or consultation to anyone to participate in the collective investment scheme.

Anyone who contravenes Sub-section (1) shall be deemed to have committed an offense referred to in this Act (Sub-sec 2).

The procedural provisions to be followed while obtaining permission of collective investment scheme are prescribed under Sec 72 of the Act, which are as follows:

(1) A scheme manager shall, prior to operating the collective investment scheme to be managed and operated by him/her, make an application to the Board in such format and accompanied by such details and fees as may be prescribed in order to register such scheme with the Board and obtain permission to operate the same.

(2) If an application is received pursuant to Sub-section (1), the Board shall, if it considers appropriate to grant permission upon conducting necessary inquiry into the matter, register the collective investment scheme and give permission to operate it within ninety days from the date of receipt of such an application.

(3) If, in conducting an inquiry in relation to the registration of a collective investment scheme and granting a permission to operate it pursuant to Sub-section (1), any notice, description, information or documents appear necessary, the Board may demand such notice, description, information or documents from the concerned scheme manager. The Board shall not grant permission to operate the collective investment scheme unless it receives the notice, description, information or documents so demanded.

(4) In registering a collective investment scheme and in granting permission to operate it pursuant to Sub-section (2), the Board may give permission in a manner that a certificate of participation or a proof thereof is to be given to a participant.

(5) In granting permission to the scheme manager to operate the collective investment scheme pursuant to this Section, the Board may specify necessary terms and conditions in relation to the operation of the collective investment scheme and the issue of the certificate on participation.

(6) The Board may make necessary modification or alteration in the terms and conditions so specified.

b) ABC Ltd., a company registered under Company Act, 2063 in Nepal, is undergoing financial difficulty and has filed a petition before the Commercial Bench of Court for restructuring under the Insolvency Act. The Court finds merit in the petition and issues an order for restructuring under Section 22(1) of the Act. The Court appoints Mr. Pragalbha Shrestha, a chartered accountant with over 19 years of experience who does possess a valid insolvency practitioner's license under Section 64 of the Act, as the restructuring manager.

However, a group of creditors challenges the appointment, arguing that only Insolvency Administration Office has a legal authority to appoint the insolvency practitioner.

Based on above scenario, you have to answer the following questions. (2+3+2=7)

i. **Examine the legal validity of Mr. Shrestha's appointment as a restructuring manager under the Insolvency Act, 2063.**

ii. **Explain the legal requirements and procedures for a person to become a licensed insolvency practitioner under the Insolvency Act.**

iii. **What actions of an insolvency practitioner are considered as offenses, and what penalties can be imposed for such violation?**

<u>Answer:4(b)</u>

i. As per the Section 2(n) "insolvency practitioner" means a person licensed under Section 64 to carry on business relating to insolvency;

As per Section 22(1) The Court may, if it considers appropriate, make order to implement the restructuring program of the company, within seven days after the receipt of the report submitted by the inquiry officer pursuant to Sub-section (1) of Section 18, the resolution adopted by the meeting of creditors or the restructuring scheme submitted by the company or any other resolution adopted.

As per Section 22(2) Where an order is made under Sub-section (1) to liquidate the company or implement the restructuring scheme, the Court shall make an order to appoint an insolvency practitioner as the liquidator of the company or to operate the restructuring scheme of the company and implement the liquidation or restructuring scheme of the Company; and the person so appointed shall perform such act within such period as specified by the Court at the time of his or her appointment.

Section 65 (2) of Act states that The Insolvency Administration Office established pursuant to Sub-section (1) shall perform the following functions:

a. To administer insolvency practice;
b. To register insolvency practitioners, issue licenses to them, and renew such licenses;
c. To carry out general supervision of the management of companies which have become insolvent;
d. To conduct investigations of the code of office required to be observed by insolvency practitioners;
e. To maintain records of each company which has become insolvent; and
f. To perform such other functions as prescribed.

Thus, Insolvency Administration Office is not responsible for appointment of the insolvency practitioners. Only the court can order to appoint an insolvency practitioner to operate the restructuring scheme of the company and implement the restructuring scheme of the Company. Thus, the appointment of Mr. Shrestha as a restructuring manager is valid and the creditors claimed on the appointment of insolvency practitioners is not valid.

ii. As per Section 63(1) No person shall operate insolvency practice without obtaining a license from the Office pursuant to this Act. Further any person who has not obtained the license pursuant to Subsection (1) shall not be appointed as the inquiry officer, restructuring manager or liquidator in the course of carrying out insolvency proceedings under this Act. Where any person other than a licensee is appointed as the inquiry officer, restructuring manager or liquidator, such appointment shall *ipso facto* be void.

Section 64 states that a person who is desirous of obtaining a license pursuant to Sub-section (1) of Section 63 shall make an application, along with the prescribed fee, to the Office in the prescribed format.

A person who makes an application shall meet the following conditions:

a. Have completed the age of thirty five years;
b. Being a member of the prescribed professional association;
c. Having acquired at least bachelor's degree in commercial law, commerce, management, accounts or any other prescribed subject from a recognized university;
d. Having abode in the State of Nepal;
e. Being competent to carry on insolvency practice under this Act.

On receipt of an application, the Insolvency Administration Office shall, if it considers appropriate to issue a license to carry on the insolvency practice, issue the license in the prescribed format. The license issued shall be renewed as prescribed.

iii. As per section 72 (1) A person shall be deemed to have committed an offense under this Act if he or she commits, or causes the commission of, any of the following acts:

- Where any person acts as an insolvency practitioner without obtaining a license from the Office pursuant to this Act;
- Where an insolvency practitioner fails to discharge any such function in good faith as required to be discharged by him or her under this Act; or

Section 72(5) states that where any company, creditor or concerned party suffers any loss as a result of the failure of an insolvency practitioner to discharge such function in good faith as required to be discharged by him or her as mentioned in Clause (d) of Sub-section (1), compensation for such loss shall be recovered from such practitioner, and he or she may also be punished with a fine not exceeding five hundred thousand rupees.

5. Answer the following questions: (3×5=15)

a) Bishow Cement Limited was established in 2075. The company was owned by Karnali Provincial Government (70%), Mona Group (20%) and general public (10%) at the time of establishment. The Federal Government acquired the entire shares of Mona Group and general public in 2082 Baisakh. The management of the company has written a letter to the Institute of Chartered Accountants of Nepal (ICAN) for audit of the books of account of the company for fiscal year 2081/82. ICAN advised the company to appoint the auditor itself as the company was also owned by Mona Group and general public till 2081 Chaitra. The general meeting of the company appointed auditor as per the advice of ICAN. Please provide your view on the following matters on the light of Audit Act, 2075. (2+3=5)

i) Define the terms "Corporate body wholly owned by Government of Nepal, Provincial Government or Local Level" and “Corporate body”.

ii) Evaluation the appointment of auditor of Bishow Cement Limited in the light of Audit Act, 2075?

Answer:5(a)

i) Section 2 (b) of the Audit Act, 2075 defines "Corporate body wholly owned by Government of Nepal, Provincial Government or Local Level" means a corporate body of which all shares or assets are owned by the Government of Nepal, Provincial Government or Local Level or a corporate body of which all shares or assets are owned by the aforesaid corporate body or by such a corporate body and the Government of Nepal, Provincial Government or Local Level and this term also includes a corporate body for which the Government of Nepal, Provincial Government or Local Level is required to bear full responsibility.

Similarly, as per section 2(e) "Corporate body" means a corporate body of which more than 50 % of the shares or assets are owned by Government of Nepal, Provincial Government or Local Level and this term also includes a body of which more than 50 % of the shares or assets are owned by the corporate body.

ii) In the given case, Bishow Cement Limited was in the status of "Corporate Body" till Chaitra 2081 as 70 % of its shares were owned by Karnali Provincial Government. Entire shares of Mona Group and general public was acquired by Federal Government in 2082 Baisakh. Thus, it acquired the status of "Corporate body wholly owned by Government of Nepal, Provincial Government or Local Level" in fiscal year 2081/82.

Clause (b) of section 3(1) of the Act, provides that the audit of "corporate body wholly owned by Government of Nepal, Provincial Government or local level" shall be conducted by Auditor General. As per section 10 of the Act not withstanding anything contained in section 3 (1), the Auditor General may appoint license holder auditor under the prevailing laws an assistant as per necessity for the audit of the "corporate bodies wholly owned by Nepal Government, Provincial Government or Local level".

The auditor appointed as assistant of Auditor General shall act under the direction, supervision and control of the Auditor General. The powers, functions, duties and responsibilities of the auditor appointed as assistant and the procedures to be followed by him/her in the course of audit and provisions relating to report shall be as prescribed in the Act and in the matters not prescribed in the Act, it shall be as prescribed by the Auditor General.

The remuneration to be paid by the concerned organization to the auditor appointed as assistant shall be fixed by the Auditor General keeping in view the volume of financial transactions, status of accounts, number of branches and sub-branches, workload and work progress of the concerned organization.

Conclusion: Bishow Cement Limited, acquired the status of "Corporate body wholly owned by Government of Nepal, Provincial Government or Local Level in fiscal year 2081/82. Thus, the appointment of it's auditor Bishwo cement limited by general meeting of the company is not valid.

b) Diana Trading Company Ltd, USA is planning to apply for a license under the International Financial Transactions Act, 2054. Once the license is obtained, the company's management team intends to bring USD 5 million to invest in shares of companies incorporated in Nepal.

Based on the International Financial Transactions Act, 2054, examine if Diana Trading Company Ltd can bring the fund and use it as intended. 5

Answer:5(b)

As per section 6 of the International Financial Transactions Act 2054, no restriction of any kind shall be imposed on a license holder entity to bring in foreign currencies as may be required for international financial transactions.

Furthermore, as per section 5 of the Act, international financial entities shall not be allowed to do the following acts:

(a) To purchase any kind of immovable property within the Nepal or to keep in their name otherwise,

(b) To carry out any type of international financial transaction with any person resident of Nepal,

(c) To purchase shares or debentures of any company incorporated in the Nepal under the existing laws,

(d) To open an account in any commercial bank of Nepal.

Provided that an account may be opened in any commercial bank with the permission of the Accreditation Committee for the purpose of running the day-to-day administrative business of the office up to such amount as may be fixed by the Accreditation Committee.

In the given case, Diana Trading Company Ltd, USA is planning to apply for a license under the International Financial Transactions Act, 2054. Once the license is obtained, the company's management team intends to bring USD 5 million for investing in shares of companies incorporated in Nepal.

As per Sec 6 of the Act, there is no restriction to bring in foreign currencies as may be required for international financial transactions. Further, as per Sec 5 of the Act, it cannot purchase shares of any company incorporated in the Nepal under the existing laws.

Therefore, Diana Trading Company Ltd, even after obtaining license for operating international financial transactions, cannot bring in and invest USD 5 million in the shares of companies incorporated in Nepal.

c) Sambhav Industry Limited (manufacturing-based industry) was established in the year 2075. The head office and manufacturing unit is located in Kailali district. The financial performance of the industry was not sound due to small plant capacity and high labor cost. Further, for the expansion and operation of the industry, it requires land in excess of the ceiling permitted to be hold pursuant to the prevailing laws. As a consultant, you are required to advise the industry in the light of Industrial Enterprises Act, 2076 **5**

Is Sambhav Industry eligible for availing land in excess of the ceiling permitted to be held pursuant to the prevailing laws?

Answer:5(c)

Pursuant to Section 32 of Industrial Enterprises Act, 2076, if land required for any industry is in excess of the ceiling permitted to be hold pursuant to the prevailing laws, the concerned industry may file an application to the Industry Registration Authority for holding such excess land.

The Industry Registration Authority shall make necessary examinations on the application and submit report along with recommendation to the Ministry.

On receipt of the application, the Ministry may provide exemption to hold land in excess of the ceiling if deemed necessary. The land in excess of the ceiling shall be used only for the same purpose for which it has been exempted.

The Industry Registration Authority shall monitor or cause to monitor as prescribed whether or not the industry has used the excess exempted land for the approved purpose and may issue necessary direction.

If it is found that the industry has not abided the directives issued by the Industry Registration Authority as above, Government of Nepal may get back such land in excess of the ceiling without any condition pursuant to the prevailing laws.

The maximum ceiling of land hold by industry on the basis of requirement, authorized capital and nature of industry, provision relating to availing land in excess of the threshold and the terms and conditions relating to it to be abided by the industry shall be as prescribed pursuant to the prevailing laws on land.

Conclusion: The purpose of Sambhav Industry Limited is to require land for the expansion and operation of the industry. Thus, it may avail land in excess of the ceiling permitted to be held pursuant to the prevailing laws by following the procedures mentioned above.

6. Write short notes on the following

a) State the provision relating to location of office of the arbitrator and language to be used by arbitrators in their arbitration proceedings pursuant to Arbitration Act, 2055. 4

<u>Answer:6(a)</u>

Exchange with following power for such management, pursuant to Section 12 of Arbitration Act, 2055, the office of the arbitrator shall be located at the following place:

(a) At the place specified in the agreement, if any.
(b) If the agreement does not specify the location of the arbitrator's office, at the place selected by the concerned parties.
(c) In case the concerned parties do not select such place within 15 days from the date of appointment of the arbitrator, or in case the concerned parties fail to reach an agreement in that connection, at the place specified by the arbitrator in the light of all the relevant circumstances.

Notwithstanding anything contained elsewhere in this section, the arbitrators may, except when any other arrangement has been made by the concerned parties, designate through mutual consultations the location of their office at any other appropriate place which is convenient for them to record the statements of witnesses, obtain the opinion of experts and inspect any document, object or place.

According to section 13 of Arbitration Act, 2055, the provision relating to use of language by arbitrators in their arbitration proceedings is as follows:

(a) The language to be used by the arbitrators in the proceedings shall be as specified in the agreement, if any.
(b) In case the agreement does not specify any such language, they shall use the language determined by them through mutual consultations.
(c) In case the arbitrators fail to determine the language to be used by them as such, the language used in the agreement shall be the language to be used by the arbitrators.

b) A firm registered in Nepal is planning to import the goods from abroad, with payment for the transaction to be made in foreign currency. Please explain the legal provisions under the Foreign Exchange Regulation Act, 2019, that apply to this situation. 3

Answer:6(b)

As per section 8 of Foreign Exchange Regulation Act 2019, any person, firm or company or body importing goods by opening Letter of Credit or by any other means into Nepal payable in foreign currency shall get the goods imported within the prescribed time specified by bank and submit to the bank such documents prescribed by the Bank.

The nature and process of obtaining foreign exchange for payment of imports shall be as prescribed by publishing a public notice.

Unless Bank's permission is obtained, importer should import the goods mentioned in the Letter of Credit up to the value and quantity mentioned in the Letter of Credit. Where amendment has been made in the Letter of Credit, then the amended quantity and value of goods should be imported.

If, in opening a letter of credit in a commercial bank by any importer, another person, firm, company or body furnishes guarantee or is directly or indirectly involved in that transaction and such a transaction involves misappropriation or deflection of foreign currency in any manner, notwithstanding anything contained in the prevailing law, punishment shall, according to this Act, be imposed also on the person, firm, company or body who has so furnished guarantee or been directly or indirectly involved in that transaction for the misappropriation or deflection of foreign currency.

Notwithstanding anything contained in this Section, the procedure for import of and payment for know-how and information technology, shall be as prescribed by public notice.

Importers shall make an actual invoice. The importer shall not do any act not conforming thereto or any act pertaining thereto.

c) Explain the offense relating to "misuse of banking resources, means and assets" pursuant to Banking Offence and Punishment Act, 2064. 3

Answer:6(c)

The offense relating to "misuse of banking resources, means and assets" is provided in Section 9 of Banking offence and Punishment Act, 2064. It includes the following:

(1) The promoter, director, shareholder who is deemed to have a financial interest under the prevailing laws, Chief Executive Officer, employee, advisor, Managing Agent or associated person or organization or family member or close relatives of such persons shall not misuse the resources of a bank or financial institution by availing a credit or facility or in any other manner.
Provided that,

(i) It shall not be deemed to be an obstruction in availing loans or advances by the Chief Executive Officer or employees of a bank or financial institution under employees' facility scheme, as per the prevailing laws.

(ii) It shall not be deemed to be an obstruction in providing credit or facility to close relative having approval of the Board of Directors of Bank or Financial Institution.

(iii) No one shall, in violation of the interest of the depositors or a bank or financial institution, expense the assets of the bank or financial institution or let the same be incurred.

(iv) No one shall commit any financial irregularity, while auctioning or selling the nonbanking assets or other assets of a bank or financial institution or while doing any other transactions.

Advanced Taxation

Attempt all questions. Working notes should form part of the answer.

1. Himalayan Cement Manufacturing Industries Ltd., listed with Nepal Stock Exchange, engaged in production and sale of cement has net profit of Rs 4,700,000 during FY 81/82 which is presented below.

Particulars	Amount
Sales Revenue	25,000,000
Dividend Income	1,900,000
Other Income	1,500,000
Closing Stock	2,200,000
	30,600,000
Opening Stock	2,500,000
Purchases	11,300,000
Salary, wages and other employee benefits	2,500,000
Administrative Expense	3,500,000
Sales, Marketing and Distribution Expense	3,000,000
Bad Debts	100,000
Miscellaneous Expense	500,000
Repair and Maintenance Expense	500,000
Depreciation Expense	2,000,000
	25,900,000
Net Profit Before Tax	4,700,000

Additional Information:

i. Other Income includes bad debts recovered Rs 500,000 which was disallowed previously.

ii. Opening stock is undervalued by Rs 75,000

iii. Purchases include VAT @ 13%

iv. Salary, wages and other employee benefits includes following:

a. Cost of gloves, helmet, boots, jackets and trousers to be worn by labors in factory during production Rs 150,000

b. Provision for gratuity of Rs 200,000 and

c. Payment made to ICAN for enrollment of two of its employees in CAP II Rs 50,000.

v. During the year, 5 employees left the organization. Gratuity paid to them amounted Rs 250,000 which is not included in salary, wages and other employee benefits above.

vi. Administrative Expense includes following:

a. Expenses incurred without bills Rs 20,000

b. Expense of Asadh 2081 Rs 80,000

vii. Sales, Marketing and Distribution Expense includes personal expenses of directors Rs 200,000.

viii. Miscellaneous Expense includes following:

a. Royalty payment made to Nepal Government Rs 55,000

b. Rs 60,000 Cash payment made to workers in area where there was only one branch of a commercial bank

ix. Repair and Maintenance Expense includes repair of building Rs 200,000; repair of furniture Rs 100,000; repair of vehicles Rs 50,000 and repair of plant and machinery Rs 150,000.

x. Details of Fixed Assets are as follows:

	Opening WDV	Additions		Disposals
		Date	Amount	
Building	5,000,000	Kartik 1	500,000	-
Furniture	2,000,000	Falgun 15	180,000	-
Vehicles	3,000,000	NA	-	3,500,000
Machineries	6,000,000	Jestha 30	300,000	500,000

xi. During 2080/81, company incurred net loss of Rs 2,500,000 in its profit and loss account. However, company submitted tax returns with loss of Rs 2,000,000.

xii. Company did not submit estimated tax return and did not make payment of advance income tax (installment tax) during income year 2081/82.

Required: **20**

a. Assessable Income from Business and Taxable Income from Business for FY 2081/82

b. Tax Liability for FY 2081/82 assuming tax return is being submitted on Ashwin end 2082.

Answer: 1

Calculation of Taxable income of Himalayan Cement Manufacturing Industries Ltd.

Particulars	**Amount**	**Remarks**
Sale of Electronic Goods	25,000,000.00	
Dividend Income	0.00	Note 1
Other Income	1,000,000.00	Note 2
Gain from Disposal of Depreciable Asset	500,000.00	Note 10
Assessable income from business (A)	**26,500,000.00**	
Cost of Goods Sold	10,375,000.00	Note 3
Salary and Wage	2,250,000.00	Note 4
Gratuity Expense	250,000.00	Note 5
Administrative Expense	3,400,000.00	Note 6
Sales, Marketing and Distribution Expense	2,800,000.00	Note 7
Bad debt	0	Note 8
Miscellaneous expenses	440,000.00	Note 9
Repair and maintenance	450,000.00	Note 10
Depreciation	2,293,333.33	Note 10
Total Deduction (B)	**22,258,333.33**	
Carry forward of loss of FY 2080/81 (C)	**2,000,000.00**	
Taxable Income (A-B-C)	**2,241,666.67**	
Applicable tax rate	17%	Note 11
Tax	**381,083.33**	
Add: Fee u/s 117(1(ka))	5,000.00	
Add: Interest u/s 118	27,009.28	
Total Tax Liability	**413,092.61**	

Note 1

Dividend Income is not included in Income from Business because it is final withholding under section 92

Note 2

Other Income	1,500,000.00
Less: Bad Debts recovered (Since, bad debt was not allowed previously it is not required to be included in calculation of income from business)	500,000.00
Total	**1,000,000.00**

Note 3

Cost of Trading Stock	
Opening value of trading stock (2,500,000+75,000)	2,575,000.00
Add: Purchase net of VAT (11,300,000/1.13)	10,000,000.00
Less: Closing Stock	2,200,000.00
Cost of Trading Stock	**10,375,000.00**

Note 4

Salary wage and other employee benefits	
Salary wage and other employee benefits	2,500,000.00
Less: Provision for gratuity	200,000.00
Less: Payment made to ICAN	50,000.00
Cost of gloves, helmet, boots, jackets and trousers to be worn by labors in factory are allowable for deduction	0.00
Total	**2,250,000.00**

Note 5

Provision for gratuity cannot be claimed as expenses as per the Income Tax Act. Gratuity expense is deductible in the year of payment. So gratuity payment of Rs 250,000 is only allowed for deduction.

Note 6

Administrative Expenses	
Administrative Expenses	3,500,000.00
Less: Expenses without PAN/VAT bill	20,000.00
Less: Prior period expense	80,000.00
Total	**3,400,000.00**

Note 7

Sales, Marketing and Distribution Expenses

Sales, Marketing and Distribution Expenses	3,000,000.00
Less: Personal expense of director not allowed for deduction	200,000.00
Total	**2,800,000.00**

Note 8

Bad Debts are disallowed previously. Hence, it is not claimed for deduction.

Note 9

Miscellaneous expenses

Miscellaneous expenses	500,000.00
Less: Cash payment made in the area where there is presence of a bank	60,000.00
Cash payment made to Nepal government is allowed for deduction. Hence, no adjustment is required	0.00
Total	**440,000.00**

Note 10: Calculation of Depreciation base and allowable repair and maintenance

Calculation of depreciation					
Particulars	**Pool A**	**Pool B**	**Pool C**	**Pool D**	**Total**
Opening WDV	5,000,000	2,000,000	3,000,000	6,000,000	
Addition During the year					
Full Addition	500,000	0	0	0	
2/3rd Addition	0	120,000	0	0	
1/3rd Addition	0	0	0	100,000	
Less: Disposal	0	0	3,500,000	0	
Balance Charge (Recognized as Income From Business)			**500,000.00**		
Depreciation Base	**5,500,000.0**	**2,120,000.**	**0.00**	**6,100,000.00**	
Normal Depreciation Rate	5.00%	25.00%	20.00%	15.00%	
Additional 1/3 (being special industry)	1.67%	8.33%	6.67%	5.00%	
New depreciation rate	**6.67%**	**33.33%**	**26.67%**	**20.00%**	
Allowable Depreciation	**366,666.67**	**706,666.67**	**0.00**	**1,220,000.00**	**2,293,333.33**
Calculation of allowable repair and maintenance					
Lower of :					

a. 7% of depreciation base, or	385,000.00	148,400.00	0.00	427,000.00	
b. Actual	200,000.00	100,000.00	50,000.00	150,000.00	
Allowable Repair and Maintenance Expense	**200,000**	**100,000**	**0**	**150,000**	**450,000**

Note 11

Computation of tax rate

Normal Corporate Tax Rate	25.00%
Tax rate for Special Industry	20.00%
Less: Rebate for Listed Companies	3.00%
Applicable Tax Rate	**17.00%**

Note 12

Computation of Fee u/s 117(1(ka))

Higher of:

(i) Rs 5,000

(ii) 0.01% of 26,500,000 = 2,650 Rs 5,000

Note 13: Computation of Interest u/s 118

Installment	Tax to be deposited	90% of tax to be deposited	Amount Deposited	Shortfall	Interest @15%
Poush end-40%	152,433.33	137,190	-	137,190	5,144.63
Chait end-70%	266,758.33	240,082.50	-	240,082.50	9,003.09
Asadh end-100%	381,083.33	342,975	-	342,975	12,861.56
				Total interest u/s 118	**27,009.28**

2.

a. Mr Bikash Pandit is working in Hamro Telecom since last 10 years and he has the following income for Income Year 2081/82:

SN	Particulars	Amount Rs.
1	Basic Salary p.m.	105,000
2	Grade p.m.	10,000
3	Dashain Allowances (One Month's Salary)	
4	Medical Allowances (One Month's Salary)	
5	Leave Encashment (Two Months' Salary)	
6	PF (10% of Salary) (Employer deducted the same amount from the employee and deposited in Provident Fund)	
7	Uniform Allowances	25,000
8	Gratuity (Employer deposited 8.83% of Monthly Salary in the account of maintained with contribution based social security fund (SSF)	
9	Annual Tiffin Allowances	115,000
10	Special Allowances annual	300,000
11	Annual Internet Allowances	24,000

Additional Information:

1) Employer has arranged a cook facility with maximum salary of Rs. 20,000 P.M. The same has been paid to Mr. Bikash Pandit and Mr. Bikash Pandit has paid 15,000 P.M. salary to the cook.
2) Employer has provided a housing facility to Mr. Bikash Pandit.
3) Employer has purchased a vehicle worth Rs. 40,00,000 in the name of Mr. Bikash Pandit and shown the amount as receivable from him. Employer deducted Rs. 88,000 monthly from receivable balances without deducting his Salary.
4) Employer has the policy to buy Life Insurance Policy of Rs. 10,00,000 per employee and paid Rs. 50,000 premium on behalf of employee.
5) He has earned Rs. 100,000 from TU for Checking the Paper of bachelor's level.
6) Rental income from his house Rs. 25,000 P.M.
7) He has earned the Dividend of Rs. 100,000 from public companies on which he has Invested Rs. 10,00,000 and Rs. 50,000 from Mutual Fund on which he has invested Rs. 5,00,000.
8) He has sold the Share of GSN Bank ltd for Rs. 3,00,000 on 2082/03/12 which he has purchased on 2081/02/15 for Rs. 1,50,000. Further he has sold the Share of Laxmi Hydropower Co. Ltd for Rs. 7,00,000 on 2082/03/10 which he has purchased on 2081/06/10 for Rs. 4,00,000. Both the shares were purchased from the NEPSE market.

Calculate:

a) Assessable Income of Mr. Bikash Pandit,

b) Tax Labilities if he opted couple **7**

<u>Answer:2(a)</u>

Calculation of the taxable income and Tax Liability of Mr. Bikash Pandit for the income year 2081/82

Particular	**Amount**	**Unit**	**Total Amount (RS.)**	**Remarks**
Basic Salary plus grade	115,000.00	12	1,380,000.00	
Festival Allowances	115,000.00	1	115,000.00	
Dashain Allowances (One Month's Salary)	115,000.00	1	115,000.00	
Medical Allowances (One Month's Salary)	115,000.00	1	125,000.00	
Leave Encashment (Two Months' Salary)	115,000.00	2	125,000.00	
Employers contribution to the PF	11,500.00	12	138,000.00	
Uniform Allowances	25,000	1	25,000	
Gratuity (Employer deposited 8.83% of Monthly Salary in the account of maintained with contribution based social security fund (SSF)	9545	12	114,540.00	
Annual Tiffin Allowances	115,000	1	115,000.00	

Special Allowances	300,000	1	300,000.00	
Internet Allowance	24,000	1	24,000.00	
Allowances for Cook Facility	20,000	12	240,000.00	Note 1
Housing facility	2,300	12	27,600.00	Note 2
Repayment of car purchased for employee	88,000	12	1,056,000.00	
Remuneration from paper evaluation				Note 3
Employers' payment of Investment Insurance premium	50,000	1	50,000.00	
Assessable income from employment (A)			**3,950,140**	
Income from business				
Income from investment				
A. Dividend from Public company and mutual fund	150,000.00		-	Note 4
B. Long Term capital gain from GSN Bank	150,000.00		150,000.00	Note 5
C. Short Term Capital gain from disposal of shares of Laxmi hydro power	300,000.00		300,000.00	Note 6
Rental income	300,000.00		-	
Total income from investment C			**450,000.00**	
Total Assessable Income (A+B)			**4,400,140.00**	
Reduction				
Investment insurance premium lower of followings:				
Monetary Limit	40,000.00		40,000.00	
Actual payment	55,000.00			
Approved Retirement Fund (Lowest of followings)				
(Contribution based social security fund)				
Monetary Limit	500,000.00		397,854.00	
1/3rd of AI	892,513.33			
Actual payment				

(Rs.115000*28.83%*12)	397,854.00			
Taxable Income			3,962,286.00	
Assuming She claims of Couple				
No tax for 600000	600,000.00		-	
5% tax for 150000	150,000.00		7,500.00	
7.50% for 300000	300,000.00		22,500.00	
10% for Next 200,000	200,000.00		20,000.00	
20% for Next 300,000	300,000.00		60,000.00	
30% for next 9,00,000			270,000	
36% for next 1,512,286			544,422.96	
Total Tax			924,422.96	

Note 1: Entire allowances amount to be included in remuneration income.
Note 2: 2% of drawing salary
Note 3: Final Withholding, not included in assessable income
Note 4: Final Withholding in case of dividend from resident company and return from mutual fund exempt, not included in assessable income
Note 5: hold for more than 365 days,
Note 6: holding period being less than 365 days
Note 7: subject to tax under local authorities

b. As per provisions of Income Tax Act, 2058, You are required to calculate the TDS amount and classify them as final or creditable withholding tax or TDS not applicable in case of the following transaction of the income year 2082-83. Assume that transactions are between person resident in Nepal unless clearly mentioned in the question:

i. ABC Limited paid Rs. 500,000 as sales bonus to Galaxy Enterprises against tax invoice.
ii. National Private Equity Fund distribute dividend of Rs. 2 crores to its unitholders.
iii. A Telecommunication Company paid lease rent of Optical Ground wire (OPGW) to Nepal Electricity Authority of Rs. 80,000. per month.
iv. A commercial bank sold its Non Banking Assets (Land and Building) of which total price of property was agreed at Rs 4 crore. Rajinama (Legal transfer of ownership) was done at government rate which was Rs 3 crore. One years ago, the commercial bank had acquire the property in auction on Rs.3.5 crores on distress settlement of Non-performing loan of a customer.
v. A telecom sales recharge to dealers on 3% discount on MRP with recharge value of Nrs. 10 crores.
vi. A commercial bank make payment of interest of loan US$ 2 million availed in foreign currency in order to invest in sector specified by NRB.

vii. Deepak Giri received national award from Government of Nepal for his outstanding contribution in the field of Art and received Rs. 700,000.

7*1=7

Answer:2(b)

	Particulars	TDS amount	Rate	Final withholding or not
i)	Sales bonus to Galaxy Enterprises	75,000	15.0%	creditable withholding
ii)	Dividend from National Private Equity Fund	1,000,000	5%	Final withholding
iii)	Lease rent payment to NEA	8,000	10%	creditable withholding
iv)	Sale of NBA by commercial Bank	450,000	1.5%	creditable withholding
v)	Discount on Recharge to dealers by Telecom	No TDS required	NA	No TDS required to be deducted by Teleco for the discount to be provided in MRP.
vi)	Interest payment by Commercial bank in Foreign currency	US$ 100,000	5%	Final withholding
vii)	National award from Government of Nepal for his outstanding contribution in the field of Art	50,000	25% in excess of 5 lacs	Final withholding

c. Determine the amount of luxury tax to be levied on following transaction:

- Mr. Dipak has paid Rs. 1,565,300 to a five-star hotel in Kathmandu for the marriage ceremony of her daughter in Ashad 2082.
- Mr. Subodh purchased gold jewelry worth Rs. 560,000 and silver jewelry worth Rs. 145,000 for his brothers weeding from a jewelry shop located at Newroad Kathmandu.
- Ms. Sunita sold old gold jewelry worth Rs. 450,000 to a jewelry shop. She purchased that jewelry at Rs. 89,400 ten years ago.
- Bhrikuti Sun Pasal sold gold jewelry worth Rs. 5,600,000 to Bright Jewelry Shop.

Answer: 2(c)

Calculation of Luxury Tax and VAT to be levied on the transactions.

Transactions	Amount (Rs)	Luxury Tax	Notes
Mr. Dipak has paid to Five-star hotel in Kathmandu for the marriage ceremony of her daughter	1,565,300.00	27,161.20	Service provided by Five-star or above category hotel, or luxury resorts must collect tax @2% on the pre-VAT amount when providing services to their

			customers.
Mr. Subodh Purchased Gold jewelry for his brothers weeding from a jewellery shop located at Newroad Kathmandu	560,000.00	11,200.00	Jewellers will collect 2% tax on sale price when selling gold jewellery or gold jewellery adorned with diamonds, pearls or gemstones to customer.
Mr. Subodh Purchased Silver jewellery for his brothers weeding from a jewellery shop located at Newroad Kathmandu	145,000.00	NA	Purchase silver jewellery is not subject to luxury tax.
Ms. Sunita Sold old Jewellery to a Jewelry Shop which was purchased before 10 years at Rs.89,400	450,000.00	NA	Purchase of gold Jewellery by Jewellery shop from individual is not subject to luxury tax
Bhirkuti Sun Pasal sold Gold to Jewellery to Bright Jewellery Shop	5,600,000.00	NA	Sale of gold jewellery from one business house to another

3.

a. Elaborate and provide your expert opinion as a Tax Consultant in the following cases: (2*2.5=5)

i. A telecommunication company in Nepal is providing international communication services to local customers by using facilities of optical fiber, satellite service providers and apparatus situated outside Nepal. The Company pays fixed charge plus fee based on transmission of information/data as Interconnection Usage Charge (IUC) periodically against these services to foreign teleco operator. Comment on the TDS applicability and nature, if so.

ii. During the tax reassessment of a company, the Tax officer has included the unrealised forex gain contending that the company may not included those gain that may be realised in succeeding income year and also add back the unrealised forex loss citing it is not allowable as deductible expenses. Comment on the Tax Officer's assessment.

<u>Answer:3(a)</u>

i. The Company pays fixed charge plus fee based on transmission of information/data as Interconnection Usage Charge (IUC) periodically against international communication services to local customers by using facilities of optical fiber and satellite service providers through the apparatus situated outside Nepal.

Proviso 7 of section 88(1) has provides that ten percent tax shall be deducted for the payment made by resident person for the use of satellite, bandwidth, optical fiber, apparatus related to telecommunication or for use of electricity transmission line.

Since the payment of IUC is made for the use of apparatus /facilities of optical fiber, satellite service providers, ten percent tax shall be deducted. And the payment is made to non-resident, such tax deduction shall be final withholding**.**

ii. As per the sec 22(3), the company shall keep their accounts on an accrual basis for the purposes of income tax. As per sec 24(4), in case where a person includes payment to which the person is entitled or deducts a payment that the person is obliged to make in calculating the person income from business or investment, and the actual payment received or payment made by the persons comes to be different by reason of change in currency exchange rate that took place afterwards, appropriate adjustment shall be made as and when payment is received or made.

So the unrealized forex gain or loss shall not be included in determining taxable income or deductible expense.
Hence, the tax officer assessment of including unrealized forex gain in determination of taxable profit is not acceptable as per the above provisions. Since unrealized forex loss shall not be deductible as expense, adding back of unrealized forex loss is correct as per the provision of Income tax.

b. What are the threats that may affect an auditor while providing assistance in the resolution of tax disputes to audit client? Briefly mention factors that are relevant in evaluating the threats by mentioning relevant provision of ICAN Code of Ethics, 2018.
5

Answer:3(b)
According to subsection 604 of ICAN Code of Ethics 2018, providing assistance in the resolution of tax disputes to an audit client might create a self-review or advocacy threat.

- The particular characteristics of the engagement
- The level of tax expertise of the client's employees.
- The system by which the tax authorities assess and administer the tax in question and the role of the firm or network firm in that process.
- The complexity of the relevant tax regime and the degree of judgment necessary in applying it.

In addition to above factors that are relevant in evaluating the level of self-review or advocacy threats created by assisting an audit client in the resolution of tax disputes include **:**

- The role management plays in the resolution of the dispute.
- The extent to which the outcome of the dispute will have a material effect on the financial statements on which the firm will express an opinion.
- Whether the advice that was provided is the subject of the tax dispute.
- The extent to which the matter is supported by tax law or regulation, other precedents, or established practice.
- Whether the proceedings are conducted in public

4.

a. Tax officer conducted assessment of Shukhnandan Industries for F.Y.2081/82 and issued the notice to deposit the additional VAT and interest thereon on various ten cases as below: **7**

Cases	VAT amount demanded
1	200,000
2	400,000
3	500,000
4	700,000
5	450,000
6	900,000
7	200,000
8	345,000
9	565,000
10	980,000

Shukhnandan Industries accepted cases 1 ,3,4,7and 9 but was dissatisfied with cases 2, 5,6,8 and 10. So the company filed for administrative review against such decision of tax officer. The Director General decided in favor of the company regarding case 5,8 but decided against regarding case 2 , 6and 10 . The company has now decided to appeal to Revenue Tribunal for case 2,6 and 10.

i. Calculate the deposit amount kept for Administrative Review

ii. Explain provision for application to Revenue tribunal and calculate deposit amount required for it.

Answer:4(a)

i) Calculation of the Amount to be deposited for Administrative Review:

As per Section 31 Ka (6) of VAT act, the taxpayer applying for administrative review shall pay entire of the undisputed tax amount out of the assessed tax amount, and deposit one fourth of the amount of the disputed tax amount.

Particulars	% to be deposited	Amount Deposited In Rs.
Undisputed Amount (Case 1,3,4,7and 9)	100%	2,165,000
Disputed Amount (Case 2, 5,6,8 and 10)	25%	768750
Total		**2,933,750**

Thus, total Rs.2,933,750 should deposit at IRD for Administrative Review.

ii) As per section 32 of the VAT Act, a person who is not satisfied with an order of suspension made by the Director General pursuant to Section 30 or a decision made by the Director General pursuant to Sub-section (4) of Section 31A, may file an appeal in the Revenue Tribunal. The person filing an appeal pursuant to Sub-section (1) shall make a written notification to the Department along with a copy of the appeal within fifteen days from the date of filing appeal.

Section 33 of the VAT act provisions that while making an appeal to the Revenue Tribunal, entire of the undisputed amount of tax has to be paid out of the amount of tax assessed, and a deposit equivalent to fifty percent of the disputed amount of tax and fine or a bank guarantee for such amount has to be furnished.

Calculation of Amount for deposit or bank guarantee for Revenue Tribunal:

Particulars	**% to be deposited**	**Amount Deposited In Rs.**
Undisputed Amount (Case 1,3,4,7and 9)	100%	2,165,000
Case 5 and 8 was decided in favor of the taxpayer so need not pay any additional security for case 5 and 8.		
Disputed Amount (Case 2,6 and 10)	50%	1140000
Total		3,305,000
Less: Deposited during administrative review		2,933,750
Additional Amount to be deposited		371,250

Thus, Rs. 371,250 should be deposited additionally for making appeal to Revenue Tribunal.

b. Sagarmatha Cigarette Pvt. Ltd. is a cigarette manufacturing company. The standard norm of manufacturing cigarette of 10 packs is 1 KG of raw materials. During the month of Shrawan 2082, the company has following transactions.

Particulars	**Amount**
Import price of leaf & casing materials Imported (10 MT)	Rs. 265,000 per MT
Local purchase (2 MT) from farmers	Rs. 250,000 per MT
Letter of credit charges	Rs. 25,000
Transportation cost up to Custom points	Rs. 90,000
Transportation cost from Custom points to Factory	Rs. 50,000
Insurance paid to Nepal insurance for import	Rs. 60,000
Locally purchase wrapping materials	Rs. 483,000
Cost of locally assembled car for official purpose	Rs. 4,000,000
Hire expenses of machines	Rs. 300,000
Electricity expenses	Rs. 50,000
Insurance premium paid for Plant & Machinery	Rs. 15,000
Diesel for vehicles	Rs. 50,000
Petrol for car	Rs. 15,000
Wages for Cigarette production	Rs. 500,000
Distribution expenses	Rs. 200,000

The above amount are excluding VAT but including excise duty as applicable.
The stock, production and sales are as follows:

Particulars	**Quantity**	**Amount Rs.**
Opening leaves	1,000 KG	350,000
Closing leaves	1,400 KG	
Opening Finished products	10,000 Packs	
Closing Finished products	9,000 Packs	
Local sales	2,000 packs	Whole sale price per pack Rs. 99.44 (inclusive of VAT)
Export	11,400 cartons	10 packs in one carton, per carton billing price US $ 4

Additional information:

- Except for imported raw materials, all other materials are sourced locally.
- No opening and closing stocks of wrapping materials
- One pack contains 20 cigarette sticks.
- Applicable customs duty is 25 % and excise duty is Rs. 80 per KG for leaf & casing materials. Excise duty is 5 % for locally purchased wrapping materials.
- Excise duty is Rs. 34 per pack.
- Excise duty is 60 % for locally assembled car

Opening excise duty receivable Rs. 120,000 and VAT receivable Rs. 40,000 Assume exchange rate Rs. 135 per US $.

10

You are required to calculate:

a. Customs duty, Excise Duty and VAT payable at the customs point.
b. Value addition in percentage in these transaction for excise purpose.
c. Excise duty payable/receivable.
d. If Excise duty is receivable, amount that can be claimed for refund.
e. VAT payable/receivable for the month.

Answer:4(b)

a. Customs duty, Excise Duty and VAT payable at the customs point

Particulars	**Amount Rs.**
Invoice price (10*265,000)	2,650,000.00
Transportation cost	90,000.00
Insurance	60,000.00
Transactions Value	2,800,000.00
Customs duty rate	25%
Custom duty	**700,000.00**
Total with Customs Duty	3,500,000.00
Excise duty (10*1000*80)	**800,000.00**
Taxable Value	4,300,000.00
VAT	**559,000.00**

b. Value addition in percentage for excise purpose:

Particulars	**Quantity**	**Amount Rs.**
Opening raw materials	1,000	350,000
Imported (10*1000KG)	10,000	3,500,000
Locally purchase (2*1000 KG)	2,000	500,000
Packing materials (483,000/1.05)		460,000
Less Closing raw materials	(1,400)	(518,000)
Consumed cost for production	11,600	4,292,000
Production cost per pack		=4,292,000/11,600 =370/10 Rs.37 per pack
Per Carton billing rate (Excise is not applicable)		US $ 4
Exchange rate		135

Per Carton Rs.		Rs. 540
Number of pack per cartoon		10
Per pack Rs.		54
Value addition		Rs.54-37=17
Value addition %		45.95%

c. Excise duty payable/receivable:

Particulars	**Excise duty Rs.**	**Remarks**
Opening duty	(120,000)	
Output duty (3,000*34)	102,000	
Input duty on raw materials	(800,000)	Refer to custom duty payable table
Input duty on packing materials	0	Not available
Excise duty paid on car	0	only available for raw materials used for the finished goods
Payable(Receivable) for the month	(818,000)	

Note:

Consumed for production: 11,600 KG (Refer Value addition b.)

Total Quantity to be produced: 11,600*10= 116,000 Pack

Opening Pack	10,000
Less: Closing Pack	(9,000)
To be issued/sold	117,000
Less Exported (11400*10)	114,000

Locally to be sold 3,000 Pack (2000 actual, 1000 deemed sales)

d. Amount that can be claimed:

Excise duty is not applicable on export of excisable product as per section 3Kha (1). Section 3kha (4) states that Industry producing and exporting excisable goods to foreign countries, shall be allowed to deduct excise duty paid on purchase or import of raw materials used for producing the excisable goods, to the extent of quantity of export, against the excise duty to be paid during removal of goods pursuant to Sub-section (3) of Section 3Ka.

For the excise duty to be eligible to be claim for refund Section 3Kha (7) of the Act requires that there has to at least 15% value addition on the goods imported. If the factory could not adjust the excise duty paid on the collected amount, it can claim for refund to the extent of exported products pursuant to section 3Kha (5). So, the company has value addition more than 15 % and excisable products exported, it can claimed for refund of Rs. 698,000 pertaining to month Shrawan, 2082 while filing the return, if opening receivables have similar situations, that amount also can be claimed for refund.

e. VAT payable/receivable for the month:

Particulars	**Amount in Rs**	**VAT in Rs**
Output VAT on Export	6,156,000	-
Output VAT on local sales (3,000*88)		
per pack, price before VAT (99.44/1.13)=88	264,000	34,320
Total Output VAT		**34,320**
Input VAT		
VAT Paid at Customs		559,000
Letter of credit charges		(Not applicable)
Transportation cost from Custom points to Factory	50,000	6,500
Insurance paid to Nepal insurance for import	10,000	included in custom already
Locally purchase wrapping materials	460,000	62,790
Purchase a locally assembled car for official purpose (40 % allowed, given excise duty irrelevant)	4,000,000	208,000
Hired machine expenses	300,000	39,000
Electricity expenses	50,000	(Not applicable)
Insurance premium paid for Plant & Machinery	15,000	1,950
Diesel for vehicles	50,000	6,500
Petrol for car	15,000	(credit not available)
Wages for Cigarette production	500,000	(Not applicable)
Distribution expenses	200,000	26,000
Total input VAT		**909,740**
Opening		40,000
Net VAT receivable		**915,420**

5.

a. Mountain Beverage Private Limited is engaged in the manufacturing and sale of liquors. Some of the excise sticker issued by the Excise office got damaged during manufacturing and packaging process. Please advise management of the Company on the provisions contained for the write off of the damaged stickers in Excise Act 2058 and Rules 2059. 7

<u>Answer: 5(a)</u>

Provisions contained in Excise Act 2058 and Rules 2059for the write-off of the damaged stickers

(a) Rule 30(1) of excise Rules 2059 provides that excise sticker shall be fixed while storing the liquor and tobacco product that are imported or manufactured in Nepal.

(b) Such stickers can be brought from tax office.

(c) Rule 30(5) provides those tickets made available by tax office to the Company is damaged at the time of use, then such tickets can be replaced by the Tax office after physical inspection by the Excise officer.

(d) Excise Directive 2068 specifies below procedure for destroying of damaged excise tickets:

- If a Company files application to the Excise Office for deduction of damaged or destroyed excise stickers, then Excise Office can allow such deduction after due investigation. Excise Office has to keep sample of damaged/destroyed stickers.
- Excise office has to issue equal amount of new excise tickets to the Company that is damaged or destroyed. Such damaged/destroyed excise tickets shall be destroyed under

affidavit of respective excise officer, representative of respective district office, representative of financial comptroller office, Excise Officer and Representative of Company every 3 months.

b. Under what circumstances a custom officer can:

i. Impose fine and/or imprisonment on Custom Agent
ii. Suspend the license of Custom Agent
iii. Cancel/revoke the license of Custom Agent

Give your answer based on Customs Act 2064. **7**

Answer:5(b)

i. As per section 59 of Customs Act 2064, a custom officer can impose fine of Rs 25,000 to Rs 50,000 or imprisonment of 1 month to 6 months or both to a custom agent, if he conducts activities mentioned in section 57(5), 57(6), 57(7), 57(8) and 57(9) of the Act.

-57(5): Declaration of goods by reducing the quantity
-57(6): Declaration of goods by mentioning wrong country of origin
-57(7): Declaration of goods by increasing the quantity during exports
-57(8): Declaration of goods by mentioning wrong name/ nature/ physical attributes/ characteristics/ size/ shape/ quality during export
-57(9): Declaration of different goods than actual; or different material than actual from which goods is manufactured; declaration goods by mentioning wrong name/ nature/ physical attributes/ characteristics/ size/ shape/ quality during import

ii. As per section 55(1) of Customs Act 2064, a custom officer can suspend the license of custom agent for a period from 1 month to 6 months, if:

-custom agent fined under section 59 of the Act,
-custom agent does any act that violates rules framed under Custom Act 2064,
-custom agent does not fulfills its duty as mentioned in section 53Ka of Customs Act 2064

iii. As per section 55(2) of Customs Act 2064, a custom officer can revoke the license of custom agent, if:

-custom agent carries out activities mentioned in section 55(1) for three times,
-it is found that custom agent has obtained the license by furnishing false certificates of academic qualification or any other false documents/details.

c. On 1st Falgun 2082, Tax Officers from IRO Baneshwar, visited the office of Miniso Shop, Baneshwar which is registered in Baneshwor Tax Office area, demanded VAT and other accounts and records of the financial years starting from 2074- 75 but the company is unable to produce the accounts and records for the years 2074-75 to 2077-78 as these records are destroyed by it. Generally, the shop destroys its VAT records and books of account and records on expiry 4 years. Both the tax officers decided to impose fine under section 29 of VAT Act 2052, NPR. 10,000 per year for the 5 years for not producing the accounts and records supposing that the firm had not maintained the books of accounts and the records. You are the tax consultant of the shop, the company wants to apply for administrative review against the order and seeks your advice, advise them with appropriate provisions of the law. **6**

Answer:5(c)

As per Section 16 (4) of VAT Act, 2052, a registered person has to keep accounts and records that is required to be maintained by the VAT regulation up to the period specified by the VAT Rules. As per rule 23 (7) of VAT Rule 2053 has prescribed 6 years for keeping the records safely by any taxpayers. In the given case, the tax officer has visited the firm on 1st Falgun, 2082; therefore, the firm is required to produce before the tax officer the records and accounts relating to the period starting from Shrawan 01, 2076. In this situation, the tax officer is not valid to charge fine under Section 29 for the period before Shrawan 01, 2069 i.e., for the year 2074-75 and 2075-76. But he charged rightly for the accounts and records not produced for the period starting from Shrawan 2076. Thus, as a tax consultant, I suggest that the firm should apply for Administrative Review for the fine charged for the year 2074-75 and 2075-76 accepting to pay the fine for the years 2076-77 and 2077-78.

6.

a. Explain the concept of Permanent Establishment as per OECD Model Tax Convention? Specify the types of activities/location and facilities that are not considered as having Permanent Establishment? **5**

Answer:6(a)

a) As per the OECD Model Tax Convention 2017, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

The term "permanent establishment" includes especially

a) a place of management;
b) a branch;
c) an office;
d) a factory;
e) a workshop, and
f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

The term "permanent establishment" shall be deemed not to include:

a. the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
b. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
c. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
d. the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
e. the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.
f. the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that such activity or, in the case of subparagraph (f), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

b. How the income tax Act has given authority to Government of Nepal for entering international treaties with other countries for avoiding double taxation?

5

Answer:6(b)

As per section 73 of the Income Tax Act, Government of Nepal may enter into a treaty or an agreement with other countries having the provision of giving a relief to taxpayers form double taxation, for prevention of fiscal evasion and for reciprocal administrative assistance in the enforcement of tax liabilities.

If a competent authority of the country requests IRD, in course of executing an agreement or a treaty to recover a certain amount of tax due to any person according to the regulations of that country, IRD may by serving a notice in writing require the person to pay the amount to IRD on or before a date specified in the notice.

In case an international agreement includes a term that Nepal will exempt income or a payment or will charge a tax at a lower rate of tax on income or a payment, the exemption or reduction shall not be available to any following entity:

a. Who, for the purpose of agreement, is a resident entity of the other contracting state; and
b. 50% or more of whose underlying ownership is held by individuals or entities in which no individual has an interest and who for the purpose of the agreement are not residents of that other contracting state or Nepal.

International treaties are basically adopted under UN Model or under OECD Model. Almost all the taxation treaties are similar. OECD has published series of documents relating to international taxation. Model convention on income and capital published by OECD has extensively described the provisions of international treaties and their implications.