

**Corporate Laws
Suggested Answer**

Roll No.....

Maximum Marks - 100

Total No. of Questions - 6

Total No. of Printed Pages - 19

Time Allowed - 3 Hours

Marks

Attempt all questions.

Use separate answer book for each question.

1. Answer the following questions:

a) There was a dispute between general shareholders and the directors of the ABC Ltd. company regarding the qualification of a Director Mr. N Kumar. Shareholders have argued that Mr. N Kumar did not possess the qualification to become a director of the company. However, Mr. N Kumar claimed that he was qualified to become a director of the company as per the Companies Act, 2063. The fact was that Mr. N Kumar was convicted in a crime regarding a traffic accident. As a legal expert of the company, answer the following question as per the Companies Act, 2063:

- | | |
|------------------------------------------------------------------------------|----------|
| i) State who is ineligible to become a director of a company? | 6 |
| ii) State who is ineligible to become an independent director of a company? | 3 |
| iii) Whether Mr. N Kumar is eligible to become a director in the given case? | 1 |

b) Mr. A is a newly appointed chairman of ABC Bank Ltd. He asked Chief Executive Officer Mrs. Nitu to invest in the real estate business. Due to high demand of houses in the market, Mr. A asked Mrs. Nitu to build few residential building for the purpose of earning profit by selling those houses in competitive market. Mrs. Nitu, Chief Executive Officer, was in a dilemma whether to buy land and build houses for the commercial or business purpose or not. She then asked you about your legal opinion regarding the acts not to be carried out by the Bank under the Bank and Financial Institutions Act, 2073 (2017). Also, state whether the ABC Bank can buy land and build houses as given here?

(8+2+10)

Answer:

- a)
- i) Section 89 of the Companies Act mentions about the ineligibility to become a director of a company. According to this provision these are the person ineligible to become a director of a company:
- (a) Who is below Twenty one years of age, in the case of a public company;
 - (b) Who is of unsound mind or is insane;
 - (c) Who is a declared insolvent and a period of five years has not lapsed;
 - (d) Who is convicted of an offense of corruption or of an offense involving moral turpitude.

Provided, that in the case of a private company, a period of three years has not lapsed from the date of such sentence,

- (e) who is convicted of an offense of theft, ⁽²⁾ fraud, forgery or embezzlement or misuse of goods or funds entrusted to him/her, in an authorized manner, and sentenced in respect thereof, a period of three years has not elapsed from the expiry of the sentence;
- (f) who has personal interest of any kind in the business or any contract or transaction of the concerned company;
- (g) who is already a director, substantial shareholder, employee, auditor or adviser of another company having similar objectives or has personal interest of any kind in such company;
Provided, however, that such person of a private company may become a director of another private company having similar objectives.
- (h) Who is a shareholder who is found to have failed to pay any amount due and payable by him/her to the concerned;
- (i) In the case of a person who has been sentenced to punishment pursuant to Section 160, a period of one year is not lapsed from the date of sentence, or in the case of a person who has been sentenced to punishment pursuant to Section 161, a period of six months has not lapsed after the date of sentence;
- (j) In the event that the prevailing laws prescribed any qualification or disqualification in the case of a company carrying on any specific business, who does not possess such qualification or suffers from such disqualification;
- (k) Who is already a director of any company which has not submitted such returns and reports as required to be submitted to the Office under this Act, for any continuous three financial years;
- (k1) Fine due as referred to subsection 2 of section 81.
- (L) Who is holding the office of director receiving from another listed company any remuneration or facility, other than a meeting allowance and actual expenses to be incurred in coming to, going from, and staying in, the place of meeting.

Furthermore, sub-section (3) of Section 89 has mentioned few criteria under which a Director cannot continue its office. These criteria are as follows.

- (a) If one suffers from any disqualification for appointment to the post of director as mentioned in Sub-section (1) or (2);
- (b) If the general meeting passes a resolution to remove him/her from the office of director,
- (c) If the resignation tendered by the director is accepted by the board of directors;
- (d) If one is held by a court to have done any act involving dishonesty or ulterior motive in the activities of the company;
- (e) If one is held by a court to have done any act prohibited by this Act from being done by a director or to have failed to do any act required to be done under this Act;
- (f) If one is blacklisted by a competent body pursuant to the prevailing law for his/her default in repaying a loan of any bank or financial institution, and the period of such black listing has not expired.

(3)

- ii) Regarding the ineligibility to become an independent director of a company is mentioned in the sub section 2 of Section 89 which are as follows:
 - (a) Who is a person as referred to in Sub-section (1) of Section 89;
 - (b) Who is a shareholder of the concerned company;
 - (c) Who has not obtained at least bachelor degree in a subject that is related to the business to be carried on by the concerned company and gained at least ten years of experience in the related field or in the company management affairs or who has not obtained at least bachelor degree in finance, economics, management, accounts, statistics, commerce, trade or law and gained at least ten years of experience in the related field;
 - (d) Who is an officer, auditor or employee of the concerned company or a period of three years has not lapsed after his/her retirement from any such office;
 - (e) Who is the close relative of the office of the concerned company;
 - (f) Who is an auditor of the concerned company or his/her partner.
- iii) Yes, as long as Mr N Kumar possess the qualification to become a Director, he is eligible to become a Director and continue his office. Since, Mr N Kumar was convicted in a crime regarding traffic accident, which is not considered as a crime of moral turpitude, therefore it doesn't create ineligibility to become a Director.
- b) Section 50 of the Bank and Financial Institutions Act, 2073 has mentioned that the Bank shall not carry out few acts which are as follows:
 - (a) To purchase and sell goods with an objective of business and to purchase immovable land and to construct building except those are necessary for its own purposes,
 - (b) To disburse credit against security of one's own shares,
 - (c) To provide any type of credit facility to the Directors, person having subscribed one percent or more than that of the paid up capital, Chief Executive, or a member of family of such persons, or the firm, company or organization having significant ownership or financial interest in any person, firm, company or organization having authority to nominate or appoint Director or managing agent,
 - (d) To provide any type of credit or facility exceeding per customer limit prescribed by the Rastra Bank from its capital fund to the single customer, company, companies or partnership firms of the same group and relevant person,
 - (e) To provide any type of credits to any person, firm, company or institution on the guarantee of promoters, Directors, or Chief Executive,
 - (f) To make investment in the securities of the bank or financial institutions of class "A", "B" and "C", classified by the Rastra Bank,
 - (g) To invest the amount more than the limit as prescribed by the Rastra Bank in share capital of other institution,

- (h) To create any type of monopoly or ⁽⁴⁾ other type of restrictive practices in banking and financial transactions in collusion of banks or financial institutions,
- (i) To commit in any act to create an artificial hurdle in competitive environment in financial sectors with a intention to get undue advantage,
- (j) To carry out any other functions which are prescribed by the Rastra Bank as the functions not be carried out by a bank or financial institutions.

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

Therefore, ABC bank cannot buy land and build houses for the business purpose. Buying land and build houses for business motive is against the prevailing law.

2. Answer the following questions:

- a) A newly established Public Entity has to start up its activities for which it has to make procurement of certain goods and services as necessary for commencing its business in the current fiscal year. Advise this Public Entity as its consultant to the following requirements pursuant to the prevailing Nepalese Public Procurement Law by precisely enumerating your answer: (4+3=7)
 - i) State on whom the ultimate responsibilities of making procurement for the new public entity lies and how s/he has to act in this regard?
 - ii) What are the various procurement methods available to the public entity to select based on such conditions and purchase price as prescribed?
- b) Mr. B is one of the nominees of the Nepal Government to the Council of the Institute of Chartered Accountants of Nepal. Before he assumes the post of Council Member, he wants to get acquainted with functions, duties and power of Council. Suggest him stating what are the major functions, duties and power of Council under the Nepal Chartered Accountants Act, 2053? 7
- c) In a timber company called Timberworld Nepal Pvt. Ltd. Tirth Kumar was held all except one share. He had also advanced substantial amount to the company as a secured creditor. He had insured the timber of the company in his personal name. In a fire accident all timbers were destroyed by fire. When he made claim to the insurance company for compensation, it was rejected for want of insurable interest. Advise him in the following issues- (2+2+2=6)
 - i) State the concept of insurable interest.
 - ii) If there is want of insurable interest of Tirth Kumar.
 - iii) If the rejection made by the insurance company is valid.

Answer:

- a)
 - i) Pursuant to section 7(1) of the Public Procurement Act, 2063 the chief of the concerned Public Entity shall be responsible for preparing a procurement plan pursuant to Section 6 of this Act and

carrying out or causing to be carried⁽⁵⁾ out all other activities relating to procurement to be made by fulfilling the procedures referred to in this Act.

Pursuant to section 7(2) of this Act, a Public Entity shall, in carrying out procurement related activity pursuant to Sub-section (1) above, carry out so through an employee who has the qualification prescribed by the Public Procurement Monitoring Office and has knowledge or training on procurement business.

Pursuant to section 7(3) of this Act, the Public Entity shall in view of work load or nature of work establish separate procurement division, branch or unit or assign the responsibilities thereof in order to carry out the following acts:

- (a) Preparing a procurement plan, which includes specifications, drawing, design, special requirement or other description according to section 4 of this Act.
- (b) Preparing cost estimate of procurement as prescribed provided that a cost estimate shall not be required for any procurement valuing upto one hundred thousand rupees except to construction work pursuant to section 5 of this Act. Further, pursuant to section 5A of this Act, the above procurement plan and cost estimate must have to be approved accordingly.
- (c) Preparing prequalification documents, bidding documents and procurement contract related documents by making necessary amendments in the standard bidding documents, standard prequalification documents and standard procurement contract documents prepared by the Public Procurement Monitoring Office on the basis of prescribed models,
- (d) Pursuant to section 6A of this Act, the Public Entity shall have to prepare updated separate index of suppliers, builders, consultants, NGOs and service providers having the set qualification as may be required according to the nature of procurement.
- (e) Preparing documents relating to proposals for consultancy services by making necessary modification in the standard request for proposal prepared by the Public Procurement Monitoring Office,
- (f) Publicly publishing the procurement notice,
- (g) Issuing pre-qualification documents, bidding documents or forwarding documents relating to proposals for consultancy service,
- (h) Receiving evaluation committee for evaluation and submit the evaluated bids for acceptance,
- (j) Notifying the acceptance of the pre-qualification proposals, bids or consultancy service proposals,
- (k) Obtaining, examining and safely keeping the performance guarantee,

- (l) Examining, or causing to be⁽⁶⁾ examined, the quality standards of the goods, construction works or services that have been procured,
- (m) Making available the information and documents asked for by the Public Procurement Monitoring Office, and
- (n) Performing other functions as may be prescribed.

Pursuant to section 7(4) of this Act, in carrying out or causing to be carried out the functions as referred to in Sub-section (3) above, the Procurement Division, Branch or the unit to which responsibility thereof has been assigned shall carry out the same with the approval of the chief of the concerned Public Entity.

It shall be duty of the Chief of the Public Entity to execute or cause to execute the procurement contract in timely manner for which it has to make regular supervision monitoring and causing quality control pursuant to section 7(6) of this Act.

- ii) Pursuant to Section 8(1) of this Act, following procurement method are available to the Public Entity to select based on such conditions and purchase price as prescribed
 - (a) For procurement of goods, construction works or other services:
 - (1) By inviting open bids at international level,
 - (2) By inviting open bids at national level,
 - (3) By inviting sealed quotations,
 - (4) By procuring directly,
 - (5) Through participation of users' committee or beneficiary group,
 - (6) Through force account.
 - (7) Through lumpsum rate,
 - (8) Through Catalogue shopping
 - (9) By limited tendering
 - (10) By buy back method
 - (b) Procurement of consultancy service:
 - (1) By requesting competitive proposals,
 - (2) Through direct negotiations.

Pursuant to Section 8(2) of this Act, in making procurement pursuant to this Act and the rules framed under this Act, procurement shall not be so made in piecemeal as to limit competition.

- (b) Section 11 of Nepal Chartered Accountants Act, 2053 mentions about the functions, duties and power of Council which are as follows:
 - (a) To conduct examinations of candidates who join the accountancy.
 - (b) To determine the procedures in relation to the membership of the Institute and registration of name as a member having obtained professional certificate.
 - (c) To provide a person who holds the required qualification with an appropriate type of membership of the Council pursuant to Section 16.

(7)

- (d) To make coordinative development of the accountancy by having maximum utilization of the available means and resources.
- (e) To determine the qualification required for efficient human resources for the development of the accountancy.
- (f) To determine the type of curriculum and practical training required to pursue the qualification necessary for obtaining the membership.
- (g) To carry out different teaching and training programs in cooperation with any university or other educational institute by the Institute itself.
- (h) To grant the professional certificate to the members for carrying on the accountancy.
- (i) To enhance the capacity of members by providing them with career development opportunities.
- (j) To monitor as to whether or not the members or members having obtained the professional certificate have acted in conformity with the professional code of conduct prescribed for the members or members having obtained the professional certificate.
- (k) In accordance with the recommendation of the disciplinary committee, to take necessary action against any members and members having obtained the professional certificate for their acts and actions in contravention of the professional code of conduct.
- (l) To give theoretical or practical directions and guidelines in various aspects of the accountancy and auditing and carry out other functions as may be necessary for the professional development.
- (m) To observe, or cause to be observed, accounting standards and standards on auditing provided or recommended by the Accounting Standards Board and Standards on Auditing Board, and to regulate whether such standards have been observed or not.
- (n) To safeguard and promote the rights, interests and reputation of the members.
- (o) To render advice and suggestion to Government of Nepal for the improvement of the various laws in force in the fields related with industry, commerce, finance, revenue and accountancy.
- (p) To accept membership of the International Federation of Accountants, and regional and sub-regional federations, and establish contact with the accountants institutes of other countries.
- (q) To recommend appropriate educational standards for accounting education in coordination with universities and other educational institutes.
- (r) To conduct necessary trainings, symposia and seminars in order to enhance professional efficiency of the registered auditors.
- (s) To conduct short term or long term trainings, symposia etc. for the benefit of accountancy human resources in service.
- (t) To publish materials relating to the accountancy.
- (u) To operate a library relating to the accountancy.

(8)

- (v) To determine the procedures to be followed by the committees to be formed by the Council.
- (w) To approve the budget of the Institute and manage the funds.
- (x) To appoint such employees as may be required for the Institute and prescribe their remuneration and other facilities.
- (y) To provide on-going professional education for members.
- (z) To develop educational system in order to prepare account technicians and do necessary acts pertaining thereto.
- (ai) To carry out such other functions as are prescribed by this Act or the Rules and Bye-laws framed under this Act.
- (bi) To carry out such other functions as may be necessary for the attainment of the objectives of this Act.

b)

- i) Insurable interest refers that the insured must have an interest in the subject matter of the insurance. It is relationship between a person and the property which is the subject matter of insurance. In the absence of insurable interest, no one can get a property insured and can claim the compensation of loss from the insurance company by destroying property.

For example, 'A' purchased a car for Rs. 50 Lakh and he is using it but he registered the car in the name of 'B,' his servant. He insured the car in an insurance company where policy amount is paid by him. After three years, the car got accident and destroyed. All the papers and installment payment slips are with him. He cannot claim the compensation in his name against the insurance company as the car is registered in the name of 'B' who is the legal owner of the car and the B only can claim compensation in his name.

- ii) A company being a separate legal entity with separate legal personality than those of its members is capable of owing, enjoying and disposing of property in its own name. Although its capital and assets are contributed by its shareholders, they are not the private and joint owner of its property. Therefore, a shareholder does not have even an insurable interest in the property of the company. The shareholders, therefore, cannot claim as their right to a single break of the company though it may purchased from his money. The rule is that the asset of the company is not the assets of its shareholders and the property of the shareholders is not the property of the company. Hence, Mr. Tirth Kumar has no insurable interest on the timber so destroyed as he not, in the eyes of the law, owner or part owners of the undertaking.
- iii) Yes, the insurance company can refuse to pay compensation to Mr. Tirth Kumar as the timber does not belong to him however they belonged to the company and the insurance was not entered by or in the name of company. It was observed that even where a shareholder held almost entire share capital, he did not even have an insurable interest in the property of the company. Company is the owner of its assets not the shareholders.

3. Answer the following questions:

- a) A winery Industrial Company of Georgia 'Vineyard Co.' intended to establish a similar industry in Kavre, Bagmati Province, Nepal under a joint venture with a

Nepalese Winery Company having ⁽⁹⁾ 50% equity investment by each of the parties of the total equity capital of Six Billion rupees. In case the joint venture partners hired you for providing detailed information on the issue: "Security of Repatriation of Investment and Earnings, Exemptions, Facilities and Concessions accorded to Foreign Investors in Nepal", how will you respond to them pursuant to the Foreign Investment and Technology Transfer Act (FITTA), 2075? 7

b) Explain the provisions of Professional Social Responsibility of an Industry as incorporated under the Industrial Enterprises Act, 2076. In case a large Manufacturing Industry 'B' of Birgunj is found to have not discharged its Professional Social Responsibility as mandated under this Act, what punishment the Industry 'B' could be imposed under this Act? Identify the officer or office who could impose such punishment. In case, Industry 'B' is not satisfied with the decision of imposing fine against it, can it file an appeal against it? 7

c) Financial Comptroller General is interested to appoint Statutory Auditor of Nepal IT Park Ltd. where Government of Nepal has invested 54% equity shares, but one of the officer from the Comptroller Office requested Comptroller General to hire one advisor to advise him on this issue. You as an advisor, suggest to the Comptroller General referring the Audit Act, 2075. 6

Answer:

a)

- (1) Security of Repatriation of Investment and Earnings, Exemptions, Facilities and Concessions provided to Foreign Investors by FITTA, 2075 are as under: Section 20 of the Act explained as under:
- (2) The foreign investor in this case 'Vineyard Co.' may, if it so wishes, repatriate its investment from Nepal by selling wholly or partly of the shares or industry having its investment in accordance with the prevailing Nepal Law, after paying all such taxes as may be leviable in accordance with the prevailing Nepal law.
- (3) A foreign investor may repatriate the following amount in the same foreign currency in which the investment has been made or other convertible foreign currency with the approval of the Nepal Rastra Bank, after paying the tax related liabilities under the prevailing law:
 - (a) Amount received from the sale of shares with foreign investment,
 - (b) Amount of profit or dividend received from foreign investment,
 - (c) In the case of liquidation or winding up of the industry or company, amount remaining after paying all liabilities following the liquidation or winding up,
 - (d) Amount of royalty received under the technology transfer agreement except the amount of such royalty shall not exceed five percent of the total selling price of liquor exported,
 - (e) Amount of lease rent under the lease investment,

- (f) Amount received as damages⁽¹⁰⁾ or compensation, if any, received from the final settlement of a law suit, arbitration or any other legal process in Nepal.
- (g) Amount that can be repatriated in accordance with the prevailing law.
- (h) Repatriate the principle and interest of the loan by auction of such property as if it were a bank or financial institution of Nepal.
- (i) Repatriate its investment and the property invested in the lease.
- (j) Repatriate such investment or profit only to the extent of the ratio of the portion of its investment in the concerned company.

If any foreign investor is not satisfied with the decision made by the body giving such approval in the course of repatriation of the amount of its investment, the investor may make an application to the Ministry. The Ministry shall make a decision on such an application with thirty working days.

Pursuant to section 23 of this Act, the Government of Nepal may make necessary arrangement so that exemptions, facilities, concessions or services to be provided to the foreign investors in accordance with this Act and other prevailing law are provided through the Single Stop Service Centre.

In addition to the exemptions, facilities, concessions or protection referred to in this Act, as provided to any industry with foreign investment, other exemptions, facilities or concessions as may be available under the prevailing Industrial Enterprises Act and other prevailing law shall also be made available to them except to sick industry facilities pursuant to section 24 of this Act.

Facility of foreign currency is provided under section 26 of this Act under:

- (1) An industry with foreign investment may, on recommendation of the foreign investment approving body, and with the approval of the Nepal Rastra Bank, obtain the foreign exchange facility for such amount as may be required for the following purposes:
 - (a) To pay such remuneration as may be payable to any foreign expert, technical or managerial employee employed in the industry in accordance with Section 27 of this Act,
 - (b) To pay the principal or interest of any bonds or debentures issued in accordance with sub-section (1) of Section 11 of this Act,
 - (c) To repatriate the foreign investment or income earned in accordance with Section 20 of this Act.
- (2) After obtaining approval from Nepal Rastra Bank in accordance with sub-section (1) above, an industry with foreign investment may pay or use such amount as approved from the foreign currency held in the account of such industry as referred to in Section 25 of this Act.

- (3) Any foreign expert, technical⁽¹¹⁾ or managerial employee employed in an industry in accordance with Section 27 may repatriate to his or her country in convertible foreign currency such amount of saving out of the remuneration receivable by him or her, after paying income tax in Nepal in accordance with the prevailing law.
- (4) The exchange or repatriation of convertible foreign currency in accordance with subsection (2) or (3) above, shall be made according to the open market exchange rate.

The employees and workers employed in any industry with foreign investment shall comply with the terms and conditions referred to in the prevailing law of Nepal.

Pursuant to section 28 of this Act, such industrial security shall be provided to any industry with foreign investment as may be available to any other industry established in Nepal.

Pursuant to section 29 of this Act, the Department of Industry may provide an identity card in the prescribed form to any foreign investor who makes such foreign investment as prescribed.

Section 30 of this Act makes the following provisions relating to visa facility to the foreign investor:

- (1) Non-tourist visa not exceeding six months shall be granted to a foreign citizen who visits Nepal to make a study, research or survey for foreign investment.
- (2) Business visa shall be granted to a foreign investor or one authorized representative of him or her and the family members of such an investor or representative to stay in Nepal until the foreign investment equal to such minimum amount as prescribed is maintained.
- (3) In the case of an investor who makes investment exceeding the prescribed amount, such facility shall be provided only to a maximum of two persons and his or her family member.
- (4) Residential visa shall be provided to a foreign investor who makes foreign investment in an amount exceeding one million US dollars or in convertible foreign currency equivalent thereto at one time or to the authorised representative of him or her and the family member of such a person until the foreign investment equal to such minimum amount as prescribed is maintained.
- (5) Tourist visa shall be provided to any foreign expert, technical or managerial employee to be employed in an industry in accordance with Section 27 of this Act.
- (6) The body giving working approval and work permit for the non-tourist visa shall make decision whether or not to give working approval or work permit, after completing the necessary procedures not later than fifteen days.

Section 31 of this Act, has made following provisions relating to land:

- (1) A foreign investor shall ⁽¹²⁾ have to manage such land as may be required for the industry, by purchasing it on his or her own or through other means in accordance with the prevailing law.

In case s/he fails and makes a request, setting out the content, for the purchase or acquisition of the land, the foreign investment approving body shall make necessary recommendation, coordination and facilitation for that purpose.

- (3) If such land as in excess of the ceiling is required only for an industry which is operated or to be operated with foreign investment, for the establishment and operation of the industry, the body registering the industry shall make necessary recommendation, coordination and facilitation in accordance with the prevailing law. The land that is not subject to such ceiling shall be used only for the same purpose for which it has been purchased.

Section 32 of this Act provides National treatment to be accorded to the industry or enterprise with foreign investment in Nepal, accordingly;

- (a) It shall be accorded the same treatment as accorded to any industry of the same nature with investment made by a Nepali citizen.
- (b) It shall be free to determine the price of goods and services, subject to the prevailing law.
- (c) It shall not be prevented from doing trade, as prescribed, being limited to that industry.
- (d) It shall not be restricted to repatriate profit, investment, pay interest of, and repay the principal of, a loan.

Section 33 of this Act guarantees that:

- (1) No industry with foreign investment in accordance with this Act shall be nationalised.
- (2) No industry shall, except for a public purpose, be expropriated directly or indirectly. If it is required to expropriate it for the public purpose, due process referred to in the prevailing law shall be fulfilled.

b)

Section 54 of the Industrial Enterprise Act, 2076 has clearly provided for professional Social Responsibility of Industries, as under:

- (1) The Medium or Large, or the Cottage or Small Industry having annual turnover of exceeding fifteen million rupees shall be required to allocate one percent of amount of its annual profit each fiscal year for the purpose of discharging its professional social responsibility. That amount so allocated shall have to be expended in the prescribed projects formulated from among its annual plans and programs.

- (2) For the purpose of sub-section (1)⁽¹³⁾ above, each industry is required to submit annual statement showing the amount of turnover transacted in that fiscal year, and the annual progress report of its professional social Responsibility discharged under its annual plans and programs in that fiscal year to the concerned industrial registration office within six months after the completion of that fiscal year. A copy of the plans and programs of professional Social Responsibility drawn for the current fiscal year shall also be submitted by that Industry alongwith that report.

In case an industry which does not discharge its professional social responsibility, in that case, the Ministry of Industry may upon the recommendation of the Department of Industry fine such industry an amount comprising the figure of 1.5 percent of the total annual profit of that industry pursuant to section 43 of this Act. In case the industry which does not discharge its professional responsibility for more than one fiscal year, in that case, such industry shall be additionally fined at the rate of 0.5 percent annual profit of each such year under this section of this Act.

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

- c) Nepal IT Park Ltd comes under the definition of a corporate body as prescribed by Audit Act, 2075. As per section 2(f) of the Act, a corporate body means a corporate body whose more than fifty percent shares or assets are owned by Government of Nepal, Province Government or Local Bodies and the term also means an institution whose more than fifty percent shares or assets are owned by corporate body.

As per section 11(1) of the Audit Act 2075, the statutory auditor of the company shall be appointed by the company subject to principle prescribed by the Auditor General. However, such auditor shall be appointed after consulting the Auditor General [section 11 (2)].

The procedures to be followed while consulting the Auditor General for appointing auditors and on matters of principles of audit to be followed by the auditors during their audit shall be as prescribed by the Auditor General. After the completion of audit, the corporate body shall deliver to the Office of the Auditor General a copy of the audit report submitted by the auditor appointed in consultation with the Auditor General [u/s 11(3)].

The Auditor General may issue directives to the concerned corporate body and auditor in respect of the irregularities observed in the report received and it shall be the duty of concerned organization and auditor to abide by such directives [u/s 11(4)].

Hence, in the given case, Comptroller General of Nepal has no authority to appoint the auditor in the above type of company.

4. Answer the following questions: (3×5=15)
- a) Mr. A, a security business person, consult you regarding the securities business. As a security business and corporate law expert could you advice Mr. A on the following issues as per the Securities Act, 2007:
- i) State the business standards to be observed by the Securities business person.
 - ii) State the punishment to be imposed to the person involved in the insider trading.

- b) Government of Nepal has enacted⁽¹⁴⁾ the Money Laundering Prevention Act, 2064 for the prevention of laundering of money (assets) earned through criminal proceeds. State the activities which are considered as money laundering offence under the Money Laundering Prevention Act, 2064?
- c) Explain, how the accounts of the Financial Mediator Institution is maintained and get the same audited under the provisions of the Act Relating to Institutions Acting as Financial Intermediary, 2055?

Answer:

- a)
- i) Section 76 of the Securities Act, 2007 mentions the business standards to be observed by the security business person which are as follows:
- (a) To maintain the operation of securities business fair and of high standards,
 - (b) To carry on the securities business with proper skills, care and hardworking,
 - (c) To keep on the higher standard of stock exchanges,
 - (d) To obtain information from customers as to their objective to make investment and provide services accordingly,
 - (e) To provide such information and advice as may be required for customers to make decision on investment in securities,
 - (f) To avoid conflicts of own interests with the interests of customers and, in the event of the existence of such situation, to disclose that matter to customers and carry on the securities business having regard to the interest of customers,
 - (g) To make such provisions as may be necessary to fulfill commitments made in relation to the securities business,
 - (h) To properly maintain records relating to the securities business,
 - (i) To provide for necessary training to employees in order to prepare skilled human resources for the operation of the securities business,
 - (j) To observe such other principle as prescribed in relation to the operation of the securities business.
- ii) Section 91 of the Securities Act mentions the provision of insider trading and Section 101 of the same Act mentions the punishment to be imposed to the person involved in the insider trading. Which are as follows:
- (1) If any person deals in securities or causes any other person to deal in securities on the basis of any insider information or notice that are unpublished or communicates any information or notice known to such a person in the course of the discharge of his or her duties in manner likely to affect the price of securities such a person shall be deemed to have been committed an insider trading in securities. (1)

Explanation: For the purposes of this sub-section, "insider information or notice" means any such specific kind of information or notice not published by a body corporate issuing any securities as may be capable of affecting the price of such securities if such information or notice is disclosed.

Section 101(1) mentions the punishment to be imposed to the person who commits insider trading which is as follows: A person who commits an insider trading as referred to in Section 91 shall, upon being convicted of the offense of insider trading, be liable to the punishment with a fine equal to the amount in controversy or with imprisonment for a term not exceeding one year or with both punishments.

- b) The Money Laundering (ML) is the process by which illegal funds and assets are converted into legitimate funds and assets.

Anti-Money Laundering (AML) refers to a set of procedures, laws and regulations designed to stop the practice of generating income through illegal actions.

In this context Government of Nepal has enacted an Act to prevent Laundering of criminally earned money (assets).

The Money Laundering Prevention Act 2064 has prescribed money laundering as an offence. According to Section 3 of the Act, no person should commit or cause to commit in any of the following acts: -

- (a) Converting or transferring property by any means knowing or having reasonable grounds to believe that it is proceeds of crime for the purpose of concealing or disguising the illicit origin of property, or assisting any person involved in the offence for evading legal consequences of offender.
- (b) Concealing, disguising or changing the true nature, source, location, disposition, movement or ownership of property or rights with respect to such property knowing or having reasonable grounds to believe that it is proceeds of crimes.
- (c) Acquiring, using or possessing any property knowing or having reasonable grounds to believe that it is the proceeds of crime.

The Act further clarifies that no person shall conspire to commit, aid, abet, facilitate, counsel, attempt, associate with or participate in the commission of the acts mentioned above.

Where any person who commits any act mentioned as above amounts to commitment of the offence of money laundering.

- c) Section 26 of the Act Relating to Institutions Acting as Financial Intermediary, 2055 provides for accounts and audit of Financial Mediator Institution, as under:
- (1) Such Institution shall maintain separate accounts of the activities relating to financial intermediation, and prepare a balance sheet for each financial year, and get the same audited by any recognized auditor appointed by the general meeting of the Institution within Six months after the expiration of the financial year.
 - (2) In appointing an auditor pursuant to Sub-section (1) above, the same person or firm shall not be appointed for more than three consecutive times.
 - (3) The remuneration of auditor shall be as specified by the general meeting of the institution.
 - (4) If Nepal Rastra Bank so wishes, it may at any time examine or cause to be examined the accounts of Such Institution.

5. Answer the following questions:
- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|---|
| a) State the grounds for disqualification to become an arbitrator under the Arbitration Act, 2055. | 4 |
| b) State the legal provisions to serve a notice to a foreign national against the charge of banking offence under the Banking Offence and Punishment Act, 2064. | 3 |
| c) State the matters to be audited by the Auditor General in view of propriety. | 3 |

ANS:

- a) Section 10 of the Arbitration Act, 2055 mentions few grounds for disqualification to become an arbitrator in Nepal. These grounds are:
- Person disqualified to become a party to the contract under the prevailing laws of Nepal can not be an arbitrator.
 - Person punished by a court on criminal charges involving moral turpitude.
 - Person becomes insolvent or been declared bankrupt.
 - Person having any interest on the issues to be settled through arbitration.
 - Person not having any specific qualification to become an arbitrator mentioned in the agreement.
- b) Section 22 of the Act provides the method of serving notice in the name of foreign individual. Sub-section (1) states that a notice to be served in the name of a foreign individual, in connection with the offenses under this Act, shall be served in the name of an office or representative of such individual in Nepal, if any, and the notice so served shall be deemed to be duly served.
- Sub-section (2) provides that in case the office or representative as stipulated under Subsection (1) is not existent, the notice shall be served at the main business place of such individual or his/her permanent residential address or at the mailing address if provided by him/her during the course of business, through telex, telefax or other means of recordable telecommunication or through post by registration and the notice so served shall be deemed to be duly served.
- Further, Subsection (3) states that if there is a separate provision in any treaty where Government of Nepal or Nepal is a party, there shall be no obstruction in serving the notice in the name of a person residing in foreign country in the manner as specified in the same whatever may be contained in Sub-section (1) or (2).
- c) Section 9 of the audit Act mentions the matters to be audited by the auditor general in view of propriety which are as follows:
- (a) If it is seen that any expenditure, though it confirms to the authorization, has been made unreasonably or in a manner to cause loss and damage to the national property, with respect to such expenditure and its authorization,
 - (b) With respect to any grant of national property whether movable or immovable or underwriting of revenue or any lease, permit, license or rights relating to mining, forest, hydropower etc. and all authorizations issued in a manner to abandon any revenue or national property, whether movable or immovable,
 - (c) With respect to the subject-matters of various financial transactions including contracts and agreements relating to public works, repair and maintenance, procurement and supply, consultancy service, service delivery, public expenditure and revenue mobilization.
- (2) The Auditor General may, if he or she deems it appropriate, examine, in accordance with the recognized principles of accounting, as to whether or not any official within his or her scope of competence has borne financial accountability.

- (3) The Auditor General may not include in his or her report minor items of irregular amounts or other items deemed not to be significant and important in view of their propriety

Comments of Evaluators on the Performance of the Students

Subject: Corporate Laws

Batch: August 2021

List of Questions	Specific Comments on the Performance of the Students
Question no. 1	Satisfactory Performance
Question no. 2	Performance has been fair for those examinees who attempted questions
Question no. 3	Provision was not explained properly Answers were mostly based on the guess work
Question no. 4	Average performance
Question no. 5	Satisfactory Performance
Question no. 6	Lack of clear conceptual knowledge

**Advanced Taxation
Suggested Answer**

Roll No.....

Maximum Marks - 100

Total No. of Questions - 6

Total No. of Printed Pages -18

Time Allowed - 3 Hours

Marks

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

Use separate answer book for each question.

1. Delta Manufacturing Ltd. is a company listed in NEPSE. It was incorporated five years ago and had issued 30% of its shares to the public through IPO in Falgun 2077. The company is engaged in manufacturing of clothing items. It took three years for the company to set-up the plant and it officially started its commercial operation from 1st of Chaitra 2077. Company imports its raw materials like silk, cotton, and other fabric through Birgunj Custom Office. Following are the transaction details of the company for Fiscal Year 2077/078:

<u>Particulars</u>	<u>Amount Rs.</u>
Revenue:	
Export sales	15,678,230.00
Local sales	38,411,600.00
Gain on sale of listed securities (net)	3,421,400.00
Dividend received from investment in listed securities	375,000.00
Interest income on call deposit	45,690.00
Total Revenue	57,931,920.00
Expenses:	
Production related expenses	
Import of raw materials	38,930,100.00
Labour wages	4,323,100.00
Factory lighting and heating	342,100.00
Other consumables	985,230.00
Total Production Related Expenses	44,580,530.00
Other administrative expenses	
Internal audit fee	350,000.00
Staff salary	6,532,140.00
Guest refreshment and hospitality	321,450.00
Vehicle fuel	54,680.00
Interest on bank loan	1,634,500.00
Statutory audit fee	200,000.00
Renew and registration	56,000.00
IPO related expenses	1,123,400.00
Rating fee	138,000.00

Other office expenses	1,232,460.00
Total Administrative Expenses	11,642,630.00

Details of Fixed Assets					
Particulars	Office Equipments	Vehicle	**Plant and Machinery	Land	Total
Cost:					
At Ashadh 31, 2077	1,786,746.01	916,778.53	-	-	2,703,525.00
Additions	1,200,000.00	2,650,000.00	37,532,400.00	10,000,000.00	51,382,400.00
Disposals	-	-	-	-	-
At Ashadh 31, 2078	2,986,746.01	3,566,778.53	37,532,400.00	10,000,000.00	54,085,925.00
Accumulated Depreciation					
At Ashadh 31, 2077	595,582.00	229,194.63	-	-	824,777.00
Depreciation charge for the year	597,791.00	667,516.78	5,629,860.00	-	6,895,168.00
Disposals	-	-	-	-	-
At Ashadh 31, 2078	1,193,373.01	896,711.41	5,629,860.00	-	7,719,944.00
Net book value:					
At Ashadh 31, 2078	1,793,373.01	2,670,067.12	31,902,540.00	10,000,000.00	46,365,980.00

**** Plant and Machinery**

Up-to last year, company has balance of WIP Plant and Machinery of Rs. 23,240,900. During the year company has purchased and installed the remaining machine and the plant of company is ready for production and company has capitalized the WIP in fixed assets. Out of total cost capitalized, Rs. 3,856,700 is for the interest capitalized for loan exclusively obtained for Machinery.

Except, plant and machinery, all assets were purchased in first quarter of the year.

Installation cost of the plant includes Rs. 36,790 relating to liquor consumed by the technician during their stay in hotel.

- At the end of the year, company has closing stock of Rs. 10,226,000.
- On the scrutiny of the books, it was revealed that Rs. 352,400 included in staff cost is the bonus of previous year distributed to employees as per the Bonus Act.
- Import of raw materials includes Rs. 675,400 paid as additional import duty levied by the custom authority by upward valuation of the imported goods. Import duty for the same product is 20% of custom value. Accountant of the company has included the additional value of the imported goods in import/purchase since the company has paid import duty on the same.
- Import of raw material also includes Rs. 345,900 paid as fine to Birgunj Dry Port due to delay in removal of imported goods.
- IPO related expenses were directly reduced from the equity of the company in general purpose financial statements of the company as per NFRS.
- Labour wage includes Rs. 321,800 to labour who do not have PAN number. However, company has obtained the PAN number in Bhadra 2078.
- Company has realized and unrealized loss of Rs. 234,590 and Rs. 562,340 respectively from trading of listed securities.

- Following are the details of ⁽²⁰⁾ installment tax paid by the company for the year:

1 st Installment	Rs. 700,000
2 nd Installment	Rs. 300,000
3 rd Installment	Rs. 100,000

Accountant of the company has submitted the estimated tax return in 2077.09.28 and same is verified on 2077.10.03

Required:

Calculate the income tax payable/receivable by the company including fee and interest if any.

20

Answer:

Computation of Taxable Income For Income Year 2077/078			
Delta Manufacturing Ltd.			
Particulars	Income From Export	General Business Income	Remarks
Inclusion			
Sales Revenue	15,678,230.00	38,411,600.00	
Gain on Sale of Listed Securities	-	3,983,740.00	W.N. 1
Dividend received from listed company	-	-	W.N.2
Interest Income on Call Deposit	-	45,690.00	
Total Inclusion	15,678,230.00	42,441,030.00	
Deduction:			
Cost of Goods Sold	7,910,831.70	19,367,898.30	W.N.3
Depreciation charges	1,789,956.86	4,382,308.18	W.N. 4
Interest Expenses	1,592,448.00	3,898,752.00	W.N. 5
Other General Deduction	2,800,161.70	6,855,568.30	W.N. 6
Total Deduction	14,093,398.26	34,504,526.78	
Taxable Income for the Year (a)	1,584,831.74	7,936,503.22	
Rate of Tax			
Normal Tax Rate	25%	25%	
Less: Concession u/s 11(2b) for Special Industry	-5%	-5%	
Rate After Concession	20%	20%	
Less: Concession u/s 11(3e(b)) for Export Income of Special Industry	-4%		
Less: Concession u/s 11(3e(c)) for Export Income of Production based Special Industry	-4%		
Less: Concession u/s 11(3g) for Production based listed entity	0%	-3%	
Applicable Rate for Export Income (b)	12%	17%	

(21)

Provision for Tax for the Year (axb)	190,179.81	1,349,205.55	
Total Tax Liability		1,539,385.36	
Add: Fine for Non-Submission estimated income tax return u/s 117 (1(a))		5,000.00	
Higher of:			
i) Rs. 5,000			
ii) 0.01% of Assessable Income i.e., 0.01% of 9,521,335	952.13		
Add: Interest u/s 118		3,310.07	W.N.9
Total Tax Liability (A)		1,547,695.43	
Less: Tax Already Paid (B)		(1,528,686.50)	W.N. 7
Net Tax Liability (A+B)		19,008.93	

W.N.1 Gain on Disposal of Listed Securities

As per Income Tax Act, 2058, only realized gain or loss on trading of securities is eligible for inclusion and deduction. However, realized loss and realized gain can be set-off for tax.

Net gain from disposal of listed securities	3,421,400.00
Add: Unrealized loss on listed securities	562,340.00
Net gain from disposal of listed securities	3,983,740.00

W.N. 2 Dividend Income

As per section 92 of Income Tax Act, 2058, dividend received from resident company is subject to final withholding and company need not to include the same in the inclusion.

W.N.3 Cost of Goods Sold u/s 15

Particulars	Amount (Rs.)
Import of raw material	38,930,100.00
Less: Additional valuation of goods considered for Custom Duty collection by Custom Authority	6,754,000.00

(Custom authority will release goods by collecting additional 50% custom duty on goods so imported through under invoicing. $[675,400/20%] \times 2$)

Fine paid to Birgunj Dry Port for delay removal of goods is not for breach of law. So, allowed as deduction.

Net cost of import of raw material (a)	32,176,100.00
Labour Wages	4,323,100.00
Less: Labour wage paid to labour having no PAN	(321,800.00)
Allowable labour cost (b)	4,001,300.00
Factory lighting and heating (c)	342,100.00
Other consumables (d)	985,230.00
Total Cost (a+b+c+d)	37,504,730.00
Less: Closing Inventory	10,226,000.00
Cost of Goods Sold	27,278,730.00

(22)

Percentage of Local Sales (rounded off)	71%
Percentage of Export Sales (rounded off)	29%

Cost of goods sold apportioned to local sales	19,367,898.30
Cost of goods sold apportioned to export sales	7,910,831.70

W.N. 4 Depreciation Charges

Particulars	Pool B	Pool C	Pool D***	Total
Opening WDV	1,191,164.01	687,583.90	-	1,878,747.90
Add: Absorbed addition	1,200,000.00	2,650,000.00	22,425,940.00	26,275,940.00
Less: Proceeds from Disposal	-	-	-	-
Depreciation Base for the Year (a)	2,391,164.01	3,337,583.90	22,425,940.00	28,154,687.90
Rate of Depreciation (Accelerated) (b)	33.33%	26.67%	20.00%	
Depreciation for the Year (axb)	797,054.67	890,022.37	4,485,188.00	6,172,265.04
Remaining Value	1,594,109.34	2,447,561.52	17,940,752.00	21,982,422.86
Add: Unabsorbed Addition	-	-	11,212,970.00	
Opening Value for Next Year	1,594,109.34	2,447,561.52	29,153,722.00	21982422.86

Allocation of Depreciation charge to:	Ratio	Amount (Rs.)
Local Sales	71%	4,382,308.18
Export Sales	29%	1,789,956.86

***Cost of Addition of Assets in Pool D:

Amount as per books (given)	37,532,400.00
Less: Liquors related cost included in capitalization (not allowed for tax purpose)	(36,790.00)
Less: Capitalization of the interest for the year	(3,856,700.00)
Total capitalized cost on the pool	33,638,910.00

As per section 14(1) of the Income Tax Act, 2058 interest expense incurred on purchase/construction of assets used to generate revenue in an income year is allowed as expenses. In the given case, interest of Rs. 3,856,700 is capitalized in plant and equipments which is correct as per Nepal Accounting Standards. However, such capitalization is not allowed in tax since the asset is used to generate revenue in this Income Year.

W.N. 5 Interest Expenses

Interest expenses as per books	1,634,500.00
Add: Interest expense capitalize in Plant and Equipments	3,856,700.00
Allowable Interest Expenses	5,491,200.00

Allocation of Interest expenseto:	Ratio	Amount (Rs.)
Local Sales	71%	3,898,752.00
Export Sales	29%	1,592,448.00

W.N.6 Other General Deduction u/s 13

Particulars	Amount (Rs.)
Internal audit fee	350,000.00
Staff Salary	6,532,140.00
Less: Bonus Payment	(352,400.00)
Guest refreshment and hospitality	321,450.00
Vehicle fuel	54,680.00
Statutory audit fee	200,000.00
Renew and registration	56,000.00
IPO related expenses	1,123,400.00
Rating fee	138,000.00
Other Office Expenses	1,232,460.00
Allowable General Deduction	9,655,730.00

Allocation of General Deduction to:	Ratio	Amount (Rs.)
Local Sales	71%	6,855,568.30
Export Sales	29%	2,800,161.70

W.N.7 Computation of Total Tax Paid

Tax paid in Installment I	700,000.00	
Tax paid in Installment II	300,000.00	
Tax paid in Installment III	100,000.00	
Advance tax on gain on disposal of listed securities	421,833.00	W.N. 8
TDS on Bank Interest (15% of interest income)	6,853.50	
Total Tax Paid	1,528,686.50	

W.N. 8 Advance Tax on gain on disposal of listed securities

Net gain from disposal of listed securities	3,421,400.00
Add: Realized loss on listed securities	234,590.00
Add: Unrealized loss on listed securities	562,340.00
Gross gain from disposal of listed securities	4,218,330.00
Rate of Tax	10%
Advance Tax deducted by NEPSE	421,833.00

W.N. 9 Interest u/s 118

Installment	Amount to be Paid	Amount Paid	Short/(Excess)	Interest
First	615,754.14	700,000.00	(84,245.86)	-
Second	1,077,569.75	1,000,000.00	77,569.75	2,908.87
Third	1,539,385.36	1,528,686.50	10,698.86	401.21
Total Interest				3,310.07

Note: It is assumed that the advance tax collected by NEPSE and TDS on bank deposit is deposited in company name at Ashad end of 2078. Alternatively, students may assume their own assumption.

2.

- a) Singapore Airlines, a government owned airlines of Singapore is operating a regular flight between Kathmandu and Singapore. The airlines has a liaison office at Kathmandu for the management of ticketing and the air services. The airlines has the following receipt and payment in Nepal for Fiscal Year 2077/78.

Particulars	Amount (in NPR)
Sale proceed from Air Ticket from the passengers embarked from Kathmandu for Singapore	100,000,000.00
Sale proceed from Air Ticket from the passengers embarked from Kathmandu for Hongkong	50,000,000.00
Sale proceed from Air Ticket from the passengers embarked from Malaysia for Hongkong	20,000,000.00
Sale proceed from Air Ticket from the passengers embarked from Malaysia for China but transit of 5 hours at Kathmandu	15,000,000.00
Ticket sold in Singapore for the passenger travelling from Singapore to China via transit in Kathmandu for 5 hours.	60,000,000.00
Catering Services Income	8,000,000.00
Sales from restaurant (Canteen operated at the International Airport)	10,000,000.00
Ground Handling Services Income (Received from Thai Airways)	6,000,000.00
Expenses incurred for sale of Air Tickets	22,500,000.00
Accommodation and Fooding Expenses of Crew Members	12,500,000.00
Expenses incurred for Ground Handling *	7,000,000.00
Rent of Canteen	1,500,000.00
Material consumed in the Canteen	6,000,000.00

* Expenses includes equal for Singapore Airlines & Thai Airways

You are required to compute taxable income & tax liability payable by the Singapore Airlines in Nepal as per Prevalent Act.

7

- b) Mention the withholding tax rate for the following cases as per the provisions of Income Tax Act, 2058. Your answer should be based on amendments by Finance Act, 2077.
- Service fee paid to a VAT exempt service provider.
 - Returns paid by Mutual Fund to an entity.

7

- iii) Interest paid by a bank on loans ⁽²⁵⁾ obtained from foreign bank to lend in the specified area by Nepal Rastra Bank.
- iv) National Sports award given to a cricket player for Rs. 5 lakhs by Nepal Sports Council.
- v) Lease rent payment by an airline company to a foreign company providing the aircraft.
- vi) Dividend paid to Mutual Fund.
- vii) House rent paid to an individual person.
- c) Golden Brewery Limited has not filed income tax return for income year 2075/76 till date claiming it has loss for the year as below:

Particulars	Amount	Remarks
Sales	50,000,000	
Other Income	2,000,000	
Total Income	52,000,000	
Employee Cost	20,000,000	
Cost of Sales	30,000,000	
Administrative Expenses	5,000,000	
Depreciation	1,000,000	
Other Expenses	4,000,000	
Total Expenses	60,000,000	
Net Loss	8,000,000	

Discussing the relevant provisions of the Income Tax Act, 2058, advise management of the Company on :

(4+2 =6)

- Consequences if the Company does not file income tax return, and
- Additional fee u/s 117 if Company decides to file income tax return at end of Bhadra, 2078.

Answer:

- a) As per Section 70 (1) of Income Tax Act 2058, the taxable income for an income year of a non-resident person who carries on a business of ship operator, charter, or air transport operator shall include the following amounts derived during other than as a result of transshipment during the year:
- Ka.) the carriage of passengers who embark in Nepal; or
- kha.) mail, livestock or goods that are embarked in Nepal.

Section 70 (3) of IT Act stipulates that the amount included in a non-resident person's taxable income under the sub section 1 or 2 shall be taxed at the rate prescribed in section 2 of schedule -1.

Section 2 of schedule 1 of the IT Act provisioned that the taxable income of a non-resident person making service available referred to section 70 for an income year is taxed at the rate of 5%.

But, tax will be levied only at 2% in case of a non-resident person making service available in water transport, air transport, or telecommunication service which have no destination to another foreign country from Nepal.

Tax on income from general business attracts @ 25%.

Based on the aforesaid provisions of Income Tax Act 2058, the Singapore Airlines has three types of taxable income that would be taxed @ 5%, 2% and 25%. The taxable income & tax liability of Singapore Airlines would be as follows:

Particulars	Taxable Income that	Taxable Income that	Taxable Income that	Note
-------------	---------------------	---------------------	---------------------	------

	attract 5% tax rate	attract 2% tax rate	attract 25% tax rate	
<u>Inclusion:</u>				
Sale Proceed from Air Ticket from the Passengers embarked from Kathmandu for Singapore	100,000,000.00	-	-	1
Sale Proceed from Air Ticket from the Passengers embarked from Kathmandu for Hongkong	50,000,000.00	-	-	1
Sale Proceed from Air Ticket from the Passengers embarked from Malaysia for Hongkong	-	20,000,000.00	-	2
Sale Proceed from Air Ticket from the Passengers embarked from Malaysia for China but transit of 5 hours at Kathmandu	-	15,000,000.00	-	2
Ticket sold in Singapore for the passenger travelling from Singapore to China via transit in Kathmandu for 5 hours.	-	-	-	3
Catering Services Income	-	-	8,000,000.00	4
Sales from Restaurant (Canteen operated at the International Airport)	-	-	10,000,000.00	4
Ground Handling Services Income (Received from Thai Airways)	-	-	6,000,000.00	4
Total Inclusion	150,000,000.00	35,000,000.00	24,000,000.00	
Deductible Expenses				
Expenses incurred for Sale of Air Tickets	-	-	-	5
Accommodation & Fooding Expenses of Crew Members	-	-	-	5
Expenses incurred for Ground Handling *	-	-	3,500,000.00	6
Rent of Canteen	-	-	1,500,000.00	7
Material Consumed in the Canteen	-	-	6,000,000.00	7
Total Deductible Expenses	-	-	11,000,000.00	
Taxable Income	150,000,000.00	35,000,000.00	13,000,000.00	
Rate of Tax	5%	2%	25%	
Tax Liability	7,500,000.00	700,000.00	3,250,000.00	

Note 1: As per section 70(1) & section 2 of Schedule 1 of IT Act, passenger embark from Nepal shall be taxed @ 5%

Note 2: As per section 70(1) & restricted clause of section 2 of Schedule 1 of IT Act, passenger does not embark from Nepal but service provides in Nepal shall be taxed @ 2%

Note 3: No any service has been provided in Nepal, hence, not taxable in Nepal.

Note 4: These are normal business transactions and shall be taxed @ 25% on taxable profit.

Note 5: Expenses related to air ticket sale & crew members are not deductible u/s 70 of IT Act.

Note 6: As the half of the expenses incurred for own airlines, only 50% of total incurred amount is allowed for deductions.

Note 7: Expenses related to normal business is allowed for deductions.

- b) Following are the applicable withholding tax rates as per the provisions of Income Tax Act, 2058.
- i) Service fees paid to VAT exempt service provider should attract withholding tax of 1.5% of the payment amount as per Sec 88 (1) proviso (4).

- ii) Return paid by a Mutual Fund to ⁽²⁷⁾ the entity or the individual is subject to 5% withholding tax as per Sec 88 (1) proviso (6).
- iii) Interest paid by a bank on loans obtained from foreign bank to lend in the specified area by Nepal Rastra Bank is subject to 10% withholding tax as per Sec 88 (1) proviso (9).
- iv) National or international level prize up to Rs. 5 lakhs given for the contribution in the area of literature, arts, culture, sports, journalism, science, technology and public administration shall be exempt from windfall gain tax, therefore there shall be no withholding tax in this case. Sec 88 ka(2).
- v) Lease rent payment by an airline company to a foreign company providing the aircraft will attract 10% rebate as per Section 88 (1) proviso (3).
- vi) Dividend paid to Mutual Fund is exempt from withholding tax therefore no tax shall be withheld as per Sec 88 (4) (nga).
- vii) House rent paid to an individual is exempt from tax as that is outside the ambit of Income Tax Act. Sec 88 (1) proviso (5).

c)

i) **Consequences if Company does not file income tax return**

Section 99(2) of the income tax act, 2058 provides that in cases where any person does not submit the income return of any income year, tax shall be deemed to have been assessed as follows on the due date for submission of the tax return until the tax return is submitted:-

(a) The amount of tax payable by that person in that year shall be equal to the sum of the amount of tax deducted from the amount received and the amount paid in installment for that year, and

(b) Tax shall not be deemed due and payable as per tax assessment.

Further, section 117(1)(c) of the Income Tax Act, 2058 provides that if income tax return is not filed u/s 96 then below fee will be charged:-

- (a) For the Persons mentioned in section 4(4) – Rs. 100 per month for the period income tax return is not filed, and
- (b) For other Person, Rs. 100 per month or 0.1% per annum of the assessable income derived by including all income that is to be included however without deducting the expenses which are allowed to be deducted while calculating the income for the year; whichever is less.

ii) **Calculation of Additional fee u/s 117**

Particulars	Amount
Total Income	5,20,00,000
Less : Deduction – Not allowed	0
Total Amount	5,20,00,000
Fee @ 0.1% p.a. for the period of 2076.07.01 to 2078.05.31 (1 year 11 months) Or Rs 100 per month, i.e. 23*100=2,300	5,20,00,000*0.1%*23months/12months =99,667

3.

- a) Ram & Associates has been appointed as tax auditor of a Company. During the course of audit, CFO of the Company offered to the audit manager a paid foreign vacation on company behalf after completion of audit. Discussing the

relevant provisions of the Code of⁽²⁸⁾ Ethics, advise the audit manager of Ram & associates on the matter.

5

- b) Discuss about concept of “Tax Neutrality” and “Tax Equity”, in International Taxation.

Answer:

- a) The code of ethics issued by institute provides that -
- (i) a firm, network firm or an audit team member shall not accept gifts and hospitality from an audit client, unless the value is trivial and inconsequential.
 - (ii) Where a firm, network firm or audit team member is offering or accepting an inducement to or from an audit client, the requirements and application material set out in Section 340 apply and non-compliance with these requirements might create threats to independence.
 - (iii) The requirements set out in Section 340 relating to offering or accepting inducements do not allow a firm, network firm or audit team member to accept gifts and hospitality where the intent is to improperly influence behavior even if the value is trivial and inconsequential.
- b) The main **objectives of International Taxation** are the Neutrality and Equity which are described in the following paragraphs:

Tax Neutrality:

A neutral tax is one that would not influence any aspect of the investment decision such as the location of the investment or the nationality or the investor. The basis justification for tax neutrality is economy efficiency. World welfare will be increase if capital is free to move from countries where the rate of return is low to those where it is high. Therefore, if the tax system distorts the after-tax profitability between two investments or between two investors leading to a different set of investments being undertaken, then gross world product will be reduced. Tax neutrality can be separated into domestic and foreign neutrality. Domestic neutrality is a compass the equal treatment of any citizen investing at home and citizen investing abroad. The key issues to consider here are whether the marginal tax burden is equalized between home and host countries and whether such equalization is desirable.

Tax Equity:

The basis of tax equity is the criterion that all taxpayers in a similar situation be subject to the same rules. All Companies should be taxed on income, regardless of where it is earned. This, the income of a foreign branch should be taxed in the same manner that the income of a domestic branch is taxed. This form of equity should neutralize the tax consideration in a decision on foreign location versus domestic location. The basic consideration here is that all similarity situated taxpayers should help pay the cost of operating a government.

4)

- a) Nepali Poshak Griha Pvt. Ltd has following transaction details for the month of Ashadh, 2078. From these details calculate the VAT receivable / payable for the month. The amount given is exclusive of VAT.

Local Sales	3,500,000	
Export Sales	15,000,000	
House rent income from sub-letting	500,000	(Canteen & Retail Shop)
Import of cloth for stitching	5,000,000	
Local purchase cloth for stitching	2,500,000	
Material for stitching	30,000	
Packing material	200,000	
Repairs cost paid to Indian party	200,000	

10

	(29)	2,500,000
Purchase of delivery van		
Purchase of motor cycle	250,000	
Bank charges paid in Nepal	50,000	
Telephone expenses	30,000	
Purchase of diesel for generator	20,000	
Purchase of diesel for delivery van	20,000	
Purchase of petrol for motorcycle	10,000	
Finished products lost on fire (cost)	200,000	
Purchase of computers	100,000	
Purchase of soft drinks	10,000	
Purchase of water jars	10,000	
Purchase of stationary	20,000	

Additional information:

- Opening VAT is Rs. 50,000
- Import value does not include the additional VAT levied on post clearance audit by Custom for Rs. 10,000, this related to earlier consignment.
- Additional Rs. 3,000 VAT paid for demurrage charge on the import is not included above because the accountant is not clear if this is allowed.
- Diesel for delivery van for Rs. 5,000 and soft drinks for 5,000 was purchased on abbreviated tax invoice.
- Stationery was purchased from non-registered vendors
- Above amounts are exclusive of VAT.

b) Extracts of data of a Rolling Mill for the month of Chaitra, 2077 are as follows:

Sales (All are Domestic)

Particulars	Unit	Quantity	Basic Sales Amount
GI Wire	Kg.	75,000.00	4,000,000.00
Steel Bar	Kg.	100,000.00	6,000,000.00
Angle	Kg.	45,000.00	2,500,000.00
TMT Bars	Kg.	25,000.00	1,500,000.00
Channel	Kg.	30,000.00	2,000,000.00
			16,000,000.00

Purchases (All Imported)

Particulars	Unit	Quantity	CIF Custom
Billet	Kg.	225,000.00	8,500,000.00
Wire Rod	Kg.	72,000.00	2,600,000.00
Zink	Kg.	3,000.00	375,000.00
			11,475,000.00

Rate of Custom Duty are as follows:

Items	Rate of Custom
Billet	8%
Wire Rod	10%
Zink	15%

Rate of excise is Rs. 1 per kg. on excisable items

Compute:

- Excise Payable for the month
- Net Custom Duty
- VAT on sale, VAT on purchase & net VAT payable

2
2
6

(30)

Answer:

a) Calculation of VAT Payable / Receivable for the month of Ashadh 2078 for Nepali Poshak Griha P. Ltd:

Collection of VAT	Amount	VAT	Remarks
Local Sales	3,500,000	455,000	
Export Sales	15,000,000	-	0% VAT on export
House rent income	500,000	-	Exempt per Annex 1 Group 12
Total VAT collection		455,000	
Payment of VAT			
Import of cloth	5,000,000	650,000	
Local purchase of cloth	2,500,000	325,000	
Material for stitching	30,000	3,900	
Packing material	200,000	26,000	
Consultancy fees paid abroad	200,000	26,000	Reverse VAT Sec 17 (5 kha)
Purchase of delivery van	2,500,000	325,000	Direct to business – full credit
Purchase of motorcycle	250,000	32,500	
Telephone expense	30,000	3,900	
Purchase of Computer	100,000	13,000	
Purchase of water jars	10,000	1,300	
Total input tax credit		1,406,600	

Calculation of VAT Payable / Receivable

Opening VAT receivable	50,000	
Add, input VAT	1,406,000	
Add, loss in fire	26,000	
Add, VAT on demurrage	3,000	allowed as per Rule 39 – VAT on imports
Less, output VAT	455,000	
Net VAT Receivable	1,030,000	

Since the export value in this month is more than 40% of the transaction, the company can claim the amount for refund and not carry forward.

Additional notes:

- Post clearance audit VAT - since this is seen as a penalty, this is not available for credit.
- Bank charges paid in Nepal - banking service is VAT exempt.
- Purchase of diesel for generator - VAT on petroleum is not available for credit Rule 41(1)(ga)
- Purchase of diesel for delivery van – as above
- Purchase of petrol for motorcycle – as above
- Finished products lost on fire (cost) – the loss of stock due to fire can be set off Sec 16(kha) and Rule 39(ka) – assumed that the procedural requirement is finished in the month.
- Purchase of stationary – purchase on non-tax invoice cannot be set off.
- Purchase of soft drinks – not allowed Rule 41

b)

1) Excise is levied Rs.1000 per quintal on Iron Rod & TMT Bars only as per schedule related to section 3 of Excise Act, 2058

Items	Quantity	Excise Amount
-------	----------	---------------

(31)

Steel Bar	100,000.00	100,000.00
TMT Bars	25,000.00	25,000.00
Total Excise Collected on Sales		125,000.00
Less: Excise Paid on Wire Rod	72,000.00	72,000.00
Excise Payable for the Months		53,000.00

2) Computation of custom duty payable

Items	CIF Custom	Rate	Custom Duty
Billet	8,500,000.00	8%	680,000.00
Wire Rod	2,600,000.00	10%	260,000.00
Zink	375,000.00	15%	56,250.00
Total custom duty payable			996,250.00

3) VAT on Sale, vat on purchase & net vat payable

i) Vat on Sales

Particulars	Base Sales Amount	Excise Duty	Vatable Sales	VAT on Sales @ 13%
GI Wire	4,000,000.00	-	4,000,000.00	520,000.00
TOR Steel Bar	6,000,000.00	100,000.00	6,100,000.00	793,000.00
Angle	2,500,000.00	-	2,500,000.00	325,000.00
TMT Bars	1,500,000.00	25,000.00	1,525,000.00	198,250.00
Channel	2,000,000.00	-	2,000,000.00	260,000.00
Total	16,000,000.00	125,000.00	16,125,000.00	2,096,250.00

ii) Vat on purchase

Particulars	CIF Custom	Custom Duty	Excise Duty	Vatable Purchase	VAT on Purchase @ 13%
Billet	8,500,000.00	680,000.00	-	9,180,000.00	1,193,400.00
Wire Rod	2,600,000.00	260,000.00	72,000.00	2,932,000.00	381,160.00
Zink	375,000.00	56,250.00	-	431,250.00	56,062.50
Total	11,475,000.00	996,250.00	72,000.00	12,543,250.00	1,630,622.50

iii) Net vat Payable

Particulars	Amount
Vat on Sales	2,096,250.00
Less: VAT on purchase	1,630,622.50
Net vat payable for the month	465,627.50

5)

- a) M/s Kaluna Hospital Pvt. Ltd. constructed a COVID ward in the hospital during pandemic. It started the activity on 1st Jestha 2077, which got completed on 30th Chaitra 2077. The construction was done with the supervision from an external consultant where the materials required were

directly purchased by the hospital.⁽³²⁾ The estimate of building construction was for Rs. 45 lakhs which escalated to Rs. 55 lakhs on completion, the break-up of which is provided below. You are required to calculate the transaction value and the VAT payable with respect to this construction.

(6)

Details	Total Amount	Purchase from VAT registered	Purchase from Non-VAT registered
Building design charges	75,000	75,000	-
Drawing approval from local government	125,000	-	125,000
Building materials	2,500,000	1,000,000	1,500,000
Labour charges	1,000,000	300,000	700,000
Plumbing and sanitization	500,000	100,000	400,000
Electrification	300,000	150,000	150,000
Air Conditioning	400,000	320,000	80,000
Painting & polishing	200,000	60,000	140,000
Supervision charges	400,000	300,000	100,000
Total	5,500,000	2,305,000	3,195,000

- b) Pashupati Cements Company Pvt. Ltd. imported machinery for USD 120,000 from Dubai. Except for the invoice of the machinery, transportation and insurance invoice were not available. However the company paid USD 10,000 and USD 5,000 for the transportation and insurance through banking channel, the invoice of which were misplaced and the company believes that those will be available in one month's time. It requested the Customs Office to clear the machinery on provisional basis till the invoice is received for transportation and insurance. The consignment reached Birgunj dry-port on 12th Jestha 2078; however the custom clearance process could take place only on 28th Jestha 2078. The rate of Custom was 10% however the post the issuance of Finance Ordinance 2078, the Custom rate changed to 20%. A month later the invoices were received, as per which the cost of transportation was higher by USD 3,000. The weight of the consignment was 1,120.2 k.g. The exchange rate prevailing on different dates are as follows:

12 th Jestha	Buying 118.00	Selling 119.00
28 th Jestha	Buying 119.00	Selling 120.00

Calculate the Customs Duty payable including the demurrage for the consignment.

7

- c) Sunny Breweries Private Limited has been assessed for excise duty liability of Rs. 2,000,000 and penalty of Rs. 2,000,000. Out of which Company disputes excise duty liability of Rs. 1,000,000 and penalty of Rs. 1,000,000. The Company is planning to file appeal to the Department. Discussing the relevant provisions of the Excise Act, 2058, determine (i) minimum cash amount to be paid and deposited for filing appeal to the Departmental review and (ii) whether Bank Guarantee can be provided for filing appeal to the Department.

6

Answer:

- a) Section 8(3) of the Value Added Tax Act requires that when a building, apartment or shopping complex of more than 50 lakhs rupees constructed for commercial purpose or other similar infrastructure of such type prescribed by the Department, though being constructed through unregistered person, tax shall be deposited as if such construction is done through registered person. In case no such deposit is made, tax shall be assessed and recovered from the person having ownership on such infrastructure.

As per the provision of the Act, following are the key points in this case:

(2)

- The construction of commercial space i.e. building, fixed assets used for generating the income or to sale.
- The value should be more than 50 lakhs including tax,
- Construction is done by the user or through unregistered person,
- Taxable value does not include pre-construction cost e.g. drawing / approval of drawing financial and supervision cost.

With above background let us calculate the taxable value.

Details	Part of Taxable Value ?	Amount	Purchase through Non - VAT invoice
Building design charges	No	-	-
Drawing approval from local government	No	-	-
Building materials	Yes	2,500,000	1,500,000
Labour charges	Yes	1,000,000	700,000
Plumbing and sanitization	Yes	500,000	400,000
Electrification	Yes	300,000	150,000
Air Conditioning	Yes	400,000	80,000
Painting & polishing	Yes	200,000	140,000
Supervision charges	No	-	-
Total		4,900,000	2,970,000
		VAT @13%	386,100

The reverse charge VAT to be paid in this case will therefore be 386,100

- All cost related to building construction shall be part of the cost of the infrastructure to identify to eligible threshold. However the taxable value does not include prior incurred cost e.g. the building design drawing and approval expenses & construction supervision cost.
- The reverse VAT so calculated should be deposited within 25th of the next calendar month with the IRO.
- Since amount threshold is passed only after the completion of the building, the requirement of reverse VAT got determined then, the VAT therefore will have to be paid at the completion of construction in this case.

b) In the given situation, we need to evaluate the date on which the consignment is said to have been submitted for clearance and what will be the value of the goods for Customs purposes.

Details	Working	Amount in Rs.	Remarks
Price of the machinery	USD 120,000 X 120	14,400,000	The custom declaration was done on 28 th Jetha therefore the selling rate prevailing on that date is used for conversion
Transportation	USD 10,000 X 120	1,200,000	Provisionally cleared the goods with available information.
Insurance	USD 5,000 X 120	600,000	
Custom value		16,200,000	Provisional value
Custom service fees		500	
Custom Duty 20%		3,240,000	

(3)

Calculation of demurrage			
Total days	16 days		
Free days	7 days		
Chargeable days	9 days X 0.4 X 1,121	4,035.60	40 paisa for each day. Full upward weight in case fraction. Annex 9 of Customs Rules. Since it was at Birgunj Customs point the rate applicable for first 30 days is Re. 0.40 per k.g.
Total Customs duty including the demurrage while clearing provisionally		3,244,535.60	

Once the additional transportation cost becomes known.

Details	Working	Amount in Rs.	Remarks
Additional transportation cost	USD 3,000 X 120	360,000	The custom declaration was done on 28 th Jestha therefore the selling rate prevailing on that date is used for conversion
Custom duty	20%	72,000	

- c) Section 19 of the Excise Act, 2058 provides for the process for filing appeal for the Departmental review. As per section 19 of the excise duty act, 2058 –
- The tax payer has to pay full amount of undisputed excise duty amount and penalty, and
 - Deposit 25% of the disputed excise duty amount and penalty.
 - Bank guarantee facility is not available for such amount.

Hence, the minimum amount that is to be paid and kept as a deposit for filing appeal for Departmental Review is :

Particulars	Amount
Minimum Amount to be paid:	
Undisputed Excise Duty Liability	10,00,000
Undisputed Penalty	10,00,000
Total Amount of Excise Duty to be Paid	20,00,000
Disputed Excise Duty Liability	10,00,000
Disputed Penalty	10,00,000
Total Disputed Excise Duty Liability and Penalty	20,00,000
Minimum Amount to be kept as deposit – 25% of above amount	5,00,000

6.

- a) Mr. Abdul Kader is an Indian national who had his hotel business in India 3 years back. He had INR. 20 million tax liability to be paid in India which he did not pay despite all procedures applied by the Indian Tax authorities. Mr. Abdul Kader has started hotel business in Nepal and is a registered tax payer in Nepal. Can the Indian Tax authority ask Nepal authorities for support in collecting the taxes in such case? Explain citing the provisions of Nepal and India Double Taxation Treaty.

5

Mention about the method for the elimination of double taxation in line with the DTAA between Nepal and Bangladesh.

5

Answer:

(4)

- a) Nepal and India have Double Taxation Avoidance Agreement where Article 27 of the said agreement provides for the mutual assistance in collection of taxes. The Contracting States shall lend assistance to each other in the collection of revenue claims. However there has to be a separate agreement for mode of application of the provisions of this Article. The competent authority may request the competent authority of the other Contracting State for cooperation on collection of the revenue claim. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State. The first mentioned State should use all measures in collecting and if by all means it is not able to collect then it can request the other State. Similarly, there should not be any legal proceeding pending or the time limit lapse should not have happened for collection of revenue at the first mentioned state with respect to the claim. Such revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

Given the provisions of the DTAA as above, in this case, since Mr. Abdul Kader has outstanding tax liabilities at India and if the claim is made by competent tax authority of India then Inland Revenue Department as a counterpart of from Nepal side should cooperate with the counterpart in collection of taxes as if its own tax due. Before making such claim the authorities have to ensure that there is valid agreement that provides for the mode of operation of the said provisions of the DTAA. If the taxes does not come in a normal way then, Income Tax Act, 2058 provides for various measures with which the taxes can be collected by Inland Revenue department e.g. lien over the property, auction of property, travel ban, recovery from the liquidator or recovery from a person who has to pay to the tax payer who defaulted on payment of tax.

- b) The Double Taxation Avoidance Agreement between Nepal & Bangladesh which becomes affective from 16th July 2021. Article 23 of the said DTAA describes about the method for the elimination of double taxation as follows:
1. Where a resident of a Contracting State derives income which, in accordance with the provisions of this Agreement, may be taxed in the other Contracting State, the first-mentioned State shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in that other State. Such deduction shall not, however, exceed that part of the income tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in that other State.
 2. Where, in accordance with any provision of the agreement, income derived by a resident of a Contracting State is exempted from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

Comments of Evaluators on the Performance of the Students
Subject: Advanced Taxation
Batch: August 2021

List of Questions	Specific Comments on the Performance of the Students
Question no. 1	Most of the students ignored the practice of cases
Question no. 2	Performance has been fair for those examinees who attempted questions
Question no. 3	Provision was not explained clearly Answer was mostly based in the guess work.
Question no. 4	Mostly opted proportionate basis of VAT segregation though not required. Well attempted. Mostly failed to segregate excisable items properly.
Question no. 5	Unsatisfactory Performance
Question no. 6	Answer to this is not exactly match with the answer Candidate need to have clear conceptual knowledge.