

SUGGESTED ANSWERS TO
THE QUESTIONS SET AT
CA MEMBERSHIP EXAMINATIONS
MARCH 2025



The Institute of Chartered Accountants of Nepal (ICAN)
ICAN Marg, Satdobato, Lalitpur



The Institute of Chartered Accountants of Nepal

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Corporate Laws

Attempt all questions.

1. Answer the following questions:

- a) Nepal Securities Board received a complaint from a group of investors alleging that a listed company, GHI Limited, has not been complying with the disclosure requirements under the Securities Act, 2006. The investors' claim that GHI Limited's financial statements are misleading and do not reflect its true financial position aligns with violations outlined in the Securities Act 2006. Specifically, publishing false, misleading statements, concealing material facts with malafide intent, and issuing deceptive financial projections. **(5+3+2=10)**

Answer the following questions on the basis of the Securities Act, 2006.

- i) Explain the functions, duties and power of Nepal Securities Board under the Securities Act, 2006.
- ii) Discuss the powers of Nepal Securities Board to investigate and take action against non-compliant companies.
- iii) What are the fine and penalties for such offences?

Answer:1(a)

- i) The functions, duties and powers of the Securities Board of Nepal provided under Section 5 of the Securities Act, 2006 are as follows:-
- a) To offer an advice, as per necessity, to the Government of Nepal on matters incidental to the development of capital market,
 - b) To register the securities of any corporate body established with the authority to make a public issue of its securities,
 - c) To regulate and systematize the issue, transfer, sale and exchange of registered securities,
 - d) To grant permission to any corporate body, which is desirous of operating a stock exchange, to operate the stock exchange subject to this Act or the rules and bye-laws framed under this Act,
 - e) To regulate and monitor the activities of the stock exchange;
 - f) To inspect as to whether or not any stock exchange is executing its activities in accordance with this Act or the rules and bye-laws framed under this Act, and to suspend or revoke the license of such a stock exchange, if it is found that the same has not been done,
 - g) To issue a license to companies or institutions, which are desirous of carrying on the securities business subject to this Act or the rules and bye-laws framed under this Act,
 - h) To regulate and monitor the activities of securities businessperson,
 - i) To classify securities businesspersons and fix their standards according to their functions and capability by fulfilling such procedures as prescribed,
 - j) To grant a permission to operate collective investment schemes and investment fund programs, and to regulate and monitor the same,
 - k) To approve bye-laws of stock exchanges and those bodies which are related with securities business and engaged in securities transactions, and to issue orders to stock exchanges and those bodies which are related with securities business and engaged in securities transactions to make necessary amendment in their bye-laws with a view to making necessary provisions concerning the development of capital market and protecting the interests of investors in securities,
 - l) To systematize the clearance of accounts related to securities transactions,
 - m) To supervise whether or not security businesspersons have maintained such conduct as prescribed in this Act or rules, bye-laws and directives framed under this Act, while carrying on securities business, and suspend or revoke the license to carry on securities business where any securities businessperson is not found to have maintained such a conduct,



- n) To make or cause to be made, such arrangements as may be necessary to regulate the volume of securities and the mode of securities transactions for the promotion, development and healthy operation of stock exchanges,
 - o) To make such arrangements as may be necessary to prevent insider trading or any other offense relating to securities transactions as referred to in Chapter 9 for the protection of the interests of investors in securities,
 - p) To review, or cause to be reviewed, financial statements submitted by corporate bodies issuing securities and securities businesspersons, and give such directives to the concerned corporate bodies as it deems necessary in this connection,
 - q) To regulate and make transparent the act of acquiring the ownership of a company thereby gaining control over its management by purchasing its shares in a single lot or in several lots,
 - r) To maintain coordination and exchange cooperation with the concerned agencies in order to supervise and regulate matters concerning securities or company affairs,
 - s) To perform or cause to be performed such other functions as may be necessary in relation to securities and the development of capital market.
- ii) Section 103 of the Act provides power of the Board for the investigation and taking action against the non-compliant companies as under:
- (1) If a complaint is made by anyone to the Board, or to the body responsible for investigating case under this Act that anyone has committed an offense under Sections 91, 94, 95, 96, 97, 98, 99, or 100, or the Board receives an information relating to such an offense in any manner, or if it appears that such an offense has been committed, the Chairperson shall promptly cause to conduct a preliminary investigation into such complaint through the officer level employee of the Board.
 - (2) The officer pursuant to Subsection (1) may, in the course of conducting the preliminary investigation of the complaint, enquire the person or body related with the offense, and demand necessary documents, details, or records.
 - (3) If, based on documents and evidence received during the investigation under Subsection (1), it is found that an offense as mentioned in Subsection (1) has been committed, the file document, along with complaint, collected details and evidence, shall be forwarded to the Nepal Police Headquarter within 30 days for further investigation on such offence.
 - (4) While forwarding the file document along with complaint for investigation under Subsection (3), the name of any officer who will coordinate and assist in the investigation on behalf of the Board may also be disclosed.
- iii) As per Subsection (3) of Section 101 of the Act, a person who commits any act referred to in Section 97 i.e. to supply misleading statements shall be liable to the punishment with a fine of one hundred thousand rupees to three hundred thousand rupees or with imprisonment for a term not exceeding two years or with both punishments.
- In addition, where anyone has suffered any loss or damage from such transactions, such loss or damage shall also be recovered.



- b) M/s European Insurance Company Ltd. desired to open branch in Nepal. The Company submitted documents to the Insurance Authority for prior approval. However, after conducting the required inquiries, the Insurance Authority denied the approval, citing that the company's objectives are inconsistent with prevailing laws. Now answer the following questions in the light of relevant provisions of the Insurance Act, 2079:- **(4+6=10)**
- i) What are the additional documents and details required to be submitted for prior approval to open branch in Nepal by foreign insurance company?
 - ii) State the ground for refusal to issue prior approval to open branch in Nepal.

Answer:1(b)

- (i) Pursuant to section 26(4) of the Insurance Act, 2079, any foreign company desirous to incorporate in joint venture an insurance company or open branch in Nepal shall have to submit an application to the Insurance Authority along with prescribed fee for prior approval. While submitting application, the following details and documents shall be included along with the application in addition to the details and document as referred to in Section 26(1).
 - (a) Copy of licenses of the foreign insurer obtained from concerned country for carrying on insurance business.
 - (b) Copy of renewal of such license obtained from concerned country for carrying on insurance transactions.
 - (c) Copy of permission granted by regulatory authority of the concerned foreign country to open branch in Nepal.
 - (d) Copy of board's decision of such foreign corporate body to open branch or incorporate an insurance company in Nepal in Joint Venture.
 - (e) Previous Five year's audit report and audited financial statements reflecting financial capability.
 - (f) Name and shareholdings of directors of such foreign company and details about corporate body in which it has financial interest.
 - (g) Other details and documents as specified by Nepal Insurance Authority.
- (ii) As per Section 27(1) of the Insurance Act, 2079, the Insurance Authority may refuse to issue prior approval to incorporate insurance business or open branch in Nepal by foreign insurance company under the following grounds:
 - a. If the name of the proposed insurance company is similar to the name of any previously registered insurance company.
 - b. If the name of the proposed insurance company or the activities of the insurer to be carried out is found to be inappropriate or prejudicial to public interest, good conduct, religion, ethnicity or community or traditional belief.
 - c. If based on study of the feasibility report, details and documents, other infrastructures submitted by the proposed insurer does not provide a ground to believe that it may carry on insurance transactions in a healthy and competitive manner.
 - d. If the objective of the proposed insurance company is contrary to the prevailing laws.
 - e. If documents and details as provided in section 26 is not submitted.
 - f. If every promoter does not undertake to subscribe to at least ten thousand shares in the proposed insurance company or if the details about the shares to be undertake is not clearly disclosed.
 - g. If the proposed insurance company has not proposed to maintain share capital as per Section 36.
 - h. If any of the proper has been convicted and sentenced of any offence involving insurance, banking, finance, fraud, forgery, money laundering, corruption, human trafficking, kidnapping, hostage or



other similar offences involving moral turpitude and a period of 5 years has not lapsed after serving such punishment.

- i. If the proposed insurance company has included objectives of other business in addition to insurance business.
- j. If the prior approval is not to be granted as per Section 31 of the Act.
- k. If any other promoters or his family members had been blacklisted as per prevailing acts and three years has not lapsed after removal from such blacklist.
- l. If it is found that an investment in the proposed insurer by single promoter or his family members or corporate body or group is fifteen percent or more of the paid-up capital. However, this provision shall not be applicable to the shares held by Government of Nepal or province Government or Foreign Investors.
- m. If the person or his family member is a substantial shareholder in another insurance company undertaking similar insurance business as proposed by the insurer.

Hence, pursuant to clause (d) of Section 27(1) of the Act, if there is reasonable ground that the objective of the proposed insurance company is contrary to the prevailing laws, the Insurance Authority has right to refuse for granting the prior approval.

2. Answer the following questions:

- a) Mr. Ramesh was appointed as Deputy Governor of the Nepal Rastra Bank for a four-year term. An application has been filed to the Council of Ministers seeking his removal on the ground that he has acquired 6.5% shares of ABC Bank Limited. In this context, the Council of Ministers seeks your legal opinion on the following matters: (5+2=7)
- i) What are the legal grounds for the removal of a Director of the Nepal Rastra Bank?
 - ii) Does the acquisition of 6.5% shares in ABC Bank Limited justify Mr. Ramesh's removal?

Answer:2(a)

- (i) Pursuant to Section 22(1) of the Nepal Rastra Bank Act, 2058, the Government of Nepal, Council of Ministers shall remove the Governor, Deputy Governor and Director from the office on any condition stipulated under Section 22(5) which are as follows:
- (a) If one is disqualified to become a Director pursuant to section 21.
 - (b) The lack of capability to implement or cause to implement the functions which the Bank has to carry out in order to achieve the objectives of the Bank under this Act.
 - (c) If one has committed any act causing loss and damage to the banking and financial system of the country.
 - (d) If one is found to have acted dishonestly or with mala-fide intention in any transaction related to the business of the Bank.
 - (e) If professional license is revoked or prohibited from carrying out any profession rendering disqualified to be engaged in any trade or profession on the ground of gross misconduct.
 - (f) If one is absent for more than three consecutive meeting of Board without a genuine reason.

Section 21 of the Nepal Rastra Bank Act, 2058 provides that following persons shall not be eligible for appointment to the Office of the Governor, Deputy Governor and Director:

- (a) Member or official of a political party, or
- (b) Person blacklisted in relation to transaction with a commercial bank or financial institution, or
- (c) An official currently engaged in any commercial bank or financial institution, or
- (d) A person having five percent or more shares or voting right in a Commercial Bank or financial institution, or



- (e) A person rendered bankrupt for being unable to pay debts to creditors, or
 - (f) An insane person, or
 - (g) A person convicted by a court in an offence involving moral turpitude.
- (ii) As per Section 21 read together with Section 22 of the Act, the ineligibility conditions prescribed under Section 21 shall not be prevailed at the time of appointment and also as long as he occupies the position of the Deputy Governor. As per Section 22(5) of the Act, in case any such ineligibility condition exists even subsequent to his appointment, the ground for removal of the Deputy Governor meets and the Government of Nepal, Council of Minister shall remove him after providing reasonable opportunity to defend.
- In the given case, Mr. Ramesh has acquired 6.5% shares in ABC Bank Limited. It means, he holds more than 5% shares of a commercial bank, making him ineligible to continue in the office under clause (d) of Section 21. Hence, the removal ground of the Deputy Governor exists. However, while removing the Deputy Governor, the Government of Nepal shall cause to conduct an inquiry by Board and remove him from the office on the basis of the recommendation made by the Board.
- b) The Institute of Chartered Accountants of Nepal is establishment of widely considered significant milestone, particularly in the fields of audit and economy of Nepal. It was established under a special law, the Nepal Chartered Accountants Act, 2053. So, you are required to answer the following questions on the basis of the Act: **(1.5+4+1.5=7)**
- i) What is the main objective behind enacting the Act?
 - ii) What are the objectives for establishing The Institute of Chartered Accountants of Nepal (ICAN)?
 - iii) What was the impact by the enactment of the Act? Explain pursuant to the repeal and saving provisions of the Act.

Answer:2(b)

- (i) As per preamble of the Nepal Chartered Accountants Act, 2053, the main objective behind enacting the Act is to establish The Institute of Chartered Accountants of Nepal (ICAN) in order to enhance social recognition and faith in accounting profession by raising public awareness towards the importance of the accounting profession, towards economic and social responsibility of the accounting professionals and towards economic development of the country through the development of awareness among the accounting professionals about their responsibility towards the importance of accountancy in order to develop, protect and promote the accounting profession.
- (ii) As per Section 5 of the Act, objectives for establishing The Institute of Chartered Accountants of Nepal (ICAN) are as follows:
- (a) To play the role of a regulatory body to encourage the members to carry on accounting profession being within the extent of the code of conduct in order to consolidate and develop accounting profession as a cause for economic development of the nation.
 - (b) To enhance social recognition and faith in accounting profession by raising awareness of the general public towards the importance of accounting and the economic and social responsibility of professional accountants.
 - (c) To develop, protect and promote the accounting profession by enabling accounting professional understand their responsibility towards the importance of accounting profession and accountancy.



- (d) To develop mechanism of registration, qualification and examination of accounting professionals in consonance with international norms and practices so as to make the accounting profession respectable and reliable.
- (iii) Impacts by the enactment of the Nepal Chartered Accountants Act, 2053 pursuant to the repeal and saving provisions are provided under Section 49 of the Act as follows:
- (1) The Auditors' Act, 2031, has been repealed.
 - (2) In case, an auditor recognized by the Office of the Auditor General is recognized by any prevailing law as an auditor for the purpose of that law, such recognized auditor shall, after the commencement of this Act, be deemed as the member holding Certificate of Practice referred to in this Act.
- So, this provision ensures continuity and protection for auditors already practicing under prior laws, thereby facilitating a smooth transition to the new regulatory framework established by the Act.
- (iii) Mr. Satark Pathak is a newly appointed Compliance Officer in an e-wallet company named Goji Private Limited. The IT officer of Goji Private Limited informed Satark Pathak that there has been some suspicious transactions of Nrs. 500 and Nrs. 1000 from 5 new account which were opened in last 3 days. The accounts conducted 198 transactions in last 2 days. Since, the transaction amount is small Mr. Satark Pathak did not find it necessary to report it to Financial Information Unit of Nepal Rastra Bank. **(2+3+1=6)**
- i) Define Suspicious transactions with reference to Assets (Money) Laundering Prevention Act, 2064.
 - ii) What are the guidelines for detecting suspicious transactions?
 - iii) Is the act of Mr. Satark Pathak valid?

Answer: 2(c)

- (i) As per Section 7S(1) of the Assets (Money) Laundering Prevention Act, 2064, following circumstances in relation to any customer, transactions or property shall be suspicious transactions and the reporting entities shall submit a Suspicious Transaction Report to the Financial Information Unit after its examination:
- (a) If it suspects or has reasonable grounds to suspect that the property is related to money laundering, terrorist acts, or proliferation financing related to weapons of mass destruction offences or other offences, or
 - (b) If it suspects or has reasonable grounds to suspect that the property is related or linked to or is to be used for, terrorism, terrorist acts, or by terrorist organization or those who finance terrorism.
- (2) The reporting entity shall submit the report to the Financial Information Unit even if just attempted to do the transactions or activity as mentioned under Sub-section (1).
- (2a). If the reporting entity believes that the customer might become aware of any identification, verification, or similar action in respect of a suspicious transaction under Sub-section (1) or (2), it shall update the customer identification or verification after submitting the Suspicious Transaction Report.
- (3) Other additional grounds or guidance on detecting suspicious activity, format, method and procedure of reporting suspicious transactions and other related information shall be as prescribed by the Financial Information Unit.



- ii) Suspicious Transactions Reports (STRs) include detailed information about transactions that are or appear to be suspicious. The goal of STRs filings is to help the Financial Information Unit (FIU) of Nepal identify individuals, groups and organizations involved in fraud, terrorist financing, money laundering and other crimes. The purpose of STR is to report known or suspected violations of law or suspicious activity observed by financial institutions subject to the provision related to Asset (Money) Laundering Prevention Act, 2064.

In many instances, STRs have been instrumental in enabling law enforcement to initiate or supplement major money laundering or terrorist financing investigations and other criminal cases. Information provided in STR forms also presents FIU with a method of identifying emerging trends and patterns associated with financial crimes. The information about those trends and patterns is vital to law enforcement agencies and provides valuable feedback to financial institutions.

FIU requires an STR to be filed by a financial institution when the financial institution suspects insider abuse by an employee; violations of law or more that involve potential money laundering or violations of existing AML/CFT law; or when financial institution knows that a customer is operating an activity prohibited by this Act.

- iii) As the transactions conducted are different from that of usually and normally conducted by the relevant customer, Mr. Satark Pathak shall not be overlooked. Instead, his transactions shall be reported to the FIU in line with Asset (Money) Laundering Prevention Act, 2064.

3. Answer the following questions:

- a) Mr. Hillary, a French national made a foreign investment in Nepal. After 5 years of investment in Nepal he intends to repatriate certain amount of profit back to his nation. However, an accountant recently hired in his company established in Nepal said that Mr. Hillary is allowed to withdraw the investment only and not allowed to repatriate profit back to his nation.
- i) What are the protections given by Foreign Investment and Technology Transfer Act, 2075 to foreign investment in Nepal? **5**
- ii) Express your opinion on validity of suggestion of the accountant. **2**

Answer:3(a)

- i) As per Section 32(1) of the Foreign Investment and Technology Transfer Act, 2075, national treatment shall be provided, after the foreign investment made by a foreigner subject to the Act and prevailing law is brought into Nepal and until such investment is retained in Nepal, in a manner that the terms applicable on management, maintenance, utilization, transfer or sale of such investment shall not be less favorable than the terms applicable on management, maintenance, utilization, transfer or sale of investment made by Nepalese person.

As per Section 32(3) of Foreign Investment and Technology Transfer Act, 2075 an industry with foreign investment shall obtain following protections:

- (a) An industry or business with foreign investment shall be treated in the manner same as an industry of same nature with investment of Nepalese citizens.
- (b) An industry or business with foreign investment shall be free to determine the price of goods or services, subject to prevailing law.
- (c) An industry or business with foreign investment shall not be prohibited to operate trade as prescribed within the limit of its industry.



- (d) An industry or business with foreign investment shall not be prohibited to repatriate profit, withdraw investment, pay interest and repay principal of loan.
- ii) The accountant's recommendation to Mr. Hillary is not consistent with the Foreign Investment and Technology Transfer Act, 2075. Foreign investors are safeguarded by section 32(3)(d) of the Act, which permits the repatriation of profits to their nation. The profits he generated in Nepal may be repatriated.
- b) The United Nations defines the sustainable development as development that meets current demands without jeopardizing future generation's ability to meet their own needs. To achieve sustainable development three main elements must be in harmony: economic growth, social inclusion and environmental protection. This statement implies that focusing solely on economic growth as a measure of development is unsustainable because it frequently comes at the expense of environmental protection and social equity, resulting in long-term negative consequences for future generations if not balanced by other factors such as environmental preservation and social well-being.
- So, as a UN member nation, what proactive measures have been incorporated in the Industrial Enterprises Act, 2076 for mitigating the adverse effects of industrial activities on the environment protection? 7

Answer: 3(b)

In order to mitigate adverse effects of industrial activities on the environment, following measures have been incorporated under section 7 of the Industrial Enterprises Act, 2076 :

- (1) If an industry registered under section 5 is required to carry out environmental impact assessment or initial environmental examination under the prevailing law, it shall commence its establishment, operation, commercial production and transaction only after the approval of a report on such assessment or examination.
- (2) Notwithstanding anything contained in subsection (1), environmental impact assessment or initial environmental examination shall also be carried out if so required under the prevailing law when an industry needs to increase its capital or capacity, add or change its objective, change its location or transfer it to another place.
- (3) The concerned industry shall be responsible for mitigating adverse environmental effects caused or likely to be caused on the environment in the course of its operation.
- (4) The industry registration body may, as required, monitor whether environmental effects are mitigated under this section and give a direction, take action or recommend the concerned body for action.
- (5) An industry which is not required to carry out environmental impact assessment or initial environmental examination when making application for its registration, shall make a self-declaration, accompanied by the reasons and grounds for not requiring to carry out such assessment or examination, that it will take necessary measures to mitigate possible adverse effects on the environment from the establishment and operation of the industry.

Furthermore, as per *proviso* clause of Section 12(3) of the Act, if the increase in capital or capacity or addition or change or alteration of objectives requires such environmental impact assessment or initial environmental examination, a report thereof shall be approved under the prevailing law.



(c) Sima and her friends are planning to establish a women-centric saving & credit cooperative society. They understand that the cooperative society shall formulate a Bye-law and several Internal Procedures, such as the Credit Policy and Saving Policy. However, they are uncertain about when these documents will be legally enforced. So, Sima is specifically asking you whether the Board of Directors of the cooperative society has the ultimate authority to approve and enforce the Bye-law and Internal Procedures. Furthermore, would your response differ if Sima was asking about the enforcement date of amended Bye-law and Internal Procedures? Provide her a detailed explanation based on the relevant provisions of the Cooperatives Act, 2074.

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Answer: 3(c)

The ultimate authority regarding the approval and enforcement of the Bye-law and Internal Procedures has been incorporated under following section 27 and 28 of the Cooperatives Act, 2074:

Section 27: Framing of Byelaws

(1) Byelaws to be framed:

A cooperative society is required to frame Bye laws for conducting its business in accordance with the provisions of the Act, the Rules, Directives, Standards, and Procedures formulated under the Act.

(2) Enforcement of Byelaws:

The Byelaws shall come into force only after they are approved by the Registrar or an authority authorized by the Registrar.

(3) Special Provision for Cooperative Banks:

In the case of a Cooperative Bank, the Registrar shall consult the Nepal Rastra Bank before approving the Byelaws, as specified in Sub-section (2).

Hence, the Byelaws shall be approved by the Registrar or an authority authorized by him and only after such approval, its enforcement commences. Approval by the Board of Directors merely does not initiate the enforcement of the Byelaws.

Section 28: Framing of Internal Procedures

A Cooperative Society may frame internal procedures that are necessary for conducting its business in alignment with the Act, the Rules, Directives, Standards, and Procedures.

The internal procedures shall come into force only after being approved by the General Meeting of the cooperative society.

Hence, approval by the Board of Directors merely does not initiate the enforcement of the Internal Procedures. They shall be approved by the General Meeting of the cooperative society.

The enforcement date of amended Bye-law and Internal Procedures has been provided under Section 29 of the Cooperatives Act, 2074 as follows:

Section 29: Amendment of Byelaws and Internal Procedures

(1) Amendment Process:

The Byelaws and internal procedures may be amended by a majority vote of the total number of members present at the General Meeting of the cooperative society.



(2) Enforcement of Amendments:

The amendments to the Byelaws shall come into force only after receiving approval from the Registrar or the authority authorized by the Registrar.

In the case of the Internal Procedure, it shall be approved by the General Meeting of the concerned cooperative society.

Hence, the approval by the Board of Directors merely does not initiate the enforcement of the amended Byelaws and Internal Procedures. It means my response would not differ is Sima was asking about the enforcement date of the amended Byelaws and Internal Procedures.

4. Answer the following questions:

- a) The newly elected Board of Directors of M/s Capital Bank Ltd has decided to invest in the real estate business, specifically in purchasing land, constructing commercial buildings, and selling them, considering current banking situations with high NPA. However, the Chief Executive Officer is uncertain about the legal permissibility of such activities under the *Bank and Financial Institutions Act, 2073 (BAFIA)*. In this regard, the CEO has sought a legal opinion from you on whether the bank is allowed to engage in the purchase of land, construction of buildings, and their subsequent sale for commercial purposes based on the restrictions imposed by *BAFIA, 2073* regarding activities that banks and financial institutions are prohibited from undertaking.

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Answer:4(a)

Section 50 of the Bank and Financial Institutions Act, 2073 has mentioned that the Bank shall not carry out following activities:

- a. To purchase and sell goods with an objective of business and to purchase immovable land and to construct building except those are necessary for its own purposes,
- b. To disburse credit against security of its own shares,
- c. To provide any type of credit facility to the directors, person having subscribed one percent or more than that of the paid-up capital, the Chief Executive, or a member of family of such persons, or the firm, company or organization having significant ownership or financial interest in any person, firm, company or organization having the authority to nominate or appoint Director or managing agent,
- d. To provide credit or facility exceeding per customer limit prescribed by the Rastra Bank from its capital fund to the single customer, company, companies or partnership firms of the same group and relevant person,
- e. To provide any type of credits to any person, firm, company or institution on the guarantee of promoters, Directors, or Chief Executive,
- f. To make investment in the securities of bank or financial institutions of class “A”, “B” and “C”, as classified by the Rastra Bank,
- g. To invest the amount more than the limit as prescribed by the Rastra Bank in share capital of other institution,
- h. To create any type of monopoly or other type of restrictive practices in banking and financial transactions in collusion with banks or financial institutions,
- i. To commit any act to create an artificial hurdle in competitive environment in financial sectors with a intention to get undue advantage,
- j. To carry out any other functions which are prescribed by the Rastra Bank as the business not be carried out by a bank or financial institutions.



Notwithstanding anything contained elsewhere in this Act, there shall be no restriction to carry on own banking and financial transaction or to provide housing or other facilities for its own employees according to prevailing Personnel Byelaws of bank or financial institution, to disburse any credit against the collateral security of the bond issued by Government of Nepal or Rastra Bank, amount deposited in any account or fixed deposits receipts or to make available credit and credit card facilities up to the prescribed limit to promoters, Directors, Chief Executive or shareholders having subscribed more than one percent of shares against the collateral security of their own fixed deposit receipts, and the bonds issued by Government of Nepal or the Rastra Bank.

Hence, the decision of the Board of Directors of M/s Capital Bank Ltd to purchase land, construct commercial buildings, and sell them is against the BAFIA, 2073.

- b) Phungling Sewa Samaj is a company not distributing profit incorporated by seven local individuals. The company has been working to conserve the biocultural heritages of Taplejung. So, you are required to answer the following questions on the basis of the Companies Act, 2063: 7
- i) The chairperson of the company is planning to add “limited” as the last word of its name, similar to a private and public company. So, examine the validity of his plan.
 - ii) Enumerate the special provisions relating to a company not distributing profit as provided by the Act and analyze whether the operation of business activities is a violation of such special provision leading to the cancellation of its registration certificate.

Answer: 4(b)

- (i) Section 8 of the Companies Act, 2063 specifies that the liability of a shareholder of a company incorporated under this Act in respect of its transactions shall be limited to the maximum value of shares which he has subscribed or undertaken to subscribe. Thus, in order to indicate such limitation, a private company and a public company shall add the words “private limited” and “limited” respectively to their name as the last word. Provided, however, that this provision shall not apply to a company not distributing profit [Section 10(b)]. In addition, except with the prior approval of the Office, a company incorporated pursuant to Sub-section (1) shall not add words such “company”, “limited “ or “private limited” at the end of its name [Section 166(5)].

Hence, only after taking the prior approval of the Office of the Company Registrar, the Chairperson may add the word “limited” as the last word of Phungling Sewa Samaj.

- (ii) As per Section 167(2) of the Companies Act 2063, in the event of violation of any provision contained in Sub-section (1), the Office may cancel the registration of the company committing such violation, after providing an opportunity to defend:

Sub-section (1) of the Section 167 prescribes that notwithstanding anything contained in this Act or the prevailing law, the following matters of a company incorporated pursuant to Section 166 shall be as follows:

- (a) There shall not be required share capital to incorporate a company not distributing profits.

Provided, however, that the company may receive membership fees from its members and receive any donation, gift pursuant to law for the accomplishment of its objectives.



- (b) No member of the company shall be liable for the debts and liabilities of the company except in the case where any member accepts such liability in writing the liability of the company, with specification of the limit of such liability; his/her liability shall be limited to the extent of that limit.
- (c) All the provisions of this Act as applicable to the listed company, other than those provisions which may be applicable only to the company with share capital, shall also apply to the company, its director, officer, auditor and employee.
- (d) The company shall not distribute dividend, bonus or any other amount, from the profits earned by it, to its members or employees; and the profits earned by the company shall be used to increase the capital of the company or for the attainment of its objectives.
- (e) The company shall obtain prior approval of the Office to change objectives.
- (f) Any company not distributing profits shall not be merged with any company distributing profits.
- (g) The members of a company incorporated under this Chapter shall elect the directors from amongst themselves in such number as fixed in the articles of association, on the basis of one member one vote.
- (h) The meeting allowance, salary, facility receivable by the officers of a company incorporated under this Chapter and the incorporation and operational expenses of the company shall not exceed the amount as specified by the Office; and in so specifying expenses, the Office shall have regard to the capital situation and profits of such company.

Provided, however, that administrative expenses shall not be more than twenty five percent of total expenses.

In the event of liquidation or cancellation of registration of a company incorporated under this Chapter, the assets of the company, if any, remaining after the settlement of the debts and liabilities of the company shall be dealt with as *per* the provision, if any, contained in its articles of association, and failing such provision, such assets shall devolve on the Government of Nepal.

Provided, however, that such assets shall, in no way, devolve on any institution or company where a promoter or member of such company or his/her close relative or close relative of such relative is a promoter or member.

Hence, Phungling Sewa Samaj may operate business activities subject to its objectives and in compliance with this Act. Such business operation merely does not lead to the cancellation of its registration certificate.

5. Answer the following questions: (3×5=15)
- a) Unless otherwise provide for in procurement contract, a procurement contract may be amended by written consent of both the parties subject to non-alteration of the basic nature or scope of the work. However, the procurement contract need not be amended in issuing a variation order or making price adjustment. In light of these legal statements, explain the provisions of the variation order and price adjustment as provided under the Public Procurement Act, 2063.



Answer:5(a)

Variation Order:

Section 54 of the Public Procurement Act, 2063 prescribes about the variation order as follows:

- 1) If a situation arises during the execution of a contract which could not be forecasted during the conclusion of the contract, the following authority may issue a variation order following the prescribed procedures by providing its clear reasons:
 - (a) Variation up to 5%, by the gazetted second-class or its equivalent chief of the concerned public entity,
 - (b) Variation up to 10%, by the gazetted first-class or its equivalent chief of the public entity,
 - (c) Variation up to 15%, by the head of the department,
 - (d) Variation more than 15% up to 25%, by the secretary of the concerned ministry or its equivalent head of the concerned entity,
 - (e) Variation beyond 25%, by the Government of Nepal, Council of Ministers in case of public entities pursuant to subclause (1) of clause (b) of section 2.
 - (f) Variation of more than 15%, by the highest executive body of such entity in case of public entities pursuant to subclause (2) of clause (b) of section 2.
- 2) While issuing the variation order under clause (e) of Subsection (1), in case of public entities pursuant to subclause (1) of clause (b) of Section 2, the Government of Nepal Council of Ministers may issue the variation order at proposal of the concerned ministry along with the recommendation received from a group of experts constituted by the concerned ministry and causing to conduct necessary examination through such group, and, in case of public entities pursuant to subclause (2) of clause (b) of Section 2, the highest executive body of such entity may issue the variation order at recommendation received from a group of experts constituted by the highest executive body of such body and causing to conduct necessary examination through such group.
- 3) Notwithstanding anything mentioned under clause (a) and (b) of subsection (1), a variation order shall not be issued by an authority inferior to the authority who had approved the cost estimates.
- 4) Notwithstanding anything mentioned under subsection (1), the chief of the department may issue a variation order of more than 15% regarding the purchase activities up to sixty lakh rupees.

Price Adjustment:

Section 55 of the Public Procurement Act, 2063 prescribes about the provision of price adjustment as follows:

- (1) Unless otherwise provided in procurement contract, if price needs to be adjusted in the course of implementation of a procurement contract having duration exceeding twelve months the competent authority may adjust price.

Provided that where a procurement contract has been concluded to procure a public construction work following the invitation of national level bidding and the price of any construction materials is increased or decreased unexpectedly by more than ten percent of the previous price, price shall be adjusted as prescribed by deducting ten percent in the amount so increased or decreased.
- (2) Notwithstanding anything contained in Sub-section (1), price adjustment cannot be made where the work under the contract is not completed within the period prescribed in such contract and has taken more time due to the delay by the person who has obtained procurement contract or if procurement contract is concluded on the basis of lump sum contract or fixed budget.



- b) What is international financial transaction? Doha Bank Ltd. seeks to engage in international financial transactions. Provide guidance on the regulatory authority responsible for issuing the required license and describe its composition as per International Financial Transaction Act, 2054.

Answer:5 (b)

Section 2(a) of International Financial Transaction Act, 2054 (IFTA) has defined the term "International Financial Transaction" as any financial transaction carried out by any license holder entity under this Act. In accordance with section 3 of the Act, the Accreditation Committee grants a license to international financial entities for carrying out international financial transactions.

As per Section 11(1) of the Act, an International Financial Transactions Accreditation Committee consisting of the following members shall be formed for the purpose of granting licenses to international financial entities to carry out international financial transactions, and for the purpose of regulating financial transactions to be carried out by such entities:

- a. Governor, Nepal Rastra Bank - Chairperson
- b. Secretary, Ministry of Finance - Member
- c. Secretary, Ministry of Law, Justice and Parliamentary Affairs – Member
- d. One person nominated by Government of Nepal from among Chartered Accountants - Member
- e. One person nominated by Government of Nepal from among Economists - Member

The Accreditation committee may invite national or foreign experts or advisors involved in international financial transactions to participate at its meetings as observers.

An officer-level employee of the Nepal Rastra Bank as designated by the Accreditation Committee with the consent of the Nepal Rastra Bank shall act as Secretary of the Accreditation Committee.

- c) Ram and Laxman Associates, Chartered Accountants is appointed as an assistant auditor by the Auditor General Office to conduct the audit of a corporation fully owned by Bagmati Province. Mr. Ram, partner of the firm thinks that he shall have to audit independently. Mr. Ram started to bargain for the remuneration with the client. Can he perform audit independently and ask remuneration from client? Give your opinion based on provisions of the Audit Act, 2075.

Answer: 5 (c)

Section 3 of the Audit Act, 2075 states that the audit of corporate body wholly owned by Government of Nepal, Provincial Government or Local Level shall be audited by the Auditor General.

Further, Section 10(1) of the Act provides that the Auditor General may appoint a license holder auditor under the prevailing laws as an assistant as per necessity for the audit of the corporate bodies wholly owned by the Nepal Government, Provincial Government or Local Level.

The auditor appointed as assistant for the Auditor General shall act under the direction, supervision and control of the Auditor General.

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

The remuneration to be paid by the concerned body to the auditor appointed pursuant to sub-section (1) shall be as specified by the Auditor General, having regard to, *inter alia*, the volume of financial transactions, status of accounts, number of branches and sub-branches, work load and work progress of such a body.



Conclusion:

Mr. Ram cannot do the audit independently as his appointment is to assist the work of Auditor General. Similarly, Mr. Ram shall have to function under the direction, supervision and control of Auditor General and he cannot function independently. In addition, fee to be received by Mr. Ram and Laxman Associates shall be fixed by Auditor General and paid by the concerned organization. So, he cannot bargain for his audit fee with the client.

6. Write short notes on the following:

- a) How does the Banking Offence and Punishment Act, 2064 approach the issue of excessive, low, or false valuation of collateral security, and what legal consequences does a valuer face for providing such valuations under the Act? 4

Answer:6(a)

As per Section 13 of Banking Offence and Punishment Act, 2064, providing excessive, low or false valuation of collateral security is termed as banking offences. While carrying out the valuation of movable or immovable assets held by a bank or financial institution as a collateral security of a loan or non-banking movable or immovable asset of a bank or financial institution, the valuator shall not cause any loss or harm to the bank or financial institution by deriving excess, low or false valuation of such assets while valuating for the purpose of auctioning sell or for other purpose relating to Bank.

According to the Subsection (3) of Section 15, if anyone commits any offense specified under Section 7(a), (b), (c) or Section 13, he/she shall be punished with a fine equivalent to the value of such collateral security and an imprisonment up to a period of four years.

- b) Disposal of foreign currency obtained if it cannot be used in the concerned purpose and its punishment if failed to do so. 3

Answer:6(b)

As per section 4(3) of the Foreign Exchange (Regulation) Act, 2019, if any person obtains the foreign exchange for any specific purpose or on any terms, that person shall not use such a foreign currency for any other purpose or violate such terms. If the foreign currency so obtained cannot be used in the concerned purpose or the terms cannot be met, that person shall sell such a foreign exchange to the licensee person or Nepal Rastra Bank at the rate specified by the Nepal Rastra Bank, within 30 days after the date of knowledge of that matter.

As per section 17 of the Act, if any person does any act in contravention of this Act or Rules framed thereunder or order or direction or circulation or notification or any procedure as prescribed by the Nepal Rastra Bank, the foreign exchange related with the offence shall be forfeited and such a person shall be fined additionally from the amount in question to three-fold of such amount in question.

Provided that, in relation to the offence where the foreign exchange related with such offence could not be forfeited, the amount in question for foreign exchange related with such offence shall be fixed and fined additionally from the amount in question to three-fold of such amount in question.

In fixing such amount in question, if the amount in question cannot be set out or cause to be set out, a fine of up to Rs 200,000, shall be imposed, as per the gravity of the offence. In the event of failure to pay the fine imposed pursuant to this Section, such a person shall be liable to the punishment of imprisonment for a term not exceeding 4 years in view of the magnitude of the offence.



c) On what grounds can an arbitral decision be challenged in court under the Arbitration Act, 2055?3

Answer:6(c)

As per the Section 30 of Arbitration Act, 2055, any party dissatisfied with the decision taken by the arbitrator may, if he/she wishes to invalidate the decision file a petition to the High Court along with related documents and a copy of the decision within 35 days from the date decision heard or notice received thereof under this Act.

The petitioner shall also supply a copy of that petition to the arbitrator and the other party. In case a petition is filed as above, the High Court may invalidate that decision or issue an order to have a fresh decision taken as per necessity in case the petitioner proves that the arbitration decision contains any of the following matters:

- In case any party to the agreement was incompetent for any reason to sign the agreement at the time of signing the agreement, or in case the agreement is not valid under the law of that nation which governs jurisdiction over the parties, or in case such law is not clear and agreement is not valid under the laws of Nepal.
- In case the petitioner was not given a notice to appoint an arbitrator or about the arbitration proceedings in due time.
- In case the decision has been taken on a disputed matter that had not been referred to the arbitrator, or in a manner contrary to the conditions prescribed for the arbitrator, or by acting beyond the jurisdiction prescribed for the arbitrator.
- Except when an agreement has been signed contrary to laws of Nepal, in case procedure of designation of arbitrators or their functions and actions do not conform to agreement signed between parties, or in case there is no such agreement it has not been done as per this Act.

The High Court may also invalidate the decision of the arbitrator in case the dispute settled by the arbitrator cannot be settled through arbitration under the laws of Nepal or in case the decision taken by the arbitrator is likely to be prove detrimental to the public interests or policies.



Advanced Taxation

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

1. Muktinath Agro Limited (MAL), a NEPSE listed company is engaged in production, processing and distribution of vegetables & pulses. The company operates its agro farms in self-owned and leased land throughout the country. The processing plant is situated in Pokhara Industrial District. The company's entire production is distributed through Kathmandu Fresh Distributor Private Limited (KFDPL). MAL has employed 1090 Nepali workers throughout the year out of which 380 are women. Operating result of the company for the income year 2080/81 is as follows:

Particulars	Amount(Rs.)	Particulars	Amount(Rs.)
Opening stock of Processed vegetable & pulses	1,125,000	Sales to KFDPL	84,000,970
Opening stock of Consumables & seeds	316,600	Bad debts recovered	40,000
Farmland lease payments	8,895,900	Commission received	150,000
Purchase of raw materials	18,035,614	Gain on sale of business assets	260,000
Wages	21,260,000	Discount received	240,000
Freight inwards	655,000	Rent received (after tax)	695,000
Salaries	1,650,000	Miscellaneous income	165,000
Opening advance income tax	2,111,000	Closing stock	
Entertainment expenses	965,000	Processed vegetable & pulses	1416000
Interest expenses	1,185,000	Consumables & seeds	512,300
Provision for bad debts	715,000		
Pollution control cost	1,650,000		
R & D Cost	2,250,000		
Donation expenses	150,000		
Repair expenses	875,000		
Depreciation	1,570,000		
Legal expenses	60,000		
Office expenses	890,000		
Staff Welfare expenses	675,000		
Sundry expenses	175,600		
Net Profit	22,269,556		
	87,479,270		87,479,270

Additional Information:

- Purchase includes purchase of Tractor with trolley during the month of Bhadra 2080 for Rs. 15,04,600. Rs. 7,52,300 was paid to the supplier and remaining 50% was received as capital grant from GoN.
- 40% of bad debts recovered were not allowed for deduction previously
- Closing stock was overvalued by Rs. 610,000.
- Salary includes Rs. 45,600 paid to Agri Technicians under contract without TDS.



- Repair & Depreciation is calculated at the rate and method provided by the schedule 2 of the Income Tax Act. However, no additional allowances applicable if any, are not considered. Similarly, depreciation of tractor with trolley and inventory management software was not considered.
- Wages include purchase of inventory management software with license of 10 years for Rs. 3 million during the year. The company started to use the software from 1st Ashad 2080.
- 20% of the donation was given to a private school. Rest was given to a tax exempted entity.
- Legal expenses include Rs. 5,000 incurred for defending the title of business assets, Rs. 1,000 for the income tax appeal and Rs. 2,000 for income tax penalty.
- Unabsorbed business loss of last 3 years is Rs. 1,200,781

You are required to calculate:

(3+15+2=20)

- Applicable tax rate for the company.
- Assessable income from business for the Income year 2080/81.
- Tax Liability

Answer: 1

a: Applicable tax rate for the company

Particulars	Reference Section	Special Industry	Other
Normal Rate		25%	25%
20 % Rebate to Special Industry	11(2kha)(kha)	5%	
Applicable Rate		20%	
Option I: 50% rebate for a company carrying agricultural business	11(1)	10%	
Option II: 30% rebate for providing employment opportunity throughout the year by special industry to 1000 plus Nepalese including additional rebate of 10% for employing 100 plus Nepalese women, Dalit & Disabled persons (20*0.7*0.9)	11(3)(ka)	12.60%	
Option III: 15% rebate for manufacturing industry listed in Nepal Stock Exchange	11(3chh)	17%	25%

Option I is the beneficial option for the company

b: Assessable income from business for the Income year 2080/81

Particulars	Special Industry	Other	Total	Remarks
<u>A. Inclusions</u>				
Sales to Kathmandu Fresh	84,000,970		84,000,970	
Bad debts recovered	24,000		24,000	Previously disallowed not included in income
Commission received	150,000		150,000	



Gain on sale of business assets		260,000	260,000	In the absence of information, treated as other income.
By Discount received	240,000	-	240,000	In the absence of information, treated as industry income assuming the discount received on material purchased income.
By Rent received (Grossed)		772,222	772,222	Gross with applicable rate
By Miscellaneous income		165,000	165,000	
Capital Grant From GoN for Purchase of Tractor with Trolley	752,300		752,300	
Total Inclusion	85,167,270	1,197,222	86,364,492	
Ratio	98.61%	1.39%	100.00%	
<u>B. Deductions</u>			-	
General deduction under section 13	4,352,417	61,183	4,413,600	Refer working Note 1
Interest u/s 14(1)	1,185,000		1,185,000	In the absence of information, treated as business expenses
Cost of goods sold u/s 15	44,465,214		44,465,214	Refer working Note 2
Repair & Maintenance u/s 16	875,000		875,000	
Depreciation Expenses under section 19	2,694,253		2,794,560	Refer working Note 3
Total Deduction	53,571,884	61,183	53,733,374	
Adjustable Taxable Income	31,595,386	1,136,039	32,631,118	
Interest under section 14(2)	-	-	-	
Pollution control Expenses Under Section 17	1,650,000		1,650,000	Lower of 50% of adjustable taxable Income from special industries only i.e. 15,797,692.8 or actual Rs. 1650000



Research & Development Cost under section 18	2,250,000		2,250,000	Lower of 50% of adjustable taxable Income from special industries only i.e. 15,797,692.8 or actual Rs. 2250000
Carried forward business loss	1,200,781		1,200,781	
Assessable Income	26,494,605	1,136,039	27,530,337	
Less: Donations	98,614	1,386	100,000	Donation to private school not allowed for deduction
Taxable Income	26,395,991	1,134,653	27,430,337	
Effective Tax Rate	10%	25%	0	
Income Tax	2,639,599	283,663	2,923,262	
Interest under section 118			18,774	Refer working Note 4
Total Tax Liability			2,942,036	

WN 1. Calculation of general deduction under section 13

Particulars	Amount (Rs.)	Remarks
Salaries	1,650,000	Payment without TDS is eligible for deduction
Provision for doubtful debt		Not allowed assuming conditions of Sec. 40 (3) (ga) not met
Entertainment expenses	965,000	
Legal expenses	58,000.00	Reduced by income tax penalty Rs.2000
Office expenses	890,000.00	
Staff Welfare expenses	675,000.00	Reduced by the interest paid for the assets not used during the income year
Sundry expenses	175,600.00	
Total	4,413,600	

WN 2: Cost of Goods sold

Particulars	Amount (Rs.)	Remarks
Opening stock of Processed vegetable & pulses	1,125,000	
Opening stock of Consumables & seeds	316,600	



Farmland lease payments	8,895,900	
Purchase of Raw materials	16,531,014	Reduced by the purchase amount of tractor with trolley for Rs 15,04,600
Wages	18,260,000	Reduced by the payment for the software purchase amounting Rs. 3 Million
Freight inwards	655,000	
Less closing stock of Raw material	(1,416,000)	
Less closing stock of Consumables & seeds	(512,300)	
Add: adjustment for closing stock overvaluation	610,000	
Cost of trading stock	44,465,214	

WN 3: Calculation of Depreciation u/s 19

Particulars	Amount (Rs.)
Depreciation as calculated at the rate and method provided by the schedule 2 of the Income Tax Act	1,570,000
Add: Depreciation for Tractor with trolley (752300*2*0.15)	225,690
Total normal Depreciation	1,795,690
Add 1/3 additional for special industry	598,563
Total Depreciation	2,394,253
Add; Depreciation for inventory management software (30m/10)	300,000
Total Depreciation u/s 19	2,694,253

WN 4: Calculation of interest u/s 118

Particular	First Installment till Poush end 40%	Second Installment till Chaitra end 70%	Final Installment till Asar end 100%	Remarks
Installment Payment	1,169,305	2,046,284	2,923,262	
Minimum Payment required 90%	1,052,374	1,841,655	2,630,936	
Opening Advance Income Tax	2,111,000	2,111,000	2,111,000	
Advance Tax on Rental Income (Annual Rental Tax Rs 77,222)	57,917	19,306	19,306	
Actual Tax Payment	2,168,917	2,130,306	2,130,306	
Short/(excess) Payment for interest calculation	-1,116,542.07	-288,650.24	500,630.59	
Rate of Interest	15%	15%	15%	
Period	3months	3 months	3 months	
Interest amount	-	-	18,774	18,774



2.

- a) Mr. Ghosh, was CEO of GMI bank Ltd, from 1st shrawan 2077 to Falgun, 2080. Thereafter he started a small business. The Bank provides the following details with respect to his employment for the Year 2080/81.

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- Monthly salary Rs. 2,00,000 and one month salary as Dashain allowance.
- Salary was deposited in his account maintained in the bank. Net interest amounting of Rs. 500,000 has been credited in his bank account during the year.
- The Bank provided a new car valuing Rs. 5,000,000 on his joining date. Fuel expenses of Rs. 100,000 and driver's monthly salary of Rs. 20,000 were paid by the bank. At the end of service period, the Bank transferred the ownership of the car in his name without any cost and charges.
- He has been provided with a rent free accommodation for which the bank paid Rs. 80,000 per month.
- The Bank pays Rs. 50,000 per month towards hospitality and entertainments,
- He attended eight Board of Directors' meeting and per meeting allowance of Rs. 25,000 was paid.
- He has received bonus Rs. 1,000,000 out of the previous years' provision.
- The bank deposits 20 % of his salary towards employee provident fund after deducting 10% from his monthly salary. The employee provident fund is an approved retirement fund. At the termination of contract, he received Rs. 2,700,000 including gain of Rs. 150,000 from the fund.
- He paid Rs. 5,00,000 for cosmetic medical surgery. The bank has the policy to compensate 50 % of any medical expenditure.
- He pays premium of Rs. 100,000 annually against his life insurance.

He has registered a small trading business on 1st Chaitra 2080. The Business, earned net taxable profit of Rs. 2,500,000 during the FY 2080/81. He has income from employment and business only and opted for tax assessment as single. He has not submitted any estimated tax return and not paid any taxes on his own. You are required to calculate the net tax liability. Also mention whether he has to file an income tax return and how he can submit the estimated tax return.

Answer:2(a)**Calculation of total tax payable and net tax liability of Mr. Ghosh**

Particulars	Amount (Rs.)	
Assessable income from Employment (note a)		6,410,000.00
Assessable income from business		2,500,000.00
Total assessable income		8,910,000.00
Less		
Deductible Amount against contribution to PF		-300,000.00
Which is lower of		
Actual Contribution	320,000.00	
1/3rd of Assessable Income	2,970,000.00	
Maximum Limit	300,000.00	
Adjusted Taxable Income		8,610,000.00
Deduction against Insurance premium lower of		-40,000.00
Actual payment	100,000.00	
Maximum Limit	40,000.00	
Taxable Income		8,570,000.00



Computation of Tax Liability		
Up to Rs. 500,000 @1% *	5,000.00	
Next Rs. 200,000 @10%	20,000.00	
Next Rs. 300,000 @ 20 %	60,000.00	
Next Rs. 1,000,000 @ 30 %	300,000.00	
Next Rs. 3,000,000 @ 36 %	900,000.00	
Balance on Rs. 3,570,000 @ 39%	1,392,300.00	
Total Tax Liability	2,677,300.00	2,677,300.00
Tax deducted by the bank (note a)		1,702,300.00
Less Medical tax credit		-----
Net tax liability	-	975,000.00

* 1 % shall not be applicable if only income has generated from only proprietorship firm, or participated in SSF.

Income file return: During the Income Year, he has income from employment as well as business income, so he has to file income tax return including the remuneration.

Estimated tax return: Section 94 of Income Tax Act, 2058 states that the installments tax to be paid on the assessable income of business and investment. It has not specified on the income of employment. So, installment tax is calculated on the tax to be paid from the business's taxable income. Further, directives issued by Inland Revenue department specified that the estimated tax return is applicable after the business registration. So, he had to file estimated tax return after the business registration, i.e. first return chaitra end, 2080.

Note:

- a) Tax deducted by the bank on his remuneration income:

Particulars	Amount (Rs.)	
Salary (2,00,000 x 8)		1,600,000.00
Dashai allowance		200,000.00
Contribution to Provident Fund (PF)		160,000.00
Vehicle facility (0.5 % of 16,00,000)		8,000.00
Vehicle provided at the time of retirement (note b)		2,560,000.00
Fuel expenses (note b)		-----
Driver's salary (note b)		-----
Accommodation facility (2% of 16,00,000) (note c)		32,000.00
Monthly payment for hospitality and entertainments for 8 months		400,000.00
Meeting allowance (25000*8), only upto Rs. 20,000 per meeting is final withholding.		200,000.00
Bonus		1,000,000.00
Compensation for medical treatment (50 % of 5,00,000)		250,000.00
Assessable income from Employment		6,410,000.00
Less		
Deductible Amount against contribution to PF		300,000.00



Which is lower of		
Actual Contribution	320,000.00	
1/3rd of Assessable Income	2,970,000.00	
Maximum Limit	300,000.00	
Adjusted Taxable Income		6,110,000.00
Deduction against Insurance premium lower of		(40,000.00)
Actual payment	100,000.00	
Maximum Limit	40,000.00	
Taxable Income		6,070,000.00
Computation of Tax Liability		
Up to Rs. 500,000 @1% *	5,000.00	
Next Rs. 200,000 @10%	20,000.00	
Next Rs. 300,000 @ 20 %	60,000.00	
Next Rs. 1,000,000 @ 30 %	300,000.00	
Next Rs. 3,000,000 @ 36 %	900,000.00	
Balance on Rs. 1,070,000 @ 39%	417,300.00	
Total Tax deducted by the Bank	1,702,300.00	1,702,300.00

Note (b) – It is assumed that the bank transferred the vehicle on WDV value. WDV value is calculated from the year of purchase to the year of transfer of title (from FY 2077-78 to FY FY 2079-80). Accordingly, the WDV of the care at the beginning of of FY 2080-81 will be Rs 25,60,000 (Rs. 50,00,000 @ 20% for 3 years on WDV method)

Note (c) As per Rule 13 of IT Rules, perquisites @ 0.5% of salary for providing car & @ 2% of salary for providing housing facility has to be included to the remuneration income of any employees. However, vehicle fuel & driver salary should be included in the salary.

- b) Buddha Airways Pvt. Ltd. is an airline with domestic and international operations. Due to financial crunch, the company has neither submitted income tax return nor deposited any tax. On 2081 Baisakh, two tax officers namely Mr. Arjon and Ms. Neerja from Putalisadak Tax Office visited the office of Buddha Airways Pvt. Ltd. for Tax audit for financial year 2078-79. During the audit, Tax Officer found that neither TDS is regularly deposited nor TDS return is submitted within the stipulated time frame. On Jestha 25, 2081, Tax office issued notice to pay the tax within 15 days along with applicable fine and penalty. Additionally, tax office imposed fine under section 120(a) and failure to file the withholding tax return under section 117(3).

Details of the payment made and TDS not deposited in Inland Revenue Office:

S.No	Particular	Amount Paid	TDS Amount	Revenue Code	Remarks
1	Remuneration tax on monthly salary paid to 250 employees	12,500,000	1,500,000	11112	Remuneration is paid on the last date of the month
2	Remuneration based monthly Social Security Tax of 250 employees	12,500,000	125,000	11211	Remuneration is paid on the last date of the month



3	Consultancy Fee paid to M/s Bishal Associates	1,333,333.33	200,000	11111	Payment made on 25.09.2079
4	Rent paid to M/s Pragyan Associates	50,000	5,000	11131	Rent is paid Quarterly on 15th of first months of each quarter
5	Payment made to contractor M/s Paul Contractor Pvt Ltd.	50,000	7500	11120	Payment made for construction of Seminar hall on 27.02.2080

Required:

7

State the consequences of the notice and quantify the amount to be paid by Buddha Airways Pvt. Ltd. as per the provisions of the Income Tax Act, 2058. Justify the tax demand of the Tax Officer.

Answer: 2(b)

As per section 90 of the Income Tax Act 2058, “Statements and Payments of Tax withheld” Every withholding agent shall be required to file with the Department within 25 days after the end of each month a statement in the manner and form prescribed (subsection-1). A withholding agent who fails to withhold tax in accordance with sections 87, 88, 88A or 89 shall be treated as though the tax had been withheld at the time required. According to this provision M/s Buddha airways Pvt. Ltd. is responsible to comply with the Income Tax Act provisions.

According to the section of 119 of Income Tax Act 2058 “Interest for Failure to Pay Tax” A person who fails to pay tax on or before the date on which the tax is payable is liable to pay interest for each month and part of a month for which any of the tax is outstanding calculated as the standard interest rate applied to the amount outstanding as per section 119(1) and for the failure to file the withholding tax return is subject to fee under section 117(3) @ 2.5% Per annum of total withholding tax computed for the month and part of month basis.

Accordingly total Tax deducted amount and Interest under Income Tax Act 2058 are as under:



Suggested Answers of CA Membership Examinations

	Particular	TDS per month/ Quarter	No. of months	Total TDS till Jestha 25, 2081	Interest u/s 119 (1)	Fee u/s 117 (3)	Total Fee & Interest
A	Remuneration Tax not Deposit in time from 2078 Shrawan to 2081 Jestha 25 Calculation of chargeable total Months based on Factorial $(34*(34+1))/2=(595 \text{ month})$	1,500,000	34	51,000,000	11,156,250 $(15,00,000 \times 15\% \times 595)/12$	1,859,375 $(15,00,000 \times 2.5\% \times 595)/12$	64,015,625
B	Remuneration based Social Security Tax of 250 Staffs monthly Calculation of chargeable total Months based on Factorial $(34*(34+1))/2=(595 \text{ month})$	125,000	34	4,250,000	929,687.50 $(125,000 \times 15\% \times 595)/12$	154,947.92 $(125,000 \times 2.5\% \times 595)/12$	5,334,635.42
C	Consultancy Fee paid to Bishal Associates	200,000	16	200,000	40,000	6,666.67	246,666.67
D	Rent payment to M/s Pragyan Associates						
	As the rent is paid on 15th of first month of each quarter, interest & fee shall be attracted for the remaining months till 2081 Jestha 25:						
	2078 Shrawan	5,000	34	5,000	2,125.00	354.17	7,479.17
	2078 Kartik	5,000	31	5,000	1,937.50	322.92	7,260.42
	2078 Magh	5,000	28	5,000	1,750.00	291.67	7,041.67
	2079 Baisakh	5,000	25	5,000	1,562.50	260.42	6,822.92
	2079 Shrawan	5,000	22	5,000	1,375.00	229.17	6,604.17
	2079 Kartik	5,000	19	5,000	1,187.50	197.92	6,385.42
	2079 Magh	5,000	16	5,000	1,000.00	166.67	6,166.67
	2080 Baisakh	5,000	13	5,000	812.50	135.42	5,947.92
	2080 Shrawan	5,000	10	5,000	625.00	104.17	5,729.17
	2080 Kartik	5,000	7	5,000	437.50	72.92	5,510.42
	2080 Magh	5,000	4	5,000	250.00	41.67	5,291.67
	2081 Baisakh	5,000	0	5,000	-	-	5,000.00
	Total TDS and Fine Rent payable by M/s Pragyan Associates			60,000	13,062.50	2,177.08	75,239.58
E.	Payment made to contractor M/s Paul Contractor Pvt. Ltd. Payment made on 2080.02.27, so, due date of TDS payment is 2080.03.25, hence, from 2080.03.26 to 2081 Jestha = 12 month	7,500	12	7,500	1,125	187.50	8,812.50

Note:

- Standard Interest rate is 15% Per annum as per the Income Tax Act Definition section.
- Additional tax imposed by Tax officer under section 120(a) 50% of tax reassessed can be done but the failure to file the withholding tax return is subject of fee under section 117(3) at 2.5% P.A of total withholding tax computed for the month and part of month basis is not applicable for



the financial year 2079-080.

- In additional fees and penalties for not observing the provision of the act is not less than 5000 and not more than NPR. 25,000 under section 119K and not less than 5000 and not more than NPR. 30,000 under section 128 of the Income Tax Act 2058.

In traditional method, the calculation of interest is as follows for A & B,

Due Month	TDS			SST		
	TDS	Interest @ 15%	Fee @ 2.5%	SST	Interest @ 15%	Fee @ 2.5%
34	1,500,000.00	637,500.00	106,250.00	125,000.00	53,125.00	8,854.17
33	1,500,000.00	618,750.00	103,125.00	125,000.00	51,562.50	8,593.75
32	1,500,000.00	600,000.00	100,000.00	125,000.00	50,000.00	8,333.33
31	1,500,000.00	581,250.00	96,875.00	125,000.00	48,437.50	8,072.92
30	1,500,000.00	562,500.00	93,750.00	125,000.00	46,875.00	7,812.50
29	1,500,000.00	543,750.00	90,625.00	125,000.00	45,312.50	7,552.08
28	1,500,000.00	525,000.00	87,500.00	125,000.00	43,750.00	7,291.67
27	1,500,000.00	506,250.00	84,375.00	125,000.00	42,187.50	7,031.25
26	1,500,000.00	487,500.00	81,250.00	125,000.00	40,625.00	6,770.83
25	1,500,000.00	468,750.00	78,125.00	125,000.00	39,062.50	6,510.42
24	1,500,000.00	450,000.00	75,000.00	125,000.00	37,500.00	6,250.00
23	1,500,000.00	431,250.00	71,875.00	125,000.00	35,937.50	5,989.58
22	1,500,000.00	412,500.00	68,750.00	125,000.00	34,375.00	5,729.17
21	1,500,000.00	393,750.00	65,625.00	125,000.00	32,812.50	5,468.75
20	1,500,000.00	375,000.00	62,500.00	125,000.00	31,250.00	5,208.33
19	1,500,000.00	356,250.00	59,375.00	125,000.00	29,687.50	4,947.92
18	1,500,000.00	337,500.00	56,250.00	125,000.00	28,125.00	4,687.50
17	1,500,000.00	318,750.00	53,125.00	125,000.00	26,562.50	4,427.08
16	1,500,000.00	300,000.00	50,000.00	125,000.00	25,000.00	4,166.67
15	1,500,000.00	281,250.00	46,875.00	125,000.00	23,437.50	3,906.25
14	1,500,000.00	262,500.00	43,750.00	125,000.00	21,875.00	3,645.83
13	1,500,000.00	243,750.00	40,625.00	125,000.00	20,312.50	3,385.42
12	1,500,000.00	225,000.00	37,500.00	125,000.00	18,750.00	3,125.00
11	1,500,000.00	206,250.00	34,375.00	125,000.00	17,187.50	2,864.58
10	1,500,000.00	187,500.00	31,250.00	125,000.00	15,625.00	2,604.17
9	1,500,000.00	168,750.00	28,125.00	125,000.00	14,062.50	2,343.75
8	1,500,000.00	150,000.00	25,000.00	125,000.00	12,500.00	2,083.33
7	1,500,000.00	131,250.00	21,875.00	125,000.00	10,937.50	1,822.92
6	1,500,000.00	112,500.00	18,750.00	125,000.00	9,375.00	1,562.50
5	1,500,000.00	93,750.00	15,625.00	125,000.00	7,812.50	1,302.08
4	1,500,000.00	75,000.00	12,500.00	125,000.00	6,250.00	1,041.67
3	1,500,000.00	56,250.00	9,375.00	125,000.00	4,687.50	781.25
2	1,500,000.00	37,500.00	6,250.00	125,000.00	3,125.00	520.83
1	1,500,000.00	18,750.00	3,125.00	125,000.00	1,562.50	260.42
	51,000,000.00	11,156,250.00	1,859,375.00	4,250,000.00	929,687.50	154,947.92



- c) Tax officer shall maintain confidentiality of any documents and information in his possession or knowledge while performing his duties under Income Tax Act. Under what circumstances Tax Officer can convey the information to other persons? 6

Answer:2(c)

As per Income Tax Act Section 84, the tax officer can convey the information to the following person under the given circumstances:

- a. To the extent required in order to perform the officer's duties under Income Tax Act;
- b. To a court or tribunal as required to perform by them in proceedings with respect to a matter under this Act;
- c. To the Finance Minister;
- d. To any person when the disclosure is necessary for the purpose of any other fiscal law;
- e. To any person in the service of GON, who requires the information for revenue or statistics related works;
- f. To the Auditor-General or any person authorized by the Auditor-General when such a disclosure is necessary for the performance of his official duties; or
- g. To the competent authority of the foreign government with which Nepal has entered into an international agreement

3.

- a) Whether the following transactions attract withholding of tax or not? If yes mention the withholding tax rates and whether it is final or adjustable. 7

- i) Commission paid by the resident employment company to non-resident person.
- ii) Payment for use of electricity transmission line.
- iii) Payment of carriage service for providing vehicle on rent.
- iv) Benefit payment from unapproved retirement fund.
- v) Interest paid by company listed in stock exchange on debenture to individual natural person.
- vi) Payment of amount exceeding five million rupees for a work to be performed by a consumers' committee.
- vii) Premium paid by resident person to non-resident reinsurance company for reinsurance.

Answer:3(a)

- i) Yes. At the rate of 5 percent. Final
- ii) Yes. at the rate of ten percent, Adjustable
- iii) Yes, at the rate of 2.5 %. Final for payment to natural person, adjustable for others
- iv) Yes, at the rate of 5 percent. Final
- v) Yes, at the rate of 5 percent. Final
- vi) Yes. At the rate of 1.5%. Adjustable
- vii) Yes. At the rate of 1.5%. Final

- b) You are a statutory auditor of A Ltd. a large size public company in Nepal. A Ltd is in requirement for various services from the professional practitioners. You are approached by A Ltd for consultation on taxation matters. Which all tax consultancy services can you provide to A Ltd? What safeguards you need to maintain? Explain in context of ICAN Code of Ethics. 5

Answer: 3(b)



Referring to ICAN Code of Ethics we find that the auditor can provide following services to its audit client:

- a. Tax return preparation
- b. Tax calculations for the purpose of preparing accounting entries to clients that are not public interest entities, using the following safeguards
 - i. Using professionals who are not members of the audit team who performs audit service,
 - ii. Having an appropriate reviewer who was not involved in providing the service review the audit work or service performed.
- c. Tax planning and other tax advisory services to all audit clients, using the following safeguards unless the effectiveness of the tax advice depends on a particular accounting treatment or presentation in the financial statements and (i) the audit team has reasonable doubt as to the appropriateness of the related accounting treatment or presentation under the relevant financial reporting framework; and (ii) the outcome or consequences of the tax advice will have a material effect on the financial statements on which the firm will express an opinion, when such services cannot be given:
 - i. Using professionals who are not audit team members to perform the service might address self-review or advocacy threats.
 - ii. Having an appropriate reviewer, who was not involved in providing the service review the audit work or service performed might address a self-review threat.
 - iii. Obtaining preclearance from the tax authorities might address self-review or advocacy threats.
- d. Tax services involving valuation to all audit clients, using the following safeguards
 - i. Using professionals who are not audit team members to perform the service might address self-review or advocacy threats.
 - ii. Having an appropriate reviewer, who was not involved in providing the service review the audit work or service performed might address a self-review threat.
 - iii. Obtaining pre-clearance from the tax authorities might address self-review or advocacy threats.
- e. Assistance in resolution of tax disputes, using the following safeguards
 - i. Using professionals who are not audit team members to perform the service might address self-review and advocacy threats.
 - ii. Having an appropriate reviewer, who was not involved in providing the service review the audit work or service performed might address a self-review threat.

It therefore to be seen which area of tax consultancy A Ltd is requiring, if the services are from above mentioned areas then it can provide, other than above it cannot provide the services as that will pose a various threat that undermines the professional integrity and independence.

4.

- a) M/s Inaya Import Trading, a proprietorship firm owned by Mr. Binayal Lal Bogati, is registered under Value Added Tax. It imports VAT applicable trading goods from United Kingdom and sells in Nepal. During the month of Mangsir 2081, the transactions of the firm are as follows:
 - i) Four consignments were cleared from Birgunj Customs Office with payment of import duty, excise duty and VAT during the month. The details of costs in relation to those consignment are as follows:

Consignment No.	CIF-cost Birgunj	Excise Rate	Custom Rate
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P	5000,000	15%	20%
Q	7500,000	Exempt	25%
R	14000,000	10%	12%
S	1000,000	Exempt	14%

- ii) Sales of Rs. 30,000,000 were recorded during the month.
- iii) Electricity expense of Rs. 90,000 were incurred during the month for the sales outlet.
- iv) Mr. Bogati purchased a car in the name of the firm for Rs. 6,000,000 during the month. It is expected that the car will not be used wholly for business purpose. The petrol expense for the car include Rs. 40,000 in the form of abbreviated tax invoice and Rs. 15,000 with proper VAT invoice.
- v) A generator is in use at the sales outlet. Petrol expenses for use of generator is Rs.55,000 during the month with proper VAT invoice.
- vi) Most of the assets for the sales outlet are directly purchased by the sole proprietor, payment being made in cash. The invoices related to purchase are then provided to the accountant for the purpose of keeping record. During the month of Mangsir, the accountant received a balance confirmation request from two vendors to confirm the balance for Fiscal Year 2080/81. The accountant was surprised and asked the owner, if there were any such transaction during that year, as the accounting record does not reflect the transaction with the vendor. The owner then checked his drawer and provided two invoices dated 4th Shrawan 2081 for Rs. 300,000 (related to purchase of a generator, installed at his home for personal use) and 15th Poush 2080 for Rs. 5,00,000 (related to purchase of furniture to renovate the shop). These have not been claimed as credit so far.
- vii) A building is self-constructed by the firm with total cost of Rs. 4,600,000 (depreciated value of Rs. 3,000,000 as on Mangsir 2081) used as sales outlet. It was built five years ago. During the month of Mangsir 2081, total cost of Rs. 600,000 was incurred on the construction of a room in the building adjacent to the sales outlet, out of which Rs. 250,000 relates to labour cost without any invoice. On scrutiny of the building ledger, it was identified that a total of Rs. 700,000 was incurred in constructing the current building. VAT invoice is available for all other cost-items of the building.
- viii) Mr. Bogati wants to start an export business. For this, he hired a firm in Belgium to assess market feasibility of Belgium market for a fee of Rs. 3,000,000. This service was received by M/s Inaya Import Trading. The report was obtained during the month of Mangsir but the payment of VAT has been made after filing return.
- ix) Mr. Bogati has another firm, M/s Binayal Imports that imports goods from India. During the month of Mangsir 2081, one consignment was released from Tribhuvan International Airport Customs office, Kathmandu. The invoice raised by the Indian Party is Rs. 3600,000, the transport cost as per airway bill is Rs. 220,000 and value declared by the importer is Rs. 350,000. The insurance and other associated cost are Rs. 300,000. The rate of customs duty is 16%. Ignore rebate as per Finance Act for import from India. Excise duty is not applicable.
- All the consignments from M/s Binayal Imports have been sold during the month with gross profit margin of 10%. There is no additional cost to bring the goods to warehouse in Nepal.
- All above items unless specified are exclusive of VAT.



You are required to compute Value Added Tax liability, if any, of the firm. **10**

Answer: 4(a)

Since both the businesses are of the same individual, the amount of VAT obligation shall be computed considering both the firms.

Computation of VAT on Sales

Sales item	VAT Amount (Rs.)	Note
Sales from M/s Inaya Import Trading	39,00,000	30,000,000 X 13%
Sales from M/s Binayal Imports	704,990	Note 'v'
Total Output VAT	4604,990	

Computation of Input VAT credit

Purchase item	VAT Amount(Rs.)	Note
Import from M/s Inaya Import Trading	4,506,190	Note i
Electricity expense	-	VAT exempt
Car for admin purpose	312,000	40% of 13% of Rs.6000,000
Petrol for vehicle	-	No credit
Petrol for generator	7,150	55000*13%
Invoice dated 2080.9.15 without VAT credit previously	65,000	Upto 1 year
Invoice dated 2081.4.4 without VAT credit previously	-	Personal use no credit
VAT on service received from Belgium	-	The payment of VAT is made only after filing return, he cannot claim credit in his solution
VAT on construction services	58,500	As the building is used in VAT attractive business, full credit on cost of Rs. 450,000(71-2.51)



Import from M/s Binayal Imports	640,900	Note iv
Total Input VAT	5,589,740	

VAT obligation

Output VAT – Input VAT = Rs. 4604,990 - 5,589,740 = Rs. 984,750 (receivable VAT)

Though there is receivable VAT of Rs. 984,750; the firm shall pay reverse VAT of Rs. 3,90,000 U/s 8(2) on import of Service. The reverse VAT u/s 8 (3) becomes payable when the firm books Capital WIP, which is ideally during the month of Mangsir, as such, the total reverse VAT payable is Rs. 422,500 (390,000 + 32,500). Cost of construction of Rs. 450,000 are VAT invoices, so no need to pay reverse VAT because paid through invoices.

i. Import from M/s Inaya Import Trading

Particulars	Con 1	Con 2	Con 3	Con 4	Total
CIF- Birgunj Value	5000,000	7500,000	14,000,000	1000,000	
Rate of Import duty	20%	25%	12%	14%	
Customs duty	1000,000	1875,000	1680,000	140,000	
Taxable value for excise duty	6000,000	9375,000	15680,000	1140,000	
Rate of excise duty	15%	0	10%	0	
Excise duty	900,000	0	1568,000	0	
Taxable value for VAT purpose	6900,000	9375,000	17,248,000	1140,000	
VAT	897,000	1,218,750	2,242,240	148,200	4,506,190

II) In case of construction of building, as per IRD circular, the total cost of the building shall be considered while determining the threshold of Rs. 50 lakhs in order to apply Sec. 8 (3). As of Mangsir 2081, the total cost is Rs. 5,200,000 that is above the threshold of Rs. 50 lakhs, as such, reverse VAT is applicable on the VAT-attractive cost element on which there is no proper VAT invoice. As per question, total of such cost is Rs. 700,000. The reverse VAT payable at the time recording Capital WIP or capitalization of asset is Rs. 32,500.

III) As the service is received from Belgium during the month, the firm must pay reverse VAT of Rs. 390,000 u/s 8 (2) on the cost within 25th of Poush. As per Sec. 8 (2), VAT must be collected at the time that is earlier of payment or receipt of service.

IV) Computation of VAT payment on import by M/s Binayal Imports

Particulars	Amounts (Rs.)
Invoice value	3600,000
Add: Transport cost (higher of amount in airway bill or cost declared by importer)	350,000
Other associated cost	300,000
Customs Value	4250,000
Import duty @ 16%	680,000
Taxable value for VAT purpose	4930,000
VAT @13%	640,900



V) Sales from M/s Binayal Imports

Particulars	Amount (Rs.)
Cost	4930,000
Sales with 10% margin	5423,000
VAT on sales	704,990

- b) Below is the detail of transaction of Tummy Dummy Foods Private Limited for the month of Magh 2080:

Import of Raw Material:

- (a) Raw Material Imported: 50 MT (2 Containers)
- (b) FOB Russia Price per MT: USD 500
- (c) Freight till Dry Port (Birgunj): USD 200 per MT
- (d) Insurance: Rs. 400,000 per Container
- (e) Other Incidental Expenses till Dry Port (Birgunj): Rs. 50,000 per container
- (f) Customs Clearance Expenses: Rs. 10,000 per Container
- (g) Local Transportation and Other Expenses: Rs. 100,000 per container
- (h) Applicable Custom Duty Rate: 10%
- (i) Applicable Excise Duty Rate: 10%
- (j) Raw Material is VAT applicable
- (k) Consider 1 USD: Rs. 120

Import of Packing Material:

- (a) Packing Material Imported: 25 MT (1 Container)
- (b) FOB Russia Price per MT: USD 400
- (c) Freight till Dry Port (Birgunj): USD 200 per MT
- (d) Insurance: Rs. 400,000 per Container
- (e) Other Incidental Expenses till Dry Port (Birgunj): Rs. 50,000 per container
- (f) Customs Clearance Expenses: Rs. 10,000 per Container
- (g) Local Transportation and Other Expenses: Rs. 100,000 per container
- (h) Applicable Custom Duty Rate: 10%
- (i) Applicable Excise Duty Rate: 10%
- (j) Packing Material is VAT applicable
- (k) Consider 1 USD: Rs. 120

Other Details:

- Opening stock of finished goods: 100 MT valued at Rs. 15,000,000
- Closing stock of finished goods: 25 MT
- Production for the month: 30 MT
- Selling price per MT: Rs. 200,000
- Opening stock of Raw Material: Nil
- Closing stock of Raw Material: 10 MT
- Opening stock of Packing Material: 50 MT Valued at Rs. 5,000,000
- Closing stock of Packing Material: 40 MT



- Direct Factory Expenses for the Month: Rs 500,000
- Indirect Factory Expenses for the Month: Rs 200,000
- Selling and Other Expenses for the Month: Rs 1,000,000.

Excise Duty applicable on finished goods at 5% of cost. Company follows weighted average method of stock keeping.

Required:

(5+5=10)

- Customs Duty and Excise Duty payable at the time of import at customs point. and
- Excise Duty Payable for the month of Magh 2080.

Answer: 4(b)

Calculation of Customs Duty and Excise Duty at Customs Point

Particulars	Import of raw Material		Import of Packing Material	
		Amount (Rs.)		Amount (Rs.)
FOB Price	USD 500*50* NPR 120	30,00,000	USD 400*25*NPR120	12,00,000
Freight till Dry Port	USD 200*50*NPR 120	12,00,000	USD 200*25*NPR 120	6,00,000
Insurance	NPR 4,00,000*2	8,00,000	NPR 4,00,000*1	4,00,000
Other Incidental Expenses till Dry Port	NPR 50,000*2	1,00,000	NPR 50,000*1	50,000
Total Assessable Value for Customs		51,00,000		22,50,000
Customs Duty	10%	5,10,000	10%	2,25,000
Assessable Value for Excise Duty		56,10,000		24,75,000
Excise Duty	10%	5,61,000	10%	2,47,500
Total Value of Goods for VAT		61,71,000		27,22,500

Calculation of Excise Duty Payable for the month of Magh 2080

Calculation of Value of Raw Material Issued

Particulars	Qty	Amount (Rs.)	Particulars	Qty	Amount (Rs.)
Opening Stock	0	0			
Purchase	50	56,10,000	Issue	40	41,91,800
Other Expenses - Customs Clearance		20,000	Closing Stock	10	16,38,200
Local Transportation and Other Expenses		2,00,000			
Total	50	58,30,000	Total	50	58,30,000

**Calculation of Value of Packing Material Issued**

Particulars	Qty	Amount (Rs.)	Particulars	Qty	Amount (Rs.)
Opening Stock	50	50,00,000			
Purchase	25	27,22,500	Issue	35	36,55,167
Other Expenses		10,000	Closing Stock	40	71,77,333
Customs Clearance Local Transportation and Other Expenses		1,00,000			
Total	75	78,32,500	Total	75	78,32,500

Valuation of Cost of Production for the month of Magh 2080:

Particulars	Qty	Amount (Rs.)
Direct Factory Expenses		5,00,000
Indirect Factory Expenses		2,00,000
Raw Material Consumed		41,91,800
Packing material Consumed		36,55,167
Total Finished Goods Cost	35 MT	85,46,967

Finished Goods Ledger

Particulars	Qty	Amount (Rs.)	Particulars	Qty	Amount (Rs.)
Opening Stock	100	1,50,00,000			
Production for the month	35	85,46,967	Sales	110	2,20,00,000
			Closing Stock	25	15,46,967
Total	135	2,35,46,967	Total	135	2,35,46,967

Calculation of Excise Duty Payable for the month of Magh 2080

Particular	Amount (Rs.)
Factory cost of Goods Sold	2,20,00,000
Excise Duty Liability @ 5%	11,00,000
Less: Excise Duty Credit On Raw Material	5,61,000
On Packing Material- Not Allowed	0
Net Excise Duty Payable for the month of Magh 2080	5,39,000

Assumed that the selling price per MT is exclusive of excise duty.

5.

- a) Biotech Ltd. imported goods worth 3,50,00,000 from Taiwan which reached Nepal customs point on 16th Magh, 2080. However, due to some unavoidable reason, the importer could not obtain the invoice of the transport costs. The goods may get damaged if not cleared within 7 days. How can the Company clear the goods from Customs? Advise the remedy as per Customs Act and Regulation. 7

Answer:5(a)



According to section 15 of the Custom Act 2064, where, owing to a circumstance beyond his or her control, an importer is not able to forthwith submit documents of cost, insurance or related costs incurred in the importation of any goods, the importer may submit an application, accompanied by the reason for the same, to the Customs Officer for the fixation of the estimated amount of such freight, insurance or other related expenses. Where, in inquiring into the application, the contents appear to be reasonable, the Customs Officer may fix the estimated amount for freight, insurance, or other related expenses likely to be included in the transaction value of such goods.

The concerned importer shall submit documents and evidence relating to the actual freight, insurance, and other related expenses no later than ninety days after the date of fixation of the estimated amount of freight, insurance, or other related costs. If the amount set forth in the documents and evidence so submitted is more than the estimated amount fixed by the custom officer, the importer shall pay the duty chargeable on such excess value, and if it is less than that, the Customs Office shall refund the remaining amount, upon deduction of the chargeable duty, to the importer.

If the concerned importer fails to submit documents and evidence within the specified period or unless it is proved otherwise, the estimated amount fixed by the Customs Officer shall be considered as the final amount of such freight, insurance, or other related costs.

- b) Ms. Jay Bharati Trading House deals in used goods and has following transaction details for the month of Magh 2081.

	Purchase (including VAT)	Sales (excluding VAT)
Chairs	25,000	20,000
Motorbike	50,000	65,000
Refrigerator	9,000	10,000
Cupboard	12,000	7,000
Bookshelf	10,000	9,000
Scooter	25,000	35,000

Mention the provisions relating to determination of VAT on the transactions of used goods and calculate the VAT payable/receivable by Ms. Jay Bharati Trading House for the month. 7

Answer: 5(b)

Section 17(5) of Value Added Tax Act provides that for dealers registered to deal in the used goods, the VAT set off facility shall be as prescribed by the VAT Rules. It means that VAT paid on purchase is not allowed to be claimed straight way. Rule 33 of Value Added Tax Rules 2053 provides for the process of determination of VAT payable in case of used items. A person dealing on used goods should maintain the full record of items purchased and sold, including the description of the items bought etc. In case of used goods, VAT is collected on the difference between the sales and cost of purchase (including VAT). Therefore the taxable value in such case is as follows:

Taxable value = Sales price – purchase price including VAT on individual basis

Invoice shall be raised for each items sold and separate record shall be kept for purchase and sales items. When the goods are sold at price lower than the cost including VAT then in such case tax invoice need not be issued and no tax needs to be collected.

There shall be no VAT credit or refund in case of used goods dealer because the payable arises only after the item is sold and no input credit is computed as the purchase price itself is including VAT.

Proper records prescribed by Rules needs to be maintained; if such records are not kept then tax officer may assess the tax on the full sales value.

Particulars	Sales	Purchase (Incl VAT)	Taxable Value	Tax
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Suggested Answers of CA Membership Examinations – March 2025

Chairs	20,000	25,000	-	-
Motorbike	65,000.00	50,000.00	15,000.00	1,950.00
Refrigerator	10,000.00	9,000.00	1,000.00	130.00
Cupboard	7,000	12,000	-	-
Bookshelf	9,000	10,000	-	-
Scooter	35,000.00	25,000.00	10,000.00	1,300.00
VAT Payable				3,380.00



Calculation of VAT payable for the month of Magh 2081:

- c) Please explain the due for payment of excise duty for the given case. Does the company need to pay any additional duty to IRD in the following cases: **6**

i. Aqua Industries Limited has imported following materials for the month of Chaitra 2080 and used for production of finished goods:

S.N.	Particulars	Payment of Excise Duty	Remarks
1	Raw materials	1000,000	20% of raw materials is subject to duty exemption
2	Subsidiary raw material	600,000	
3	Packing raw materials	100,000	

All the imported materials were used in the production of finished products and finished goods were also delivered to its customers. The company has accounted for Rs. 854,000 as excise payable for the month of Chaitra 2080.

ii. Anamika Manufacturing Pvt. Ltd. is following self-removal system for goods produced from its factory. For the month of Poush 2080, the company has determined excise duty payable of Rs. 2000,000 and duty is paid on 31st Magh 2080 through good for payment cheque. Good for payment cheque is realized by IRD on 5th Falgun 2080.

Answer: 5(c)

i. As per section 3A of The Excise Duty Act, 2058 excise duty paid on consumption of raw materials which is used to finished goods can be set off with excise duty payable upon removal of the final goods. While deducting excise duty pursuant to this Section, excise duty paid on import of auxiliary raw materials, packaging materials, and raw materials and machinery parts having customs duty exemption shall not be allowed to be deducted.

Particulars	Amounts (Rs.)	Remarks
Duty collected on sales	854,000	
Less:		
Excise duty paid on consumption raw materials	(800,000)	20% of raw materials is subject to duty exemption and no deduction is available



Excise duty paid on consumption subsidiary raw materials	-	Deduction is not available
Excise duty paid on consumption of packing raw materials	-	Deduction is not available
Net Duty Payable	54,000	

Computation of Excise duty payable for the month of Chaitra 2080:

i. As per section 4B of The Excise Duty Act, 2058 in case of goods or services produced, sold and distributed under Self Removal System, excise duty collected pursuant to this Act shall be deposited within twenty-fifth day of the month following the issuance of the invoice.

If the excise duty is not paid within the time limit prescribed, a delay fee at the rate of 0.05 percent per day shall be charged on the amount of excise duty remaining due.

In the given case due date for payment of the excise duty is 25th of Magh 2080. But the company has paid duty on 31st Magh 2080 through GFP.

Total delay for payment is six days.

Hence the delay fee payable to company is

Duty Payable x Number of Delay Days x Per Day Rate of Delay Fee
 $= 2000,000 \times 6 \times 0.05\% = \text{Rs. } 6,000$

6.

- a) Professor Ramdhar Gupta is teaching at Allahabad University since last 20 years. He visited Nepal on 1st Ashwin 2080 under an assignment for carrying out specific research work in Tribhuvan University. For his outstanding research work, Tribhuvan University paid remuneration of Rs. 752,000 during income year 2080/81. Discuss the tax liability of Mr. Gupta giving consideration to the agreement between Nepal and India for avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income.

5

Answer: 6(a)

According to Article 20 of the agreement between Nepal and India for avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income, a professor or teacher who is or was a resident of one of the contracting states immediately before visiting the other contracting state for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other contracting state shall be exempt from tax in that other state on any remuneration for such teaching or research for period not exceeding two years from the date of his arrival in that other state.

This provision applies to professor Gupta because he was resident in India before coming to Nepal and his stay in Nepal has not exceeded two years. Therefore, remuneration of Rs. 752,000 received by professor Gupta is exempt from tax in Nepal.

- b) Describe the concept of "Transactional net margin" method of computing arm's length price. 5

Answer: 6(b)

The transactional net margin method (TNMM) in transfer pricing compares the net profit margin of a taxpayer arising from a non-arm's length transaction with the net profit margins realized by arm's length parties from similar transactions; and examines the net profit margin relative to an appropriate base such as costs, sales or assets.



This differs from the cost-plus and resale price methods that compare gross profit margins. However, the TNMM requires a level of comparability similar to that required for the application of the cost plus and resale price methods. Where the relevant information exists at the gross margin level, taxpayers should apply the cost plus or resale price method.

Because the TNMM is a one-sided method, it is usually applied to the least complex party that does not contribute to valuable or unique intangible assets.

Since TNMM measures the relationship between net profit and an appropriate base such as sales, costs, or assets employed, it is important to choose the appropriate base taking into account the nature of the business activity.