

**SUGGESTED ANSWERS TO**  
**THE QUESTIONS SET AT**  
**CA MEMBERSHIP EXAMINATIONS**  
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**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) Gurans Life Insurance Company Limited has been in operation since 10 years. There has been frequent disputes between the directors regarding its operation and management. The inspection performed by Nepal Insurance Authority discloses the inability of the company to fulfill its liabilities. The Authority declared the company problematic and issued orders to adopt remedial measures. The financial condition of the company could not be improved. The Authority after complying the legal requirements formed a Special Administration Team and took operation and management of the company under its control. You as a consultant are required to advise the Authority and Special Administration Team on the following matters: **(5.5+2+2.5=10)**
- i) State the grounds in which Nepal Insurance Authority may declare an Insurer problematic. Is declaration of the Authority valid?
  - ii) Advise the Special Administration Team for the possible course of action in case of improvement in condition of Gurans Life Insurance Company Limited.
  - iii) Will your advice differ in case improvement is not achieved in the condition of the company?

### **Answer:1(a)**

- i) Pursuant to Section 101 of the Insurance Act, 2079, Nepal Insurance Authority may declare an insurer as problematic for the sake of interest of the insured if the following conditions exist:
- (a) In case the insurer fails to maintain the minimum paid up capital and capital fund to be maintained.
  - (b) In case the ratio of total assets and liabilities (solvency margin) is not maintained.
  - (c) In case it is proved that the promoter shareholders of the insurer have established the insurance company with the earnings through fraud or embezzlement, money laundering, corruption, financial investment in terrorist activities, human trafficking.
  - (d) In case if it is proved that the insurance company was established or license was received by insurer by deceiving, forgery, or providing false statements or preparing or submitting fake documents.
  - (e) In case acts performed against the interest of insured, shareholders, creditors of insurers or general public repeatedly,
  - (f) In case the insurer did not follow the instruction provided by the Authority to be merged in another insurer,
  - (g) Violating repeatedly this Act or Rules and By-laws framed under this Act, existing laws, terms and conditions mentioned at the time of issuing license or the instructions and orders issued by the Authority,
  - (h) In case insurance fraud is conducted by the insurer.
  - (i) If the regulation, inspection, monitoring performed by the Authority or audit report or actuary report discloses the inability of the insurer to fulfill its liabilities or being impossible the same,
  - (j) In case information of situation pursuant to Section 105(3) is provided,
  - (k) If it is observed that the insurance business may not be operated continuously due to disputes between the directors regarding to the operation and management of the insurer,



- (l) Being failure to submit the evidence of improvement within prescribed time period as per the instruction provided by the Authority while imposing full or partial ban to the insurance business being operated by the insurer,
- (m) Insurer being failure to fulfill its liability repeatedly.

Conclusion: Before declaring an insurer as problematic, the Authority shall provide notice of 15 days to the insurer to submit clarification with evidences to prove that if there is any reason for not declaring problematic. In case the insurer being failure to submit the clarification within the given time period or the clarification provided by the insurer is not deemed satisfactory and reliable, the Authority shall declare such insurer as problematic insurer and publish the information about the same through at least 2 national daily newspapers and Authority's own website.

- ii) Section 108 of the Act provides that if it is felt that improvement is seen in the condition of Gurans Life Insurance Company Limited taken under the control by the Special Administration Team, it may take following actions:
  - (a) To release the suspension of the suspended Board of director,
  - (b) To hand over the management of the insurer to the Board of directors of the insurer,
  - (c) To form new Board of directors amongst the shareholders of the insurer and provide instruction to convene the General Meeting within six months,
  - (d) To convene General meeting of the insurer and form new Board of Directors.
- iii) Section 109 of the Act provides that, if it is felt that improvement is not achieved in the condition of the Insurer taken under the control by the Special Administration Team, it may take the following actions:
  - (a) To transfer the forfeited shares by selling the same in auction within the time prescribed,
  - (b) To recommend to the Authority to merge the insurer into another insurer within the time prescribed,
  - (c) To recommend to the Authority to cancel the license of the insurer by making hand over the insurance business of that insurer to another insurer,
  - (d) To recommend to the Authority to make improvement in the condition of the insurer pursuant to Section 110,
  - (e) To recommend to the Authority to initiate the process of insolvency of the insurer.
- b) Kathmandu Asiatic Company Ltd. failed to pay the debt within thirty five days after the service by the creditor-Mr. Juglan, on the company a notice for the payment of the debt. The company also failed to make an application to the High Court within the legal limitation to void such notice. In this situation, High Court made an order to restructure the company pursuant to the legal provision of the Insolvency Act, 2063. Respond the following issues on restructuring of the said company. **10**
  - i) What is the commercial situation of the company?
  - ii) Who and how the company is operated while court issued an order for restructure? Discuss the provision.
  - iii) What programs of restructure contained after an order of court issued?



**Answer:1(b)**

**i) Commercial situation of the company:**

As the instant facts, the company failed to pay the debt within thirty five days after the service by the creditor on the company a notice for the payment of the debt. After the failure, the company also failed to make an application before the High Court within the legal limitation to void such notice. It is precondition of the insolvency of the Kathmandu Asiatic Company Ltd. Section 2(b) of Insolvency Act, 2063 has defined “being insolvent” means a state of being unable, or appearing to be unable, to pay any or all of the debts due and payable to or payable in the future to creditors or a situation where the amount of liabilities of a company exceeds the value of the assets.

In addition to this, Section 7 states that a company shall be deemed to have become insolvent in the following condition:

- (a) The general meeting of shareholders ***adopts special resolution*** that the company has become insolvent or a meeting of the board of directors of the company makes such decision; or
- (b) The Court issues an order requiring the company to pay the debt ***and the debt is not paid up within 35 days*** from the date of receipt by the company of such order; or
- (c) The company fails to pay the debt within 35 days after the service by the creditor on the company a notice for the payment of the debt or fails to make an application to the Court within the said period to void such notice.

In accordance with the provisions and facts of the company, it can be said that the company is in the insolvent situation.

**ii) Who and how the company is operated?**

The company has proceeded on restructure program. In this situation the company is operated as per following legal provisions mentioned in section 31 of the Act:

- (1) The restructuring manager shall operate the company during the restructuring period.
- (2) In operating the company pursuant to Sub-section (1), the manager may exercise the following powers:
  - (a) Management and control of the business, properties and transactions of the company.
  - (b) Termination, sale and disposal of any business or property of the company. Provided that, if 50% or more of the property has to be terminated or sold, decision shall be made by meeting of creditors.
  - (c) Doing or exercising any such act or power that the company or its officer may do or exercise.
- (3) In exercising the powers referred to in Sub-section (2), the restructuring manager shall have power to inspect all books of account, ledgers, records, accounts and documents of the company.
- (4) In doing or exercising any act or power set forth in this Section, the restructuring manager shall act in capacity of an agent of the company.
- (5) If so sought by the restructuring manager, the director and other officer of the company shall provide any kind of such assistance as may be necessary for the management and control of the company.
- (6) No director and officer of the company shall, except with written direction of the restructuring manager, exercise any power or do any act of the company in capacity of the director or officer of the company.
- (7) The director of the company shall provide such information about the company and its business, property and transaction to the restructuring manager as sought by the restructuring manager.



- iii) Pursuant to Section 23, if the Court makes an order to restructure any company pursuant to Sub-section (2) of Section 22, the restructuring manager shall prepare a restructuring scheme of the company in writing.

The restructuring scheme shall contain the following programs:

- (a) To capitalize the debt of the company and alter the capital structure;
- (b) To pay the claims of creditors by selling any portion of the assets of the company;
- (c) To change the nature of claims of creditors of the company and issue securities for the same;
- (d) To get the creditors of the company to participate in capital investment by issuing shares in consideration for their claims;
- (e) To amalgamate the company with any other company;
- (f) To change the management of the company; or
- (g) To do any such other act which the Court considers appropriate to restructure the company.

2. Answer the following questions:

- a) In the year 2078/2079, the collected revenue of the Government of Nepal was Rs. 60 million. The value of the overdraft by the Government of Nepal from the Nepal Rastra Bank and total value of the Government bond (all types) earned by the Nepal Rastra Bank in the year 2079/80 were Rs. 5 million and Rs. 8 million respectively. Further, Nepal Rastra Bank did not obtain any collateral for the overdraft. Give your view on the following questions in terms of the specific provisions of the Nepal Rastra Bank Act, 2002. (4+3=7)
- i) Under what conditions can Nepal Rastra Bank provide credit to the Government of Nepal?
  - ii) Examine the validity of the loan provided by Nepal Rastra Bank.

**Answer: 2(a)**

- i) Pursuant to Sub-section (2) of Section 75 of the Nepal Rastra Bank Act, 2058, the Bank may extend credit to Government of Nepal subject to the limits specified in this Section with a condition to repay within 180 days.

Pursuant to Sub-section (3), notwithstanding anything contained in Sub-section (2), the Bank may extend a special credit of long term to the Government of Nepal only on account of subscription and similar payments resulting from or incidental to the membership of Nepal with international organization.

Pursuant to Sub-section (4), the Bank shall disburse credit to be extended to the Government of Nepal or an institution under full or substantial or partial ownership of the Government of Nepal only in Nepalese rupees. Such credit shall be certified by negotiable debt bond issued by the Government of Nepal and delivered to the Bank. Such debt security should have the maturity corresponding to the maturity of the extension of credit and should bear the interest at market rate. There must be a written agreement executed between the Government of Nepal and the Bank. Such agreement should clearly stipulate the principal amount of the loan or limit on a line of credit, the maturity, and the applicable rates of interest and other charges.

Pursuant to Sub-section (6), Government of Nepal shall make the payment of the overdraft within 180 days at the prevailing interest rate either in the form of cash or marketable debt bond.



- ii) According to section 75(5) of the Act, at no time the amount of overdraft provided by the Bank to Government of Nepal shall be more than five percent of the revenue income of the Government of Nepal in the preceding fiscal year. Thus, value of overdraft cannot be more than 5% of the last year revenue collection i.e., 5% of 60 million = 3 million.

Similarly, according to section 75(7) of the Act, the total amount of debt bond purchased by the Bank from the Government of Nepal and taken into its ownership shall not be more than ten percent of the revenue income of the preceding fiscal year. Thus, NRB holdings of Government bonds cannot be more than 10% of 60 million = 6 million.

Conclusion: In both cases the limit has been exceeded and there is violation of the law. The excess limit shall be returned at the earliest.

- b) Labor Act, 2074 has provided the May Day (May 1<sup>st</sup>) as a public holiday. However, the General Manager of Yamben Restaurant has mandated that all employees report to work on this day. He justifies this decision by citing the anticipated high volume of customers expected for recreation on that day, arguing that closing the restaurant would result in substantial financial losses to the restaurant. Despite a formal written request from all employees seeking to observe May Day as a public holiday, he has declined their request.

Based on the Labor Act, 2074, please address the following questions:

- (i) Evaluate whether the General Manager's decision to deny May Day as a public holiday is legally justified. 3
- (ii) Advise the employees on their legal rights if the General Manager compels them to work on May Day. 4

**Answer: 2(b)**

- (i) According to Section 51(1) of the Labor Act 2074, all leaves/holidays except the sick leave, mourning leave and maternity leave which the labor is entitled to pursuant to this Chapter are only facility and cannot be claimed as a matter of right.

Furthermore, as per section 51(2), in the case of leaves other than that mentioned in sub-section (1), the employer may, for the reason to be specified, refuse, withhold, deduct or alter the time of the approved leave, on the basis of the need of the work at the workplace.

In this context, although May Day is recognized as a public holiday, it is classified as a facility and not a guaranteed right. Therefore, considering the operational needs of Yamben Restaurant, the General Manager's refusal to grant May Day as a public holiday is legally valid.

- (ii) Employees have the right to exercise the following options, as provided under Section 42 read together with section 30 of the Act:

Section 42 of the Act stipulates that any labor engaged in work that cannot be halted or must be performed continuously is entitled to substitute leave in compensation for working on a weekly or public holiday.

If an employee is required to work on May Day, the substitute leave at request of the concerned worker shall be granted within 21 days of the date of work.



However, under Section 30(2) of the Act, if the employer fails to provide substitute leave for work performed on a public holiday within the specified 21 days period, such work is deemed to be overtime, and overtime payment shall be provided.

Therefore, if the General Manager refuses to grant substitute leave for work performed on May Day within 21 days, the work should be considered as overtime, and the employees are entitled to receive overtime compensation accordingly.

- c) Mr. Prem Bahadur, is a Registered Auditor (Class C) member of the Institute of Chartered Accountants of Nepal (ICAN) holding Certificate of Practice. He passed Chartered Accountancy Professional (CAP-II) Examination of the Institute in June, 2023 and joined for articleship training under Shyam & Associates, Chartered Accountants. The articleship deed was signed and registered in ICAN. Mr. Prem Bahadur is undergoing articleship and carrying accountancy profession as well. Give your opinion on the following issues in the light of Nepal Chartered Accountants laws: **(4+2=6)**
- Is Certificate of Practice (COP) of Mr. Prem Bahadur subject to suspension?
  - Examine the validity of the action of ICAN & Mr. Prem Bahadur.

**Answer: 2(c)**

- i) Rule 52 of Nepal Chartered Accountants Rules, 2061 has laid down provisions for suspension of Certificate of Practice of members of the Institute. The Certificate of Practice shall be suspended in the following circumstances:
- If it is prohibited by the Council to any member to carry accounting profession for a certain period pursuant to clause (c) of sub-section 5 of section 14 of the Act,
  - If the member applies for suspension of the Certificate of Practice to the Council for a certain period,
  - Not completed required Continued Professional Education hours pursuant to Rule 55,
  - If the Registered Auditor member has enrolled in Chartered Accountancy course, during the period of his/her articleship.
- Conclusion: As Mr. Prem Bahadur has passed Chartered Accountancy Professional (CAP-II) Examination of the Institute and joined for articleship training under Shyam & Associates, Chartered Accountants, his COP shall be suspended during the articleship period.
- ii) In the given case, Mr. Prem Bahadur, Registered Auditor member holding Certificate of Practice has passed CAP-II level examination of ICAN. He is required to undergo articleship training under accountancy practicing CA member of the Institute. His Certificate of Practice during the period of articleship shall be suspended.

ICAN has registered the articleship deed without suspending the Certificate of Practice of Mr. Prem Bahadur. The action of the Institute is not valid. Since, the Certificate of Practice of Mr. Prem Bahadur shall remain suspended during the period of articleship, he cannot carry accountancy profession during the same period.



3. Answer the following questions:

- a) Larsen and Tarsen Limited, an Indian company, has been awarded a Bid for construction of 220 KVA transmission line for Tinau Corridor. Chief Executive Officer consults you and asked in respect of the terms to the management, maintenance, use, transfer and sale of such investment he made in Nepal. State the legal provision to him on national treatment that provides wide range of rooms for the national treatment to the foreign investment.

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**Answer: 3(a)**

Section 32 of Foreign Investment and Technology Transfer Act, 2075 has provided following provisions on national treatment:

- (1) In respect of the terms applicable to the management, maintenance, use, transfer and sale of any foreign investment made in Nepal by a foreigner, subject to this Act and other prevailing law, after the commencement of this Act, such foreign investment shall, after the investment is brought into, and until it remains in Nepal, be accorded national treatment no less favourable than that accorded to any investment made by a Nepalese person, in respect of the terms applicable to the management, maintenance, use, transfer and sale of such investment.
- (2) Notwithstanding anything contained in sub-section (1), in the case of a foreign investment approved prior to the commencement of this Act, the provisions contained in the prevailing law relating to foreign investment in force at the time of making such an investment shall apply, and no change shall, without his or her consent, be made that may prejudice to any facility obtained by any foreign investor in accordance with that law.
- (3) The following protection shall be accorded to any industry with foreign investment in accordance with sub-section (1):
  - (a) The industry, enterprise with foreign investment shall be accorded the same treatment as accorded to any industry of the same nature with investment made by a Nepali citizen.
  - (b) The industry, enterprise with foreign investment shall be free to determine the price of goods and services, subject to the prevailing law.
  - (c) The industry, enterprise with foreign investment shall not be prevented from doing trade, as prescribed, being limited to that industry.
  - (d) The industry, enterprise with foreign investment shall not be restricted to repatriate profit, investment, pay interest of, and repay the principal of a loan.
- (4) Notwithstanding anything contained in sub-section (1), national treatment shall not apply in respect of the following matters:
  - (a) Matters relating to the creation of such intellectual property rights, limits thereof, transfer of title thereto or provisions requiring compulsory licensing for the use thereof as specified in any agreement made under the World Trade Organisation,
  - (b) Matters relating to the exemption or facility, if any, granted to any domestic industry or goods in accordance with the prevailing Nepal law relating to public procurement,
  - (c) Matter relating to any grant or concession to be made or provided by the Government of Nepal,
  - (d) Matter of non-commercial services to be provided by the Government of Nepal,
  - (e) Such measures relating to financial services as may be adopted or managed by the Government of Nepal upon considering appropriate on matters such as matters relating to the protection of investors, participants in the securities market, insurance policy holders or insurance policy claimants, or relating to financial institutions having liability to safeguard the financial interests of any persons or relating to maintaining soundness, morality or financial responsibility of financial institutions,



- (f) Matters involving liability or provision to accord special treatment by the Government of Nepal because of being a party to any regional or multilateral economic, monetary organization or organization of similar nature to which the Government of Nepal is or will be a party,
  - (g) Matters relating to the terms that may be specified by the regulatory body in accordance with the prevailing law in respect of repatriation of investment to a foreign country, repayment of loan (including principal, interest and fees), payment of service fees,
  - (h) Matters relating to the protection of human, animal and plant health or the environment.
- b) Small Agro Farm is a small industry registered and in operation since 2 years. In the first year of its operation it incurred net loss of Rs. 50 lakhs. In the second year (FY 2079/80) of its operation the Firm has earned net profit of Rs. 40 lakhs with turnover of 16 crores. The accountant of the Farm asked approval from its proprietor for appropriating 1% of the net profit for the corporate social responsibility. However, the proprietor refused on the ground that such provision for corporate social responsibility is required to be appropriated by large industries only, not by small industries. Further, he argued that his firm has accumulated loss of Rs. 10 lakhs. Give your opinion on the following matters pursuant to the Industrial Enterprises Act, 2076. **(4+3=7 marks)**
- i) Is the claim of the proprietor valid? **4**
  - ii) Can any sort of punishment be attracted to Small Agro Farm? **3**

**Answer: 3(b)**

- i) Section 54 of the Industrial Enterprises Act, 2076 has laid down provisions relating to Corporate Social Responsibility. Medium or large industries or cottage or small industries with annual turnover of more than 15 crores shall set aside at least 1% of the annual net profits in each fiscal year for the performing the corporate social responsibility.

The fund is to be utilized on the basis of annual plans and programs in the prescribed sector. Industries shall submit report of programs completed in each fiscal year and the amount spent (utilized) for such program to the concerned Industry Registration Body within 6 months after the end of the fiscal year.

In the given case, Small Agro Farm is a small industry with annual turnover of Rs. 16 crores in FY 2079/80. The Farm has also earned a net profit of Rs. 40 lakh in the same fiscal year. However, the proprietor refused to make appropriation of at least 1% of net profit for corporate social responsibility.

Conclusion: As per section 54(1) of the Industrial Enterprises Act 2076, even a small industry with an annual turnover exceeding Rs. 15 Crore needs to appropriate a minimum of 1% of net profit for spending for corporate social responsibility. Thus, the claim of the proprietor is not valid.

- ii) As per section 43(7) of the Act, if any industry does not perform Corporate Social Responsibility pursuant to section 54, the Ministry may, at the recommendation of the Industry Registration Body, impose a fine of 1.5% of the annual net profit. Further, if it does not bear such responsibility for the period of more than 1 fiscal year, it shall be imposed an additional fine at 0.5% p.a. of annual net profit for each fiscal year.

However, industry shall get an opportunity to defend itself under section 45 of this Act. The Industry so fined if dissatisfied with the decision of the Ministry of Industry may file an appeal against it to the concerned High Court within 35 days of the information of such decision pursuant to section 46(1) of the Act.



Conclusion: Since Small Agro Firm has made net profit in second year of its operation. A fine of 1.5% of the net profit may be imposed to it by the Ministry.

- c) Complaints or First Information Report (FIR) are lodged before the investigative body prescribed by the Money Laundering Prevention Act, 2064. In which office such complaints or FIR may be lodged? What are the special investigative technique that may be applied in investigation of money laundering and financial terrorism case? Discuss.

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**Answer: 3(c)**

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

Offense	Office
(a) Offence relates to financing on terrorist activities or proliferation and extension of weapons of mass destruction	Police office
(b) Offence relating to the money laundering being related to the predicate offence	Office that investigates in the predicate offence
(c) Matter being of money laundering that does not connect with the predicate offence	Department of Money Laundering

Pursuant to Section 19C, the Investigation Officer, while investigating the offense related with money laundering, financing on terrorist activities or proliferation and extension of weapons of mass destruction or investigating predicate offenses under the direct surveillance (supervision) of officer of Investigation office holding at least Gazetted second class or officer holding equivalent position may apply any or all of the following methods/techniques:

- Controlled investigation technique (Control delivery),
- Mobilization of undercover agent,
- Undercover operation,
- Acquire the detail of telephone or communication channel (interception),
- Not to arrest immediately with the target of obtaining additional proofs/evidences and information (arrest waiver),
- Access on computer or other structure and system of electronic instruments,
- Other special investigation methods as prescribed.

4. Answer the following questions:

- a) Due to the internal management conflict, Bagar Securities Brokerage Company Pvt Ltd is failing to fulfil legal obligations, *inter alias*, financial report submission to the Securities Board on time. Hence, the chairperson of the company fears if the SEBON may suspend or revoke license of the company. You are a consultant of the company. So, he asked you the specific grounds under which the Board may suspend or revoke license of the company. Advise him on the basis of Securities Act, 2063.

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**Answer:4(a)**

The grounds for the suspension of stockbroker license have been provided under section 88 of the Securities Act, 2063 as follows:

- (1) If any stock exchange or securities business person does any act in contravention of this Act or the Rules and Bye-laws framed under this Act or does not observe any order or direction issued by the Board or does not perform activities required to be performed by it, the Board may, having regard to the interest of investors, suspend the license obtained by such a stock exchange or securities business person to operate the stock exchange or securities business specifying a certain period.
- (2) No suspension of license made pursuant to Sub-section (1) shall have any effect on any liabilities arising from any activities done by such a stock exchange or securities businessperson prior to the suspension of a license.

The grounds for the revocation of stockbroker license have been provided under section 89 of the Securities Act, 2063 as follows:

- (1) The Board may, on any of the following circumstances, revoke a license obtained by any stock exchange or securities businessperson to operate the stock exchange or securities business under this Act:
  - (a) If one stops operating the stock exchange or securities business,
  - (b) If one operate the stock exchange or securities business in contrary to the interest of investors,
  - (c) If one violates the terms set forth in the license,
  - (d) If one violates this Act or the Rules and Bye -laws framed under this Act,
  - (e) If one fails to observe any order or direction issued by the Board,
  - (f) If one becomes insolvent being unable to repay credit to creditors,
  - (g) If the company or body having obtained a license to operate the stock exchange or securities business is wound up,
  - (h) If the stock exchange or securities businessperson having obtained a license to operate the stock exchange or securities business makes an application for the revocation of a license,
  - (i) If the securities businessperson who has removed an agent appointed by it does not appoint another agent in lieu of such an agent,
  - (j) If one fails to submit such financial and transaction related statements as required to be submitted to the Board,
  - (k) If one fails to pay such fees as required to be paid pursuant to Section 50 to the Board within the time limit specified by such a Section.
- (2) No revocation of a license made pursuant to sub-section (1) shall have any effect on any liabilities arising from any activities done by such a stock exchange or securities business person prior to the cancellation of license.

Conclusion: Bagar Securities Brokerage Company Pvt Ltd has failed to fulfil legal obligations, *inter alias*, financial report submission to the Securities Board on time. Hence, the Board may revoke the license of the company pursuant to clause (j) of sub-section (1) of Section 89 of the Act.



- b) North Export Hydropower Limited is a public company. It has been holding annual general meeting regularly. The last annual general meeting was held on 2080/9/30. However, it has not sent return of the annual general meeting to the Office of Company Registrar for the last 3 consecutive years till 2080/11/30. The Office asked the company to submit such return with penalty as per the provisions of the Companies Act, 2063. However, it did not pay the penalty either. On this ground the Office is set to cancel the registration of the company. You are required to suggest on the following matters on the basis of legal provisions of Companies Act, 2063.
- i) Can the Office of Company Registrar cancel the registration of North Export Hydropower Limited 4
- ii) Does the Act have provision for restoration of company of which registration is cancelled? 3

**Answer:4 (b)**

- i) Pursuant to Section 136(1) of Companies Act, 2063, Office of Company Registrar may cancel the registration of a company in the following circumstance:
- If the promoter of the company makes an application, showing a reason for the failure to commence the business of the company, and accompanied by the prescribed fees, for the cancellation of the registration of the company,
  - If the company is in default in submitting to the Office the returns as referred to in Section 80 or fails to pay the fine as referred to in Section 81 for 3 consecutive financial years, or
  - If based on the proofs received in the course of administration of the company, the Office has a reasonable ground to believe that the company is not carrying on its business or the company is not in operation.

Pursuant to Sub-section (2), if it is required to cancel the registration of any company pursuant to sub-section (1), the Office shall, prior to the cancellation of registration, give a notice, accompanied by the reason to the concerned company.

While sending a notice to a company pursuant to sub-section (2), the notice shall be sent to the company at its registered office or to office bearers of such company if the address of the registered office of such company is not registered with the Company Registrar Office or if the office of the company is not located at the address registered and to the address of all promoters as mentioned in Memorandum of Association of the company if even address of such office bearers is not available to Company Registrar Office or is not known. The notice shall also be published in a national daily newspaper, as per necessity.

If the company fails to make an application, specifying the reasons that the registration of the company shall not be cancelled within 2 months from the date of receipt by the company of a notice pursuant to Sub-section (2) or, despite the making of such application, the reasons specified are not found reasonable, the registration of such company may be cancelled.

Conclusion: North Export Hydropower Limited is in default in submitting to the Office the returns as referred to in Section 80 and failed to pay the fine as referred to in Section 81 for 3 consecutive financial years. Thus, the Office of Company Registrar may cancel the registration of the company by complying the legal formalities mentioned above.

- ii) Section 137 of Companies Act, 2063 has laid down following provision for restoration of registration of company of which registration is cancelled:



Pursuant to Sub-section (1), in the case of cancellation of the registration of a company pursuant to sub-section (5) of section 136, if the company or its shareholder or creditor makes a petition, setting out the reasons to the Court to have the company restored, no later than five years after the date of publication of the notice of cancellation of registration of the company, the Court may, if the following circumstance, order to restore the company and restore its name in the company register:

- (a) If it appears that the registration of the company was cancelled while such company was carrying on its business,
- (b) If the Court considers it to be just to restore the name of the company for the proper management of the assets and liabilities of such company.

In the event of restoration of a company by virtue of an order of the Court pursuant to sub-section (1), the company shall be considered to have been in existence from the date of its registration. In issuing such order, the court may issue such orders and make an order to make such arrangements as it may consider appropriate and necessary for restoring the company and all other persons into the *status quo ante* as if the registration of the company was not cancelled.

If a company is restored pursuant to sub-section (1) and any fine as referred to in Section 81 is to be paid, the company shall be restored and its name reentered in the company register only after such fine is paid to the Office.

Conclusion: Thus, the company of which registration has been cancelled can be restored by the order of the court as mentioned above.

5. Answer the following questions:

**(3×5=15)**

- a) State the matters to be audited by the Auditor General in view of propriety.

**Answer: 5(a)**

Pursuant to Section 9(1) of Audit Act, 2075, the Auditor General shall audit following matters considering the propriety thereof:

- (a) On the propriety of any expenditure and its authorization, if in the opinion of the Auditor General such expenditure is a reckless one or is an abuse of national property, whether movable or immovable, despite that the expenditure conforms to the authorization.
- (b) On the propriety of all authorizations issued in respect of any grant of national property whether movable or immovable, fixed or current, or underwriting of any revenue, or any contract, license or permits relating to mining, forest, water resources, etc. and any other act of abandoning movable or immovable, assets of the nation.
- (c) On the propriety of public construction, repair and maintenance, procurement and supply, contract relating to consultancy service, service contract, public expenditure and mobilization of resources.

The Auditor General may examine whether the officials under his jurisdiction has borne financial responsibility or not if deemed necessary on the basis of acceptable principles of audit.



The Auditor General may not include in the report minor items of discrepancy and other items deemed as insignificant in view of their propriety which were observed during the audit of income and expenditure.

- b) Mandala Cooperative Organization has taken grants sum of Rs. 50 Lakh from the Government of India for the purpose of promotion of Cooperatives. Do you think the grant taken from the Government of India is valid? Discuss. What kinds of amount are deposited in the Mandala Cooperative Organization? Explain the Reserve Fund and Secured Capital Redemption Fund in the light of the Cooperatives Act, 2074.

**Answer:5 (b)**

Pursuant to Section 67(1) of the Cooperative Act, 2074, following amounts shall be deposited in the fund of a Cooperative Organization:

- (a) Amount received from sale of shares,
- (b) Amount received as savings,
- (c) Amount received as loan,
- (d) Amount of grant received from the Government of Nepal,
- (e) Grant or assistance received from a foreign government or an international organization,
- (f) Amount accrued from commercial activities,
- (g) Membership entry fee.

Approval of the Ministry of Finance shall be obtained before obtaining the amount referred to in clause (e) of sub-Section (1).

In accordance with the Section 67(1)(e), any cooperative organization can receive grant from foreign government or an international organization. Receiving such grant requires approval or any process should be fulfilled by the organization. Therefore, the grant received by the Mandala Cooperatives is valid in terms of fund raising.

**Reserve Fund: Section 68**

- (1) There shall be a reserve fund in Cooperative Organization.
- (2) Following amounts shall be credited to the fund referred to in sub-Section (1):
  - (a) At least 25% of net savings of the fiscal year,
  - (b) Capitalized grant amount provided by any institution, organization or entity,
  - (c) Proceeds of sale of fixed assets,
  - (d) Amounts received from other sources.
- (3) The Amount of the fund referred to in sub-Section (1) shall be indivisible.

**Secured Capital Redemption Fund: Section 69**

- (1) There shall be a Conserved Capital Redemption (Refund) Fund in Cooperative Organization.
- (2) A minimum of 25% of the residual amount of net savings after providing for the amount under section 68(2)(a) (i.e., after providing amount for Reserve fund) shall be annually deposited in this Fund.
- (3) The amount of the Fund shall be made available to the concerned member based on the annual turnover of the member as prescribed.

- c) District Ayurvedic Hospital Humla has purchased X-Ray machine directly from market. Hospital paid Rs. 10 Lakh rupees including VAT for the machine. Do you think that applying the direct purchase method is valid? What are the circumstances that authorize the direct purchasing method as provided in the Public Procurement Act, 2063?



**Answer: 5(c)**

Pursuant to Section 41 of Public Procurement Act, 2063, Notwithstanding anything contained elsewhere in this Act, goods or consultancy services or other services may be directly procured or construction work may be caused to be carried out directly in the following conditions:

- (a) Low value procurement costing up to the prescribed amount,
- (b) If only one supplier or construction entrepreneur or consultant or service provider has the technical efficiency or capacity to fulfill the procurement requirement,
- (c) If only one supplier has the exclusive right to supply the goods to be procured and no other appropriate alternative is available,
- (d) If additional goods or services of proprietary nature within the prescribed limit is to be procured from the existing supplier or consultant or service provider after it has been proved that if the existing supplier or consultant or service provider is changed to replace or extend existing goods or services or the spare parts of the installed machine, the goods or services existing in the Public Entity cannot be replaced or changed,
- (e) If procurement is required to be made by one public entity from another public entity,
- (f) If procurement of goods or services is required to be made from international inter-governmental organization at the rate fixed by such organization,
- (g) If procurement is required to be made in special circumstances,
- (h) If the most necessary construction works, goods or consultancy services or other services within the limit as prescribed but not included in the initial contract due to failure to foresee and difficult to be completed by separating from the initial contract due to technical or financial reasons, is to be procured,
- (i) If the service of a particular consultant with his unique qualifications is immediately needed for the concerned work or of the service of same consultant is indispensable.

Pursuant to Rule 85(1) of Public Procurement Rules, 2064, in making procurement pursuant to clause (a) of sub-section (1) of Section 41 of the Act, direct procurement may be made for construction work or goods the cost estimate of which does not exceeds Rs. 10,00,000.

Conclusion: Therefore, the direct purchase of machine is valid in accordance with public procurement laws.

6. Write short notes on the following:

- a) State the circumstances of removal of an arbitrator in case the condition and procedure of removal has not been mentioned in the agreement, as per the Arbitration Act, 2055. 4

**Answer: 6 (a)**

Section 11 of the Arbitration Act, 2055 mentions the circumstances of removal of an arbitrator. The condition and procedure for removal of an arbitrator shall be as mentioned in the agreement. In case the condition and procedure has not been mentioned in the agreement, any party may submit an application to the arbitrator requesting for permission to remove an arbitrator within 15 days from the date of his/her appointment or from the date when the party learns that the concerned arbitrator has failed to act in any of the following circumstances:



- In case any arbitrator is seen to have shown a bias toward or discriminated against any party instead of working in an impartial matter.
- In case any arbitrator engages in improper conduct or commits fraud in the course of arbitration.
- In case any arbitrator frequently commits mistakes or irregularities in the course of arbitration.
- In case any arbitrator does not attend arbitration meetings or refuse to take part in arbitration proceedings for more than three times without furnishing satisfactory reasons with the objectives of prolonging or delaying the arbitration proceedings in an improper manner.
- In case any arbitrator takes any action which is opposed to the principles or rule of natural justice.
- In case any arbitrator is found to be lacking the necessary qualifications, or to have ceased to be qualified.

b) Risk bearing fund of institutions acting as financial intermediary

3

**Answer:6 (b)**

Risk bearing fund has been provided under section 25 of the Act relating to institutions acting as the financial intermediary as follows:

- (1) The institution shall establish a separate risk bearing fund, in addition to the fund set forth in Section 24, for the purpose of bearing the possible loss and damage while disbursing the micro-credit, and the amount to be set as prescribed of the remaining total credit applied in the investment by the last day of each financial year shall be credited to this fund.
  - (2) The institution may invest the amount deposited in the fund pursuant to Sub-section (1) in the securities of the Government of Nepal or the Bank or periodic deposits of a commercial bank or financial institution.
  - (3) The amount deposited in the fund pursuant to Sub-section shall be used only for the remission of the micro-credit. Where it is required to so remit the micro-credit, the institution shall obtain the approval of the Bank.
- c) Define about 'currency', 'currency Note', 'Foreign Currency' and 'Nepalese Currency' as provided in the Foreign Exchange (Regulation) Act, 2019.

3

**Answer:6(c)**

**“Currency”** means any kind of currency notes, postal orders, postal notes, money orders, cheques, drafts, travelers cheques, letters of credit, bills of exchange, promissory notes and credit cards, and this term also includes similar other monetary instruments as may be prescribed by the Bank by publishing and broadcasting a public notice.

**“Currency notes”** means bank notes in circulation as cash and this term also includes coins.

**“Foreign currency”** means any currency other than the Nepalese currency, and this term also includes special rights to draw funds (Special Drawing Rights) from the International Monetary Fund, the Asian Currency Unit, the European Currency Unit and such other instruments as may be prescribed by the Bank, by publishing and broadcasting a public notice.

**“Nepalese currency”** means a currency tendered in Nepalese Rupee.



## Advanced Taxation

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

1. B & B Ltd, a subsidiary company of A Ltd, is a manufacturing company producing soft drinks with its plant located at Bharatpur, Chitwan. Management of the B & B Ltd. needs your support to assess the tax liability upto Bhadra 30, 2081 for the income year 2080/81 based on the following information

**20**

- a) **Sales:** Total sales Rs. 4,000 lakh, out of which 60 % is exported. The company received Rs. 3 lakhs interest income in Kartik 2080 from a bank against call deposit.

- b) **Purchase and overhead cost:**

Particulars	Amount Rs. (in lakhs)
Raw material purchase	1,000
Transportation of raw materials	100
Salaries and other employees cost	1,000
Gratuity & other retirement benefits	15
Travel cost	30
Repair & maintenance cost	60
Communication	1
Consumables	2.5
Liquid leakage & damage	2
Testing & Sampling	2
Depreciation on Factory, Plant & machinery	5
Power & Fuel	15
<b>Total Purchase &amp; overhead cost</b>	<b>2,232.5</b>

- Rs. 1 lakh out of raw materials transportation cost is related to the transfer of raw materials to A Ltd. The cost of the transferred raw material was Rs. 15 lakhs included in purchase.
  - A mobile phone was purchased by company in Bhadra 2080 for a cost Rs.120,000. The phone was provided to Chairman and he made 33% personal calls.
  - Repair and maintenance cost is the actual cost incurred for repair and maintenance of Plant and Machinery.
- c) **Stocks:** Stocks ledger shows the following details:

Particulars	Amount Rs. (in lakhs)
Opening raw materials	200
Closing raw materials	250
Opening WIP	300
Closing WIP	250
Opening fixed goods	500
Closing fixed goods	400



d) **Assets:** Assets with purchase date are as follows:

Particulars	Purchase Date	Gross amount in Rs. lakhs (Excluding VAT)	Life of assets (in Years)
Factory Building completed	30 Jestha, 2080	500	40
Plant & Machinery	15 Ashad 2080	750	20
Cooler	1 Shrawan 2080	50	10
Bottles	30 Shrawan 2080	30	5
Office Equipment & Furniture	30 Shrawan 2080	20	5
Truck	30 Magh 2080	30	10
Car	20 Baishak 2081	60	10

e) **Administrative and interest Expenses**

Particulars	Amount Rs. (in lakhs)
Salary & benefits	300
Gratuity & other retirement benefits	60
Office expenses	15
Depreciation	30
Promotional expense	10
Repair & maintenance cost on truck	4
Interest expense	150

Office expenses include Rs. 5 lakhs incurred for the factory setup and office arrangement in Ashad 2080, the invoice was received on Bhadra 5, 2081. Full interest expense was related to the loan provided by A Ltd. The company does not include the R & M cost incurred for the truck & car in the production cost.

f) **Additional information**

- A Ltd. produces the same product but exports 100 % its product and opts for tax exemption and facilities under section 11 of Income Tax Act, 2058.
- The company was registered in Chaitra 2079 whereas its business operation and production started from 1 Bhadra, 2080.
- The company charged the cost of repair and maintenance in the valuation of finished goods at 1 percent of total production cost by excluding it.
- A loan of Rs. 1000 lakhs was provided by parent company on 1 Ashad, 2080 to purchase the Plant & Machinery.
- Gratuity and other retirement benefits have been charged as per the prevailing law, No deposit has been made in separate bank account or SSF as per relevant provisions.
- The company has employed 510 Nepalese employees throughout the year.
- The Company provides free lunch during office hours, cost of which is Rs. 100 per meal to all employees, assuming 252 working days in a year. Cost is included in other employee cost.
- The company has paid advance tax amounting to Rs. 80 lakhs at the end of Ashad, 2080 without any estimated tax return for the income year.

**Answer:1****Calculation of taxable income and tax liability**

Particulars	Rs. (in Lakhs)
Sales	4,000.00
Other income (received 3 lakh/.85)	3.53
Total income	4,003.53
<b>Eligible Expenditure</b>	
Interest under section 14(WN 4)	150
Cost of sales under section 15 (WN 1)	2,234.51
Repair & maintenance expenses under section 16 (WN2)	60.90
Depreciation under section 19 (WN 2)	216.93
Other expenses under section 13 (WN 3)	320.67
<b>Total allowable expenses</b>	<b>2,983.01</b>
Total Taxable income	<b>1,020.52</b>
Tax Rate (WN 6)	15%
<b>Tax amount</b>	<b>153.08</b>
Fees under section 117 for non-submission of estimated tax return	0.02
Rs. 5000 or 0.01% of assessable income, whichever is higher	
Interest under section 118 (WN 5)	7.07
<b>Total tax to be paid</b>	<b>160.17</b>
Advance Tax Paid	80
Tax deducted at source on interest income	0.53
<b>Net tax liability upto Bhadra 30, 2081</b>	<b>79.64</b>

**Working Notes (WN)****WN 1 Cost of sales**

Particulars	Amount (Rs.)	Amount (Rs.)	Remarks
Opening stock Raw material		200.00	
Opening stock WIP		300.00	
Opening stocks Finished goods	(500/1.01)	495.05	After Excluding Repair
Raw material purchase	(1000-15)	985.00	15 L pertains to Purchase for Parent Company *
Transportation of raw materials	(100-1)	99.00	1 L pertains for Parent Company
Salaries and other employees cost		1,000.00	
Travel cost		30.00	
Consumables		2.50	
Liquid leakage & damage		2.00	
Testing & Sampling		2.00	
Power & Fuel		15.00	
Closing stock raw materials		(250.00)	
Closing stock WIP		(250.00)	



Closing stocks Finished goods	(400/1.01)	(396.04)	
<b>Cost of sales</b>		<b>2,234.51</b>	

*\*As per the section 33 of Income Tax Act 2058 regarding to the Transfer Pricing, If any provision is made between the associated persons and the provision is operated as per the arm's length, the Department may by issuing a notice in writing, distribute, appropriate or allocate the amounts to be included or deducted in computing the income between those person in such a manner as to reflect the taxable income or the payable tax that could be set for them.*

*In this question, B & B Ltd purchased Raw Materials on behalf of its parent company & assume the transaction is done on arm's length prices, hence, transfer pricing treatment shall not be applicable.*

### **WN 2 Depreciation & Repair & Maintenance**

Particulars	Block A	Block B	Block C	Block D	Total
Factory Building completed in FY 2079/80 but used during the year	500.00				
Plant & Machinery used during the year				750.00	
Cooler				50.00	
Bottles				30.00	
Office Equipment & Furniture		20.00			
Truck ( 2 third of the purchase cost)			20.00		
Car (1/3 of Purchase cost)			20.00		
Mobile cost (67 % of total cost)		0.80			
Depreciation base	500.00	20.80	40.00	830.00	1,390.80
Depreciation rate (Normal rate +1/3 for special industry)	6.67	33.33	26.66	20	
Depreciation for the Income Year 2080/81	33.33	6.93	10.67	166.00	216.93
7 % percent of depreciation base	35.00	1.46	2.80	58.10	
Actual repair expenses	-	-	4.00	60.00	64.00
Eligible for tax	0.00	0.00	2.80	58.10	60.90

**WN 3 Other expenses**

Particulars	Amount Rs. (in lakhs)
Salary & benefits	300.00
Gratuity & other retirement benefits	-
Office expenses (15 L less 5 L being prior period)	10.00
Promotional expense	10.00
Chairman's Communication cost (1*.67)	0.67
<b>Total allowable Expenses</b>	<b>320.67</b>

**WN 4 Interest Expenses**

The Parent Company is exported oriented, it has selected the tax exemption & facilities under section 11, so, interest expense is allowable under section 14(2), and the calculation is as follows:

Particulars	Amount Rs.
Total sales	4,000.00
Less	
Cost of sales under section 15 (WN 1)	2,234.51
Repair & maintenance expenses under section 16 (WN2)	60.90
Depreciation under section 19 (WN 2)	216.93
Other expenses under section 13 (WN 3)	320.67
Adjusted Taxable income	1,166.99
50 % of ATI	583.50
Add interest income	3.53
Allowable interest expenses for entire loan	587.03
Loan used 750 L out of 1000 lakh, so 75 % can be claimed as maximum	440.27
Actual Interest Expenses	150
Allowable Interest Expenses u/s 14 (2)	150

Note:

- The business is effective since Bhadra 2080, the property, plant and equipment has been used since operation, so the depreciation has been calculated after the use of the PEE.
- Office expenses related to previous year is not allowed under section 13.
- Gratuity and other retirement benefits have been provisioned only, lacking of full compliance of labor act, social security act, it is not allowed during the year.

**WN 5: Interest under section 118, calculated upto Bhadra 30.**

Particulars		Income Tax Payable	90% of Income Tax Payable	Income Tax Paid	Balance Tax Payable	Interest U/s 118
Upto Poush	40%	61.23	55.11	0.53	54.58	2.04
Upto Chaitra	70%	107.16	96.44	0.53	95.91	3.60
Upto Ashad	100%	153.08	137.77	80.53	57.24	1.43
<b>Total</b>		<b>153.08</b>		<b>80.53</b>	<b>0</b>	<b>7.07</b>

**WN 6: Effective tax rate**

Computation of effective rate applicable for the Export and Local.

Particulars	Provision	Export	Local
Normal Rate	Schedule 1 Section 2(1)	25%	25%
Less: Exemption @ 20%	U/s 11(2b)(b)	5%	5%
Balance		20%	20%
Less: Exemption @ 20%	U/s 11(3e)(b)	4%	0
Effective tax rate (option I)		16%	
75% on 20 % due to employing more than 500 Nepalese (Option II)	U/s 11(3)(a)	20%*75%* =15%	15%
Selection		15%	15%

As the lowest applicable tax rate comes after considering section 11 (2b) (b) and section 11 (3) (a) i.e., 15% on Local manufacturing sales income as well as export income. Therefore, the taxpayer have the right to choose any one rebate out of the available multiple applicable tax rebates u/s 11. Hence, there is no need to prepare separate annexure 5 for Export Income.

2.

- a) Calculate the Taxable Income and Monthly TDS requirements of Mrs. Rubi Basnet, whose permanent address is Jumla, for FY 2080/81. She works in XYZ Bank Ltd. Her income for FY 2080/81 is as follows:

Basic Salary: Rs. 120,000 per month

Allowance: Rs. 80,000 per month

Provident Fund: 10% of basic salary (20% deposited in approved fund by the Bank)

Dashain Allowance: One-month basic salary and allowance

Bonus: 3 months' basic salary and allowance

Other Information:

- Bank has policy of providing meeting allowance of Rs. 15,000 per meeting. During the year she attended 10 meetings.
- She is provided a vehicle for personal use. The cost of vehicle is Rs. 3,000,000.
- Along with vehicle, a driver is deputed as well. Driver is paid salary of Rs. 20,000 per month.
- She is also provided with a cook. The cook is an employee of the Bank and receives salary of Rs. 20,000 per month. The Bank deducts Rs. 5,000 from salary of Mrs. Basnet towards cook's salary contribution.
- The Bank has policy of providing interest free loan to its employees. Mrs. Basnet has also availed Rs. 5,000,000 loan from the Bank. Currently, prevailing market interest rate is 10% p.a. Loan was disbursed on 1st Magh 2080 and will remain fully utilized for the income year.
- She has availed Rs. 100,000 advance for official work which has not settled yet. Out of this Rs. 20,000 is her travelling and daily allowance.
- The Bank has purchased group accidental insurance policy for all of its employees. The insurance premium for the policy is Rs. 1,000,000. Total number of employees in the Bank is 500.
- During 2078/79, she had an accident and received Rs. 50,000 reimbursements from insurance company for her medical expense.
- During the year, she received best employee award of Rs. 25,000.
- As a part of tax planning, she has deposited Rs. 50,000 in CIT.



- k) She has paid life insurance premium and health insurance premium of Rs. 30,000 and Rs. 15,000 respectively during the year.
- l) She is unmarried woman with no dependents and has income from employment only.
- m) She is currently deputed as Branch Manager of Koteshwor Branch, Kathmandu.

**Answer:2(a)****Computation of Estimated Taxable Income of Miss Rubi Basnet**

Particular	Remarks	Amount (Rs.)
Basic Salary	120,000*12	1,440,000
Allowance	80,000*12	960,000
Provident Fund	120,000*12*10%	144,000
Dashain Allowance	120,000+80,000	200,000
Bonus	(120,000+80,000)* 3	600,000
Meeting Allowance	WN1	-
Vehicle Facility	0.5% of basic Salary	7,200
Driver Facility	WN2	-
Cook Facility	(20,000-5,000)*12	180,000
Interest Free Loan	(5,000,000*10%)/2	250,000
Official Advance	WN 3	-
Group Accidental Insurance Policy Premium	WN 4	-
Reimbursement from Insurance Company	WN 5	-
Best Employee Award		25,000
<b>Total Income From Employment</b>		<b>3,806,200</b>
Less: 1. Contribution to Approved Retirement Fund	Min of: a. Actual (144,000+144,000+50,000) 338,000 b. 1/3rd of Assessable Income from Employment (3,806,200/3) 1,268,733 c. Maximum limit 300,000	(300,000)
2. Life Insurance Premium	Min of: a. Actual 30,000 b. b. Maximum Limit 40,000	(30,000)
3. Health Insurance Premium	Min of: a. Actual 15,000 b. b. Maximum Limit 20,000	(15,000)
<b>Taxable Income</b>		<b>3,461,200</b>

**Computation of Estimated Tax Liability: (assuming opted Single )**

Taxable Income	Tax Rate	Tax Amount(Rs.)
1-500,000	1%	5,000
Next 200000	10%	20,000
Next 300000	20%	60,000
Next 1000000	30%	300,000
Balance 1461200	36%	526,032
Total Tax Liability		912032
Women Tax rebate @10%		(91,203.2)
Net Tax Liability		
Monthly TDS required		66,152.40

**Working Notes:**

- Meeting allowance upto Rs 20,000 per meeting is final withholding tax and is not included in income from employment u/s 92[1(ja)].
  - As per IRD circular dated 2059.4.28, if vehicle facility of 0.5% is added as benefit, the cost paid to driver is not included in income from employment.
  - Advance for official work is used for employer's business. It is not the income of employee. Hence it should not be included in income from employment. Similarly, travelling and daily allowance for official work is also not included in income from employment because such expenses are incurred for employer's business purpose u/s 8[3(ga)].
  - Group accident insurance facility is provided to all staffs uniformly. Hence, such amount is not included in income from employment.
  - Reimbursement of medical insurance is not included in income from employment u/s 31
  - Her permanent has no relevance for remote area allowances as she was working with Koteswor Branch of the bank.
- b) Uthao Service Pvt. Ltd. provides car rental services in Kathmandu. It provided the following information related to its transactions and vehicle ownership for the year 2080/81. Calculate the total taxable income and tax of the company based on these information. 7

Particulars	Service provided (KM)	Rates per KM (Rs.)	Remarks
Car up to 1300 cc	50,000	50	5 cars are owned by natural persons and leased at Rs.400,000 annually per car excluding repair cost.
Jeep and Van 1400 CC and 2000 CC	1,00,000	75	Jeep 1 and Van 1 owned by company.
Micro bus 2001 CC	2,00,000	100	3 micro bus owned by company.
Motorcycle	10,00,000	20	100 motorcycle are leased from riders who charge Rs.18 per km.

Annual vehicle tax of car, jeep, van and micro bus is Rs. 13,000 for rented and Rs. 25,000 for private. In addition to the above, the company has following expenses during the year:



Particulars	Amount (Rs.)	Remarks
Monthly house rent	50,000	Net amount paid to Swom, the house owner. 8 % House rent tax is applicable.
Petrol for cars	4,50,000	
Diesel for microbus, Jeep & Van	30,00,000	
Repair and maintenance for cars	1,50,000	Opening depreciated value of the cars was at Rs. 12,00,000 per cars
Repair and maintenance for Jeep & Van	5,00,000	Opening depreciated value of Jeep and Van was Rs. 30,00,000
Repair and maintenance for Micro bus	30,00,000	Opening depreciated value of the micro bus was Rs. 30,00,000 per micro bus

**Answer:2(b)**

**i) Calculation of taxable income**

Particulars			Total income/expenses (Rs.)
<b>Income</b>	Service provided KM	Rates per KM services Rs.	
Car up to 1300 cc	50,000	50	25,00,000
Jeep and Van 1400 CC and 2000 CC	1,00,000	75	75,00,000
Micro bus 2001 CC	2,00,000	100	2,00,00,000
Motorcycle	10,00,000	20	2,00,00,000
<b>Total income</b>			<b>5,00,00,000</b>
<b>Expenses</b>			
Monthly house rent		$(50,000/.92)*12$	652,174
Car rental		$5*400,000$	2,00,00,000
Petro for cars			450,000
Diesel for microbus, Jeep & Van			3,00,00,000
Repair and maintenance for cars*			150,000
Repair and maintenance for Jeep, Micro bus & Van: 7 % of depreciation base or actual which is lower		$=(30,00,000*4)*.07$ Or actual Rs. 3,500,000 Whichever is lower	8,40,000
Depreciation (Jeep, Van and Microbus)		$=(30,00,000*4)*.20$	2,40,00,000
Service charge paid to motorcycle riders		$=10,00,000*18$	18,00,00,000



<b>Annual vehicle renewal taxes paid to the provincial government</b>			
Jeep, van and microbus	5	25000	125,000
<b>Total allowable expenses</b>			<b>27,617,174</b>
<b>Taxable Income</b>			<b>22,382,826</b>
Tax rate			25%
Tax			<b>5,595,706.5</b>

\* This cost related to hiring cost, not owned by the company, so all repair cost is allowable

- c) Specify whether the TDS is required in the following income, if yes specify the rate and calculate the TDS amount. 6
- Mrs. Chaulagai, earned dividend income Rs. 200,000, interest income Rs. 300,000 from bank, meeting allowances Rs. 20,000 and gain from sales of non-listed shares Rs. 300,000 which were owned for 720 days. She is single and earned the above in FY 2080/81.
  - Koica Construction Company, a non-resident company, constructing Trishuli road project with Mahadev JV registered at Kathmandu, Nepal. Koica has 50 % share in the JV and JV has taxable income of Rs. 3,000,000 in 2080/81. Net profit has been distributed as dividend on Bhadra, 2081.
  - Mr. Rahama is a Nepalese citizen, appointed as a consultant by Vront International, Cambodia on 30 Jestha 2079. As per the contract, he has to work two weeks in Cambodia and one week in Nepal each month. He has annual remuneration and facilities equivalent to Rs. 12,000,000 but remitted from Sudan to Nepal Rs. 9,000,000 in FY 2080/81.

**Answer: 2(c)**

- TDS is applicable in all payments. The TDS rates are 5 % TDS for dividend income as per section 88(2), 6 % TDS for interest income as per 88 (1), 15 % for meeting allowance as per section 88(1) and 10 % TDS on gain on sale of non-listed shares as per section 95ka (2).  
So, total TDS amount:  $200,000 \times 5\% + 300,000 \times 6\% + 20,000 \times 15\% + 300,000 \times 10\% = \text{Rs. } 71,000$
- Dividend tax is applicable as per section 54 while distributing to the shareholders or partners of JV and rate is 5 % as per section 88(2). The JV has total taxable income is Rs. 3,000,000, the tax rate is 25 as per schedule 1 of income tax act, 2058. The net distributable profit remains Rs. 2,250,000 after tax provisions. The JV has to deduct 5 % on all distributed amount, i.e. 5 % on Rs. 2,250,000 = Rs. 112,500.
- As per the information given in the question, Mr. Rahaman is in 2 weeks in Cambodia and remaining period in Nepal, i.e. during the year, 24 weeks (168 days), he is in Cambodia, and he has more than 183 days in Nepal. He is resident natural person as per the income tax act, 2058 because he is more than 183 days during the Income Year. Further, section 95ka (6ga) states that if any resident natural person provides consultancy services at an individual level outside of the country which is not connected with the business and receives the amount in foreign currency, the respective bank, financial institution and money transfer agency shall deduct 5 % TDS of the received amount. His income is taxable because of his residential status as per this provisions, only TDS shall be Rs. 450,000 (5 % of 9,000,000).



3.

a) Elaborate the difference between Public Circulars and Advance Rulings as per Income Tax Act. **5**

**Answer:3(a)**

Basis	Public Circular	Advance Ruling
Issuance	It is issued by department interpreting any provisions of the Act to bring uniformity in the implementation of the Act and simplify tax administration.	It is issued by department on application by taxpayer for removal of any confusion relating to applicability of the Act for any arrangement proposed or followed by him/her.
Superiority	It is available to all taxpayer even conflict with advance ruling.	In case of dispute with public circulars, the advance ruling shall prevail.
Effect of issue	It affects all the taxpayer about matter/content mentioned in circular.	It only affects the concerned person for any arrangement proposed or followed

b) Sony & Associates, a class D registered auditor firm, is approached by Thomas export Pvt. Ltd to provide suggestion on tax planning. The requirement of the company is to show lesser sales than actual, because any type of export invoices are acceptable by the foreign clients. Further, the company has invested in Bitcoin crypto currency through the foreign client. Provide your views highlighting the provisions of the ICAN Code of Ethics whether the firm can accept the service of tax planning or not.

**5**

**Answer:3(b)**

As per R604.8 of ICAN Code of ethics, A firm or a network firm shall not provide tax planning and other tax advisory services to an audit client when the effectiveness of the tax advice depends on a particular accounting treatment or presentation in the financial statements and:

(a) The audit team has reasonable doubt as to the appropriateness of the related accounting treatment or presentation under the relevant financial reporting framework; and

(b) 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

The concealment of sales that will be material effect in the financial statements and investment in bit queen against the provisions of foreign currency transactions and Nepal Ratra Bank Directives, the firm cannot accept such service as per the Code of ethics.

4.

a) Mention whether excise duty is leviable in following cases:

**10**

i. UNDP had imported two motor vehicles (produced in 2015 AD) in the name of an ABC project under full tariff facility. Now the project has been completed and it wants to transfer those vehicles to a community school with the approval of Ministry of Finance. Whether excise duty is levied in such transfer?



- ii. An ambassador had imported a luxury car for personal use under partial customs tariff facility in 2016 AD. After the death of ambassador in 2022, his wife sold the car to a businessman. Whether excise duty is levied in such transfer?
- iii. A government organization has obtained approval from Ministry of Finance to scrap and cancel the registration of all the vehicles which are more than 20 years old from the year of production such that it cannot be re-used. Whether excise duty is levied on those vehicles?
- iv. YZ industry produces excise taxable products using 95% of local scrap materials. Whether excise duty is levied on such products?

**Answer : 4(a)**

i) According to the section 4 Ga (2)(ka) of the excise act, excise duty shall be exempted if a diplomatic mission or donor agency transfers the motor vehicles, not older than ten years since the year of its first production, that they imported with diplomatic facility or tariff facility to any project as per the approved annual program of such project and converts the number plate into governmental plates; or if the motor vehicle, not older than ten years since the year of its first production, imported in the name of any project under full or partial tariff facility (except those imported on inventory or bank guarantee) is transferred to local body, community school, community hospital or governmental body with the approval of Ministry of Finance, Government of Nepal upon the completion of the project, the excise duty shall not be levied on such transfer.

Hence, in the above case, the Vehicle imported by UNDP if transferred to community school is exempt from Excise Duty.

ii) According to the section 4 Ga (2)(Ga), if the owner of a motor vehicle imported for personal use with the enjoyment of partial customs tariff facility dies and the motor vehicle has to be transferred to the husband or wife of such owner of motor vehicle, the excise duty shall not be levied on such transfer.

In the given case, the vehicle has been transferred to a Businessman. Hence, Excise Duty is applicable on such transaction.

iii) According to the section 4 Ga (2)(Kha), if any diplomatic agency, project, person and other body (governmental or nongovernmental organization) intends to scrap and cancel the registration of any motor vehicle imported by them under tariff facility, which is older than fifteen years from the year of its production, with the approval of Ministry of Finance such that it cannot be re-used, the excise duty shall not be levied on such motor vehicle.

Hence, in the given case, Excise Duty is not applicable since a government organization has obtained approval from Ministry of Finance to scrap and cancel the registration of all the vehicles which are more than 20 years old from the year of production such that it cannot be re-used.

iv) As per section 4 Ga (3) of the excise act, an industry producing goods by using ninety percent or more of local scrap (Jhutra or Patru) goods, excise duty levied on such products shall be exempted.

Hence, Excise Duty is not applicable on good produced by YZ Industries since it is using 95% of local scrap materials.



- b) Strong Plastic industries, established in Narayanghat, Chitwan, is a manufacturer of plastic products. The industry imports raw materials (plastic seeds) and sells finished products. The standard norm is 95 KG production from 100 KG raw materials. During the month of Ashad, 2081, the company has imported 150,000 KG seeds from India, and provided the following information:

Particulars	Amount	Remarks
Seed Invoice price	Rs. 340 per Kg	Indian Rupees
Letter of credit charges	Rs. 20,000	
Transportation cost upto Custom points	Rs. 80,000	
Transportation cost from Custom points to Factory	Rs. 100,000	
Insurance paid to Nepal insurance company	Rs. 30,000	
Packing materials purchased locally	Rs. 5,100,000	

The above amount is excluding VAT but including excise duty as applicable.

The industry has two additional branches for sales, the details of quantity sales/transfer as follows:

Location	Received Qty	Sales Qty	Transfer Qty
Factory premises	135,000 KG	40,000 KG	95,000 KG
Pokhara branch	40,000 KG	35,000 KG	-----
Butwal branch	75,000 KG	55,000 KG	20,000 KG

Additional information:

- The selling price was Rs. 600 per KG before all relevant taxes and duties. It has no opening stocks but opening VAT receivables is Rs. 90,000 and excise duty payable is Rs. 60,000.
- The company imported a car and a truck during the month. The CIF value of the car and truck upto customs point was Rs. 6,000,000 and Rs. 4,000,000 respectively. The transportation cost from the customs point to the factory premises includes the petrol cost of Rs. 5,650 for the car, and the diesel cost of Rs. 6,780 for the truck. Driver's wages of Rs. 5,650 for each have been paid to a transporter against VAT invoice. Applicable custom duty for the car and the truck are 80 % and 60% respectively whereas excise duty for the car is 60 % and 30 % for such truck.
- The company has capitalized all associated costs to the property, plant and equipment following the accounting standards.
- The company has paid the customs clearing service charges of Rs. 80,000 for the seeds clearance and Rs. 15,000 each for the car and truck clearance against the VAT invoices dated Shrawan 05, 2081.
- Applicable customs duty is 20 % and excise duty is 5 % for the plastic products.
- The company collects VAT and Excise duty at the point of sales, i.e. from branches, consolidates the total and submits the monthly return.
- The company fully complies with excise and VAT Act to avoid further penalties which may be charged by the respective tax office.

In above transactions and situations, you are required to answer the following questions and issues.

- Explain the point of Excise Duty & VAT collection as per the provisions.
- Calculate the customs duty payable at the customs point, excise duty and VAT payable/receivable for the month.

**Answer: 4(b)**

**(i) Point of Excise Duty Collection**

Section 4 of excise act 2058 provisioned that excise duty shall be recovered at the time of issuing the invoice in case of goods or services under the self-removal system. So, the plastic products are under the self-removal system, so, the place of excise duty collection is where the invoice has been issued.

**(ii) Point of VAT Collection**

(a) Section 5(1) of Value Added Tax Act, 2052 provides that VAT shall be levied on the goods and services supplied within Nepal or imported in Nepal or Exported from Nepal.

(b) Section 8(1) of Value Added Tax Act, 2052 provides that VAT shall be collected as per rule made under VAT Act.

(c) Rule 15 of VAT Rules 2053 specified the place of supply of goods, it states that

- i) in the case of transfer of movable goods via sale, the place where such movable goods sold or transferred.
- ii) In the case of immovable goods where even after transfer of ownership the place of goods remains same, the place where such immovable goods is situated,
- iii) In the case of imported goods, the customs point from where such goods are imported into Nepal, and
- iv) In the case of supply of goods to the producer or seller himself, the place where the producer or seller of such goods is situated. Further internal transfer of goods for commercial purposes related to regulation directives 2076 issued by the IRD defined the internal transfer that includes the stock transfer to the branch. So, the collection place is the seller of such goods if transfer the goods to itself.

(d) Rule 16 of VAT Rules 2053 specified the place of supply of Services, it states that place of supply of services will be the place where such services are consumed.

Hence, the VAT shall be collected at the place of supply of such goods and services.

**ii) Calculation of customs duty, excise duty & VAT payable/receivable**

**Calculation of Customs Duty**

Particulars	Seeds Import	Car Import	Truck Import	Total
Invoice price	81,676,500.00	6,000,000.00	4,000,000.00	
Transportation cost	80,000.00	-	-	
Insurance	30,000.00	-	-	
Transactions Value	81,786,500.00	6,000,000.00	4,000,000.00	
Customs duty rate	20%	80%	60%	
<b>Custom duty</b>	<b>16,357,300.00</b>	<b>4,800,000.00</b>	<b>2,400,000.00</b>	<b>23,557,300.00</b>
Total with Customs Duty	98,143,800.00	10,800,000.00	6,400,000.00	
Excise duty rate	5%	60%	30%	
Excise duty	4,907,190.00	6,480,000.00	1,920,000.00	
Taxable Value	103,050,990.00	12,480,000.00	5,920,000.00	



VAT	13,396,628.00	1,622,400.00	769,600.00	
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Total customs duty payable at the customs point is Rs. 23,557,300.

#### Calculation of Excise duty Payable/Receivable

Particulars	Excise duty (Rs.)	Remarks
Opening duty	0	Assumed paid
Output duty (WN)	4,275,000	
Input duty on raw materials	4,907,190	Refer to custom duty payable table
Input duty on packing materials	0	Not available
Input duty on car & truck	0	only available for raw materials used for the finished goods
<b>Payable for the month</b>	<b>(632,190)</b>	

Generally, the payable amount of excise duty are paid on the due date, within the 25th of the next month, so the opening Excise duty has been assumed paid in Aswin, 2078.

#### Calculation of VAT Payable/Receivable

Particulars	Excise duty (Rs.)	Remarks
Opening receivable	(90,000)	
Output VAT (WN)	11,670,750	
Input VAT on raw materials	(7,042,958)	Refer to custom duty payable table
Input VAT on packing materials	(663,000)	5,100,000*.13
Transportation cost	(13,000)	Rs. 100,000*.13
Insurance	(3,900)	Rs. 30,000*.13
Input VAT on car	(649,220)	All associate cost has been capitalized, total is (1,622,400+VAT on petrol, credit not available+650 (VAT of Driver's wages)*40%
Input VAT on truck	(771,030)	Rs. 769,600+780+650
Clearing service charges	0	Invoice dated on Shrawan, it cannot be claimed without payment.
<b>Payable for the month</b>	<b>2,437,642</b>	

#### Working note: Calculation of output excise duty

The Excise Duty Officer may punish such a person if the output recovery is not met by any person as per section 16 (4) (i) of Excise Act, 2058. Under penalties section, it states that if the output recovery (pratilabdi) of production of excisable goods or services is prescribed and such prescribed output recovery (pratilabdi) is not met, cent percent of the amount of excise duty to be added. So, excise duty is required to be calculated to avoid the 100 % penalties. The company also does not want to pay any penalties as given.

#### Calculation:

Total input quantity (Given) 150,000



Output recovery rate	95 %
Quantity to be produced	142,500
Sales rate before excise as given	600
Total sales amount Rs.	85,500,000
Excise @ 5 %	<u>4,275,000</u>
Taxable Value	89,775,000
VAT	<b>11,670,750.</b>

**5.**

- a) Om and Singh are importer of Microvens. On Ashwin 15, 2080, the firm has imported a consignment of 56 pcs. of Microvens. The details of the transaction are given hereunder:

Particulars	Amount
Invoice Value CIF as per piece	\$104
Transportation, clearing and other expenses up to custom office	Rs.24000
Bank and other L/C charges	Rs.800
Clearing expenses at Custom area	Rs.5500
Transportation from custom to godown	Rs.5000

Other direct expenses to bring the goods to godown is Rs. 4500

In normal conditions the importers of similar items are marking up 25% on the landing cost for determining selling price. The rate of custom duty on the Microvens is 22% of the transaction value. The rate of exchange on the day of custom clearance was Rs. 125.75 per \$.

Being suspicious of the transaction value declared by the importer, the custom officer has ascertained selling price of such Microvens and concluded that the importer's selling price of such kind of Microven is NPR. 27,500 per pc. (excluding VAT).

Nepalgunj Custom officer has many reasons to believe that the declared value is lower than the actual and he decided to apply deductive value method for calculation of the transaction value of the consignment.

As a expert, state in brief the circumstances in which the custom officer is empowered to apply the deductive value method for determining the transaction value of the consignment. On the basis of the above information, you are required to calculate selling price as per invoice value method and the transaction price of the consignment applying the deductive value method.

7

**Answer:5(a)**

Section 13 of Customs Act, 2064 is specific to Article VII of the General Agreement on Tariffs and Trade 1994 for valuation of transaction value of a consignment. The sub-section (2) to (16) has provided various methods of valuing the transaction value of a consignment. But, it is specifically mentioned that the methods shall be used in priority of the methods suggested by sub-sections in order of the sub-sections.

As per sub-section (4) of section 13, a transaction value is determined on the basis of the value declared by the importer if the value is in conformity with the Article VII and is proved to be agreeing with invoices and other relevant documents proving the price. In case the custom officer believes that the declared value is doubtful, he can ask for more documents to prove the validity of the declared price. Even after analyzing



the required documents, in case the custom officer is not satisfied with the declared value, he is empowered to apply other methods of valuation as suggested by other sub-sections.

The first method of determining transaction value is the identical goods method. In this method the value of the goods imported shall be determined on the basis of identical goods previously imported. Here, identical goods means goods which are the same in all respect, including physical characteristics, quality and reputation {Sub-section (8)}. In case the custom officer has no record of recently imported identical goods, he may apply the second alternate method of valuation that is similar goods method {Subsection (9)}. Here similar goods means goods which, although not alike in all respect, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable.

In case the custom officer is not in position to apply even the similar goods method of valuation, under the following conditions the custom officer could value the goods applying the deductive value method:

Identical goods are previously imported in Nepal and being sold in Nepal frequently such goods were imported by importer other than Ms. Om and Singh or its related firms. The deductive value method is calculated by deducting tax, duty levied in Nepal on the selling price of each unit of the maximum unit so sold, and other related costs and profits.

In the given case, selling price as per invoice value method is calculated as under.

Particulars	Amount(Rs.)	Per unit cost
Invoice price( $56 \times 104 \times 125.75$ )	732,368	13078
Transportation etc. up to custom	24000	428.6
Transaction value for custom duty	756,368	13039.5
Custom duty 22%	166,400.96	2868.7
Other expenses after custom	15,800	282.14
Total landed cost	938,568.96	16,760.16
Profit margin 25% on landing cost	234,642.24	4190
Selling price of Microven	1,173,211.20	20,950.20
Per unit selling price (before VAT)		20,950.20

#### Calculation of transaction value on the basis of deductive value method:

Selling price per Microven	27500
Less: Profit margin( $27500/125 \times 25$ )	(5500)
Net landing cost	22000
Expenses after custom office	282.14
Transaction value + custom duty	21,717.86
Custom duty( $21798.3/122 \times 22$ )	3916.33
Transaction value for custom purpose	17,801.53
Less: Transportation expenses up to custom	(428.6)
The invoice price per pc as per deductive value method comes to	17,372.93

So the transaction value of the consignment for custom purpose applying the deductive value method shall be:



56 Microvens	972,884.08
Transportation etc. up to custom	24,000
Transaction value for custom duty	996,884.08

b. M/S Malika Foods Productions has following transactions from Poush to Chaitra 2079. The company submitted the VAT return for the period on Baisakh 20, 2080.

Particulars	Poush	Magh	Falgun	Chaitra
Opening VAT receivable	8,000			
Local Sales	3,500,000	3,000,000	3,800,000	4,000,000
Sales to Industry in SEZ	500,000	1,000,000	300,000	400,000
Purchase of materials	2,500,000	2,000,000	5,000,000	2,500,000
Purchase of Bus for staffs				2,500,000
Purchase of Petrol for Vehicle	20,000		10,000	10,000
Purchase of Truck for goods transport on bank loan		6,500,000		
Diesel for vehicle		5,000	15,000	18,000
AMC of Software acquired from Singapore	500,000			
Consultancy Service	50,000			100,000
Office supplies	25,000	35,000	15,000	20,000
Import of Plant and machinery used only for production of VAT applicable foods products	600,000			

Out of total production, 80% is VAT applicable. All of the above items are exclusive of VAT. Purchase of materials in Falgun and Chaitra includes purchase of raw materials of Rs. 150,000 and Rs.500,000 respectively from farmers directly. Compute the VAT payable for each month.

7

### **Answer:5(b)**

#### **Calculation of VAT payable by Malika Foods Productions:**

Particulars	Poush	Magh	Falgun	Chaitra
VAT on local sales -80%	364,000	312,000	395,200	416,000
VAT on sales to SEZ (zero rate as per schedule 2)				
<b>Total VAT collected</b>	<b>364,000</b>	<b>312,000</b>	<b>395,200</b>	<b>416,000</b>
VAT credit: Vatable purchase of raw materials (excluding from farmers)	260,000	208,000	504,400	208,000
Purchase of Bus for staffs				104,000
Purchase of Petrol for Vehicle (not allowed as per Rule 41)				
Purchase of Truck for goods transport on bank loan (100% allowed as per Rule 41)		676,000		



Diesel for vehicle		520	1,560	1,872
AMC of Software acquired from Singapore (if reverse VAT has been deposited, it allowed to claim)	52,000			
Consultancy Service	5,200			10,400
Office supplies	2,600	3,640	1,560	2,080
Import of Plant and machinery used only for VAT attractive foods (no proportionate basis)	78,000			
<b>Total Credit</b>	<b>397,800</b>	<b>888,160</b>	<b>507,520</b>	<b>326,352</b>
VAT payable (receivable)	(33,800)	(576,160)	(112,320)	89,648
Opening VAT Credit	(8,000)	(41,800)	(617,960)	(730,280)
<b>Net VAT Payable/(Receivable)</b>	<b>(41,800)</b>	<b>(617,960)</b>	<b>(730,280)</b>	<b>(640,632)</b>

- b) Gurkha Cigarette Factory has following transactions in the month of Shrawan 2081. You are required to calculate the Excise Duty to be claimed for refund. There is no deposit maintained with the Excise authorities and it follows physical control system.
- Excise duty paid on import of raw materials 2,500,000
- Excise duty paid on import of packing materials 400,000
- Value of export of cigarette 30,000,000
- Value of local sale of cigarette 50,000,000
- Discount given on local sale 500,000
- Would the answer be different if the value addition on the imported material is less than 15%.
  - What is the timeline by which the refund will have to be claimed?
  - What is the normal time by which the Excise Officer shall refund the Excise Duty refund claim?

**Answer:5 (c)**

Excise duty paid on raw material	2,500,000
Value of export	30,000,000
Value of local sale	50,000,000
Proportion of export	37.5%
Proportion of local sale	62.5%
Proportion of Excise duty paid applicable for export	$37.5\% \times 2,500,000 = 937,500$

Since there is no excise duty applicable on export of excisable product as per section 3kha (1) whereas the duty applicable on local sales would have been collected on each removal of goods from factory. Section 3kha (4) states that Industry producing and exporting excisable goods to foreign countries, shall be allowed to deduct excise duty paid on purchase or import of raw materials used for producing the excisable goods,



to the extent of quantity of export, against the excise duty to be paid during removal of goods pursuant to Sub-section (3) of Section 3A. So, the factory should collect the excise duty on local sales of Rs. 50,000,000 as per prescribed rate, can claim for excise duty paid of Rs. 2,500,000 for raw materials only, excise duty paid for packing materials is not allowed for credit.

- i) For the excise duty to be eligible to be claim for refund Section 3Kha (7) of the Act requires that there has to at least 15% value addition on the goods imported. Therefore, if the value addition is less than 15% then the refund cannot be claimed. If the factory could not adjust the excise duty paid on the collected amount, it can claim for refund upto Rs. 937,500 to the extent of exported products pursuant to section 3kha (5) if the value addition is at least 15 %.
- ii) According to Section 3Kha (8) the claim for the refund shall be made within one year from the due date of filing the excise return, anything beyond this will not be admissible for refund claim.
- iii) According to section 3kha(6), If the Excise Duty Officer, upon investigation and examination finds the claims for refund of excise duty amount pursuant to Sub-section (5) to be reasonable, shall refund the amount within sixty days of making such claim.

6.

- a) Based upon the Double Taxation Avoidance Agreements (DTAAs) with China, find out the taxability of the following transactions citing the relevant DTAA provisions:  
(1+1+2+1=5)
  - i) Tara Airlines, a subsidiary of China Air, China, paid meeting allowance to its director from China, who visits Nepal only for occasional meetings.
  - ii) Mr. Zhen Xiou, a Chinese Resident, has apartment in Kathmandu and got rental for FY 2080/81.
  - iii) Professor Emraan pathan, resident of Nepal during the FY 2080/81, got monthly stipend of CNY 3,000 from Peking University, Beijing for research work carried out there during the period Kartik 2080 to Ashadh 2081.
  - iv) A Chinese Company got payment from Kathmandu Valley Khanepani Limited against the contract won through international bidding and executed through Permanent Establishment herein.

**Answer:6(a)**

i)	Tara Airlines, a subsidiary of China Air, China, paid meeting allowance to its director from China, who visits Nepal only for occasional meetings.	Yes. (Article 16 Directors' fees) Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the Board of Directors of a company which is a resident of the other Contracting State may be taxed in that other State.
ii)	Mr. Zhen Xiou, a Chinese Resident, has apartment in Kathmandu and got rental for FY 2080/81.	Yes. Article 6(1) (Income from immovable property) Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
iii)	Professor Emraan pathan, resident of Nepal during the FY 2080/81, got monthly stipend of CNY 3,000 from Peking University, Beijing for research work carried out there	Yes. Article 20 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



	during the period Kartik 2080 to Ashadh 2081.	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. It is taxable in Nepal.
iv)	A Chinese Company got payment from Kathmandu Valley Khanepani Limited against the contract won by the Chinese Company through international bidding and executed through Permanent Establishment herein.	Yes. Article 7(1) Business profits, the profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

b) Write short note on duties of Customs Agent as per Customs Act, 2064.

5

**Answer:6(b)**

**Duties of Customs Agent**

Section 53A of Customs Act, 2064 provides below duties of Customs Agent:

- a. Full compliance of legal provisions of Customs related Act
- b. Necessary coordination with Customs Office for simplification of Customs Clearance process
- c. Necessary coordination with Customs Office for collection of Duties
- d. Should not enter into any activity which hindrances with Customs job
- e. If Customs office issues written notice for physical presence of main importer or exporter who has appointed such customs Agent, then delivering such notice to such importer or exporter.