

SUGGESTED ANSWERS TO
THE QUESTIONS SET AT
CA MEMBERSHIP EXAMINATIONS
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The Institute of Chartered Accountants of Nepal (ICAN)
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Suggested Answer of CA Membership Examinations

The Institute of Chartered Accountants of Nepal

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Corporate Laws

1. Answer the following questions:

- (a) Mr. X is a shareholder of XY Pvt Ltd. The company had obtained a secured loan of NPR 5 crores from Sumsi Bank Ltd. Meanwhile, due to default in repayment, the bank initiated an auction process to recover the loan. Hence, in order to revive the company through capital restructuring mechanism, shareholders of the company concluded an agreement with Mr. N for additional share investment in the company as per which the latter shall hold majority of shares i.e. 55% shares of the company and also takeover its entire management whereas Mr. X to hold minority of shares only. Meanwhile, after the management was taken over by Mr. N, the company accomplished the AGM and got the company status also updated at the Office of Company Registrar. However, Mr. X was not notified about the AGM though the company had adopted general meeting procedure similar to public companies. In addition, Mr. X demanded AGM minute & audit report of the company to its office but the latter refused to provide it.

Now, answer the following questions on the basis of the Companies Act, 2063:

- (i) If the AGM conducted by XY Pvt Ltd without furnishing a notice to Mr. X is valid? Justify **5**
(ii) Advise him if there is any alternative way to get AGM minutes and audit report of the company **3**
(iii) What is the precedent established by Supreme Court of Nepal in *Amir Pratap Rana et al V. Madhav Raj Sharma (2077)*, a case similar to above? **2**

Answer: 1(a)

- (i) Section 67(11) of the Companies Act 2063 states that notwithstanding anything contained elsewhere in this Section, matters pertaining to the general meeting of a private company and procedures thereof shall be as provided in the articles of association or the consensus agreement. Failing such provision, the provisions of this Act shall apply.

In the given case, XY Pvt Ltd has adopted the general meeting provision of public companies. As per Section 67(2) of the Act, a public company shall send a notice specifying the place, date and agenda of meeting to every shareholder at the address supplied by that shareholder to the company, in advance of at least 21 days to hold the AGM, and in advance of at least 15 days to hold the extra-ordinary general meeting. A notice thereof shall also be published at least twice in a national level daily newspaper.

Further, Section, 69 of the Act prescribes before every general meeting commences, the shareholders present therein shall ascertain whether it has been convened in accordance with this Act and the articles of association; and a general meeting shall be deemed to have been duly called even if any other law has not been observed with respect thereto, provided a notice has been sent to all shareholders pursuant to Sub-section (2) of Section 67 and the meeting attended by the required quorum as referred to in Section 73 agrees to hold it.

In the given case, Mr. X, a shareholder of XY Pvt Ltd was not notified about the AGM. Hence, the AGM conducted without furnishing a notice to him is not valid pursuant to Section 69 read together with Section 67 of the Act.



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- (ii) Section 25 of the Act prescribes following provisions regarding the collection of annual documents including audit report of the company:
- (1) If any shareholder or any other person concerned demands for a duplicate copy of the memorandum of association, article of association, prospectus, annual accounts and audit or directors report or any document submitted by the company to the Office of Company Registrar, the concerned company shall provide a duplicate copy of such document by collecting the fees prescribed in the articles of association. Provided, however, that any person whoever may demand for such document in the case of a public company.
- (2) If the concerned company does not provide duplicates of such documents pursuant to Sub-section (1), the Office of Company Registrar shall provide duplicates of such documents from its records by collecting the prescribed fees.
- Hence, pursuant to Section 25(2) of the Act, Mr. X may apply to the Office of Company Registrar for getting the AGM minute and audit report of XY Pvt Ltd by paying the prescribed fees.

- (iii) The precedent established by Supreme Court in *Amir Pratap Rana et al V. Madhav Raj Sharma case (2077)* is:

The shareholders of private limited companies cannot easily sell their shares in the market. The regulation of the private company has also been made comparatively more flexible by the Companies Act, 2063. Further, in practice, as there is a direct interference of the shareholders in private companies and there are attempts to run them like a partnership firm, the potential pressure that the majority shareholders can overpower the minority shareholders should be carefully looked at. Making the protection of shareholders' interest provided by the law effective is also desirable from the point of view of healthy corporate management and corporate governance. In comparative jurisprudence, it seems that rights such as pre-emptive right and right of first refusal are accepted to protect the interests of the minority shareholders. In the case of paying compensation for the losses that have occurred in the situation of pressure and continuity of discrimination towards minority shareholder, the regulatory body and the court may give orders ranging from forcing the majority shareholder or someone else for buying the minority shares at the market price to liquidating the company.

- (b) Mr. Subhash Koirala is a newly appointed chairperson of board of director of the Millenium Development Bank as per section 14(5) of the Bank and Financial Institutions Act, 2073. He is aware of the functions, duties, and powers of the board of directors mentioned in section 22. As the supreme body of the bank, the Board of directors is fully responsible for overall bank management. In the light of the above statements Mr. Koirala would like to have your expert advice on the following matters based on relevant legal provisions.
- i) Legal Provisions on Sale or Pledging of Securities of the Millenium Development Bank as per BAFIA, 2073. 5
- ii) Provisions of maintaining Capital Fund and Declaration and Distribution of Dividends by the Millenium Development Bank. 5



Answer: 1(b)

(i) Provisions relating to the sale of share or Pledging of Securities are as follows as per section 11 of the Act:

- (1) The promoter of the bank or financial institution shall not be entitled to sell or pledge any share registered under his/her ownership for at least five years from the date of commencement of financial transactions.
- (2) Notwithstanding anything contained in Sub-Section (1), in case of arising a special circumstance due to emergence of any obstruction or hindrance in the operation of the bank or financial institution or the promoter shareholder is included in the blacklist owing to transactions with another bank or financial institution, shares may be sold or brought amongst promoters by obtaining approval from the Rastra Bank.

Explanation: For the purpose of this Section, “special circumstance” means a situation where to hold a meeting of the Board of Directors has not been possible due to lack of a quorum for a consecutive period of three times or a situation where no decision has been made possible because of disputes amongst Directors.

- (3) If the promoter wishes to sell or pledge the shares held in his/her name after five years from the date of commencement of financial transactions by the bank or financial institution, his/her/its may sell or pledge such shares by obtaining approval from the Rastra Bank on the condition that such shares shall remain in the promoters group. Provided that, approval of the Rastra Bank shall not be required while selling or pledging shares by a promoter having subscribed the shares of less than two percent of the paid up capital.
- (4) Notwithstanding anything contained in Sub-Section (1) & (2) of Section 9, after completion of a period of ten years of transactions of bank or financial institution, the promoter shares may gradually be converted into ordinary shares with approval of the Rastra Bank by giving due consideration to the impact it may have on the capital market, banking, and overall financial sector.
- (5) In case any company or corporate body has subscribed promoter shares, prior approval of the Rastra Bank shall be obtained before alteration of shareholders or sale or transfer the ownership of share among the shareholders having substantial ownership of such company or corporate body.
Provided that, approval of the Rastra Bank shall not be required while selling or transferring the shares by a company or corporate body having subscribed the shares of less than two percent of the paid up capital of a bank or financial institution.

(ii) Provision on maintaining Capital Fund and declaration & distribution of dividends are as follows as per section 42 and 47 of the BAFIA, 2017:

Sec 42: Capital fund

- (1) A bank or financial institution shall have to maintain a capital fund in the ratio as prescribed by the Rastra Bank on the basis of its total assets or total risk-weighted assets. The Rastra Bank may, while prescribing such ratio, also prescribe the ratio of additional capital fund.
- (2) If any bank or financial institution fails to maintain the capital fund in accordance with Sub-Section (1), the Board of Directors of such bank or financial institution shall have to give information thereof to the Rastra Bank within one month.
- (3) The information given pursuant to Sub-Section (2) shall also be accompanied by, *inter alia*, the reasons for the failure to maintain the capital fund and the plans or programs prepared by the Board of Directors to increase the capital fund and restore it to the position as prescribed by the Nepal Rastra Bank.
- (4) On receipt of the information referred to in Sub-Sections (2) and (3), if the Rastra Bank deems the plan or program submitted by the Board of Directors reasonable, it may give directive to the concerned bank or financial institution to implement such plans or programs; and if any amendment or alteration is to be



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made in the proposed plans or programs it may give a direction to the concerned bank or financial institution to amend or alter such plan or programs stating the reasons for such amendment or alteration, and to implement the same.

Sec 47: Declaration and distribution of dividend

- (1) A bank or financial institution shall have to obtain the approval of the Rastra Bank before declaring and distributing dividends.
- (2) No bank or financial institution shall be allowed to declare or distribute dividends to its shareholders until it recovers all of its preliminary expenses and the losses sustained by it until the previous year, capital, capital fund and possible loan loss provisioning as prescribed by the Rastra bank and for general reserve fund pursuant to Section 44 and until complete sale of shares to be allotted to general public.

2. Answer the following questions:

- a) Nepal Rastra Bank has decided to form a special administration team for the resolution of People Bank Limited because the bank is incapable to make its liability of payment. You are one of the most competent candidates to be a member of the team. In the above situation, explain the Power of the Nepal Rastra Bank to carry out work of resolution and the Function, Duty and Power of Special Administration Team as per the Nepal Rastra Bank Act, 2058.

Answer: 2(a)

Power of the Nepal Rastra Bank to carry out work resolution as per section 88A of the Nepal Rastra Bank Act, 2058 are as follows:

- (1) On any of the following conditions, the Bank can further the work of resolution by taking up any commercial bank or financial institution under its control: -
 - (a) If its liability of payment cannot be made fully or partially,
 - (b) If there is condition of not being able to fulfill the liabilities to be paid, on the ground of supervisory analysis, within ninety days from the date of the completion of the work relating to such analysis,
 - (c) If liability exceeds the net assets,
 - (d) If sustained loss that cannot be covered up even by all kinds of capital and funds prescribed by the Bank,
 - (e) If the Bank makes decision to take to the process of resolution as per Section 86 G.
- (2) Only the bank shall have the power to carry out, or get the resolution carried out, of the claim of the depositor and secured creditor remained upon any commercial bank or financial institution.
- (3) Total expenses incurred while carrying out work relating to resolution of the commercial bank or financial institution shall have to be borne out of the amount received after selling out the properties of the commercial bank or financial institution concerned.

Function, duty and power of Special Administration Team as per section 88C of the Act are as follows:

- (1) The Special Administration Team shall have the total power, which is allowed to be exercised by the general meeting, Board of Directors, Chief Executive Officer, and other lien on posts of the commercial bank or financial institution concerned.
- (2) By remaining under the Sub-Section (1), the Special Administration Team shall have the following power regarding to manage the movable and immovable assets, to carry out resolution of any property and liability of the commercial bank or financial institution concerned and to operate such commercial bank and financial institution: -
 - (a) To sell all or partial share of the commercial bank or financial institution remained to be sold to new person,



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- (b) To allow any institution the responsibility to carry out operation of transaction and to carry out particular work that can be operated regularly with systematic perspective, or to establish separate bridge institution or unit for some period for the sake of carrying out such operation,
 - (c) To sell any or all transactions or properties of the commercial bank or financial institution concerned or any subsidiary company of such commercial bank or financial institution,
 - (d) To sell the properties or rights of the commercial bank or financial institution concerned, which remain under any other persons or institutions.
- (3) Regarding the commercial bank or financial institution remained under the process of resolution, Special Administration Team shall have other powers as follows: -
- (a) To get the documents, which the Special Administration Team deems necessary to further the act and action of resolution, submitted by the person concerned,
 - (b) To transfer, or get the ownership of the shares or other instruments issued by the commercial bank or financial institution concerned, transferred,
 - (c) To transfer certain power, properties or liabilities of the commercial bank or financial institution concerned to another person,
 - (d) To revoke the shares or other instruments issued by the commercial bank or financial institution concerned,
 - (e) To alienate the shares issued by the commercial bank or financial institution concerned or the shares or other ownership owned by any or all of its shareholders to the name of any other person on the ground as per prescribed,
 - (f) To issue preference shares or other instruments relating to capital,
 - (g) To move all the steps seen necessary to protect and take care of the properties of the commercial bank or financial institution concerned.
- b) One of your friends qualified from ICAEW is making a preliminary plan to obtain membership of ICAN. So, she enquired you about the time limit for renewal of membership along with the grounds under which such membership may be removed. Answer her query quoting the membership renewal and removal provision pursuant to Nepal Chartered Accountants Act, 2053 and its Rules, 2061. 7

Answer: 2(b)

Section 22 of the Nepal Chartered Accountants Act, 2053 read together with Rule 46 of its Rules, 2061 prescribe legal provisions regarding the removal and renewal of membership.

Removal of membership:

Provisions regarding the removal of membership have been provided under Section 22 of the Act as follows:

- (1) The Council may issue an order to remove the name of any member from the Membership Register on any of the following circumstances: -
- (a) If he is convicted by a court in a criminal offense involving moral turpitude and punished there for,
 - (b) If he fails to pay any fees required to be paid to the Institute,
 - (c) If he fails to abide by the professional conduct referred to in this Act and the Rules framed under this Act,
 - (d) If he becomes unsound-minded, or
 - (e) If he is dead.



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- (2) In case, a member whose name has been removed from the Membership Register pursuant to sub-section (1) makes an application, along with the fees as prescribed, stating reasonable ground to restore his membership, the Council may consider restoring his membership by reinstating his name in the Membership Register.

Renewal of membership:

Further, Rule 46 of the Nepal Chartered Accountants Rules, 2061 provides following provisions regarding the renewal of membership:

- (1) Every member shall update his/her membership by paying annual membership fee as prescribed by the Council from time to time within 60 days of commencement of fiscal year and completing the Continued Professional Education (CPE) equivalent to credit hours pursuant to Rule 55(1).
- (2) If any member fails to renew the membership within 60 days of expiry of fiscal year, he/she may renew the membership within next 60 days by paying additional fee of 15%. If the member fails to renew the membership within such additional period as well, he may renew the membership within next 60 days by paying additional 25% fee in the prescribed fee.
- (3) The membership of the member who has not paid the membership fee within the extended time limit of sub-rule (2) and not completed CPE hours pursuant to Rule 55(1) shall be *ipso facto* cancelled.
- (4) Notwithstanding anything mentioned elsewhere in this Rule, if any member desires to pay the annual membership fee in advance, he may do so for any number of years.

However, after the payment of such an annual membership fee in advance, if any change occurs in the annual membership fee rate, the membership fee paid in advance shall be adjusted accordingly.

3. Public welfare corporation limited; a government owned corporation wants to recommend for blacklisting after terminating the contract to foreign supplier because the supplier is still not delivered the machine on stipulated time due to bankruptcy of supplier company. On the above situation, is it possible to do blacklist to the supplier company? Describe the legal provision of Blacklisting and Exclusion from the Blacklist according to the Public Procurement Act, 2063.

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Answer: 3

The provision of Blacklisting and Exclusion from the Blacklist are as follows as per section 63 of the Public Procurement Act, 2063:

- (1) The Public Procurement Monitoring Office may blacklist a bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization, or company in the following grounds from one year to three years on the basis of seriousness of his/her/ act: -
 - (a) If it is proved that s/he has committed an act contrary to the conduct as referred to in Section 62,
 - (b) If a proponent of a proposal selected for acceptance does not come to sign the contract pursuant to Section 38,
 - (c) If it is proved later that s/he had committed substantial defect in implementing procurement contract or had not substantially fulfilled obligation under the contract or the work carried out according to the procurement contract is not of the quality as per the said contract,
 - (d) If convicted from a court of law in a criminal offense liable to be disqualified for taking part in procurement contract,
 - (e) If s/he/it is proved of having signed the procurement contract by falsifying qualification or misrepresenting,
 - (f) Any other conditions as prescribed.



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- (2) A bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization, or company blacklisted pursuant to Sub-section (1) shall be debarred from taking part in the procurement proceedings of a Public Entity up to that period.
 - (3) Notwithstanding anything contained elsewhere in this Section, a person, firm, organization or company blacklisted by a competent authority under prevailing law for not paying a loan of a bank or financial institution shall not be eligible to take part in the procurement proceeding of a Public Entity during the period of such blacklisting.
 - (4) If the person, firm, organization, or company ineligible to take part in the public procurement proceedings pursuant to Sub-section (2) or (3) is found to have taken part in a procurement of a Public Entity, no action shall be taken over his/her bid or proposal.
 - (5) Other provision concerning blacklisting pursuant to Sub-section (1) shall be as prescribed.
 - (6) A bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization, or company blacklisted pursuant to Sub-section (1), (2), (3), (4), and (5) shall be excluded from the blacklist as per the criteria prepared by the Public Procurement Monitoring Office for exclusion from the blacklist.
4. Answer the following questions:
- a) Philip Mugabbe, a citizen of South Africa, interested to establish a cement factory in Dang district and currently in the visit of Dang with his feasibility survey team, wants to clear the following queries before injecting foreign capital to Nepal. You as a consultant suggest him referring provisions of the Foreign Investment and Technology Transfer Act, 2075.
 - i) Meaning of foreign investments
 - ii) Repatriation facility of earning and investment in foreign currency

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Answer: 4(a)

- i) As per Section 2(j) of the Foreign Investment and Technology Transfer Act, 2075, foreign investment means the following investment made by a foreign investor in industry or company:
 - 1) Share investment in foreign currency
 - 2) Re-investment of dividend obtained from foreign currency or share in industry
 - 3) Lease investment (lease finance) as per section 6
 - 4) Investment in venture capital fund as per section 9
 - 5) Investment in listed securities through secondary market of securities
 - 6) Investment made by acquiring shares or assets of a company incorporated in Nepal
 - 7) Investment received through banking system after issuing securities in foreign capital market by an industry or company established in Nepal
 - 8) Investment made through technology transfer
 - 9) Investment maintained by establishing and expanding an industry in Nepal.
- ii) **Section 20 of the Act prescribes about the repatriation facility as follows:**
 - 1) Foreign investors, if desire, may sell shares or industry fully or partially of his investment as per prevailing law and repatriate his investment after paying all the taxes as per prevailing laws. Foreign investors can repatriate the amount in the same currency of investment or in other convertible foreign currency with the approval of NRB.
 - 2) Foreign investor can repatriate following amounts in the same currency of investment or in other convertible foreign currency with approval of NRB after fulfilling liabilities prescribed under prevailing laws:
 - a) The amount received by the sale of the share of foreign investment
 - b) The amount of profit or dividend received from foreign investment.



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- c) In case of liquidation or winding up of industry or company, amount remaining after paying all liabilities after liquidation or winding up.
 - d) Royalty amount received under technology transfer agreement.
Provided that in case of royalty or fee for use of trademark under the transfer of technology in a liquor industry other than a liquor industry exporting cent percent liquor, the amount of such royalty shall not exceed five percent of the total selling price as prescribed, excluding the prevailing tax.
 - e) Lease rent obtained under lease investment.
 - f) Amount received as damages or compensation, if any, received from the final settlement of a lawsuit, arbitration or any other legal process in Nepal
 - g) Amount that may be repatriated as per prevailing law.
- b) How money laundering activities are criminalized and make provision of punishment in the Money Laundering (Prevention) Act, 2064 (Second Amendment in 2070).

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Answer: 4(b)

Money laundering activities

Section 3 of the Money Laundering (Prevention) Act, 2064, with its second amendments, has criminalized the following activities as money laundering offenses:

- (1) Nobody shall do or cause to be done the following acts:
 - (a) To conceal or disguise the illicit origin of property or convert or transfer the property by any means with the purpose of assisting any person involved in offence for evading legal consequences after knowing or having reasonable grounds to believe that it is proceeds of crime,
 - (b) To conceal, disguise or change the true nature, source, location, disposition, movement or ownership of property or rights with respect to such property after knowing or having reasonable grounds to believe that it is proceeds of crimes.
 - (c) To acquire, use, possess property after knowing or having reasonable grounds to believe that it is the proceeds of crime.
- (2) No person shall conspire, aid, abet, facilitate, counsel or attempt or associate with or participate in the commission of acts mentioned in sub-sec (1).
- (3) Any person who commits any act mentioned in sub-sec (1) or (2), commits the offence relating to money laundering.

Provision of Punishment

- 1) Any person who has committed the offence of money laundering pursuant to Sec 3(1) shall be fined 2 times of the proceeds and imprisoned from 2 years to 10 years as per the gravity of the commission of act.
- 2) Any person who has committed any offence of conspiracy to commit money laundering pursuant to Section 3(2) shall be punished pursuant to Sub-section (1) and person committing other offences shall be punished half of the Sub-section (1).
- 3) Any person who has committed any offence of terrorist financing pursuant to Section 4(1) shall be imprisoned from 3 years to 20 years as per the gravity of commission of act and fined up to 5 times of proceeds if it is apparent or fined up to Rs 10 million, if such proceeds is not apparent.
- 4) Any person who has committed the offence of terrorist financing pursuant to sub-sec (2), (3) or (4) of section 4 shall be punished with half punishment of sub-sec (3).
- 5) If a person commits the offence of money laundering or terrorist financing through or by the use of a legal person, such person, official or staff shall be punished pursuant to subsection (1), (2), (3) or (4).

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- 6) The chief of legal person working during the period of commission of the offence shall be punished pursuant to prevailing laws if the particular person committing such offence is not traced out as per sub-sec (5).
- 7) Punishment to a civil servant or chief or staff of a reporting entity shall be punished 10% more of the punishment stipulated in subsections (1), (2), (3) or (4) if he is found to have committed the offence of money laundering or terrorist financing.

Punishment Provision for artificial person:

Notwithstanding anything mentioned in the prevailing laws, if any legal person commits any offence of money laundering or terrorist financing, one or all following punishment shall be awarded on the basis of the gravity of offence: -

- (a) Fine up to five times of the fine stipulated in subsection (1), (2), (3) or (4),
 - (b) Prohibition in public procurement by prescribing time limit,
 - (c) Prohibition in production or service procurement for a specific period of time
 - (d) Recovery of losses and damages
 - (e) Cancellation or revocation of license or permission,
 - (f) Liquidation of such legal person.
- c) What do you mean by Drone Industries? Mr. 'D' is willing to incorporate a company concerning the Drone. Could he incorporate a company in the intended sector? Does he require approval and registration from the prescribed authority? Examine the provision on the given issues with the provision of the Industrial Enterprise Act, 2076.

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Answer: 4(c)

Industries Concerning Drone:

A drone usually refers to an unpowered aircraft. Sometimes it is referred to as "Unmanned Aerial Vehicles" (UAVs). These crafts can carry out an impressive range of tasks, ranging from military operations to package delivery. Drones can carry sensing equipment to assist with any number of functions, Commercial aerial surveillance, Commercial and motion picture filmmaking, Oil, gas, and mineral exploration, Disaster relief, Real estate and construction, and Recreational use. It can be as large as an aircraft or as small as the palm of a hand. Industry concerning production/manufacturing and rendering service through Drones is called the drone industry.

Industries requiring prior approval before registration:

Annex-1 of the Industrial Enterprise Act, 2076 has been provided with the list of the industries that require approval before registration. The industries are as follows:

1. Industries producing arms, ammunition, gunpowder, or explosives.
2. Security printing, banknotes, and coin industries,
3. Cigarette, bidi, khaini, cigar, chewing tobacco, and industries producing other goods of a similar nature utilizing tobacco as the basic raw material and industry producing electric cigarettes,
4. Microbrewery, beer, Alcohol or substances beer producing industries,
5. Stone, ballast, sand excavation and processing industry,
6. Industries producing radio communication equipment,
7. Industries like mining of precious minerals and petroleum products excavation,
8. Liquefied petroleum gas (L.P.G) refilling industries,
9. All kinds of industries that produce drone products or provide services through drones,
10. Other industries that need to take permission as prescribed by the prevalent laws.



In accordance with the provision as provided in annex-1 the industry concerning Drone is also required to obtain approval from the Department of Industry. Mr. D can establish such an industry after obtaining approval and registration from the Department of Industry.

The requirements to be registered in an industry: Section 3

- (1) No person shall establish or operate, or cause to be established or operated, an industry without registering it pursuant to this Act.
- (2) Notwithstanding anything contained in sub-section (1), since the enforcement of this Act, the industries operating in accordance with the prevailing industrial enterprise law shall not have to re-register under this Act.
- (3) An industry established as a branch industry before the commencement of this Act shall, within one year of the commencement of this Act, have to complete the process of this Act and shall be registered as a separate industry.
- (4) If an industry wants to take its production or its parts from a different place than the industry in which it is located before or any industry which does not want to be registered as a separate industry for the period of sub-section (3), may establish and operate such branch industry as a unit industry.
- (5) Establishing the unit Industry pursuant to Sub-section (4), the procedure similar to the establishment of a new industry shall be completed except the registration in accordance with this Act.
- (6) The concerned unit industry shall keep records relating to the products and transactions of the unit industry of sub-section (4) and such records shall also be sent to the head office of the industry.

5. Answer the following questions:

- a) Dukhad Hydro Ltd, Panchthar is facing a financial difficulty. Consequently, it is unable to settle the debts. Due to this harsh situation, shareholders of the company desire to liquidate the company. Hence, the extraordinary general meeting of shareholders adopted a special resolution for instituting an insolvency proceeding of the company.

Now, answer the following questions on the basis of the Insolvency Act, 2063:

- (i) Justify if shareholders of Dukhad Hydro Ltd can apply to the Office of Company Registrar, for carrying on the insolvency proceeding. 3
- (ii) Can an individual be declared insolvent under this Act? 3
- (iii) Which government office has been assigned with the functions of the Insolvency Administration Office? 2

Answer: 5(a)

- (i) Section 3 of the Insolvency Act, 2063 states that except as ordered by the Court pursuant to this Act, no person shall commence insolvency proceedings against any company.

Hence, shareholders of Dukhad Hydro Ltd cannot apply to the Office of Company Registrar for carrying on the insolvency proceedings.

Further, section 7(1)(a) of the Act states that if the general meeting of shareholders adopts a special resolution that the company is being insolvent or a meeting of the board of directors of the company makes such decision, unless otherwise proved, a company shall be deemed to have 'being insolvent'. In addition, section 4(1)(c) of the Act states that shareholder or shareholders that has or have subscribed at least 5% of shares, out of the total shareholders of a company may make an application to the Court in the prescribed form for the institution of such proceedings. Hence, the shareholders of Dukhad Hydro



Ltd, Panchthar have to apply to the High Court for instituting the insolvency proceedings.

However, Section 4(4) of the Act states that notwithstanding anything contained elsewhere in this section, any shareholder or debenture-holder of a company shall obtain permission of the Court to make an application for insolvency proceedings pursuant to Clause (c) or (d) of Sub-section (1), and the shareholder or debenture-holder may, if so permitted, make an application on such terms and conditions as may be specified by the Court. Hence, the shareholders of Dukhad Hydro Ltd, Panchthar have to obtain permission of the High Court Biratnagar before applying for insolvency proceedings.

- (ii) The preamble of the Insolvency Act, 2063 states whereas, it is expedient to make legal provisions immediately in relation to the administration, insolvency proceedings of ‘companies’ which are being insolvent or going to be insolvent by becoming unable to pay debts to creditors or which are facing financial difficulties and in relation to the restructuring of such companies, now, therefore, be it enacted by the House of Representatives in the First Year of the issuance of the Proclamation of the House of Representatives, 2063.

Section 2(a) of the Act states “Company” means a company incorporated under the companies law in force, and this expression also includes such other corporate body with limited liability as specified by the Government of Nepal by notification in the Nepal Gazette;

Hence, only the companies can be declared insolvent under the Insolvency Act 2063. Individuals cannot be declared insolvent under this Act.

- (iii) Section 65(1) of the Act states that after the commencement of this Act, the Government of Nepal shall establish an Insolvency Administration Office, by notification in the Nepal Gazette. Pending the establishment of such Office, the Government of Nepal may designate any of its offices to perform the functions of the Insolvency Administration Office.
- Hence, the Government of Nepal has designated the Office of Company Registrar to perform the functions of the Insolvency Administration Office.

- b) What are the Functions, Duties and Powers of the Insurance Authority of Nepal? Explain in light of relevant provisions of Insurance Act, 2079?

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Answer: 5(b)

As per the section 5 of the Insurance Act 2079, the Functions, Duties and Powers of the Insurance Authority shall be as follows:

- (a) To act as an advisor of the Nepal Government in matters related to Insurance.
- (b) To formulate National Insurance policy and recommend to Nepal Government.
- (c) To provide Prior approval, license for the establishment of Insurance company and cancel the same.
- (d) To issue Bye laws, directives, guidelines or order necessary for the Insurance business.
- (e) To provide license to the Insurance intermediaries, renew and cancel as such licenses,
- (f) To determine capital and capital fund.
- (g) To prepare and implement the necessary programs to make insurance business systematic, regular, competitive and credible.
- (h) To conduct or make conducted Study, research, training, orientation or outreach program for the development and expansion of insurance business.
- (i) To make decision on complaint filed by the insured against insurer regarding to the settlement of liability of the insurer.
- (j) To settle the disputes concerning various parties of the Insurance



Suggested Answers of Membership Examinations

- (k) To take necessary work in relation to risk minimization of Insurance business.
- (l) To prepare and implement the programs for the development of human resources and for the promotion of Insurance education for the development of insurance business.
- (m) Formulate and implement insurance business promotion program to make access of insurance to all the people.
- (n) To promote micro insurance business to make access of insurance to low-income group people.
- (o) To coordinate, cooperate and exchange of information with other government and non-governmental entity, for the regulation, inspection, supervision and development of insurance business
- (p) To organize, make organized and cooperate with other organization on study, research and training program related Insurance regulatory entity of foreign nations, international organization and insurance.
- (q) To represent on behalf of Government of Nepal or Authority in International organization relating to regulation of Insurance and obtain membership of such organization.
- (r) To operate other necessary work of Insured interest protection Fund
- (s) Coordinate with the state in relation to insurance.
- (t) To undertake necessary act in the capacity of regulatory entity of Insurance.

6. Answer the following questions:

(3×5=15)

- a) Point out the acts not to be done by International Financial Entities with the definition of "License holder Entity." As per International Financial Transactions Act, 2054 (1998).

Answer: 6(a)

"License holder Entity" means an international financial entity authorized to carry out international financial transactions under this Act.

As per section 5 of International Financial Transactions Act, 2054 the acts not to be done by International Financial Entities are as follows:

- (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.

- b) State the matters to be mentioned in the notice on invitation to bid or prequalification proposal under the Public Procurement Act, 2063.

Answer: 6(b)

Section 14 of the Public Procurement Act, 2063 prescribes the matters to be mentioned in the notice on invitation to bid or prequalification proposal as follows:

- (i) A notice for invitation to bids or prequalification proposals shall have to be published in a daily newspaper of national circulation and such notice shall be placed in the website of the entity or that of the Public Procurement Monitoring Office.
- (ii) The matters to be mentioned in the notice on invitation to bid or prequalification proposal are:



- (a) The Name and address of the Public Entity inviting bid,
- (b) The nature of and time limit for procurement work and the place of delivery of the goods to be supplied, the services to be delivered and the construction work to be performed.
- (c) If bid security is required, the amount and validity period thereof.
- (d) Where bid security is required, the amount and validity period of the bid.
- (e) The place, manner of obtaining the bidding documents or prequalification documents and the fees charged thereof.
- (f) The place, manner, the deadline for the submission or forwarding of the bidding documents or prequalification documents.
- (g) The place, date and time for the opening of bids, and matter that the bidders or their authorized agents shall be invited to attend the opening of bids, and
- (h) Other matters as prescribed.

c) How the cooperative societies can allocate their surplus in various funds?

Answer: 6(c)

Cooperative societies shall allocate their surplus in various funds as follows

1. General Reserve

As per section 68 of the Cooperative Act 2074, at least 25 percent of net saving (i.e. net profit) shall be appropriated to general reserve fund.

2. Capital redemption reserve fund

As per section 69 of the Cooperative Act 2074, at least 25 percent of residual amount after appropriating the amount for general reserve fund under section 68, shall be appropriated to capital redemption reserve fund.

3. Cooperative promotion fund

As per section 70 of the Cooperative Act 2074, at least 0.5 percent of residual amount after appropriating the amount for general reserve fund under section 68, shall be appropriated to cooperative promotion fund.

4. Other Funds

As per the section 71 of the of the Act, the cooperative societies shall appropriate in other fund, other than the fund prescribed under section 68, 69 & 70 of the Act as prescribed.

As per rule 27 of the Cooperative Rules 2075, after appropriating the amount for funds under section 68, 69 & 70 of the Act, at least five percent of the residual amount shall be distributed to following funds:

- a. Cooperative Education Fund
- b. Share Dividend Fund
- c. Employee Bonus Fund
- d. Cooperative Development Fund
- e. Loss Recovery Fund
- f. Community Development Fund
- g. Stabilization Fund approved by general meeting under sub-sec 5 of section 103 of the Act.
- h. Other Risk Management Fund

7. Write short notes on the following:



- a) Circumstances a court can appoint Arbitrator(s) as per the Arbitration Act, 2055.

4

Answer: 7(a)

Section 7 of the Arbitration Act, 2055 provides for the appointment of Arbitrators by the Court asunder:

- 1) Any party of the Arbitral dispute may submit an application to the High Court for the appointment of arbitrator(s) in the following circumstances:
 - (a) In case no arbitrator can be appointed upon following the procedure contained in the agreement.
 - (b) In case the agreement does not mention anything about the appointment of arbitrators.
- 2) The application to be filed pursuant to sub-section (1) above shall explicitly mention the full name, address, occupation and the field of specialization of at least three persons who can be appointed as arbitrators, and also be accompanied by a copy of the agreement.
- 3) Upon receiving of an application pursuant to sub-section (1) above, the High Court shall notify all the parties and shall appoint arbitrators from the persons proposed by them in the case of consensus in that connection, and in the case of fail to consensus, the persons deemed appropriate by the High Court, within 60 days from the date of receipt of the application. The decision taken by the court in that manner shall be final.

- b) Provision regarding the audit of financial intermediary.

3

Answer: 7(b)

Section 26 of the Act Relating to Institutions Acting as Financial Intermediary, 2055 has prescribed following provisions regarding the audit of the financial intermediary:

- (1) The institution shall maintain separate accounts of the activities relating to financial intermediation, and prepare a balance sheet for each financial year, and get the same audited by any recognized auditor appointed by the general meeting of the institution within 6 months after the expiration of the financial year.
- (2) In appointing an auditor pursuant to Sub-section (1), the same person or firm shall not be appointed for more than 3 consecutive times.
- (3) The remuneration of the auditor shall be as specified by the general meeting of the institution.
- (4) If the Bank so wishes, it may at any time examine or cause to be examined the accounts of the institution.

- c) Person residing in Nepal pursuant to Foreign Exchange (Regulation) Act, 2019.

3

Answer: 7(c)

As per section 2(n) of the Foreign Exchange (Regulation) Act 2019, "Person residing in Nepal" means any of the following persons:

- (1) A citizen of Nepal other than a citizen of Nepal who is residing outside Nepal for a period exceeding the period specified by the Nepal Rastra Bank by publishing and broadcasting a public notice in the course of employment, trade or any other business or for any other purpose,
- (2) A non-Nepalese citizen who is residing in Nepal for a period exceeding the period specified by the Nepal Rastra Bank by publishing and broadcasting a public notice in the course of employment, trade or any other business.



Advanced Taxation

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

1. Swat Cement Ltd. a Cement manufacturing entity is operating since 5 years in Arghakhanchi District, an underdeveloped area in Nepal. The following information has been extracted from the financial statements for the year 2079/80:

Particulars	Expenses Rs.	Particulars	Income Rs.
Opening stock	3,080,000.00	Export sales	32,000,000.00
Factory salary, wages and others	11,000,000.00	Local Sales to dealers	12,000,000.00
Loader and excavation expenses	1,000,000.00	Sales Return	(4,520,000.00)
Factory Building repairs	1,000,000.00	Local Trading	5,000,000.00
Plant & Machinery repairs	3,500,000.00	Transport services within Nepal	7,181,250.00
Factory Insurance	100,000.00	Incentive on export	1,200,000.00
Tractor running expenses	2,400,000.00	Bonus written back	2,000,000.00
Cement packing charge	1,000,000.00	Insurance claim	6,000,000.00
Mines expenses	5,500,000.00	VAT refund	250,000.00
Other Direct expenses	1,500,000.00	Bad debt recovered from trading business	200,000.00
Depreciation	11,000,000.00	Gain on sale of generator set	50,000.00
Admin staff salary & allowance	4,000,000.00	Interest income from local Debtors	300,000.00
Rates & taxes	125,000.00	Closing stock	4,060,000.00
Interest	1,200,000.00		
Business promotion	2,400,000.00		
Donation	300,000.00		
Cash discount	700,000.00		



Suggested Answers of CA Membership Examinations

Office expense	2,500,000.00		
Office Vehicle repairs	340,000.00		
Net Profit before tax	13,076,250.00		
Total	65,721,250.00		65,721,250.00

Additional information:

- a) Sales return includes the cement return of Rs. 4,520,000 including VAT. The export amount includes an export order of Rs. 5,000,000 for which cement delivery could not be done in fiscal year. Similar obligation last year was Rs. 6,000,000. The company has practiced to add a profit margin of 20 % to its cost of production.
- b) Government incentive on export relating to the export for the FY 2078/79 was requested in FY 2078/79 but received during FY 2079/80.
- c) Bonus written back is the amount provisioned in FY 2078/79 relating to the welfare fund which is not required and reversed. The company books the provision for Bonus under the salary and allowance in compliance with the Labour Act.
- d) The company claimed for insurance amount of Rs. 120,000,000 which includes loss of stocks of Rs. 9,000,000 and Rs. 111,000,000 towards cost of repair and maintenance of damaged machinery. The insurance company has assessed and provided fifty per cent of the claimed amount of each based on actual loss.
- e) Bad debt recovered includes amount which was allowed as expenses in previous year.
- f) VAT refund of Rs. 250,000 is received during the year which was claimed under section 24 of VAT Act.
- g) Opening stock includes machinery repair & improvement expenses of Rs. 320,000
- h) Closing stock includes the sales returned goods and 50% of opening stock. Stock does not include the trading stock.
- i) Tractor running expenses includes cost of petrol to run a generator set of Rs. 33,900 including VAT which has been sold in Jestha 2080 for Rs. 150,000 excluding VAT.
- j) Donation includes the following payments
 - i) Paid to local Municipality Rs. 75,000
 - ii) Paid to Local Users Committee for construction work Rs. 225,000
- p) Office expenses also include the following:
 - i) 60% of VAT paid on Purchase of Delivery Van. The Van was purchased for Rs. 1,000,000 on 15 Poush 2079.
 - ii) Machine transportation expenses of Rs. 100,000 was incurred from custom point to the factory. The transaction value of the machine was Rs. 12,200,000, imported on Ashad 25, 2080 and installed on Shrawan 25, 2080.
 - iii) Customer entertainment expenses Rs. 113,000 including VAT.
- q) Interest relates to Bank Loan availed for establishment of a Mines research company which is 100% subsidiary of Swat Cement Ltd.
- r) Opening depreciation base for the Property, Plant & Equipment was as follows:



Suggested Answers of CA Membership Examinations

Block	Amount Rs.
A	20,000,000
B	5,000,000
C	4,500,000
D	48,075,000

- s) The Company has not submitted any estimated tax return.
t) If any income or expense is not specified or requires to be assessed it can be calculated based on gross revenue ratio.

Based on the above information, ascertain the following as per Income Tax Act, 2058:

- a) Total gross local sales, export sales and other income separately **4**
b) Taxable income under each nature of income as per gross income calculated under (a) above. **12**
c) Total tax liability for the Income Year 2079/80 including fees & interest **4**

Answer:1

Particulars	Export	Local	Other income	Total
a) Total gross local sales, export sales and other income				
Sales (WN 1) –	33,000,000	13,000,000	-	46,000,000
Transport Service			7,181,250	7,181,250
Incentive on export (WN 2)	-	-	-	-
Insurance claimed received	-	60,000,000		60,000,000
Bonus Written Back	1,241,039	488,894	270,067	2,000,000
VAT refund	-	-	-	-
Bad debt recovered	124,104	48,889	27,007	200,000
Gain on Sale of Generator	-	-	-	-
Interest Income	-	193,249	106,751	300,000
Total income	34,365,143	73,731,032	7,585,075	115,681,250
b) Taxable income under each nature of income				
Eligible Expenditure				
Interest Expenses section 14 (WN 5)	-	-	-	-
Cost of sales under section 15 (WN 6)	15,726,523.16	6,195,031.29	0.00	21,921,554.45
Depreciation under section 19 (WN 7)	7,482,095.45	2,947,492.15	3,555,412.40	13,985,000.00
Repair and Maintenance section 16 (WN 8)	1,773,553.55	698,672.61	842,773.84	3,315,000.00
General deduction under section 13 (WN 9)	5,100,772.11	2,009,395.08	2,423,832.81	9,534,000.00

Commented [md1]: In assumption it is allocated between local and other income See WN 3



Suggested Answers of CA Membership Examinations

Total deduction before interest, R & D & Donation under 12	30,082,944.28	11,850,591.12	6,822,019.05	48,755,554.45
Donation (WN 10)				
Total allowable expenses	30,123,069.93	11,866,398.19	6,841,086.33	48,830,554.45
Taxable income	2,876,930.07	1,133,601.81	8,840,163.67	12,850,695.55
c) Total tax liability for the Income Year 2079/80 including fees & interest				
Tax rate (Note 2)	6%	6%	25%	
Total tax	172,615.80	68,016.11	2,210,040.92	2,450,672.83
Advance tax Paid				-
Remaining tax payable				2,450,672.83
Fees under section 117 for non-submission of estimated tax return	Rs. 5000 or 0.01% of assessable income, whichever is higher			5,000.00
Fees under section 117 for not filling tax return	Rs. 100 per month or 0.1% Per annum of total income, whichever is higher, there is 4 month late filling			20,560.42
Interest under section 118 (Note 4)				173,691.44
Interest under 119	Four month late			122,533.64
Net tax payable				2,772,458.33

Working Notes (W.N.)

W.N: 1 (Local sales)

As given sales to supplier	12,000,000
Trading as given	5,000,000
Less sales return	4,000,000 (4,520,000/1.13)
Actual sales	13,000,000

W.N. 1 (Export)

As given	32,000,000
Less: Sales of CY where risk is transferred next year	5,000,000
Add: Sales of PY where risk was transferred this year	<u>6,000,000</u>
Actual export	33,000,000



W.N. 2: Incentive Income

It is assumed that the right to receive the payment of export incentive for last year was established during the year incentive claim was lodged with Government. Since the company has to follow the accrual basis of accounting, the amount had to be included in previous year.

W.N. 3

- The best assumption for claim of loss of stock and repair cost is related to domestic sales only.
- In case of bonus write back, it would be appropriate to allocate income based on expenses charged last year. In absence of such information, income is allocated across all three income.
- Bad debt is from domestic sales and other income, therefore, it is allocated between these two.
- Interest is received from domestic debtors, therefore, income is allocated between the domestic sales and other income.

WN. 4: Ratio of Income

Particulars	Amount (Rs.)	% in total	Amount (Rs.)	%
Export	33,000,000.00	53.50%	33,000,000.00	71.74%
Local	13,000,000.00	21.08%	13,000,000.00	28.26%
Other	15,681,250.00	25.42%		
Total	61,681,250.00	100.00%	46,000,000.00	100.00%

WN. 5: Interest Expense

Interest incurred for Capital Investment is not Deductible u/s: 14 of Income Tax Act, 2058.

WN. 6: Cost of sales

Particulars	Amount (Rs.)
Opening Stock (note I)	8,214,545.45
Factory Salary, wages and others	11,000,000.00
Loader and excavation expenses	1,000,000.00
Factory Insurance	100,000.00
Tractor running expenses (note II)	2,396,100.00
Cement package charge	1,000,000.00
Mines expenses	5,500,000.00
Other Direct expenses	1,500,000.00
Less Closing (Note III)	(4,289,091.00)
	21,921,554.45
Export	15,726,523.16
Local	6,195,031.29

**Note****(I) Opening Stock**

As Given	3,080,000.00
Less :Repair & Maintenance Expenses	(320,000.00)
Add: last year's stock booked under sales	<u>5,454,545.45 (6,000,000/1.1)</u>
Actual	8,214,545.45

(II) Petrol expense is deductible expenses but VAT Rs. 3,900 is adjusted with VAT account.

(III) Closing Stock

As given	4,060,000.00
Less: Stock on which insurance claim is obtained	(4,500,000)
Less VAT Included in Sales Return	(520,000) (4,520,000-4,000,000)
Add: Order stock booked under sales	4,545,454.55 (5,000,000/1.10)
(assuming the book stock is adjusted for CY shown export sales)	
Add last year's stock booked under sales	5,454,545.45 (6,000,000/1.1)
Less R & M Expenses part of Opening stock.	<u>(160,000) (320,000 * 50%)</u>

Commented [md2]: Please review the calculation

WN. 7: Depreciation

Particulars	Block A	Block B	Block C	Block D	Total
Opening Depreciation base	20,000,000	5,000,000	4,500,000	48,075,000	77,575,000
Addition during the year	-	-	1,078,000	-	1,078,000
Disposal	-	-	-	150,000	
Depreciation base	20,000,000	5,000,000	5,578,000	47,925,000	78,503,000
Depreciation rate (Normal rate)	5%	25%	20%	15%	
Normal Depreciation	1,000,000	1,250,000	1,115,600	7,188,750	10,554,350
1/3 additional depreciation for the special industry	333,333	416,667	371,867	2,396,250	
Total Depreciation	1,333,333	1,666,667	1,487,467	9,585,000	14,072,467



Suggested Answers of CA Membership Examinations

Particulars	Block A	Block B	Block C	Block D	Total
Depreciation base	20,000,000	5,000,000	4,500,000	48,925,000	78,425,000
7 % of depreciation base	1,400,000	350,000	315,000	3,424,750	5,489,750
Actual	1,000,000	-	340,000	2,000,000	3,340,000
Allowable	1,000,000	-	315,000	2,000,000	3,315,000

WN. 8: Repair & Maintenance

Out of total repair cost of Machinery Rs. 3,500,000, supporting documents of Rs. 1,500,000 out of total repairs Rs. 3,000,000 for damaged machinery was not produced, so it is not deductible.

WN. 9: General Deduction

Particulars	Amount (Rs.)
Admin staff salary & allowance	4,000,000.00
Rates & taxes	125,000.00
Business promotion	2,400,000.00
Cash discount	700,000.00
Office expenses	2,500,000.00
VAT on Delivery VAT, 100 % VAT can be claimed (1000000*13%*60%)	(78,000.00)
Machine transportation expenses	(100,000.00)
VAT on Customer Entertainment expenses	(13,000.00)
Total	9,534,000.00
Export	5,100,772.11
Local	2,009,395.08
Other income	2,423,832.81

WN: 10 Donation expense

Donation and payment made to local user committee is not deductible under any provisions of the Act.

WN 11: Effective tax rate

Particulars	Provision	Export	Local
	Schedule 1		
Normal Rate	Section 2(1)	25%	25%
Less: Exemption @ 20%	U/s 11(2b)(b)	5%	5%
Rate for special industry		20%	20%
Less: Exemption @ 20%	U/s 11(3e)(b)	4%	0
Balance		16%	



Suggested Answers of CA Membership Examinations

Less: additional Exemption @ 50% on balance	U/s 11(3e)(c)	8%	
Effective Tax Rate (option I)		8%	20%
Rate for Normal industry as above		20%	20%
Exemption: under developed area upto 10 Years, 30 % of applicable tax rate (Option II)	11(3)(Kha)	6%	6%

Computation of effective rate applicable:

Option II: As per Section 11(3)(Kha) of Income tax act, 2058 any special industry established in under-developed area shall be subjected to tax rebate for up to ten years from the date of commencement of the commercial production or transaction by that industry started operating. The tax rate will be liable only for 30% of the prevailing tax resulting into tax liability of 6%.

WN 12: Interest under section 118

Particulars		Income Tax Payable	90% of Income Tax Payable	Interest U/s 118
Upto Poush	40%	980,269.13	882,242.22	33,084.08
Upto Chaitra	70%	1,715,470.98	1,543,923.88	57,897.15
Upto Ashad	100%	2,450,672.83	2,205,605.55	82,710.21
Total		2,450,672.83	0.00	173,691.44

2.

a) Discuss the applicability of loss set off in following cases as per Income Tax Act:

- During the income year 2079/80, Mrs. Rama Mulepati has business income from Bhutan Rs.855,000 and investment loss in Nepal Rs. 475,000.
- RR enterprise, a sole proprietorship firm owned by Mr. Ramesh Rupakheti has assessed business loss of Rs. 570,000 till income year 2078/79 and the firm is converted into Private Limited Company with effective from 1 Shrawan 2080. Mr. Ramesh Rupakheti is the only shareholder of the company so converted.
- Kathmandu Bank Limited took over Pokhara Bank Limited on 31st Ashadh 2080. Pokhara Bank Limited had loss of Rs. 25,000,000 just before the merger.
- Swastik Industries Pvt. Ltd. has obtained full exemption in tax till FY 2078/79. The company has unsettled loss of Rs. 5,000,000 from last 3 years back. In FY 2079/80, the company has taxable profit of Rs. 8,000,000.
- Mr. Pratik has incurred loss of Rs.500,000 in hotel business in FY 2079/80. He has made profit of Rs.800,000 in trading business though in same year.
- A hydroelectricity generation project has loss of Rs. 2,400,000 unsettled in the last 8 years. The project has secured taxable income of Rs. 2,000,000 in FY 2079/80.
- A partnership firm has three partners Mr. A, Mr. B and Mr. C having ownership in the ratio of 20:20:60 respectively. Mr. C sold his ownership to his friend Dr. D on Baishakh 1, 2080. The firm has loss of Rs. 500,000 during the period of Shrawan 1, 2079 to Baishakh 1, 2080.



Answer:2 (a)

- i. Investment loss cannot be set off with business income. Domestic investment loss can be set off within 7 years from domestic or foreign investment income only.
 - ii. Proprietorship firm is being treated as natural person whereas company is an entity with separate legal existence. Since business loss of the same person can be offset from the business income of the same person, and the persons are different loss cannot be offset.
 - iii. As per the special provision provided by section 47ka for BFs and Insurance, loss of the entity not in existence due to merger which could not be deducted, such loss shall be deducted on pro rata in the upcoming seven years. So, the loss of Rs.2.5 crore just before the merger can be set off in the coming seven years. Assuming that the letter of intent for merger is registered with IRD within 2079 Ashad end. If it is registered later on, then there will not be set off of losses.
 - iv. As per section 20(8), if any person has received full tax exemption in respect of income of business or investment in any income year, the loss incurred in that income year shall not be carried forward to upcoming income year. Thus, the loss of Rs. 50 lakh cannot be deducted in FY 2078/79 and upcoming years.
 - v. According to the section 20 (1), in computing the income earned by any person from any business or investment in an income year, such person may deduct the loss suffered by that person from any other business and not deducted in that year. Hence, the loss of hotel business can be set off with profit of trading business.
 - vi. As per section 20(1), in the case of a project on construction of powerhouse and generation and transmission of electricity, loss not deducted in the last twelve income years can be deducted while computing the income in the income year. Hence, the loss of Rs. 20 lakh can be set off in 2078/79 and the remaining loss can be carried up to next 3 years.
 - vii. This is the case of change in control as per section 57. So, the firm shall not be allowed to deduct the loss suffered prior to the change in ownership, pursuant to Section 20.
- b) Ms. Hema Thakali divorced on 25 Mamsir, 2075. As part of divorce settlement, she got a house property which was bought at Rs. 10 million (market value Rs. 15 million) as compensation from her husband. She owns shares which she purchased for Rs. 1 million (market value Rs. 1.5 million). She left Nepal to settle abroad after the divorce settlement.
- Her only surviving parent died and she inherited a property which was purchased at Rs. 30 million with market value of Rs. 80 million on the date of inheritance. After staying abroad for few years, she came back to Nepal in Bhadra 2080. She sold the shares for Rs. 2 million and the building she got as part of her divorce settlement for Rs. 25 million.
- The inherited property has been taken over by the government as part of the road expansion plan after providing compensation of Rs. 78 million. She bought another property for Rs. 82 million within 6 months from the date of takeover of inherited property.

What are the tax consequences on the above transactions? Mention the incomings and outgoings value on each of the transactions.

7



Answer: 2(b)

Following will be the incomings in each of situations for Ms. Hema Thakali with respect to the transactions mentioned above:

Section 43 of Income Tax Act has defined the process and the outcome of the handover of assets between husband, wife or ex-husband and ex-wife. Either of the transferor or transferee shall apply with the concerned Inland Revenue Office, for application of provisions of Section 43. It is assumed that the transferor has applied Sec. 43. Where the Section 43 is applied, the person who acquires the assets through transfer shall be deemed to have incurred an amount equal to the net expense incurred immediately before the disposal. In light of above Ms. Hema Thakali receiving the building as part of settlement the outgoing shall be Rs. 10 million. Her husband on the other hand will not earn income on this transfer because the incoming for him will be equivalent to the cost incurred. When Sec. 43 is not applied, her outgoings will be Rs. 15 million.

As per Section 40 (3) at the time of her becoming non-resident, assets other than land and building situated in Nepal which is considered to have been transferred immediately before the person becoming non-resident. Section 41 further clarifies that the incomings in this case shall be the market value of the assets. Considering the provisions of the Act, in the case of shares, Ms. Hema is said to have realized the incomings from shares for Rs. 1.5 million with outgoing Rs. 1 million, which gives her a gain of Rs. 0.5 million.

In case of death of her father, since she is within three generation and the property is assumed to be either land or shares, at the time of death of her father there will be disposal of asset, but the asset is not treated as taxable asset. And as per Sec. 45, her outgoings will be equal to her father's outgoings for the assets. Therefore, her outgoings for the asset is Rs. 30 million. If we assume it to be business asset or trading stock, then Section 44 applies and the assets is said to have been transferred at market value, equivalent amount is considered as cost to the person receiving the assets. Ms. Hema is said to have incurred the outgoings of Rs. 80 million.

When Ms. Hema returns Nepal and sells the property and shares the incoming and outgoing shall be as follows:

Incomings for land	Rs. 25 million, outgoings	Rs. 10 million (when Sec. 43 had applied, otherwise the outgoings is 15 million)
Incomings for shares	Rs. 2 million, outgoings	Rs. 1.5 million

The property which she inherited got acquired by the government and provided the compensation. Section 46 of the Act provides for situation when a property is disposed involuntarily and within one year similar property is acquired and person applies to the Inland Tax Office for application of this Section then the person need not pay tax at the time of involuntary transfer of assets. Only after the replacement assets is acquired, the gain on sale of assets is computed.

In the given case, Ms. Thakali has purchased the replacement assets within one year, therefore the incoming and cost in this case shall be as follows:

Purchase price of new property	Rs. 82 million
Compensation received	Rs. 78 million
Net expenses for the property immediately before disposal	Rs. 80 million

Incomings= Net expenses for the property immediately before disposal or compensation received whichever is higher = Rs. 80 million



Suggested Answers of CA Membership Examinations

Outgoings of the new asset = Net expenses for the property immediately before disposal + purchase of new property - compensation on disposal
= 80 + 82 - 78 = 84 million

There is no profit or loss at the time of involuntary disposal of property.

- c) Discuss the applicability of withholding Tax in the following cases: **6**
- i) "A telecommunication company in Nepal is providing international communication services to local customers by using facilities of optical fiber and satellite service providers situated outside Nepal. The Company pays fixed charge plus fee based on transmission of information/data periodically against these services."
 - ii) Mr. Ferguson, a European resident wanted to do business in Nepal and accordingly he brought foreign currency amounting to US\$ 50,000 and promoted a one man company and purchased agricultural land in the name of the Company equivalent to US\$ 50,000 at that time. The total amount invested in the Company was Rs. 2,500,000 at the prevailing exchange rate. But, due to various reasons, he could not start his operation for more than 5 years, and so he lost interest in the project and wanted to sell the Company at an agreed price of Rs. 7,500,000 and get the money remitted back to his country.

Answer: 2(c)

- i) As per sec.67(6) (ja) of the Act, payments received by a person who conducts a business of transmitting messages by cable, radio, optical fiber, or satellite communications in respect of the transmission of messages by apparatus established in Nepal, whether or not such messages originate in Nepal is deemed to have source in Nepal. Since in the question the optical and satellite service provider are situated outside Nepal and naturally the equipment are also supposed to be placed outside Nepal, their income has no source in Nepal and is not liable to tax in Nepal. If the equipment is situated in Nepal, then the provider of service shall be liable to tax deduction at source of 5% as per Schedule 1-clause 2(7).
 - ii) It is the case of sales of shares of company.
As per Section 95ka (2), the company not listed in NEPSE shall collect advance tax @ 25% of gain on sale of shares, if the seller is non-resident.
Mr. Ferguson is non-resident, and the gain on disposal is Rs. 50 lakhs
The tax amount is Rs.12,50,000
The company shall collect the amount from Mr. Ferguson and pay the tax amount in concerned inland revenue office. There shall be no certification of share register without payment of such tax
- 3.
- a) A firm engaged in import and trading of computer parts seeks taxation service from D.D and & Associates, a Chartered Accountants firm. The importer has not maintained the books of accounts but it has had regular service (preparing VAT statements and annual statutory audits) from an auditor for a long time. The firm seeks services of reconciling under-invoicing of the imports to the overbilling on the sales amount. Provide your expert views highlighting the provisions of the ICAN Code of Ethics whether the firm can accept the service and whether the existing auditor complying the code of ethics.



Answer: 3 (a)

As per the ICAN Code of Ethics, a firm or a network firm shall not provide tax services that involve assisting in the resolution of tax disputes to an audit client if:

- (a) The services involve acting as an advocate for the audit client before a public tribunal or court in the resolution of a tax matter; and
- (b) The amounts involved are material to the financial statements on which the firm will express an opinion

Further, taxation services can be acceptable if the member can provide the service to maintain the quality. The reconciliation between the under-invoicing of imported values and overbilling sales amount is not possible, auditor is not the magician as asked. It may materially affect the financial statements of the importer. If there are circumstances that the under-invoicing and over billing amount will constitute the portion of the financial statements, the firm cannot provide the taxation service to the client.

- b) Infinity Loop Tech Private Limited, a newly established IT Company, has made provision for Bonus as per Bonus Act, 2030 at the rate of 10% of net profit before provisions. Management of the Company is of the view that since this is a statutory provision, the same shall be claimed as deduction under income tax act without recourse to whether the same has been distributed or not.

You are required to advise management of the Company on income tax treatment of Bonus provision as per income tax act, 2058 and circulars and directives issued by Internal Revenue Department.

Answer:3(b)

Inland Revenue Department has issued below circular for treatment of Bonus provision as per Bonus Act, 2030 for the purpose of Income Tax:

- a. The Bonus provision shall be 10% of Net profit after charging Bonus provision.
- b. Such Bonus provision should be distributed in the immediate next year. In case where Government of Nepal's approval is required, it shall be distributed in the year of obtaining approval.
- c. If whole or part of Bonus provision is not distributed in the immediate next year or in the year of obtaining approval from GON, then such undistributed amount shall be treated as income in such immediate next year
- d. However, out of undistributed Bonus, the amount deposited in National Welfare Fund, shall not be considered as income.



- 4.
- a. M/s Sudesh Liquors Pvt. Ltd. is liquor manufacturer and has been duly registered as per tax law. The details of its purchases, production, issue for production and sales for the month of Falgun 2080 are as follows:

Particulars	Quantity	Rate	Other details
Opening stock of molasses	50 tonne	Rs. 2,800 per tonne	
Purchase of molasses from molasses manufacturer	200 tonne	Rs. 2,900 per tonne	Rate of excise duty- Rs. 105 per quintal, VAT is applicable
Issue of molasses to production units	220 tonne		
Purchase of auxiliary raw materials and packing materials	100 tonne	Rs. 1,000 per tonne	Rate of excise duty- Rs. 10 per quintal, VAT is applicable
Closing stock of molasses	20 tonne		FIFO method of valuation

- i. The input-output ratio of alcohol is 19-liter alcohol per quintal of molasses. The rate of excise duty is Rs. 576 per liter.
- ii. All the auxiliary raw materials and packing materials are used during production.
- iii. The selling price of alcohol is determined as cost plus gross profit margin of 10%. The manufacturing overhead is Rs. 40,500,000 for the month.
- iv. All the finished goods are issued from factory unit and sold to distributor during the month.
- v. The company purchased a car for Rs. 8,000,000 during the month. It is expected that the car is not used wholly in business and will be used by the Managing Director as well. The petrol expense for the car is Rs. 5,000 in abbreviated tax invoice and Rs. 10,000 with proper Value Added Tax invoice.
- vi. The company purchased generator. Petrol for the generator is Rs. 25,000 during the month with a proper VAT invoice.



Suggested Answers of CA Membership Examinations

- vii. The transportation cost on distribution of goods for the month was Rs. 8 lakhs, of which Rs. 2 lakhs were paid to the transport operator registered for VAT and the remaining amount was paid to the transport operator registered only in PAN.
- viii. The company constructed its office cum business building. The total cost of the building is Rs. 8,000,000 of which Rs. 1,000,000 is related to labour for which there is no Value Added Tax invoice. There was an electricity expense of Rs. 200,000; building permit fee paid to local level of Rs. 500,000 and supervisory cost of Rs. 300,000 that is not supported by Value Added Tax invoice. There is a VAT invoice for all other costs. There is no payment of VAT related to the cost of building.
- All above items unless specified are exclusive of VAT.

You are required to:

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- Compute Excise duty on production of alcohol.
- Compute Value Added Tax liability for the month.

Answer: 4(a)

i. Calculation of excise duty

Particulars	Details	Amount (Rs.)
Loss of molasses	10 tonne	
Excise duty payable on lost molasses	10 tonne * 1000 kg per tonne /100 kg per quintal * 576 less excise credit [10 *10* 105]	1,083,900
Excise duty credit (On raw materials used for production of alcohol that are issued from factory units)	220 tonne * 1000 kg per tonne /100 kg per quintal * 105 (No credit on excise paid for auxiliary raw materials and packing materials)	231,000
Excise duty on alcohol issued from factory units	220 tonne * 1000 kg per tonne /100 kg per quintal * 19 liter per quintal * Rs. 576 per liter	24,076,800
Payable excise duty	24,076,800+1,094,400- 231,000	24,940,200



ii.

a) VAT collected on sales

Note: VAT is not calculated on deemed production of alcohol:

Particulars	Amount (Rs.)	Details	Note
Cost of Raw materials consumed	633,000	50* 2800 plus 170 * 2900 Excise do not form part cost, as credit is available	
Cost of auxiliary raw materials and packing materials	100,000		
Excise paid on auxiliary raw materials and packing materials	10,000		
Excise duty on production of alcohol	24,076,800		
Production overhead	40,500,000		
Cost of production	65,319,800		
Margin @ 10%	6,531,980		
Selling Price (sales value)	71,851,780		
VAT @ 13%	9,340,731		

Determination of selling price of alcohol:

b) VAT paid on purchase of raw materials and auxiliary raw materials

Particulars	Value before excise duty	Excise duty	Taxable Value	VAT
Purchase of molasses	200 * 2900 = 580,000	210,000	790,000	102,700
Auxiliary raw materials and packing materials	100 * 1000 = 100,000	10,000	110,000	14,300
Total				117,000



c) Payable Reverse VAT

Particulars	Amount (Rs.)	Remarks
Reverse VAT on Transport service	78,000	600,000 * 13%
Reverse VAT on Building Construction	130,000	VAT is not applicable on electricity expense and building permit fee
Labor without VAT bill	Nil	
Building Permit Fee	Nil	
Electricity expense	39,000	
Supervisory Cost		

d) VAT Liability Calculation

Particulars	Amount (Rs.)	Remarks
Taxable Sales	9,340,731	
Total Output VAT	9,340,731	
VAT raw materials, aux. raw materials and packing materials	117,000	
Purchase of car	416,000	partial (1,040,000* 40%)
Petrol for vehicle (whether or not proper VAT invoice)	-	No credit
Petrol for generator	3,250	3250
VAT credit on Reverse VAT paid	78,000	transport cost, assuming it has been paid before filing return
Total credit	614,250	
VAT Receivable	8,726,481	



Suggested Answers of CA Membership Examinations

- b. Abroad Supplier is importing various products from different countries and selling in Nepal. During the month of Poush, 2080, it has the following transactions.

HS Code	Product Particular	Import Price in Rs.			Sales before VAT
		India	China land by	Bangladesh by	
2101.11.00	Extracts, essences and concentrates of coffee	640,000.00	560,000.00	320,000.00	2,000,000.00
2304.00.00	Oil Cakes & other Solid residues	2,380,000.00	1,700,000.00	2,720,000.00	7,600,000.00
2306.10.00	Oil Cakes of Cotton seeds	1,050,000.00	262,500.00	350,000.00	1,870,000.00

Additional information of its transactions

- Goods were imported from three consignments, i.e., one from each country during the month. The associated cost relating to import were as follows:

Particulars	India	China	Bangladesh
The transportation costs up to the customs point, equivalent Rs. paid to foreign transporters	160,000	100,000	120,000
Insurance premiums paid to Nepal Insurance for all three products	No insured	22,600	28,250
Transportation cost including VAT from Customs Point to warehouse for all three products	56,500	22,600	33,900

The goods were transported to Nepal from India and China by trucks and from Bangladesh by ships and trucks.

- The integrated tariff rate published by the Customs Department presents the following rates:

HS Code	Product Particular	Unit	Custom rate		Excise Duty rate	Agricultural Improvement Fees	VAT
			SAARC	Other			
2101.11.00	Extracts, essences and concentrates of coffee	KG	11.25	30	10		13
2304.00.00	Oil Cakes & other Solid residues	KG	6	10		9	



Suggested Answers of CA Membership Examinations

2306.10.00	Oil Cakes of Cotton seeds	KG	6	10		9	13
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- In addition to the cost of the imports, the following expenditures exclusive of VAT were incurred during the month:
 - Loading & unloading wages paid Rs. 90,000
 - Consultancy service of Rs. 500,000 was paid to XY Overseas Service Pvt. Ltd. for providing expert views to import goods from foreign countries.
 - Entertainment expense incurred on wholesalers include Rs. 70,000 (with VAT) including whisky purchase of Rs. 10,000.
- Opening VAT Payable is Rs. 120,000

The suppliers ask you to calculate customs duty, excise duty, any other fees and VAT payable at the customs points and excise duty and VAT be payable or receivable in the next month.

10

Answer: 4 (b)

i) Calculation of Custom Duty, Excise duty and VAT Payable at the Customs:

Goods imported Country	Customs Duty	Agricultural Improvement fees	Excise duty	VAT
India (WN 1)	75,550.47	323,922.63	74,711.02	258661.75
China (WN 2)	175,992.07	185,027.38	76,263.23	148,022.16
Bangladesh	229,618.58	-	37,122.71	103,378.42
Total payable at Customs Office	481,161.12	508,950.01	188,096.96	510,062.33

ii) Calculation of VAT Payable/receivable for the month

Particulars	Taxable	Tax exempt	VAT Rs.	Remarks
Total sales	3,870,000	7,600,000	503,100	ratio: 34 % & 66 %
VAT Paid on imported goods (refer i)			(510,062.33)	
Freight from custom point to the warehouse	100,000	0	(4,420.00)	13000*34%
Insurance	45,000	0	(1,989.00)	45000*.13*.34
Loading & unloading	--	90,000	-	
Consultancy Expenses	500000	0	(22,100.00)	500000*.13*.34
Entertainment Expense	70,000	0	-	no credit available



Suggested Answers of CA Membership Examinations

Payable/(receivable) during the month			(35,471.33)	
Opening Receivable			-	
Net receivable			(35,471.33)	

As per section 3 of the Excise Act, 2058, excise duty paid cannot claimed on such product.

WN 1: Duties for goods imported from India

Particulars	Extracts, essences and concentrates of coffee	Oil Cakes & other Solid residues	Oil Cakes of Cotton seeds	Total
Total Import Price	640,000.00	2,380,000.00	1,050,000.00	4,070,000.00
Transportation cost	25,159.71	93,562.65	41,277.64	160,000.00
Insurance 1 % of import price as given	6,400.00	23,800.00	10,500.00	40,700.00
Total transaction value	671,559.71	2,497,362.65	1,101,777.64	4,270,700.00
Custom duty or Agriculture Improvement fee rate	11.25%	6%	6%	
Custom duty or Agriculture Improvement fee	75,550.47	149,841.76	66,106.66	399,473.09
Value for Excise duty	747,110.17	2,647,204.41	1,167,884.30	4,670,173.09
Excise duty rate	10%	0%	0	
Excise duty	74,711.02	-	-	74,711.02
Value for VAT	821,821.19	2,647,204.41	1,167,884.30	
VAT	106,836.75	exempt	151,825	258,661.75

WN 2. Duties for goods imported from China

Particulars	Extracts, essences and concentrates of coffee	Oil Cakes & other Solid residues	Oil Cakes of Cotton seeds	Total
Total Import Price	560,000.00	1,700,000.00	262,500.00	2,522,500.00
Transportation cost	22,200.20	67,393.46	10,406.34	100,000.00
Insurance (ratio as per import price) before VAT	4,440.04	13,478.69	2,081.27	20,000.00



Suggested Answers of CA Membership Examinations

Total transaction value	586,640.24	1,780,872.15	274,987.61	2,642,500.00
Custom duty or Agriculture Improvement fee rate	30.00%	9%	9%	
Custom duty or Agriculture Improvement fee	175,992.07	160,278.49	24,748.89	361,019.45
Value for Excise duty	762,632.31	1,941,150.64	299,736.50	3,003,519.45
Excise duty rate	10%	0%	0	
Excise duty	76,263.23	-	-	76,263.23
Value for VAT	838,895.54	1,941,150.64	299,736.50	
VAT	109,056.42	exempt	38,965.74	148,022.16

WN 3: Duties for goods imported from Bangladesh

Particulars	Extracts, essences and concentrates of coffee	Oil Cakes & other Solid residues	Oil Cakes of Cotton seeds	Total
Total Import Price	320,000.00	2,720,000.00	350,000.00	3,390,000.00
Transportation cost	11,327.43	96,283.19	12,389.38	100,000.00
Insurance (ratio as per import price) before VAT	2,359.88	20,059.00	2,581.12	25,000.00
Total transaction value	333,687.32	2,836,342.18	364,970.50	3,535,000.00
Custom duty rate	11.25%	6%	6%	
Custom duty	37,539.82	170,180.53	21,898.23	229,618.58
Value for Excise duty	371,227.14	3,006,522.71	386,868.73	3,764,618.58
Excise duty rate	10%	0%	0	
Excise duty	37,122.71	-	-	37,122.71
Value for VAT	408,349.85	3,006,522.71	386,868.73	
VAT	53,085.48	exempt	50,292.94	103,378.42



Note: As per Finance Act, Agricultural Improvement fee will not be applicable for the goods where custom duty is charged. Further, Agricultural improvement fee is levied for the goods imported from India & China by land.

5.
a) Transaction detail of Ramjanaki Foods Private Limited for the month of Magh 2080 are as under:

Particulars	Amount
Export Sales – VAT applicable	2,00,00,000
Local Sales – VAT applicable	1,50,00,000
Export Sales – VAT exempt	40,00,000
Local Sales – VAT exempt	50,00,000
Scrap Sales	5,00,000
Purchase of Material – VAT applicable	1,80,00,000
Purchase of Motor Cycle	2,00,000
Purchase of Car for MD	50,00,000
Purchase of Delivery Van	25,00,000
Accommodation expenses of Engineer	10,000
Food expenses of Engineer	5,000
Refreshment expenses of Engineer	5,000
Petrol Expenses for motorcycle	10,000
Diesel Expenses for car	20,000
Petrol Expenses for car	30,000
Purchase of Newspaper	2,000
Consultancy service paid to a party in India	1,00,000

Other information:

- i) Company has completed construction of office building at the total cost of Rs 1,00,00,000 during Magh 2080. The cost breakup of the building in addition to the above is as under:
- Purchase of VAT applicable goods – Rs 40,00,000
 - Labor Charges Paid to individual workers – Rs 40,00,000
 - Building design expenses paid to VAT registered party – Rs 5,00,000
 - Supervision Charges paid to engineer not registered in VAT – 15,00,000
- ii) Company has received following old bills during the month:
- Raw material purchase bill (VAT applicable) dated 01.04.2079 of Rs 15,00,000
 - Security Bill dated 25.11.2079 of Rs 2,00,000
 - Petrol bill dated 01.06.2080 of Rs 5,000
- iii) Opening VAT credit Rs 25,000.
- iv) All the figures are excluding VAT.
- You are required to calculate the VAT payable for the month of Magh 2080.

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Answer:5(a)

Calculation of VAT Payable for the month of Magh 2080

Particulars	Amount (Rs.)	Remarks
VAT Payable:		
Export Sales – Vatable	0	
Local Sales – Vatable	19,50,000	
Export Sales – VAT exempt	0	
Local Sales – VAT exempt	0	
Scrap Sales	65,000	
Total VAT Payable	20,15,000	
VAT Receivable:		
Purchase of Material – Vatable	23,40,000	
Purchase of Motorcycle	26,000	
Purchase of Car for MD	2,60,000	Only 40% VAT Credit Available
Purchase of Delivery Van	325,000	Full credit
Accommodation expenses of Engineer	1,300	
Food expenses of Engineer	650	
Refreshment expenses of Engineer	0	VAT Credit not allowed for entertainment purpose
Petrol Expenses for motorcycle	0	VAT Credit not allowed
Diesel Expenses for car	2,600	
Petrol Expenses for car	0	VAT Credit not allowed
Purchase of Newspaper	0	Non-Vatable
Consultancy service paid to a party in India	0	Reverse VAT to be claimed in next VAT period
Vatable Raw material purchase bill dated 01.04.2079	0	VAT Credit not allowed being bill more than 12 months old
Security Bill dated 25.11.2079	26,000	VAT Credit allowed being bill less than 12 months old
Petrol bill dated 01.06.2080	0	VAT Credit on petrol not allowed
VAT Credit on Construction Material:		
Purchase of Vatable goods	5,20,000	
Building design expenses	65,000	
Total VAT Receivable	33,71,550	
Ratio of Vatable sales to Total Sales	79.78%	
VAT Credit Allowed	2,845,393.59	
Opening VAT	25,000	
VAT Receivable	855,393.59	
Reverse VAT Charge Adjustment		



Suggested Answers of CA Membership Examinations

Reverse VAT u/s 8(2) : Import of service		
Consultancy service paid to a party in India	13,000	
Reverse VAT u/s 8(2) : Office Building Construction by self having value more than 50 lacs		
Labor Charges Paid to individual workers	5,20,000	
Supervision Charges paid to VAT nonregistered engineer	1,95,000	
Total Reverse VAT to be Paid	7,28,000	

- b) Nepalgunj Bricks Private Limited is a newly established Bricks factory. Discussing relevant provisions of Excise Act, Rules and Directives, please advise management of the Company regarding prerequisites for Excise registration.

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Answer: 5(b)

As per Excise Directives 2068 updated 2075 below are the prerequisites which Nepalgunj Bricks Private Limited is required to fulfil before getting registered for Excise –

- Motor Access road upto factory should be there
- Factory should be of Concrete Cement
- Factory should be fenced with compound wall
- Machineries should have been installed
- Proper godown should be made for proper storage of raw materials
- Separate paces should be made for production process and storage of finished and raw material
- Proper arrangement should have been made for lock and key of factory
- Proper arrangements should have been done for stopping trespassing
- Separate arrangements should have been done for goods production and issuance
- Proper sitting should be made for excise officer
- Factory should be 200 metre far from school, temples, hospital etc.
- Tax Clearance of Excise, VAT and Income Tax should be there
- IP camera should have been installed at production site and finished goods and raw material storage place.

- c) M/s Padam Kumari Traders is a sole proprietorship concern registered under Value Added Tax and deals only in VAT applicable goods. On 1st Magh 2080, there was fire in the warehouse of the firm. The stock of the firm is insured with Sagarmatha Insurance Company Limited. The company lodged insurance claim of Rs. 5,000,000 for the loss of stock, of which the surveyor approved the loss of Rs. 4,500,000 excluding VAT. On 10th Falgun 2080, there was inspection from tax officer in the warehouse of the firm. The tax officer could not physically find the stock of Rs. 5,000,000; which was lost by fire. The tax officer wants to assess VAT on missing stocks as per Rule 40 of Value Added Tax Regulations, 2053. Further, the tax officer also found that there are goods worth (market value) Rs. 4,000,000 (cost of Rs. 3,400,000) which cannot be sold due to expiry of consumption. The tax officer also wants to assess VAT on expired goods. The details presented by the firm proves that the expired goods are from 2079 Ashwin till 2080 Kartik. There is no intimation to tax officer in respect of incidence of fire and expiry of goods.

The Institute of Chartered Accountants of Nepal



Suggested Answers of CA Membership Examinations

You are required to advise the firm on the following matters:

- i) Is the demand of tax officer correct as per Rule 39Ka of the Value Added Tax Regulations, 2053? The firm desires to understand the provision of Rule 39Ka and 40 as well. Calculate the amount of VAT that could be payable as per those provisions.
- ii) Is there any significance of insurance claim in respect of claim of VAT credit on loss of stock as per Rule 39Ka of the Value Added Tax Regulations, 2053?

2

Answer:5 (c)

- i. As per Rule 39Ka, in case of fire, the tax officer shall be intimated within 30 days of happening of event. In case of expiry of goods, the tax officer shall be intimated every quarter on 25th of Kartik, 25th Magh, 25th Baisakh and 25th Shrawan for any expiry happening between Shrawan to Ashoj, Kartik to Poush, Magh to Chaitra and Baisakh to Ashad respectively. If such does not happen, the tax credit on the purchases of goods is not allowed.

As per Rule 40, if there is shortage of stocks at the time of physical inspection by tax officer and the reason cannot be explained by the firm, the tax officer can deem it to be supplied in market value

In the given case, since there is no intimation to tax officer, even though the argument of tax payer is valid that there is physical evidence of fire and documentation that proves expiry of goods, due to failure of the firm to intimate tax officer, the intention of tax authority is correct.

The amount of VAT is-

- a) There will be debit adjustment equivalent to 13% of Rs. 3,400,000. As the VAT claim on expired goods is not available.
 - b) The tax officer will assess VAT on market value of goods lost due to fire, VAT = 650,000
- ii. Yes, there is significance of insurance. If the firm intimates tax officer within the due date as mentioned in Rule 39Ka, and there is insurance for loss of stock, the tax officer will not form an investigation committee to determine the degree of loss, rather they will consider the report from insurance company as valid to allow input VAT credit on losses.

6.

- a) Umer ALrahaman, a Company incorporated in Qatar, registered a subsidiary company on 15 Baishak 2079 in Kathmandu, Nepal. The total capital of the subsidiary company is Rs. 150 million comprising 30 % equity capital and 70 % loan. The loan amount was also provided by the parent company at the rate of 5 % per annum. The subsidiary company seeks your expert views on the following issues to take the benefits of DTAT between Nepal and Qatar.

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Suggested Answers of CA Membership Examinations

- i) Whether the company is treated as a person for the fiscal year 2079/80 as per the income tax act, 2058?
- ii) What is the applicable tax rate?
- iii) What are the tax implication on the interest expenses on the loan financing and dividend paid to equity shareholders?

Answer:6(a)

- i) As per the Income-tax Act, a company person includes the natural person as well as the entity. A company is defined as an entity, and a company established in Nepal is considered a resident company. The subsidiary company is established as per the Nepalese law, so it is treated as a person as per the Income Tax Act, 2058.
 - ii) The tax rate for this company is the same rate that applies to other resident companies. The rate prescribed in schedule 1 and the exemption given under section 11 is considered. As per section 11(3)(g), there is an exemption for the special and tourism-based industry investing more than 100 million. If the subsidiary company is related to a special industry or and tourism-based, it can get benefits on tax rate upto 8 years (5 years full exemptions and 3 years 50 %). Generally, a 25 % tax rate is applicable.
 - iii) As per the treaty between Nepal and Qatar, 10 % tax on interest is applicable whereas a 15 % tax rate is applicable as per the income tax act for other non-treaties countries. TDS @ 10 % will be deducted from the interest payment and deposited into the government revenue account.
In international accounting treatment, the loan financing is considered a direct investment, as per Nepal's law related to the direct investment, interest, and principal can be get backed. So, the interest payable to the parent company is allowable expenses while filling the income tax return. Sec. 14 (2) will apply. When distributing the profits on the equity financing, 5 % tax is applicable.
- b) M/s Everest Nepal Ltd., a wholly owned subsidiary of Everest India Ltd., is a manufacturing company. Everest India Ltd. is wholly owned subsidiary of Everest Australia Ltd. M/s Everest Nepal Ltd. commenced its commercial operation in Nepal from 1st Shrawan 2072. The company's products are sold in domestic market and exported to India (Everest India Ltd.) and Australia (Everest Australia Ltd. and other independent buyers). Considering the competitive environment in India, the FOB price for export to India is determined after giving due effect to the total cost to the ultimate retailer in India and the margin of those involved in supply chain. In case of Australian market, as import from Nepal has incentive from Government of Australia, the FOB price is based on the price negotiated with independent vendor. The selling price per tonne in domestic market is Rs. 280,000, in India is INR 140,000 (exchange rate of Rs. 160 per 100 INR) and in Australia is Australian dollar 2000 (average exchange rate of Rs. 120 per Australian Dollar).
You are required to:
- i) Describe the transfer pricing risk in supplying the goods to associated entity with reference to Sec. 33 of Income Tax Act, 2058 and Transfer Pricing Guidelines issued by Organization for Economic Cooperation and Development. 2
 - ii) Advise with reason whether M/s Everest Nepal Ltd. shall consider transfer pricing adjustments while computing tax liability by the company. 2
 - iii) Advise on potential defenses and legal recourse in worst possible scenario. 1



Answer:6(b)

i. As per Sec. 33 of Income Tax Act, 2058; where is there reduction of tax liability due to transfer pricing arrangement between associated persons, the tax authority can make transfer pricing adjustments. The Transfer Pricing Guidelines issued by OECD contains the methodologies to make transfer pricing adjustments along with the guidelines on how to determine whether there is reduction of tax liability due to transfer pricing arrangements.

ii. Legal provisions of Transfer Pricing adjustments are invoked by tax authority as part of amended assessment process under Sec. 101. It means, if the taxpayer thinks that there is transfer pricing risk, it has to adjust the invoice issued to the associated enterprises or be ready with its argument to defend that the invoices have been raised at arm's length.

In the given case, M/s Everest Nepal Pvt. Ltd. has fixed its selling price after the careful assessment of market to sell its product in India. The price for the Australian market to its associated or non-associated enterprise is same. It is to be noted that the price for domestic market and export market are not same, and there are various factors that should be considered in determining the arm's length. It is the intention of the taxpayer that has to be tested as well. As such, there shall not be any transfer pricing risk.

iii. If the tax authority still makes transfer pricing adjustment, the company shall be ready to challenge the decision of tax authority in competent court. The natural judicial proceedings begin with Administrative Review and then appeal in Revenue Tribunal against any unacceptable outcome from administrative review process. The decision of Revenue Tribunal can be challenged in Supreme Court under writ jurisdiction if the hearing judge orders the registration of petition as per prevailing laws.

The potential defenses would be the price determination process in India and same prices for associated and non-associated enterprises in Europe.