

**SUGGESTED ANSWERS TO**  
THE QUESTIONS SET AT  
**CA MEMBERSHIP EXAMINATION**  
**MARCH 2023**



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

The Institute of Chartered Accountants of Nepal

The exam questions and solutions can be used only by students in preparation for their CA Membership Examination. They cannot be published in any form (paper or soft copy), or sold for profit in any way, without first gaining the express permission of ICAN. Nor can they be used as examinations, in whole or in part, by other institutions or awarding bodies.

Year and month of Publication: 2023 September

**Disclaimer:**

The suggested answers published herein do not constitute the basis for evaluation of the students' answers in the examination. The answers are prepared by the concerned resource persons and compiled by the Technical Directorate of the Institute with a view to assist the students in their education. While due care has been taken in the compilation of answers, if any errors or omissions are noted, the same may be brought to the attention of the Technical Directorate. The Council or the Board of Studies of the Institute is not any way responsible for the correctness or otherwise of the answers published herewith.

## **Contents**

<b>Corporate Laws.....</b>	<b>1</b>
<b>Advanced Taxation.....</b>	<b>14</b>



## Corporate Laws

### Attempt all questions.

#### 1. Answer the following questions:

- a) National Reinsurance Ltd. had accepted a facultative insurance of a construction work from Makalu Insurance Ltd. on 26<sup>th</sup> June, 2022 with 60 days premium payment warranty-PPW clause with condition of auto cancellation provision after the expiry of PPW period. Makalu Insurance fails to pay premium within the PPW period whereby the reinsurance company issued a note on 25<sup>th</sup> August expressing intention to cancel the policy within 15 days if premium is not paid. On 10<sup>th</sup> September, 2022 i.e., on the 15<sup>th</sup> day of such notice, Makalu Insurance paid the premium which was accepted by the reinsurance company. Some part of the construction work damaged by a flood on 20<sup>th</sup> August, 2022 and main construction works including buildings collapsed by an earthquake on 7<sup>th</sup> September. When loss was claimed the reinsurance company refused to pay contending the Makalu Insurance had not paid the premium on time. Advise the reinsurance company on the following issues with legal principles in reference to the Insurance Act, 2079:
- i. What is meant by PPW? 3
  - ii. Is the reinsurance with PPW clause terminated after the PPW period? 3
  - iii. Can Makalu Insurance claim for loss occurred on 20<sup>th</sup> August, 2022? 2
  - iv. Is National Reinsurance be held liable for loss occurred on 7<sup>th</sup> September, 2022? 2

#### 1a. Answer:

##### i.

In general payment of premium is a pre-requisite for insurance contract as the risk cover starts only after the payment of premium. However, in reinsurance a certain time is provided for the payment of premium even though the coverage becomes effective without actual payment of premium to the reinsurance company by the primary insurer. This extended time period for the payment of premium is known as the premium payment warranty. The premium payment warranty (PPW) stipulates the number of days (from inception-date of reinsurance) within which premium must be paid to the reinsurer, for example, PPW (60 Days) means that premium is due within 60 days from the inception date. Failure to pay the premium by the due date renders the policy void from inception.

If the clause provides for cancellation of cover if the premium is not paid to the reinsurer within that period, the reinsurer is required to send a notice of cancellation which should stipulate the notice period, for example, 15 days from the date of notification. The clause has a further provision for payment of “Time on Risk Premium” or prorata premium, which represents the premium accrued during the period between the inception date and the cancellation date.

##### ii.

At the time of reinsurance contract, premium may be paid after some time as agreed and provided under the PPW clause. This clause may be agreed with or without auto cancellation at the time of expiry of such period. If there is PPW clause with auto cancellation, the reinsurance cover/policy shall be automatically terminated on the expiry of such PPW period. On the other hand, if the PPW clause is without auto cancellation or requires to issue a cancellation note, the reinsurer must issue a notice to the insured stating that the reinsurance policy shall be terminated if premium is not paid within a certain period of time, i.e., 15 days from the date of such notice. In this case, the insurance



contract does not terminate if the insured pay the premium within the time of such notice of cancellation. If the reinsured pays the premium contract continues and if not paid after the expiry of notice period the contract terminates. Therefore, termination of the reinsurance cover in this instance is automatic. There is no need for prior notification of cancellation by the reinsurer.

**iii.**

It is agreed and understood that otherwise subject to the terms, exclusions, provisions and conditions contained in the Policy, it is warranted that the premium shall be paid and in the possession of the Company within sixty (60) days from the inception or renewal date of the policy.

In the given case, the insured is required to pay the premiums charged for the reinsurance within 60 days from the effective date of insurance cover-inception date which is shown on the policy/cover note and/or renewal certificates. Though the insurance cover will be automatically cancelled from the 61<sup>st</sup> day if the premium is not paid by the 60<sup>th</sup> day, the reinsurer is liable to pay claims for loss occurred from the date of inception to the PPW period, i. e., within 60 days from the commencement of reinsurance contract. The reinsurer cannot refuse to pay on the ground that the premium was not paid yet. However, the reinsurer is entitled to the pro-rata premium on the period they have been on risk. ***Hence, Makalu Insurance is entitled to claim for loss occurred on August 20.***

**iv.**

After the expiry of PPW period where a 15 days advance notice of cancellation was provided, the contract is not yet termination until the last date of such cancellation notice. Within that notice period the reinsured can reinstate the policy by paying premiums to the reinsurer. However, if any loss occurs after the PPW period and before the expiry of the cancellation notice, the reinsurer is not liable to pay to the reinsured. Loss occurred in between the expiry of PPW period and cancellation notice period can not be recoverable by the insured. But if the contract is reinstated by paying premium and the contract is reinstated, the reinsurance company is liable for any losses caused from the date of payment of premiums.

***Hence, The National Reinsurance cannot be held liable for loss occurred on 7<sup>th</sup> September, 2022 as the contract is reinstated only on 10<sup>th</sup> September, 2022 at the time of payment of premium.***

**b)** Shivpuri Bank Ltd., a newly established commercial bank is looking for the suitable candidates for the post of Chief Executive Officer (CEO) of the bank. The Board of Directors are considering Mr. Rana as a probable candidate with master degree in rural development and 7 years' experience as senior manager in the Premier Bank Ltd. Chairperson of the bank enquire you about the relevant legal provisions of the Banks and Financial Institutions Act, 2073 in the following issues.

- I. What are the qualifications required to be appointed as the Chief Executive Officer of a bank?
- II. What are the functions, duties and powers of Chief Executive Officer?
- III. Whether Mr. Rana can be appointed in the post of Chief Executive Officer of the bank.

**1b. Answer:**

- I.** The Chief Executive Officer of a bank or financial institution is the chief administrator of the bank thereof. Business and day-to-day administration and management of bank or financial institution is under control of the chief executive officer.



Sub-section (5) of Section 29 has laid down the qualifications of Chief Executive as under-

- Person having attained Master's degree in management, banking, finance, monetary, economics, commerce, statistics, accounting, mathematics, business administration or law.
- Person having work experience of at least ten years as an officer level or above in banking or finance sector, government entity, corporate body, university or an international institution or organization to carry on similar works after having attained bachelor's degree in chartered accountancy or management, banking, finance, monetary, economics, commerce, bookkeeping, statistics, account, mathematics, business administration or law,

**II.** The functions, duties and powers of chief executive are as follows as per the section 30 of the Bank and Financial Institution Act, 2073:

- a) To implement the decisions of the Board and supervise and control the activities and transactions of the bank or financial institution, subject to this Act and the memorandum of association and articles of association;
- b) To prepare annual budgets and action plans of the bank or financial institution and present them before the Board for approval;
- c) To manage necessary human resources, subject to the personnel bye-laws of the bank or financial institution;
- d) To implement, or cause to be implemented, the decisions of the General Meeting,
- e) To operate the institution according to Act and directives of the Rastra Bank and to carry out effective internal control and risks management.
- f) To submit statements, documents, decisions, etc. to be submitted by the bank or financial institution to the Rastra Bank or any other agency, on time subject to Act, directives of Rastra Bank and memorandum of association and articles of association;
- g) To operate the institution taking into consist optimum protection of interests of depositors. Shareholders and the institution itself.
- h) To apply appropriate criteria for senior management subject to the policy as determined by the Board of Directors.

**III.** As Mr. Rana has not got academic qualification and experience required as per the provision in section 29 (5). So he is not qualified to be the Chief Executive Officer of the bank.

**2.** Answer the following questions:

- a) Sagarmatha Bank Ltd., a public company after few years of its operation, was taken under control by Nepal Rastra Bank (NRB) after suspending its board of directors (BOD). Thereupon, NRB took under its control the management of the Bank and appointed one of its first class officers to manage the business of the Bank.

Mr. Kabir Sharma, a shareholder of Sagarmatha Bank Ltd. wants to challenge the decision and action of NRB before the court.

You as a corporate consultant Mr. Kabir Sharma wants answer the following questions in the light of the Bank & Financial Institutions Act, 2073: 7

- i. Under which situations NRB may take control over the commercial bank?
- ii. What procedures NRB must follow before taking control over the management of the commercial bank?
- iii. What procedures NRB is required to follow after the taking over control of the commercial bank?

**2a. Answer:**

- i. As per section 102(1) of the Bank & Financial Institutions Act, 2073, notwithstanding anything contained elsewhere in this Act, if the Rastra Bank believes that a licensed institution has violated the this Act or Rastra Bank Act or the Rules or Byelaws framed thereunder or the Orders or Directives issued there under or is satisfied, on the basis of the inspection and supervision report of the Rastra Bank, that a licensed institution has failed or is likely to fail to perform the obligations required to be performed by the licensed institution or that a bank or financial institution has not been operated smoothly or has carried out anything contrary to the interests of its shareholders or depositors, the Rastra Bank may suspend the Board of Directors of such licensed institution for a period of maximum three years and take such bank or financial institution under own control.
- ii. Section 102(6) of Bank & Financial Institution Act 2073, States the Nepal Rastra Bank shall, prior to taking a licensed institution under its control, give an opportunity to the concerned bank or financial institution to defend itself, by providing it with a time-limit not exceeding 15 days, having regard to the situation.
- iii. After taking of any licensed institution under its control pursuant to Sub-Section (1) of NRB shall follow the following procedures:
  - a) The Rastra Bank shall have to inform Government of Nepal, Ministry of Finance about the taking of any licensed institution under its control.
  - b) After taking any licensed institution under its control, the Rastra Bank may either itself or through any appropriate person, firm, company or institution appointed by it, carry out the management of such bank or financial institution. Then. Rastra Bank shall, within one year after the management of licensed institution has been carried out by itself or through any other person, firm, company or institution, conduct or cause to be conducted financial and management audit of such institution and publicly publish a report thereof.
  - c) If the Rastra Bank is satisfied, from the report referred to sub-section(3), that the concerned licensed institution has become capable of performing the liabilities required to be performed by it or that the institution has reached a stage of operating smoothly, the Rastra Bank may take the following actions:-
    - i. To remove the suspension of the Board of Directors of the licensed institution and handover the management of the institution to that Board of Directors, or
    - ii. To dismiss the Board of Directors of the licensed institution which has been suspended, form a new Board of Directors from amongst the shareholders of the licensed institution and handover the management of that institution to the new Board of Directors, or
    - iii. To convene the General Meeting of the licensed institution, get a new Board of Directors formed by the Meeting, and handover the management of the institution to the Board of Directors, or
    - iv. To take any other action as the Rastra Bank deems appropriate.
  - d) If the Rastra Bank is satisfied, from the report referred to sub-section(3), that the concerned licensed institution has become incapable of performing the liabilities required to be performed by it or that the institution has reached a stage of not being operated smoothly, the Rastra Bank may take any of the following two actions:-
    - i. To initiate the process of mandatory liquidation according to the provisions made in Chapter 12 of the Act, or
    - ii. To initiate the process of settlement according to the Rastra Bank Act, 2058.



- b) Mr. Ram Bilash Sharma has been appointed as the Auditor of Nepal Bikas Co-operative Society Ltd and had commenced the auditing work. During the audit work he was informed by one of the friend that he is having one of the disqualification of being auditor of the co-operative society. Mr. Sharma approached you and willing to know about following issues: 7
- i) The disqualification of the Auditor
  - ii) In case auditor becomes disqualified before completion of audit what should be done.

**2b. Answer:**

Section 77 of the Co-operative Act, 2074 makes provision about the disqualification of be the Auditor of the Cooperative society.

The following person shall not be appointed as an auditor and if already appointed shall not hold his / her office:

- a) Director of co-operative society.
- b) Member of the concerned co-operative society.
- c) Consultant or employee drawing regular salary from the co-operative society.
- d) One who has not completed a period of 3 years after having convicted of an offence relating to audit.
- e) One who has been declared bankrupt.
- f) One who has not completed a period of 5 years after having convicted of an offence relating to corruption, fraud or other criminal offences involving moral turpitude.
- g) Person, firm or company which has auditor for 3 consecutive fiscal years.
- h) Person having conflicting interest with concerned cooperative society or association.

Where as, before the completion of the term of the audit, the auditor has been disqualified or condition has arisen where he/she can no longer hold office, the auditor shall immediately stop performing the audit and provide information of the same in writing to the cooperative society or association. Audit carried out by the auditor appointed in contravention of this section shall not be valid.

- c) District Attorney Office, Baglung published a bid document for works of Intranet installation. Vendor 'Vijaya' submitted upon the respective bid including X,Y, Z. The District Attorney constituted a committee for evaluation of Bid as prescribed in the Public Procurement Act, 2063. If you are a member amongst them, how can you evaluate the Bid? Suggest the process of the evaluation of bids referring the PPA. 6

**2c. Answer:**

Section 25 of the Public Procurement Act, 2063 has provided the process of evaluation of Bid as follow:

1. All submitted bids other than those separated for non-procurement shall be included for evaluation.
2. Where a bid is found containing minor deviations in the matters such as the technical specifications, descriptions and characteristics etc. so as not to reject the bid, the value of such deviations shall be quantified, to the extent possible, and included in the evaluation of bids pursuant to Sub-section (1).
3. Where the value of minor deviations under Sub-section (2) exceeds fifteen percent of the bid price of the bidder, such a bid shall be deemed to be substantially non-responsive; and shall be excluded from evaluation. 'minor deviations' mean such deviations that do not materially depart from the matters such as the technical specifications and descriptions as set forth in the bidding documents.





4. Where invitation to bid has been made after determination of pre-qualification, the bids submitted by the bidder other than the pre-qualified bidders shall be excluded from evaluation under Sub-section (1).
5. Bid shall be evaluated in accordance with the criteria and methodology set forth in the bidding documents; and in carrying out such evaluation, the bid with the lowest bid price shall be determined by making comparison of the evaluated price of every bid with the evaluated price of the other bids.
6. The qualifications of the bidder of the bid having the lowest bid price under Sub-section (4) shall be verified in order to ascertain whether it conforms to the qualification criteria set forth in the bidding documents or not.
7. Where on examination, the qualification of the bidder of the bid having the lowest bid price pursuant to Sub-section (4) is in conformity with the qualification evaluation criteria set forth in the bidding documents under Sub section (5), such bid shall be the s lowest evaluated substantively responsive bid. Where, on examination, the qualification of such bidder is found not to be in conformity with the qualification as evaluation criteria set forth in the bidding documents, such bid shall be excluded from evaluation; and the qualification of the next bidder having the next lowest bid price shall be examined on the same grounds respectively.

The evaluation committee shall prepare an evaluation report stating, *inter alia*, the criteria and methodology of evaluation of the lowest evaluated substantially responsive bid pursuant to Sub-section (6) and submit the report to the Public Entity.

**3. Answer the following questions:**

- a) Ramaswami, a Kanya national, has intended to invest £50,000,000 in a pharmaceutical company in joint venture with Nepalese investors. He was informed the process of approval of foreign investment in detail. Afterward he wants to know the special protection of industry in Nepal with foreign investment and the dispute settlement process between the foreign investor and Nepalese investors if any. Hence, advise him to the following issues as per the Foreign Investment and Technology Transfer Act, 2075:

7

- i. Dispute settlement process.
- ii. Protection accorded to industry with foreign investment

**3a. Answer:**

**i.**

Section 40 of the Foreign Investment and Technology Transfer Act, 2075 has provided the provisions for the Settlement of dispute arises between a Nepalese investor and a foreign investor in relation to foreign investment. The dispute settlement process can be stated as under-

1. When dispute arises, the Department may make necessary facilitation in order that such a dispute is settled by the concerned parties through mutual discussions or negotiations.
2. If the dispute cannot be settled through the process through mutual discussions or negotiations within a period of forty-five days after the dispute has arisen, and a joint investment or dispute settlement agreement exists between the parties to the dispute for the resolution of such a dispute, the dispute shall be settled in accordance with such an agreement.
3. The parties shall give information about the settlement of the dispute to the Foreign Investment Approving body not later than fifteen days of its settlement. Provided, that the parties shall not be bound to give information about on what terms and conditions such a settlement has been made.
4. If the agreement concluded between the parties for the resolution of such a dispute has no provision about the settlement of disputes, such a dispute shall be settled by arbitration in accordance with the



arbitration law of Nepal. Arbitration to be conducted in accordance with this Act shall be held in Nepal, and substantive law of Nepal relating to arbitration shall apply.

5. Any dispute arising in connection with any foreign investment shall be settled by arbitration in accordance with the prevailing Rules or Procedures of the United Nations Commission on International Trade Law (UNCITRAL), unless otherwise agreed upon by the parties to the dispute.
6. If no agreement was made between the parties on the settlement of dispute prior to the arising of the dispute or if they realise that the agreement, if any made, is inadequate, the concerned parties may make an agreement for the settlement of a dispute even after the dispute has arisen. Information of the agreement so made shall be given to body registering the industry.

**ii.**

Under Sub-section (1) of Section 32 of the Act, industry with foreign investment has been 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. The following protection shall be accorded to any industry with foreign investment:

- 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 Nepalese 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. No industry, enterprise with foreign investment shall be prevented from doing trade, as prescribed, being limited to that industry.
  - d. No industry, enterprise with foreign investment shall be restricted to repatriate profit, investment, pay interest of, and repay the principal of, a loan.
- b) Industrial Enterprise Act, 2076 has provided facilities and concessions to industries. Among them, additional facilities and concessions have been provided for various sector industries. You are a policy-level officer of the Government of Nepal. What types of exemptions, facilities, and concessions under this Act are provided? Elaborate on the additional facilities and concessions as mentioned on the basis of this Act.

7

**3b. Answer:**

The Industrial Enterprises Act, 2076 has introduced various exemptions, facilities and concessions on income tax, custom duty, and various other charges on various nature of production. There are many provisions regarding incentives and facilities in terms of Income Tax Concession, VAT Exemption, Custom Duty Exemption, Duty Exemption, Additional benefits for Female Entrepreneurs to the industries as per EIA. Removal of exemption of the Value Added Tax (“VAT”) on production cost of the exported goods on the basis of export quantity is the major Provision. Some of the major headings of exemptions, facilities and concessions are as follows:

1. Exemption from customs duties, excise duties, and value-added tax (VAT) on imported goods/raw materials required for the production of export-oriented goods.
2. Provision for tax holidays for a certain period of time to newly established industries based on their location, investment, and size.
3. Provision for the establishment of industrial estates, industrial zones, and export processing zones with necessary infrastructure facilities.
4. Provision for the grant of low-interest loans, subsidies, and equity participation by the government agencies to promote the development of the industrial sector.
5. Provision for the establishment of Bank Industrial Investment Fund to provide the required capital for industrial development.

6. Provision for the establishment of technology transfer centers, vocational training centers, and research and development centers to improve the quality and competitiveness of the product.
7. Provision for the participation of local bodies and private sectors in the development of industrial enterprises.

The other remarkable provision includes 100% income tax exemption to the Micro Industries being in operation at the time of commencement of this Act; 50% income tax exemption to the Cottage and Small Scale Industries with at least 10 Million (Nepalese Rupees Ten Million) being in operation by the time of commencement of this Act and coming into operation pursuant to this Act; 50% exemption on the rate of the income tax levied on the income from the sale of production by Local tea producing and processing industries, dairy industries and clothes producing industries. The current law guarantees non-limitation of the incentives, concessions, facilities, or subsidies guaranteed under the Act. The stabilization provision states that no provisions shall be made limiting the benefits and exemptions prescribed under the Act and other applicable laws.

**Additional exemption, facilities and concessions has been provided by the Act as follows:**

- Government of Nepal may provide incentives, exemptions, benefits or concessions to the production-oriented industries, industries related to agriculture and forest products and minerals industry.
  - The exemption may be provided on the custom duty to be levied to the micro and cottage and small-scale industries while importing novel technologies including machinery, tools and equipment as required for enhancing capacity of such industries.
  - The Government of Nepal may make special arrangement in relation to providing incentives, exemptions, benefits, or concessions to the industries operating inside industrial zone, product specific zone and industrial cluster.
  - The Government of Nepal may provide incentives, exemptions, benefits, or concessions to the industries established in the under-developed, undeveloped, and least developed regions.
- c) Discuss the procedure for an international entity to be a part of international financial transactions? Illustrate in accordance with the International Financial Transaction Act, 2054. 6

**3c. Answer:**

International Financial transactions Act, 2054 has been provided to an international entity. The procedure to take part of:

**Application for License:**

An international financial entity interested to carry out international financial transaction shall, for the purpose of obtaining license to carry out such financial transaction, submit an application to the Accreditation Committee in the format as prescribed along with the prescribed application fee, details and documentations.

**Granting of License:**

If the Accreditation Committee, after the necessary inquiry made into an application submitted under Section 13 for obtaining license to carryout international financial transactions, deems it appropriate to grant a license to carryout international financial transactions, it shall, upon taking the prescribed amount of license fee, issue a license in the prescribed format setting out therein the necessary terms and conditions. If a license may not be issued, the applicant shall be informed thereof.

**Information, Details and Documentations may be Demanded :**

The Accreditation Committee may, before issuing a license to any international financial entity under this Act, demand from such entity such information, details and documentations as it may deem necessary in connection with issuing a license for carrying out international financial transactions. It shall be the duty of the concerned international financial entity to furnish forthwith the information, details and documentations so requested by the Accreditation Committee.

**Renewal of License:**

A license issued under section 14 for carrying out international financial transaction shall be renewed every year. The license renewal fee and other provisions regarding renewal shall be as prescribed.

**Secrecy to be maintained :**

The Accreditation Committee shall maintain secrecy of all documents and information which are related with license holder entities and are in possession or control of the Accreditation Committee. The Accreditation Committee shall not be compelled to produce any documents or information referred to in Sub-section (1) before any court, commission of inquiry, Commission for the Investigation of Abuse of Authority or committee of inquiry, nor shall it be compelled to leak otherwise the secrecy of such documents or information.

Notwithstanding anything contained in Sub-section (2), if there are sufficient grounds to prove that the documents or information related to the international financial transaction carried out by a license holder entity are connected with illicit narcotic drugs or illegal arms and ammunition, the court may, on the request of the prosecuting authority acting on behalf of Government of Nepal, give an order to have such documents and information produced before it.

4. Answer the following questions:

- a) What are the liabilities of the concerned persons for the matter referred to in the prospectus as per the Securities Act, 2063?

8

**4a. Answer:**

The liabilities of the concerned persons for the matters referred to in the prospectus are laid down under Section 33 of the Securities Act, 2063, as follows:

- i. The concerned body corporate and the director signing a prospectus and the expert preparing such a prospectus shall be personally and collectively liable for the truth of the details and documents underpinning the information set down in the prospectus submitted to Securities Board of Nepal (Board) for the purpose of registering securities with the Board and obtaining permission to issue such securities.
- ii. Where any person who subscribes for any securities on the faith of the matters set down in the prospectus subsequently sustains any loss or damage by the reason that the matters set down in the prospectus have been set down with mala fide intention or untrue or false statements have been included therein knowingly, the body, director or experts preparing the prospectus shall be liable to pay compensation for such loss or damage.

Provided that no director shall be liable to pay such compensation if he or she proves that he or she has resigned prior to making a decision on the matters set down in the prospectus with ulterior motive or knowingly or that he or she did not know that the prospectus was untrue.



- iii. Where any investor sustains any loss or damage by the reason that the prospectus, information, statements or returns submitted by a body corporate to the Board, such an investor may make a petition to the concerned District Court for compensation within thirty five days from the date of knowledge within one year after the making of investment.
- b) The Commercial court issued order for restructuring of the Himal Company Ltd after studying the report submitted by the inquiry officer. The court appointed Mr. Hem Raj Sharma as Restructuring Manager of the Company. Mr. Hem Raj Sharma asked you to advise him the restructuring programs of the company pursuant to Insolvency Act 2063.

7

**4b. Answer:**

1. As per the section 23 of Insolvency Act, 2063. Where, the court makes an order to restructure any company pursuant to section 22(2), the restructuring manager shall prepare a restructuring scheme of the company in writing.
2. The restructuring scheme prepared by the restructuring manager shall contain the following programs:
  - i) To capitalize the debt of the company and alter the capital structure.
  - ii) To pay the claims of creditors by selling any portion of the assets of the company.
  - iii) To change the nature of claims of creditors of the company and issue securities for the same.
  - iv) To get the creditors of the company to participate in capital investment by issuing shares in consideration for their claims.
  - v) To amalgamate the company with the other company.
  - vi) To change the management of the company, or
  - vii) To do any such other act which the court considers appropriate to restructure the company.

**5. Answer the following questions:**

(3×5=15)

- a) State the qualifications to hold the membership and the formation of council of ICAN including the legal provisions as to the election of president and vice-president pursuant to the Nepal Chartered Accountants Act, 2053.

**5a. Answer:**

There are two types of membership- *Chartered Accountants* and *Registered Auditor* and as per the Section 16 (2), the membership of Chartered Accountant shall, subject to Section 18, be provided to a person who: -

- (a) Has, on the date of commencement of this sub-section, obtained the certificate of Registered Auditor of class 'A' pursuant to the Auditors' Act, 2031 or of class 'B' on the basis of qualification of Chartered Accountant.
- (b) Has passed Chartered Accountancy or equivalent course from the Institute or other foreign accounting bodies recognized by the Institute and has received practical training relating to accounting profession.

Further Sub-section (3) provides that Subject to Section 18, Membership of Registered Auditor shall be granted, on the date of commencement of this sub-section, to a person holding audit license of class 'B', 'C' or 'D' acquired under the provisions of Auditor's Act, 2031.

Under Section 7 (1) a Council shall be formed with an objective to take up necessary actions required, to attain objectives of the Institute in a well-planned manner and to manage and supervise all activities of the Institute. The Council shall, except as otherwise provided elsewhere in this Act,



exercise all authority and discharge all duties conferred on and assigned to the Institute subject to the Act, Regulations and Bye-laws framed under this Act.

Pursuant to Section 7(3) of the Act, the Council shall consist of the following Council members: -

- (a) Ten persons elected by and amongst Chartered Accountant members -Member
- (b) Four persons elected by and amongst Registered Auditors -Member
- (c) Three persons nominated by the Government of Nepal, upon the recommendation of the Auditor General, from amongst the persons well experienced in the field of accounting profession. -Member

Similarly, as per Sub-section (4), The Council members shall elect a President and a Vice-President from the Fellow Chartered Accountants (F.C.A) Council members referred to in clause (a) of sub-section (3) and they shall remain in the post for one year and upon expiry of the term of office, they shall be eligible to be elected for one more term.

- b) Money Laundering Prevention Act, 2063 (2008) has been provided a Financial Information Unit (FIU). Explain the constitution of the FIU as provided under this Act.

**5b. Answer:**

Section 9 of the Asset (Money) Laundering Prevention Act, 2064 (AMLPA) has been provided. This section constituted the Financial Intelligence Unit (FIU) as follows:

- 1. There shall be a Financial Intelligence Unit, with functional autonomy and independent in Rastra Bank for the purpose of reporting on suspicious transactions of money laundering, financing in terrorist activities and predicate offences and obtaining other information thereof, analyzing and flowing the conclusion of such analysis.
- 2. The Governor of Rastra Bank shall appoint the chief of the Financial Intelligence Unit from among the first class officers, at the least, of Rastra Bank.
- 3. The office of the Financial Intelligence Unit shall be placed in Rastra Bank and the Rastra Bank shall manage the staffs required for it.
- 4. The Government of Nepal or any public institution shall provide her employee working in the Financial Intelligence Unit on the request thereof.
- 5. Nepal Rastra Bank shall provide budget to Financial Information Unit separately.  
It shall be as mentioned in the by-regulation of the Rastra Bank on the matter of chief of Financial Intelligence Unit as well as minimum qualification, organization structure, number of employee or conditions of vacant and the provision to be provided the other resources and materials.

- c) The Nepal Rastra Bank Act, 2058 has been enacted to provide for establishment of Nepal Rastra Bank to carry out the Functions of the Central Bank. State, how the NRB inspection and supervision of the banking institutions of Nepal as prescribed by the Act.

**5c. Answer:**

The NRB Act, 2058 prescribe the provision regarding Regulation, Inspection and Supervision of the Banks as follows:

**Inspection and Supervision:**

- (1) The Board shall frame and implement inspection and supervision bye-law confirming to international standard for inspection and supervision of the commercial banks and financial institutions licensed by the Bank.





- (2) The Bank may, at any time, inspect and supervise or cause to inspect and supervise any of the offices of commercial banks or financial institutions. Such inspection and supervision may be carried out by the deputed official of the Bank or an expert designated by the Bank at the office of the commercial bank or financial institution or by asking the concerned institution to submit detailed particulars and information to the Bank itself.
- (3) It shall be the duty of the concerned commercial bank and financial institution or Directors, officials or employees of such commercial bank and financial institution to make available the statement, data, record, information, particulars necessary for computer and auditing and other programs and particulars developed through the electric system and financial control system or necessary other documents to such official, expert or the Bank or to enable such official or expert to review or to examine them within the time prescribed by such officer or expert.
- (4) The inspecting and supervising official or the Bank under this section may cause to record written statements of any Director, official or employee of the commercial banks or financial institutions with regard to the functions and proceedings which are deemed necessary in course of inspection and supervision.
- (5) The Bank or the inspecting and supervising official may issue necessary directives to the commercial bank or financial institution on the matters deemed necessary while inspecting and supervising. It shall be the duty of the concerned commercial bank or financial institution to abide by the directives issued by the Bank or by the inspecting or supervising official. The inspecting or supervising official shall inform the Bank as soon as possible about the directives so given.
- (6) The official or expert carrying out the inspection and supervision under this section shall submit the report of the inspection and supervision he has undertaken generally within fifteen days upon completion of his works to the Bank. In case such report is not completed within fifteen days, the Governor may extend the time limit for another fifteen days.
- (7) The report submitted pursuant to sub-section (6) should be submitted in the next meeting of the Board.
- (8) The Board may, after making appropriate decision on matters contained in the report submitted pursuant to sub-section (7), issue appropriate directions to the Governor about the actions to be taken in the matter. It shall be the responsibility of the Governor to implement or cause to implement such directions.

**6. Write short notes on the following:**

- a) Discuss the Proceeding and Disposal of the cases initiated under the Banking Offence and Punishment Act, 2064. 4

**6a. Answer:**

Section 17 of the Act, prescribes time and limitation for the lodgment of First Information Report.

- (1) In regard to an offense under the Banking Offence and Punishment Act, 2064, an First Information Report (FIR) may be lodged within one year from the date the offense comes to the knowledge and the case shall have to be lodged within six months from the date FIR is so lodged with the Court as fixed by the Government of Nepal with publishing a notice in Nepal Gazette.
- (2) Notwithstanding anything contained hereinabove in Subsection (1), a case may, at any time, be initiated against an employee or office-bearer of a bank or financial institution, who caused misappropriation or loss of asset of Bank or Financial Institution during his/her assumption of



service in any post thereof and there shall be no obstruction in initiating a case even after such office-bearer or employee retires from the service.

Under Section 18, in the case where punishment shall be given as per this Act, the government shall be the plaintiff.

According to Section 19 of the Act, proceedings may be initiated by detaining into the custody an offender for the purpose of investigation and inquiry pertaining to the offence.

- b) Discuss the power of the banks to take action in accordance with the Foreign Exchange (Regulation) Act, 2019. 3

**6b. Answer:**

Power of Nepal Rastra Bank to take action: **Section 3A.**

1. If a licensee fails to abide by the order or directive issued by the Bank pursuant to this Act, the Nepal Rastra Bank may take any or all of the following actions against such a licensee:
  - a) To admonish,
  - b) To impose restriction on any or all of the foreign exchange transaction,
  - c) To forfeit the cash deposit in the Bank or make recovery from the guarantee,
  - d) To suspend or cancel the license.
2. In taking action against the licensee pursuant to Sub-section (1), the licensee shall be provided with a reasonable opportunity to defend himself or herself.

- c) Where shall the arbitrator locate his/her office as per the provision of the act? 3

**6c. Answer:**

Section 12 of the Arbitration Act, 2055 has authorized to location of the arbitrator at the following place:

1. At the place as specified in the agreement, if any.
2. If the agreement does not specify the location of the arbitrators office, at the place selected by the concerned parties.
3. In case the concerned parties do not select such place within 15 days from the date of appointment of the arbitrator, or in case the concerned parties fail to reach an agreement in that connection, at the place specified by the arbitrator in the light of all the relevant circumstances
4. The arbitrators may except when any other arrangement has been made by the concerned parties, designate through mutual consultations the location of their office at any other appropriate place which is convenient for them to record the statements of witnesses, obtain the opinion of experts, and inspect any document, object or place.



## Advanced Taxation

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

1. M/s Rhine Nepal Ltd., a wholly owned subsidiary of Rhine India Ltd., is a paper manufacturing company listed in Nepal Stock Exchange Ltd. Rhine India Ltd. is wholly owned subsidiary of Rhine Europe Ltd. It commenced its commercial operation in Nepal from 1<sup>st</sup> Shrawan 2076. It employs total of 600 employees of which 550 are Nepali nationals. As it promotes underprivileged and women in its work-force, 300 out of 600 employees are women, underprivileged and incapacitated persons. The company's products are both sold in domestic market and exported to India (Rhine India Ltd.) and Europe (Rhine Europe Ltd. and other independent buyers). Considering the competitive environment in India, it has fixed its FOB price to provide price advantage to sell its targeted volume in India. The FOB price is determined after giving due effect to the total cost to the ultimate retailer in India and the margin of those involved in supply chain. In case of European market, as import from Nepal has incentive from European Union, the FOB price is based on the price negotiated with independent vendor.

For the Income Year 2078/79, the extract of relevant information from statement of Profit or Loss and other income of the company are produced as under:

(In Rs.)

Particulars	Amount
Sales	697,692,240
Cost of sales (without considering depreciation)	362,500,000
Administrative expenses	13,200,000
Selling and distribution expenses	45,123,450
Legal expenses	2,220,000

Breakdown of sales (in Rs.):

Sales in Domestic market	308,000,000
Export to Rhine India Ltd.	168,000,000
Export to Rhine Europe Ltd.	179,945,000
Export to Europe other than to Rhine Europe Ltd.	41,747,240

Additional Information:

- The selling price per tonne in domestic market is Rs. 220,000, in India is INR 100,000 (exchange rate of Rs. 1.6 per INR) and in Europe is Euro 1241 (average exchange rate of Rs. 145 per Euro).
- The total investment in the company was Rs. 3.5 Arba Nepali rupees equivalent, of which Rs. 50 Crore was injected in the form of capital and USD 28.57 million was injected in the form of debt at interest rate of 3% per annum (interest payable for the Nepali fiscal year at the end of Nepali fiscal year) on 15<sup>th</sup> Ashad 2076, payable in 15 installments at the end June every year. Debt was obtained from Rhine America Inc., which holds 70% stake of Rhine Europe Ltd. The exchange rate at the time of injecting loan was Rs. 105 per USD. The exchange rate as on June 30, 2022 was Rs. 126.65 per USD and as on July 16, 2022 was Rs. 128.11 per USD. The corresponding A.D. Calendar for Shrawan 1, 2078 was July 15, 2021.
- Due to the latest environmental guidelines issued by the local government, the company had to incur Rs. 1 crore on plantation in river bank near its project site. The river bank is a public property. It was also required to incur Rs. 55 lakhs in installing a special device that contains the air pollution from the factory during the year.



- iv. The total donation to a local club, exempt-entity, is Rs. 120,000 during the year.
- v. There are two manufacturing facilities in the same industry premise. Facility 1 is dedicated to the production of export-oriented products, and Facility 2 for those to be sold in domestic market. All the export sales come from the production of that facility during the year. As the company uses Just-in-Time Inventory Management system, there is closing or opening stock of raw materials, auxiliary raw materials, finished goods and packing materials. The raw materials and auxiliary raw materials are dispatched to Production facility in the ratio of the production quantity of each of the items. The various costs associated to the operation of that facilities other than factory repair and depreciation are as follows:

(In Rs. Million)

Particulars	Facility 1	Facility 2	Total
Purchase of raw materials			178
Purchase of auxiliary raw materials			84
Purchase of packing materials	22	40	
Electricity, water and other expenses	8	6	
Facility managers' salary (dedicated to the facility)	2	1.8	
Facility supervisors' salary (dedicated to the facility)	3	2.2	
Wages paid to employees	9	6.5	

There is no abnormal loss of materials during manufacturing process. The normal loss are same for both the facilities.

- vi. The opening balances of depreciable assets as per tax law are as follows:

	Facility 1	Facility 2	Other
Building	27,000,000	19,719,625	4,072,513
Furniture and fixture	8,500,000	6,400,000	21,000,000
Vehicles	-	-	45,000,000
Machineries, plant	85,000,000	55,000,000	-

- vii. The company purchased a new machinery for Facility 1 for Rs. 20 million that is available for use since 1<sup>st</sup> Jestha 2079. The machinery was put to use since 1<sup>st</sup> Shrawan 2079.
- viii. There was a major improvement in the plant of Facility 1, that increased the production capacity of the plant. The cost of improvement is Rs. 4,500,000. There is maintenance cost of Rs. 2,500,000 of machineries in Facility 2. A vehicle was repaired for Rs. 4,000,000 during the year.
- ix. The company purchased production software with license of 10 years for Rs. 30 million during the year. The company started to use the software from 1<sup>st</sup> Ashad 2079.
- x. During the year, customs authority conducted post clearance audit for imports and exports until last fiscal year. Additional customs duty and penalty of Rs. 30 million was assessed. The company challenged the decision of the authority in competent court. Of total legal expenses, 50% was paid to a law firm to defend this lawsuit.
- xi. Of the total selling and distribution expense, 30% was spent to promote the goods in domestic market.
- xii. Apart from the information above, the other costs are incurred to generate income from export of goods and sales in domestic market.
- xiii. None of the domestic buyer withheld tax on their payments. The company paid advance tax of Rs. 20 lakhs on Poush, and there is no any payment of taxes there-after. Estimated tax return was filed in Poush 2078. Income return was filed on Ashoj 2079. Remaining tax was paid on 1<sup>st</sup> Mangsir 2079.

**Required:**



- a) Describe the transfer pricing risk in supplying the goods to associated entity with reference to Sec. 33 of Income Tax Act, 2058 and Transfer Pricing Guidelines issued by Organization for Economic Cooperation and Development. Also advise whether M/s Rhine Nepal Ltd. shall consider transfer pricing adjustments while computing tax liability by M/s Rhine Nepal Ltd. Also advise on potential defenses and legal recourse in worst possible scenario. **5**
- b) Calculate the most beneficial corporate tax rate for M/s Rhine Nepal Ltd. Also state whether M/s Rhine Nepal Ltd. is or not under compulsion to choose most beneficial tax rate. **2**
- c) Compute assessable income of M/s Rhine Nepal Ltd. **9**
- d) Compute taxable income of M/s Rhine Nepal Ltd. **2**
- e) Compute Corporate tax liability of M/s Rhine Nepal Ltd., including fees and interest u/s 117, 118 and 119 of Income Tax Act, 2058. You can use the income tax rates as amended by Finance Act, 2079; in which case, all your workings on calculation of tax liability shall be based on the provisions as amended by Finance Act, 2079. **2**

### Answer

1)

a.

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

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

In the given case, M/s Rhine Nepal Pvt. Ltd. has fixed its selling price after the careful assessment of market to sell its product in India. The price for the European market to its associated or non-associated enterprise is same. It is to be noted that the price for domestic market and export market are not same, and there are various factors that should be considered in determining the arm's length. It is the intention of the taxpayer that has to be tested as well. As such, there shall not be any transfer pricing risk. However, if the tax authority still makes transfer pricing adjustment, the company shall be ready to challenge the decision of tax authority in competent court. The natural judicial proceedings begin with Administrative Review and then appeal in Revenue Tribunal against any unacceptable outcome from administrative review process. The decision of Revenue Tribunal can be challenged in Supreme Court under writ jurisdiction if the hearing judge orders the registration of petition as per prevailing laws.

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

b.

As per Sec. 11 (5) of Income Tax Act, 2058; if multiple rebates are available in relation to same income, the person can choose any of those rebates at its convenience. It is always rational for a taxpayer to choose most beneficial tax rate. However, the provision of the law does not preclude a taxpayer to choose from any of the available options:

There is application of Sec. 11 (4) as well, as multiple tax rates are applied if most-beneficial rate is chosen for income from domestic market *and that from export sales*:

Options available	Option 1	Option 2	Option 3
	Listed	Employment	Export
Normal Rate	25.0%	25.0%	25.0%
Less: Rebate @ 20% for Special Industry	5.0%	5.0%	5.0%
Balance	20.0%	20.0%	20.0%
Less: Rebate for listed company U/s 11(3Chha)	3.0%	0.0%	0.0%
Balance	17.0%	20.0%	20.0%
Less: Rebate U/s 11(3)(Ka) @ 25%	0.0%	5.0%	0.0%
Balance	17.0%	15.0%	20.0%
Less: Rebate U/s 11(3)(Ka) @ 10%	0.0%	1.5%	0.0%
Balance	17.0%	13.5%	20.0%
Less: Rebate @ 20% for Export Income U/s 11(3Nga)(Kha)	0.0%	0.0%	4.0%
Balance	17.0%	13.5%	16.0%
Less: Rebate @ 35% for Export Income U/s 11(3Nga)(Kha)	0.0%	0.0%	5.6%
Balance	17.0%	13.5%	10.4%

## Most beneficial tax rate

For Domestic Sale	13.50%
For Export Sale	10.40%

## c. Computation of Taxable Income

(In millions)

Particulars	Note	Export Sales	Domestic Sales	Total
Sales		389,692,240	308,000,000	697,692,240
Total Inclusions		389,692,240	308,000,000	697,692,240
Deductions				
Cost of Trading Stock	1	206,380,228	156,119,772	362,500,000
Administrative Expenses	2	8,180,989	5,019,011	13,200,000
Selling and distribution	3	31,586,415	13,537,035	17,123,450
Legal expenses	4	1,375,894	844,106	2,220,000
Depreciation	5	33,577,267	21,775,542	55,352,809
Repair and Improvement cost	6	6,452,281	3,697,719	10,150,000
Depreciation	7	619,772	380,228	1,000,000
Exchange Gain or loss	8	25,556,933	15,679,100	41,236,033
Deduction before Interest cost and PCC		313,729,780	217,052,512	
AI before Interest cost and PCC		75,962,460	90,947,488	
Interest u/s 14 (2)	9	50,118,672	30,686,302	
Pollution control cost	9	3,408,745	2,091,255	5,500,000
Donation to Tax Exempt Entity	9	61,977	38,023	100,000
Taxable Income		22,473,066	58,131,908	



Corporate Tax Liability

Particulars	Export Sales	Domestic Sales	Total
Taxable Income	22,473,066	58,131,908	
Income Tax Rate	10.40%	13.50%	
Income Tax Payable	2,337,198.86	7,847,807.58	10,185,006.44

Since the return was filed in due date, there is no fees u/s 117.

Interest u/s 118, assuming the rate for 2078/79 was used:

Particulars	Payable	Paid	Shortfall	Interest
By the end of Poush 2078	3,666,602	2,000,000	1,666,602	62,498
By the end of Chaitra 2078	6,416,554	2,000,000	4,416,544	165,621
By the end of Ashad 2079	9,166,505	2,000,000	7,166,505	268,744
<b>Total</b>				<b>496,863</b>

Interest u/s 119, assuming the rate for 2078/79 was used:

Income Tax Payable	10,185,006.44
Less: Paid	2,000,000
Payable	8,185,006.44
Interest @ 15% for 2 months	204,625

Working Note 1:

Particulars	Facility 1 (Export)	Facility 2 (Domestic)	Total
Quantity Produced	2282	1400	3682
Purchase of raw materials	110,319,392	67,680,608	178,000,000
Purchase of auxiliary raw materials	52,060,837	31,939,163	84,000,000
Purchase of packing materials	22,000,000	40,000,000	62,000,000
Electricity, water and other expenses	8,000,000	6,000,000	14,000,000
Facility managers' salary (dedicated to the facility)	2,000,000	1,800,000	3,800,000
Facility supervisors' salary (dedicated to the facility)	3,000,000	2,200,000	5,200,000
Wages paid to employees	9,000,000	6,500,000	15,500,000
Total Cost of Trading Stock	206,380,228	156,119,772	362,500,000

	Domestic	India	Europe
Total Sales	308,000,000	168,000,000	221,692,240
Selling Price Per Tonne	220,000	160,000	179,945
MT Produced	1,400	1,050	1,232

Working Note 2:

Administrative Expenses

Particulars	Facility 1 (Export)	Facility 2 (Domestic)	Total
Quantity Produced	2,282	1,400	3,682
Actual Expenses	8,180,989	5,019,011	13,200,000

Working Note 3:

Selling and Distribution Expenses

Particulars	Facility 1 (Export)	Facility 2 (Domestic)	Total
Quantity Produced	2,282	1,400	3,682
Balance Expenses	31,586,415	13,537,035	
<b>Total</b>	<b>19,576,371</b>		<b>17,123,450</b>

Working Note 4:

Legal Expenses

Particulars	Facility 1 (Export)	Facility 2 (Domestic)	Total
Quantity Produced	2,282	1,400	3,682
Total Expenses	1,375,894	844,106	2,220,000
<b>Total</b>	<b>1,375,894</b>	<b>844,106</b>	<b>2,220,000</b>

Working Note 5:

Depreciation

Particulars	Facility 1 (Export)			Facility 2 (Domestic)		
	Pool A	Pool B	Pool D	Pool A	Pool B	Pool D
Opening Depreciation Base	27,000,000	8,500,000	85,000,000	19,719,625	6,400,000	55,000,000
Add: Absorbed Addition	-	-	-	-	-	-
Less: Amount derived from disposal	-	-	-	-	-	-
Depreciation Base	27,000,000	8,500,000	85,000,000	19,719,625	6,400,000	55,000,000
Depreciation Rate	6.67%	33.33%	20.00%	6.67%	33.33%	20.00%
Depreciation	1,800,000	2,833,333	17,000,000	1,314,642	2,133,333	11,000,000
<b>Total Depreciation</b>	<b>21,633,333</b>			<b>14,447,975</b>		
<b>Add: Common Depreciation</b>	<b>11,943,934</b>			<b>7,327,567</b>		
<b>Total Depreciation</b>	<b>33,577,267</b>			<b>21,775,542</b>		

Particulars	Others		
	Pool A	Pool B	Pool C
Opening Depreciation Base	4,072,513	21,000,000	45,000,000
Add: Absorbed Addition	-	-	-
Less: Amount derived from disposal	-	-	-
Depreciation Base	4,072,513	21,000,000	45,000,000
Depreciation Rate	6.67%	33.33%	26.67%
Depreciation	271,501	7,000,000	12,000,000
<b>Total Depreciation</b>		<b>19,271,501</b>	

Working Note:6

Repair and Improvement Cost

Particulars	Facility 1 (Export)	Facility 2 (Domestic)	Other
	Pool A	Pool A	Pool C
Actual Expenses	4,500,000	2,500,000	4,000,000
7% X Depreciation Base	1,890,000	1,380,374	3,150,000
Lower	1,890,000	1,380,374	3,150,000
Add: Common Repair	1,952,281	1,197,719	
Total Repair Expenses Allowed	3,842,281	2,578,092	

Working Note :7

Depreciation on Intangible Assets

Particulars	Amount
Opening Depreciation Base	-
Add: Absorbed Addition	10,000,000
Depreciation Base	10,000,000
Depreciation Rate	10%
Depreciation	1,000,000
Export Sale	619,772
Domestic Sale	380,228

Working Note 8:

Exchange Gain/Loss

Particulars	Debt
Loan Obtained	28,570,000
Installment Pain in June 2022	1,904,667
Difference in Exchange Rate	21.65
Exchange Loss	41,236,033
Export Sales	25,556,933
Domestic Sales	15,679,100





Note 9

Adjusted Taxable Income for the purpose of Section 12, 14(2), 17

Particulars	Section 12	Section 14(2)	Section 17
Adjusted Taxable Income	170,639,574	170,639,574	170,639,574
Less: Actual Interest	97,738,256	-	97,738,256
Less: Actual PCC	5,500,000	5,500,000	-
Adjusted Taxable Income	67,401,318	165,139,574	72,901,318

Particulars	Debt	Interest
Interest Expenses	-	-
Loan Amount	28,570,000	-
Less: 1st Installment 15th Ashad 2077	1,904,667	-
Balance	26,665,333	-
Less: 2nd Installment 15th Ashad 2078	1,904,667	-
Balance	24,760,667	-
Interest	-	-
from 1st Shrawan 2078 to 15th Asad 2079	-	742,820
Equivalent Nepali Currency	-	94,078,153
Less: 3rd Installment 15th Ashad 2079	1,904,667	-
Balance	22,856,000	-
Interest	-	-
from 16th Ashad 2079 to Ashad end 2079	-	28,570
Equivalent Nepali Currency	-	3,660,103
Total Interest	-	97,738,256

Least of the following shall be allowed U/s 14(2)

i) Actual Interest		97,738,256
All Interest Income + 50% X (Adjusted Taxable Income - All Interest Expenses)	$= 0 + 50\% * (165,139,574 - 0 + 0)$	82,569,787
Lower		82,569,787
Export Sale		51,174,431
Domestic Sale		31,395,356

Least of the following shall be allowed U/s 17

i) Actual PCC		5,500,000
ii) 50% X Adjusted Taxable Income	$= 72,901,318.0166667 * 50\%$	36,450,659
Lower		5,500,000

Export Sale		3,408,745
Domestic Sale		2,091,255

Least of the following shall be allowed U/s 12

i) Actual Donation		120,000
ii) 5% X Adjusted Taxable Income	$= 67,401,318.02 * 5\%$	3,370,066





iii) Monetary Limit	100,000
Lower	100,000
Export Sale	61,977
Domestic Sale	38,023

**2.**

- a) Dr. Prem P. Upadhyay is a surgeon practicing in Nepal. He travels frequently to Maldives to provide his expert services at a hospital. In the financial year 2078/79 he had following income and expenses. Calculate tax payable by him in the year in most efficient way assuming he filed his tax return by end of Ashwin 2079. Unless indicated, the amounts are in gross. 7

Particulars	Amount
Consultation charges from hospitals	1,750,000
Fee for giving occasional lectures at medical college	120,000
Free sample received from medicine company	350,000
Consultation income received from Maldivian hospital (net)	3,500,000
Participation fee paid for South Asian Surgeon's conference	125,000
Net income from registered private clinic – sole proprietorship	3,000,000
Investment insurance maturity	2,500,000
Contribution to CIT	1,000,000
Life insurance premium	500,000
Salary paid to driver in the year	500,000
Donation to a national political party	200,000
Loss on sale of shares of a private hospital	1,000,000
Profit on sale of shares of Nabil Bank	500,000
House rent income	2,400,000
Withholding tax paid in Maldives	500,000

- b) Agro supplier having sole proprietor Mr. Som, located at Narayanghat, Chitwan is an importer of agricultural products in Nepal. You are required to calculate the withholding taxes to be paid/deducted by Agro supplier on the following transactions for the Income Year 2078/79 highlighting the relevant provisions of Income Tax Act, 2058. 7
- Import of garlic for business purpose from India, the import price is Rs. 900,000 whereas customs valuation is Rs. 1,000,000.
  - Import of rice for business purpose from India, the import price is Rs. 1,000,000 whereas custom valuation is Rs. 900,000
  - Import of rice for household consumption from India, the import price is Rs. 30,000 whereas custom valuation is Rs. 35,000
  - Rent paid to Mr. Ram, owner of the warehouse.
  - Disposed a plot of land which is in the name of Agro supplier, the cost of the land was Rs. 50 lakh and sale price is Rs. 75 lakh. The holding period is 5 years.
  - Transportation service amounting to Rs. 200,000 paid to the owner of a truck, service provided from customs point to the warehouse.
  - Commission paid to a local agent amounting to Rs. 226,000 including VAT.



- c) Hansika Pvt. Ltd. has filed income tax return for FY 2078/79 in the concerned IRD. Mr. Natbarlal has filed a complaint to the Director General of IRD that Hansika Pvt. Ltd did not include insurance claim of Rs. 20 lakhs in the income tax return that it has submitted (assume after 4 months of date of submission). On the basis of the above information if it is found that Hansika Pvt. Ltd. has actually hidden the insurance claim. What should be penalty and interest to be fined to Hansika Pvt. Ltd.? **4**

Is there any provision of award for the informer, if yes what is the amount?

**2**

**Answer**

- 2 a)** Calculation of tax liability of Dr. Prem P. Upadhyay for the FY 2078/79

Particulars	Detail	Amount	Remarks
Income from Business			
Items to be included in Income			
Consultation charges from hospitals		1,750,000	Considered gross
Fee for giving occasional lectures at medical college		-	Final withholding
Free sample received from medicine company		350,000	Business related gift
Consultation income received from Maldivian hospital (net)		4,000,000	
Net Income from private clinic		3,000,000	
Total amount to be included in income		9,100,000	
Less: Deductible Expenses			
Participation fees for conference		125,000	Related to business
Salary paid to driver		500,000	Related to business
Total Deductible Expenses		625,000	
Assessable Income from Business		8,475,000	
Income from Investment			
Investment Insurance maturity		-	Final Withholding Payment
Profit on sale of shares of Nabil Bank		500,000	
Loss on sale of shares of a private hospital		(1,000,000)	
House rent income		-	Not related to business hence not taxable
Net Loss on investment		(500,000)	
Total Assessable Income		8,475,000	Loss on investment cannot be set off with business income
Contribution to ARF			
1/3rd of income	2,825,000		
Actual contribution	1,000,000		
Amount limit	300,000		
Whichever is less		300,000	
Adjusted Taxable Income		8,175,000	
Donation to Political Party			

5% of Adjusted Taxable income (7,825,000 *5%)	408,750		
Actual Donation	200,000		
Amount limit	100,000		
Whichever is less		100,000	
Life insurance premium paid			
Actual Premium	500,000		
Monetary Limit	25,000		
Whichever is less		25,000	
Taxable income		8,050,000	

Calculation of tax (assuming couple)			
First 450,000			-
Next 100,000 - 10%			10,000
Next 200,000 - 20%			40,000
Next 1,250,000 - 30%			375,000
Balance 6,050,000 - 36%			2,178,000
Total Tax			2,603,000
Nepal average tax rate			32.34%
Tax paid in Maldives	500,000		
Average rate of Nepal Income Tax X Assessable Foreign Income	1,293,416		
Less: Foreign tax credit (full credit shall be available as foreign tax paid is lower than average Nepal tax)		500,000	Section 71 of Income Tax Act
Net Tax Payable (subject to advance & withholding tax paid)		2,103,000	

**2 b)**

- i) As per section 95Ka(7), Advance Tax shall be recovered at the customs point at the rate of 5 % for garlic which are imported for business purpose. The value is considered the valuation for the custom purpose. So, Advance Tax to be paid at customs point is Rs. 50,000 (5% of Rs. 1,000,000)
- ii) As per section 95Ka(7), the Advance Tax shall be recovered at the customs point at the rate of 2.5 % for rice which are imported for business purpose. The value is considered the valuation for the custom purpose. So, Advance Tax to be paid at customs point is Rs. 22,500 (2.5% of Rs. 900,000)
- iii) As per section 95Ka(7), the Advance Tax shall be recovered at the customs point for those transactions which are imported for business purpose. The supplier shall be eligible to import the goods for the business purpose even though it has imported for personal use. It has not granted to import for personal purpose. So, TDS is Rs. 875(2.5 % of Rs. 35,000).
- iv) No tax shall be withheld in an amount received by natural person for house rent. (Sec 88(1)(5)(Kha)



- v) As per section 95Ka(6), the Land Revenue Office shall collect advance tax at the rate of 1.5 % at the time of registration on amount derived from disposal of land. So, Advance Tax is Rs. 1,12,500 (1.5 % on gain Rs. 75 lakh).
- vi) In a payment for carriage service or rent payment for carriage service, TDS shall be 2.5 % as per Sec 88(1)(8). So, TDS is Rs. 5,000 (2.5% on Rs. 200,000)
- vii) Under section 88(1), TDS on commission payment is 15 %. So, TDS is Rs. 30,000 (15% on Rs. 200,000 excluding VAT)

2 c)

As in given case, Hansika Pvt. Ltd. Has filed income tax return for FY 2078/79 in the concerned IRD. Mr. Natbarlal has made a complaint to the Director General of the departments that Hansika Pvt. Ltd did not include insurance claim of Rs. 20 lakh in the income tax return that it has submitted.

As per section 120, In cases where any person submits to the Department a false or misleading statement on any matter or the information mentioned in the statement becomes misleading as result of concealing information of any matter or thing required to be submitted or removing such information from the statement, the following fee shall be imposed on such a person:-

In cases where it has become false or misleading knowingly or recklessly, One Hundred percent of the less amount resulted therefrom.

As per section 119 , In cases where any person does not pay tax on the prescribed due date for payment of tax, an interest by the normal rate of interest, for each month and portion of the month, in the amount due and payable shall be imposed on the person for the period during which tax is so due and payable.

If on the basis of the evidence obtained on investigation from the office, the tax rate of Rs. 25% ie Rs.5 lakh and penalty as per section 120(Kha) Rs. 5 lakh and also interest as per section 119 Rs, 5 lakh\*15%\*4/12=25 thousands. Further, interest @ 15% shall also be levied on non payment of advance tax U/s 118(1) Rs. 500,000 \*90%\*15% = 67,500. Total being Rs.10,92,500 is assessed and recovered from Hansika pvt. Ltd.

In this case , Director General of IRD can decide to provide Mr. Natbarlal 20% of the tax amount( Rs.1,092,500) which will be Rs. 218,500 as award as per section 136Ka(1) of the Income Tax Act 2058.

3.

a) Gora Construction, a company incorporated in Singapore, has been awarded a consulting service by Civil Aviation Authority of Nepal to renovate Tribhuvan International Airport. Unsure about Nepalese legal system it wants to know how such foreign entities are treated for tax purposes in Nepal. What conditions it must fulfill to be a taxable entity in Nepal. Provide your view as per Income Tax Act 2058. 5

b) What are the threats that may affect an auditor while providing tax planning and other tax advisory services to audit client? Briefly mention factors and safeguarding measures as per relevant provision of ICAN Code of Ethics, 2018. 5

**Answer**

3 a)

Section 2(Bha)(5) of Income Tax Act 2058 has covered a foreign permanent establishment to be an 'entity' within the meaning of Act. Section 3 of the Act which specified the person to whom the tax is levied, where a 'person' having a taxable income in the year is levied the tax as per the Act. Further, Section 2(KaCha) which defines 'person' covers natural person and entity within the meaning of 'person'. Moreover as per the meaning of Section 2(KaNga), the foreign permanent establishment is considered as 'resident person'. With all these definitions it is clear that a foreign permanent establishment if has a taxable income in the year is supposed to be paying tax in Nepal.

It is clear that a foreign permanent establishment is a taxable entity in Nepal, however the conditions in which any establishment of foreign entity is a taxable in Nepal, we need to ascertain whether the establishment satisfies the definition of permanent establishment. If the establishment satisfies the definition of permanent establishment, such permanent establishment of foreign entity is taxable unit in Nepal.

For a foreign entity to have a permanent establishment in Nepal, any of the following conditions is to be met:

- a. In case there is a place from where the entity carries on business either wholly or partially.
- b. In case there is a place from where the agent of the entity carries on business the agent not being general agent of independent status.
- c. In case there is a place where the entity has, is installing or is using main machinery or equipment, In case the entity provides technical, business or consultancy services in one or more places or Nepal
- d. for more than 90 days in any twelve months period either continuously or intermittently either through employee or otherwise, or
- e. In case the entity is involve in construction, installation or establishment projects for 90 days or more or is involved in supervisory activities of such projects.

Gora Construction should also obtain the Permanent Account Number as per Section 78 of Income Tax Act.

3 b)

According to subsection 604 of ICAN Code of Ethics 2018, providing tax planning and other tax advisory services to an audit client might create a self-review or advocacy threat.

In general, factors that are relevant in evaluating the level of threats created by providing any tax service include:

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

In addition to above factors that are relevant in evaluating the level of self-review or advocacy threats created by providing tax planning and other tax advisory services to audit clients include:

- The degree of subjectivity involved in determining the appropriate treatment for the tax advice in the financial statements.

Whether the tax treatment is supported by a private ruling or has otherwise been cleared by the tax authority before the preparation of the financial statements.

For example, whether the advice provided as a result of the tax planning and other tax advisory services:

- o Is clearly supported by a tax authority or other precedent.
  - o Is an established practice.
  - o Has a basis in tax law that is likely to prevail.
- The extent to which the outcome of the tax advice will have a material effect on the financial statements.
  - Whether the effectiveness of the tax advice depends on the accounting treatment or presentation in the financial statements and there is doubt as to the appropriateness of the accounting treatment or presentation under the relevant financial reporting framework

Examples of actions that might be safeguards to address such threats include:

- Using professionals who are not audit team members to perform the service might address self-review or advocacy threats.
  - Having an appropriate reviewer, who was not involved in providing the service review the audit work or service performed might address a self-review threat.
- Obtaining pre-clearance from the tax authorities might address self-review or advocacy threats

**4.**

a) M/s Import Trading, a proprietorship firm of Mr. Ram Bahadur Gautam registered with Value Added Tax, imports VAT applicable trading goods from the United Kingdom and sells it in Nepal. During the month of Mangsir 2079, the transactions of the firm are as follows:

i. Three consignments were cleared from Birgunj Customs Office with payment of import duty, excise duty and value added tax during the month. The details of costs in relation to those consignment are as follows:

Consignment No.	CIF-cost Birgunj	Excise Rate	Customs Rate
1	4,000,000	15%	24%
2	6,500,000	Exempt	30%
3	11,000,000	12%	10%

- ii. There were sales of Rs. 22,000,000 during the month from the firm.
- iii. The total electricity expense is Rs. 100,000 during the month for the sales outlet.
- iv. Mr. Ram Bahadur purchased a car in the name of the firm for Rs. 5,000,000 during the month. It is expected that the car is not used wholly in the business. The petrol expense for the car is Rs. 30,000 in abbreviated tax invoice and Rs. 10,000 with proper Value Added Tax invoice.
- v. There is a generator in the sales outlet. Petrol for the generator is Rs. 25,000 during the month with proper VAT invoice.
- vi. Most of the assets for the sales outlet are directly purchased by the sole proprietor, payment being made in cash. The invoices related to purchase are then provided to the accountant for the purpose of keeping record. During the month of Mangsir, the accountant received a balance confirmation request from two vendors to confirm the balance for Fiscal Year 2078/79. The accountant was surprised and asked the owner, if there were any such transaction during that year, as the accounting record does not reflect the transaction with the vendor. The owner then checked his drawer and provided two invoices dated 2078 Shrawan 4 of Rs. 200,000 (related to purchase of a generator, used



in another firm M/s Ram Imports) and 2078 Poush 15 of Rs. 300,000 (related to purchase of furniture to renovate the shop). These have not been claimed as credit so far.

- vii. A building is self-constructed by the firm with total cost of Rs. 4,500,000 (depreciated value of Rs. 3,000,000 as on Mangsir 2079) used as sales outlet. It was built five years before. During the month of Mangsir 2079, total cost of Rs. 700,000 is incurred on the construction of a room in the building premise adjacent to the current building, of which Rs. 300,000 is related to labour for which there is no Value Added Tax invoice. The construction of the building is completed. On scrutiny of the building ledger, it was identified that a total of Rs. 750,000 was incurred as labour cost in constructing the current building for which there is no value added tax invoice. There is value added tax invoice for all other cost-items of the building.
- viii. Mr. Ram wants to start an export business. For this, he hired a firm of Germany to provide him the report of German market for Rs. 2,000,000. This service was received by M/s Import Trading. The report was obtained during the month of Mangsir, however, the payment has not been made. Ram Bahadur has another firm, M/s Ram Imports that imports goods from India. During the month of Mangsir 2079, one consignment was released from Tribhuvan International Airport Customs office, Kathmandu. The invoice raised by the Indian Party is Rs. 3,000,000, the transport cost as per airway bill is Rs. 200,000 and that declared by the importer is Rs. 220,000. The insurance and other associated cost are Rs. 350,000. The rate of customs duty is 14%. Ignore rebate as per Finance Act for import from India. Excise duty is not applicable.

All the consignments from M/s Ram Imports have been sold during the month with gross profit margin of 12%. There is no additional cost in bringing the goods to warehouse in Nepal.

All above items unless specified are exclusive of VAT.

You are required to compute Value Added Tax liability, if any, of the firms.

**10**

- b) A Valley Plastic industry is a manufacturing company producing 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. It is mandatory for compliance, otherwise it is treated as deemed sales. During the month of Poush, 2079, the company provided the following information:

Particulars	Quantity	Amount Rs.
Opening stocks (Raw Material: seeds)	2000 KG	200,000
Opening stocks (Finished Products)	1000 KG	200,000
Raw Material imported: seeds	20,000 KG	2,400,000
Production expenses		680,000
Sales	20,000 KG	7,600,000
Closing stocks (Raw Material)	800 KG	144,000
Closing stocks (Finished Products)	600 KG	400,000

Additional information:

- The sales amount represents the total invoice value including VAT; the remaining items are exclusive excise prices.
- The production expenses include the wages amounting to Rs. 195,000; remaining expenses are not excisable.
- The industry follows the FIFO method including raw materials.
- The opening excise payable is Rs. 50,000
- The industry pays the excise duty as per the standard norms to avoid further penalties.



In this case, you are asked by the company to calculate the excise duty payable for the month Poush, 2079 by citing the relevant provisions of the Excise Act, 2058. The company also requested to consider the compliance of standards. The applicable rate of excise duty is 5 per cent in all cases, if applicable. **10**

**Answer**

4 a)

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

Computation of VAT on Sales

Sales item	VAT Amount	Note
Sales from M/s Import Trading	2,860,000	22,000,000 X 13%
Sales from M/s Ram Imports	592,563	Note 'v'
Total Output VAT	3,452,563	

Computation of Input VAT credit

Purchase item	VAT Amount	Note
Import from M/s Import Trading	3,601,780	Note 'i'
Electricity expense	-	VAT exempt
Car for admin purpose	260,000	40% of 13% of Rs. 5,000,000
Petrol for vehicle	-	No credit
Petrol for generator	3,250	
Invoice dated 2078.9.15 without VAT credit previously	39,000	Up to one year
Invoice dated 2078.4.4 without VAT credit previously	-	More than one year: no credit
VAT on service received from Germany	-	Two solutions exist. If the examinee assumes that payment of VAT is made before filing return, then he must claim credit. If he assumes that payment of VAT is made only after filing return, he cannot claim credit in his solution
VAT on construction services	52,000	As the building is used in VAT attractive business, full credit on cost of Rs. 400,000
Import from M/s Ram Imports	529,074	Note 'iv'
Total Input VAT	4,485,104	

VAT obligation

Output VAT – Input VAT = 1,032,541 (receivable VAT)

Though there is receivable VAT of Rs. 1,032,541; the firm shall pay reverse VAT of Rs. 260,000 U/s 8(2) on import of Service. The reverse VAT u/s 8 (3) becomes payable when the firm books Capital WIP, which is ideally during the month of Mangsir, as such, the total reverse VAT payable is Rs. 3,57,500 (260000+97500).



## i) Import from M/s Import Trading

Particulars	Con 1	Con 2	Con 3	Total
CIF- Birgunj Value	4,000,000	6,500,000	11,000,000	
Rate of Import duty	24%	30%	10%	
Customs duty	960,000	1,950,000	1,100,000	
Taxable value for excise duty	4,960,000	8,450,000	12,100,000	
Rate of excise duty	15%	-	12%	
Excise duty	744,000	-	1,452,000	
Taxable value for VAT purpose	5,704,000	8,450,000	13,552,000	
VAT	741,520	1,098,500	1,761,760	3,601,780

- ii) In case of construction of building, as per IRD circular, the total cost of the building shall be considered while determining the threshold of Rs. 50 lakhs in order to apply Sec. 8 (3). As of Mangsir 2079, the total cost is Rs. 5,200,000 that is above the threshold of Rs. 50 lakhs, as such, reverse VAT is applicable on the VAT-attractive cost element on which there is no proper VAT invoice. As per question, total of such cost is Rs. 750,000. The reverse VAT payable at the time recording Capital WIP or capitalization of asset is Rs. 97,500.
- iii) As the service is received from Germany during the month, the firm must pay reverse VAT of Rs. 260,000 u/s 8 (2) on the cost within 25th of Poush. As per Sec. 8 (2), VAT must be collected at the time that is earlier of payment or receipt of service.
- iv) Computation of VAT payment on import by M/s Ram Imports

Particulars	Amount
Invoice value	3,000,000
Add: Transport cost (higher of amount in airway bill or cost declared by importer)	220,000
Other associated cost	350,000
Customs Value	3,570,000
Import duty @ 14%	499,800
Taxable value for VAT purpose	4,069,800
VAT @ 13%	529,074

## v) Sales from M/s Ram Imports

Cost	4,069,800
Sales with 12% margin	4,558,176
VAT on sales	592,563

4 b)

## Calculation of Excise duty Payable/Receivable

Particulars	Excise Rs.	Remarks
Opening duty	-	Opening payable is assumed paid
Output excise duty (WN 1)	328,917.29	
Input excise duty (WN 2)	120,000.00	
Excise duty payable at the end of Poush, 2079	208,917.29	

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 Poush, 2079.

**Working note 1: 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) (Jha) of Excise Act, 2058.

Calculation:

Total sales quantity (Given)	20,000
Add shortage, deemed sales (WN 3)	540
Total quantity sales with deemed sales	20,540
Sales rate before excise (WN 4)	320
<b>Total sales amount Rs.</b>	<b>6,578,346</b>
Excise @ 5 %	328,917.29

**Working note 2: Calculation of Input Excise duty**

As stated under section 3Ka(3) of excise act, 2058, the excise duty paid on the raw materials used in the making of a product subject to excise duty may be deducted from the excise duty to be paid while issuing the finished product. Provided that, the excise duty paid by any industry subject to the self-release system on the purchase or import of raw materials may be deducted from the excise duty payable while selling the finished product.

So, excise duty paid on raw material shall be allowed to be set off on excise duty to be paid on finished goods under Shelf Removal System.

Total Cost of Imported Raw Material	2,400,000
Excise duty paid @ 5 %	120,000

**Working note 3: Short production calculation**

Calculation total quantity to be produced during the month as per standard:

$$\begin{aligned}
 &= (\text{Opening raw materials} + \text{Purchased-closing raw materials}) * 0.95 \\
 &= (2000 + 20000 - 800) * 0.95 \\
 &= 20,140 \text{ KG}
 \end{aligned}$$

Calculation total quantity actual produced:

$$\begin{aligned}
 &= \text{Sales} - \text{Opening finished products} + \text{closing finished products} \\
 &= 20,000 - 1000 + 600 \\
 &= 19600 \text{ KG}
 \end{aligned}$$



Production shortage as per the agreed standard  
=20140-19600  
= 540 KG

#### Working note 4: Calculation of excisable price per KG

As given information,

The total invoice value is Rs. 7,600,000

The value before VAT is Rs. 6,725,663.72 (7,600,000/1.13)

The excisable value is Rs. 6,405,394.02 (Rs. 6,725,663.72 /1.05),

Per KG before excise duty is Rs. 320.27 (6,405,394.02/20,000)

#### 5.

- a) Mr. Krishna Hari Satyam desires to start a manufacturing business. He imports raw material from foreign country. The finished goods attract excise (which is not tobacco related or alcohol related product) and subject to value added tax as well. He wants to understand the legal formality under various tax laws before he can commence his business. He approached you with the following queries:
- Is there any requirement of registration under Value Added Tax Act, 2052; Excise Duty Act, 2058 and Customs Act, 2064? If so, is there any renewal requirement? You are also required to clarify him the conditions for registration. **3**
  - Can the business/license be suspended under Value Added Tax Act, 2052; Excise Duty Act, 2058 and Customs Act, 2064 for any violation of any provisions of those law? If so, what is the maximum period the business or license can be suspended by tax authority? **3**
  - Is there any provision by which the registration under Value Added Tax Act, 2052; Excise Duty Act, 2058 and Customs Act, 2064 are withheld at the will of the registered person? If so, how can the registration be reinstated. **1**
- b) Janata Cables P. Ltd. has been importing raw materials from Singapore since last two years. On 15<sup>th</sup> of Ashwin 2079 one consignment of 2 tons of raw materials has arrived at Birgunj Dry Port Custom Office. The company asked its clearing agent for clearing the goods from Custom and sending them to its factory at Bhaktapur. You are given the following information with respect to this consignment:

<u>Particulars</u>	<u>Amount in Rs.</u>
Cost of purchase (as per supplier invoice)	500,000
Insurance	7,500
Letter of Credit Charges related to import	8,000
Sea Freight up to Kolkata	50,000
Transportation from Kolkata to Birgunj Custom Office	30,000
Transportation from Birgunj to Factory	15,000
Local Development Tax at custom point	1,000
Miscellaneous expenses on the way to Bhaktapur	1,000

The supplier has agreed to provide the volume discount @5% of the invoice value. Determine the amount of custom duty to be paid for this consignment. The rate of custom duty for this type of items is 20%. Ignore other taxes.

Further, calculate the demurrage if the goods could be cleared only on 30<sup>th</sup> Ashwin 2079. **7**

- c) Relax Juice industry is producing various juices and selling to the distributors. The industry's production cost is Rs. 80 per liter and it sells adding 15 % value addition on production cost. An Excise officer inspected the factory premises and juice issue point of the industry on 15 Magh, 2079. He found shortage of 1000 liters Juice in the stock pertaining to the period of Kartik, 2079. The excise officer realized that the industry has no intention of the fraudulent monthly excise return. However, he issued a notice on 15 Falgun , 2079 penalizing under section 16 in addition to the assessment to the industry on the shortage stocks. The excise duty of juice is Rs. 10 per liter. The management needs your advice on the following issues, advice by citing the relevant provisions of excise act and rules. 6

- i) Whether the Excise officer is correct to to assess the excise amount and penalize on the shortage of juice?  
ii) If the management realized the actual stock shortage shown by the excise officer. What are the consequences of Excise Act on this shortage items?

### Answer

- 5 a)  
i.

Yes.

As per Sec. 10 of Value Added Tax Act, 2052; a person must register for VAT if the turnover (purchase or sales, whichever is higher) of last twelve months exceed Rs. 50 Lakhs (for trading in goods), Rs. 20 Lakhs (for transaction of service or goods and service). One can register voluntarily for any transaction below that threshold, if the transaction is VAT- attractive.

As per Sec. 9 of Excise Duty Act, 2058; one must obtain excise license to produce, import, sell, store excise attractive goods and render excise attractive services.

As per Sec. 89Kha of Customs Act, 2064; one must obtain Exim Code in order to conduct cross border transaction except for import/export under Luggage and Baggage order, import up to Rs. 10,000 and export up to Rs. 1 million.

### Renewal requirement:

The registration under VAT law is valid unless it is cancelled.

The Exim Code license under Excise law shall be renewed every year.

- ii.

### Suspension of business or License:

In case the same offence under Sec. 29 of Value Added Tax Act, 2052 is repeated two or more than two times, then the Director General can order the tax officer to suspend the transaction for maximum period of seven days while penalizing the person for each of additional offence as per Sec. 30.

As per Sec. 9Kha of Excise Duty Act, 2058; the license may be suspended by Excise Officer in case of liquor and tobacco related transactions only (not other goods under self-issuance system) in case of any of the following two conditions for a maximum period of three months:

- the licensee does not stick stickers or sticks fake stickers or reuses already used stickers while producing, issuing, selling or distributing liquor and tobacco related products or
- where it is proved from preliminary investigation that the goods are manufactured without proper record of raw materials used for production.

Exim Code may be suspended in case of failure of the code-holder of payment of any dues to Government of Nepal for a period of six months. or the validity of bank guarantee is expired until the valid bank guarantee is presented.

iii.

There is no provision for withholding of registration at the will of registered person under VAT laws, and Customs Laws.

However, as per Sec. 9Ka of Excise Duty Act, 2058; the licensee can withhold the license by making an application in case it ceases to conduct excise-attractive transactions.

5 b)

Computation of Custom Duty payable on consignment:

Particulars	Amount
Price of items	500,000
Insurance	7,500
Sea Freight upto Kolkata	50,000
Transportation Kolkata-Birgunj	30,000
Total Transaction Value	587,500
Rate of Custom Duty	20%
Amount of Custom Duty	117,500

Calculation of demurrage on the consignment:

Date of entry in custom	15 <sup>th</sup> Ashwin 2079
Date of clearance	30 <sup>th</sup> Ashwin 2079
Total days	16 days
Exempt days	7 days
Demurrage applicable days	9 days
Applicable rate	0.40 per k.g. per day - Other than TIA Custom
Total weight	2,000 k.g.
Total demurrage to be paid	=0.4*2000*9 = 7,200

Note:

- Letter of Credit charges cannot be considered for valuation purpose,
- Transportation cost beyond custom point cannot be considered for valuation purpose,
- Local development tax cannot be included in the valuation for custom purposes.

5 c)

- i) Section 10Gha of Excise act, 2058 provisions the power of the excise officer to assess excise duty. As per provisions, the excise officer can excises the power if the following conditions exist:
  - a) if excise duty return is not submitted within the time limit,
  - b) if incomplete or erroneous excise duty return is submitted,
  - c) if a false excise duty return is submitted,
  - d) if there are grounds to believe that the amount of excise duty is shown less or is not correct,



- e) if there are grounds and reasons to believe that the selling price is under-invoiced, which requires reassessment of the price or assessment of an additional price pursuant to sub-section (4) of Section 7,
- f) if manufacturing limit is not met where such limit of manufacture of goods or service subject to excise duty in accordance with or under this Act, is specified
- g) if the volume of alcohol in released liquor or alcohol based substance differs by more than one percent,
- h) if excise duty is evaded,
- i) if any person carries out transaction of goods subject to excise duty without obtaining the license.
- j) if the excise stickers are more or less than books of accounts.

As given situation, the conditions of (b), (c) and (d) are existed. So, the excise officer can assess the excise amount under this situation. For penalty under section 16 relevant for non-compliance with section 10Gha, has not been specified. However, in the given case as excise duty is not recovered or is less recovered so, the penalty U/s 16(4)(Tta) can be made by the excise officer.

- ii) If the management realized the stock of shortage, excise duty, delayed fee will be applicable. Excise duty is Rs. 10 per liter of shortage 1000 liters, so excise duty will be Rs. 10,000, in addition delayed fee 0.05 % per day on the excise duty to be paid. The delayed fee shall be charged from 26, Mangsir, 2079 to the date of short deposit.

## 6.

- a) M/s KP Advisory Solutions Pvt. Ltd., Bangalore, India was appointed as Information System auditor by M/s Nepal Credit Bank Ltd, Nepal. The audit was conducted by the firm remotely from India with minimum physical visit of its staff in Nepal. During the period from 1<sup>st</sup> Poush 2078 until 30<sup>th</sup> Mangsir 2079, the employee and consultant of the firm visited Nepal for total of 60 days. The total amount due to be payable by Nepal Credit Bank Ltd. is Rs. 20 million excluding value added tax. The cost of employees deputed in the information system audit in Nepal is Rs. 40 lakhs, and travel and other costs related to physical visit in Nepal is Rs. 20 lakhs. You are required to advise M/s KP Advisory Solutions Pvt. Ltd. on applicability of income tax, value added tax or any withholding tax obligation on the services provided to M/s Nepal Credit Bank Ltd. **5**

- b) What do you mean by Digital Service Tax? Mention relevant provisions as per Finance Act, 2079? **5**

### Answer

6 a)

As per Article 5 of DTAA between Nepal and India, in case KP Advisory Services Pvt. Ltd., India provides service in Nepal for more than 90 days in any twelve months period, a permanent establishment of the company is deemed to be present in Nepal.

As per Para 1 of Article 7 of the same DTAA, the profit of Indian enterprise is taxable in Nepal only if it carries out business through a permanent establishment.

As per Para 42. 31 of 'Comments on the Articles of Model Tax Convention of OECD', the provision of Article 5 of DTAA only applies to services that are performed in a State by a foreign enterprise. Whether or not the relevant services are furnished to a resident of the State does not matter; what matters is that the services are performed in the State through an individual present in that State. As such, for a PE to be present in Nepal, there shall be presence of individual in Nepal for more than 90 days.

In the given case, as the presence of individuals in Nepal is for less than 90 days, there is no presence of PE of KP in Nepal. By virtue of Article 7 (1) of the DTAA, the income earned by KP in Nepal is not taxable as the income is not generated by PE.

As per 8 (2) of Value Added Tax Act, M/s Nepal Credit Bank Ltd. shall collect and pay value added tax for the services received from KP.

As per Sec. 88 (4), there is no withholding tax on payment to KP as the amount is exempt from tax.

6 b)

Digital Service Tax is the tax levied by the government on the digital service. Digital service means the goods and services for which there is essential need of the information technology for rendering service and which are automated through the internet with minimal human intervention.

The goods and services can be

1. Advertising services,
2. Movies, television, music, over the top (OTT) and other similar subscription based services,
3. Data collection services,
4. Cloud services,
5. Gaming services,
6. Mobile Application related Services,
7. Online Marketplace Services and the services and goods provided through it,
8. Supply of and updating of software,
9. Sales of data collected from residents of Nepal
10. Download services including data and pictures,
11. Education, consultancy, skill development and training services,
12. E-book, E-library and E-newspaper service

The Finance Act 2079 introduced Digital Service Tax (DST) through section 20 on digital services provided by non-residents to consumers in Nepal and certain amendments in the Value Added Tax Act 2052 were made to register the non-residents providing digital services with the Inland Revenue Department (IRD) and issue TAX invoices to the consumers including collecting the VAT.

Digital service tax will be levied at the rate of 2 percent on the transaction value (excluding the indirect taxes attracted in Nepal) of the digital service provided to the consumers of Nepal by non-resident persons. Annual transactions up to Rs 20 lakh shall not be taxed, however, if the amount exceeds Rs. 20 lakh, the entire transaction amount shall be taxed. It has the nature of direct tax like income tax. The tax should not be added to the invoice amount but should pay the tax on the annual turnover. Income Tax as per Income Tax Act, 2058 shall not be applicable on the transaction on which DST is provided.