

Corporate Laws
Suggested Answer

Roll No.....

Maximum Marks - 100

Total No. of Questions - 6

Total No. of Printed Pages - 14

Time Allowed - 3 Hours

Marks

Attempt all questions.

1. Answer the following questions:

10×2=20

- a) Rainbow Public Company, a going concern, decided to recover due amount of shares by making calls for payment to the shareholders. In this connection, answer the following questions in the light of the Companies Act, 2063:-
- i) What procedure the company has to follow to make such calls for payment of shares?
 - ii) If a shareholder did not turn up to the company to pay the due amount for his shares within the period called upon, what measures the company will take against him to recover such due amount called upon?
 - iii) State the process and period the company shall settle the amount of forfeited shares with the shareholders?
- b) Star Bank Ltd of Chitwan, a Class 'B' Bank wants to convert itself into Class 'A' Bank. For this purpose, it has sought your legal opinion on the following issues. Answer them in the light of the Banks and Financial Institutions Act, 2073:
- i) What is the underlying basis of Classification of Banks and Financial Institutions under this Act?
 - ii) Explain the grounds or terms and conditions of such upgradation of Bank under which the Rastra Bank may grant prior approval for obtaining a license for such conversion.
 - iii) Elucidate the procedure of conversion of Star Bank Ltd. of lower Class into a Bank of higher class?

Answer no.1(a)

- (i) Rainbow Public Company has to follow the following procedures as prescribed under section 53 of the Companies Act, 2063 in order to make calls for payment of shares:
- (1) An amount for a share shall be paid up within the period of a call made in accordance with the articles of association of the company.
 - (2) In making a call pursuant to Sub-section (1) of this section, a company shall send every shareholder a written notice, in the prescribed format, specifying a time-limit of at least thirty days and the installment payable by him, the place and time for payment. The public company shall also publish such notice, for at least two times, in a daily newspaper with national circulation.
- (ii) In this case, if Shivaram Joshi, a shareholder of the Company fails to pay the sum called and payable in respect of the share within the period as referred to in Sub-section(2) of this section, a notice shall be sent to the concerned shareholder, giving an additional period of three months after the date of expiration of that period, and specifying clearly that if payment is made within that period, it shall

(2)

be accepted, along with interest at the prescribed rate and if that shareholder fails to make payment even within that period, his share shall be liable to be forfeited pursuant to section 53(3) of this Act. In the case of this public company, such notice shall also be published in a daily newspaper with national circulation for at least three times. If the installment called is not paid even within the time-limit as mentioned in that notice, the company may forfeit all or the remaining shares after retaining the number of shares as fully paid up to the extent of the amount paid up on the shares in respect of which the company has given such notice or also to the extent of the amount of dividends, if any, attached in respect of such shares.

(iii) Where any share is forfeited under Sub-section (3) of this section, the board of directors may refund the amount already paid up in respect of the share so forfeited and the amount equal to the dividends, if any attached in respect of such share, or issue the share to the extent covered by such amount; and where the amount is to be refunded, it has to be refunded within three months after the forfeiture of share pursuant to section 53(4) of this Act.

In the event of failure to make refund within three months pursuant to sub-section (4) above, interest chargeable on such amount after the expiration of that period shall also be paid pursuant to section 53(5) of this Act.

Answer no. 1(b)

(i) Section 37 of the Banks and Financial Institutions Act, 2073 deals with the classification of Banks and Financial Institutions as under:

Nepal Rastra Bank shall classify the Banks and Financial institutions into “A”, “B”, “C” and “D” classes on the basis of the minimum paid-up capital required for the license to be issued pursuant to Section 33 to carry on the financial transactions; and the transactions and sector of operation of such Banks and Financial Institutions and issue the license to the concerned bank or financial institution accordingly.

But the Infrastructure Development Bank shall not be classified in either of the classes.

(ii) Section 38 of the Banks and Financial Institutions Act, 2073 provides for the conversion of a Bank and Financial Institution of lower class into a Bank or Financial institution of higher class, for which Star Bank has to apply to Rastra Bank for permission.

Pursuant to section 38(2) of this Act, if Rastra Bank upon investigation of the application and particulars so submitted finds it appropriate to convert the applicant to a step higher Bank or Financial Institution, it may grant prior approval on the following grounds:

(a) If it has the paid up capital prescribed by the Rastra Bank for a licensed institution of such higher class;

(b) If it has maintained adequate capital fund since the last five years according to the directive of Rastra Bank; if it has been able to earn profits since five consecutive years, if its average non-performing loan in the last five years is within the limit prescribed by the Rastra Bank;

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- (c) If it has already written off its preliminary expenses.
- (d) If public issue of shares and its allotment has been accomplished.
- (e) If special resolution has been passed by the General Meeting for such upgradation.
- (f) If it has met all conditions as prescribed by the Rastra Bank.

(iii) Any Financial Institution of a lower class (in this case Star Bank Ltd., a class 'B' bank) which meets the prescribed conditions under section 38(2) of this Act may, with the prior approval of the Rastra Bank, be converted into a Bank or Financial Institution of a step higher class, for that purpose such Bank or Financial Institution has to apply to the Rastra Bank along with the particulars prescribed by it for obtaining its prior approval.

If, on receipt of the prior approval referred in as above in section 38(2), the concerned Bank or Financial Institution is required to amend its memorandum of association and articles of association to carry on the financial transactions of higher class, it shall amend the same in accordance with the laws in force and make an application to the Rastra Bank under this Act to obtain the license of higher class.

After that Rastra Bank may issue license to the applicant under section 38(3) of this Act.

2. Answer the following questions:

a) XYZ Ltd, a holding company with some subsidiaries and associate companies, wants to have business transactions to each other's own companies so that each company including the holding company itself shall make attractive profit. However, board of directors of the holding company are not ensuring with such transactions between the company and asked you to clarify the transactions between the associates companies. You being the company secretary of the XYZ company explain the following questions referring the provisions of the Company Act, 2063:

- i) State the legal provision regarding transactions between the associate companies. 4
- ii) State the process of restriction on transactions between the companies. 3

b) Mr. Amar, partner of XR & Associates, has accepted gift from their client in Dashain Festival. Under what circumstances the gift as taken by Mr. Amar is assumed as the guilty of misconduct? Answer it referring the provisions of code of conduct of ICAN. 7

c) The new Audit Act, 2075 in order to strengthen the office of the Auditor General has entrusted to Auditor General certain new responsibilities which may be cited as:

- (i) to give direction for the implementation of the audit report
- (ii) to audit of financial and various matters

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- (iii) to perform timely audit
- (iv) to carryout audit of grant and aid
- (v) to conduct review of audit.

Explain these five responsibilities of the Auditor General in their legal connotation pursuant to this Act.

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Answer no. 2(a)

Company Act, 2063 has explained the transactions between the companies and laid down restriction on the transaction with the companies as follows:

i) Section 175 of the Act has defined the transactions between associated companies as follows:

(1) Where an agreement or arrangement is made between the following companies whereby any company directly or indirectly provides loan or other kinds of financial assistance, pays any liability, provides guarantee or any other kind of security to another company or any other transactions other than an ordinary business transaction is done between them, it shall be deemed to be a transaction between the associated companies:

- (a) Any company and its holding company;
- (b) Any company and any subsidiary company of its holding company;
- (c) A subsidiary company of any company and the holding company of such company;
- (d) A subsidiary company of any company and another subsidiary company of its holding company.

(2) Where any transactions as referred to in sub section (1) is carried on , the associated company shall give a notice on such transactions, also setting out a following details to its shareholders and the Office as soon as possible:

- (a) Date of transaction and the parties involved in the transactions;
- (b) Nature of transaction, and where transaction such as provision of a loan , provision of financial assistance and furnishing security has taken place under such transaction, the amount or the value thereof.

ii) Section 176 of the Act has imposed restriction on transaction between companies as follows: (3)

(1) No company shall, where directly or indirectly, lend money to another company in excess of an amount that is sixty percent of its paid-up capital and free reserves or an amount to be set by hundred percent of its free reserves, which ever is the higher, give guarantee for a loan borrowed by another company or make investment in the securities of another company in excess of the said amount .

(2) Provided, however, that this provision shall not apply to a company carrying on banking or financial transaction, insurance company, company with main objective to buy and sell securities, private company which has not borrowed any loan from a bank or financial intuitions, company with objective to provide

(5)

infrastructure facility, and investment made by the holding company in its fully owned subsidiary company, money lent by such holding company to such subsidiary and guarantee given by such holding company for a loan borrowed by such subsidiary and investment made in right shares issued under this Act.

- (3) Subject to Sub-section(1) , a company shall maintain the details, as prescribed, on the moneys lent by it to another company, investment made by it in such company or guarantee given by it for a loan borrowed by such another company

Answer no. 2(b)

Code of conduct number 250.9 A3 has explained the circumstances when the gift deemed as guilty of misconduct as follows

The determination of whether there is actual or perceived intent to improperly influence behavior requires the exercise of professional judgment. Relevant factors to consider might include:

- The nature, frequency, value and cumulative effect of the inducement.
- Timing of when the inducement is offered relative to any action or decision that it might influence.
- Whether the inducement is a customary or cultural practice in the circumstances, for example, offering a gift on the occasion of a religious holiday or wedding.
- Whether the inducement is an ancillary part of a professional activity, for example,
- Whether the offer of the inducement is limited to an individual recipient or available to a broader group. The broader group might be internal or external to the employing organization, such as other customers or vendors.
- The roles and positions of the individuals offering or being offered the inducement.
- Whether the professional accountant knows, or has reason to believe, that accepting the inducement would breach the policies and procedures of the counterparty's employing organization.
- The degree of transparency with which the inducement is offered.
- Whether the inducement was required or requested by the recipient.
- The known previous behavior or reputation of the offeror. Consideration of Further Actions

Answer no. 2(c)

(i) Implementation of the audit report: It has to be under section 21 of this Audit Act, 2075 as under:

- (1) It shall be the duty of the concerned responsible official to implement the audit report issued by the Auditor General pursuant to this Act.
- (2) The Auditor General may, in order to ensure whether the matters set forth in the report issued pursuant to this Act have been improved and the suggestions have been implemented, do acts including to obtain report of activities carried out by,

(6)

explanation from the audited body, specify the period for implementation, make re-examination and give necessary direction on the matter to the concerned body.

(ii) Audit of financial and various matters: It has to be made under section 5 of this Audit Act, 2075 as under:-

- (1) The Auditor General may, on the selective basis, perform audit of various matters such as information technology, functioning, gender, forensic, environment, of the bodies referred to in sub-section (1) of Section 3, of which audit is to be performed, in addition to their financial audit, having regard to, *inter alia*, the regularity, economy, efficiency, effectiveness and the propriety thereof.
- (2) The mode, method, scope, period, matters of examination and reporting of the audit of various matters to be performed pursuant to sub-section (1) above shall be as specified by the Auditor General.

(iii) Timely audit: It has to be carried out under section 6 of this Act, as under:

- (1) The Auditor General may, on the selective basis, perform timely audit of the bodies referred to in sub section (1) of Section 3 before the completion of the fiscal year or after the completion of transactions.
- (2) The mode, method, scope, period, matters of examination and reporting of the audit to be performed pursuant to sub-section (1) above shall be as specified by the Auditor General.
- (3) The Auditor General shall forward the report prepared pursuant to sub-section (2) to the concerned body and make it public.

(iv) Audit of grant and aid: It has to be undertaken under section 7 of this Act, as under:

- (1) The Auditor General may audit any aid and grant amount receivable by the Government of Nepal, Provincial Government or Local Level under the Federal law and any aid or grant amount to be provided by the Government of Nepal, Provincial Government or Local Level.
- (2) The mode, method, scope, period, matters of examination and reports thereof shall be as specified by the Auditor General.

(v) Review of audit: It has to be carried out under section 14 of this Act as under: (1 mark)

- (1) The Auditor General may provide for periodic quality assurance review or peer professional review in order to ensure the quality of audits performed pursuant to this Act.
- (2) No review of audit, other than the review to be made pursuant to sub-section (1) above may be made by any person or body.

3. Answer the following questions:

(7)

- a) Nepal Rastra is the central bank of Nepal and it works as the banker of the banks. Under the Board of directors of NRB, there are two committees i.e. management committee and audit committee. Please explain both committees with their importance and requirements for NRB functions. 7
- b) Sun Life Insurance was going to provide a loan guarantee to Lion Airlines while purchasing an aircraft where Mrs. Neeta Chand the wife of Rakesh Chand, a director of the insurance company was working as a managing director. One of the directors objected that Insurance Board may impose a ban on insurance business. Give your advice when a ban may be imposed on insurance business by the Insurance Board under the Insurance Act, 2049. 7
- c) Asset (Money) Laundering Prevention Act, 2064, in order to control and prevent money laundering and terrorist financing in Nepal has made legal prohibition on the Reporting Entities (Banks) to allow, establish or operate anonymous or fictitious accounts and or shell Banks in Nepal or through its territory. For that purpose the Act has established compulsive Customer Identification (KYC) mechanism as one of the basic and reliable tools of scrutiny or tracer for screening of all customers under the fold of Reporting Entities. Now as a student of this discipline as well, answer the following questions under this Act: (3+3=6)
- (i) How the Entity shall accurately identify the customer while carrying out which types of acts?
- (ii) What measures the Reporting Entity shall take when undertaking the identification and verification of its customers?

Answer no3(a)

Section 33 of Nepal Rastra Bank Act, 2058 has defined management committee as follows:

- (1) There shall be a Management Committee, to remain under the Board to be chaired by the Governor in order to conduct the business of the Bank in a smooth manner. The two Deputy Governors shall be other members of the Management Committee, and one senior officer of the Bank designated by the Governor shall act as the member-secretary of the committee.
- (2) The functions, duties and powers of the Management Committee formed pursuant to Sub-section (1) shall be as prescribed.
- (3) Notwithstanding anything contained in Sub-section (1), the Governor may invite any of the officers to take part in the meeting of the Management Committee.
- (4) The Committee shall, in connection with discharging its functions, evaluate the country's monetary and financial condition on a periodic basis. For this purpose, the Management Committee shall, at least once in a month, submit a report to the Board on the Bank's administration and operation, operation of monetary and other regulatory policies, the soundness of the banking system of the country, condition of money, capital and foreign exchange market, implementation of such policies and impact they may have and situation on the banking system, and on the significant events.

Section 35 of this Act has defined the functions, duties and powers of Audit Committee as follows:

functions, duties and powers of the Audit Committee shall be as follows:

(8)

- i. To submit its report and recommendations to the Board on accounts, budget and audit procedures and control system of the Bank;
 - ii. To ascertain whether or not the audit and preparation of periodic balance sheet and other documents of the Bank have been carried out properly;
 - iii. To supervise the implementation of the appropriate risk management adopted by the Bank;
 - iv. To audit managerial and performance of works of the Bank in order to be assured that the prevailing laws applicable to the Bank have been fully complied with;
 - v. To frame bye-law for auditing of the Bank in accordance with the prevailing laws and international auditing standard and to submit it to the Board for approval.
- (1) The Audit Committee shall, while submitting the report and recommendations to the Board pursuant to Clause (a) of Sub-section (1), furnish the information thereof to the Governor.

Answer no3(b)

Pursuant to Section 12 A (1) of the Insurance Act, 2049, the Insurance Board may impose a ban entirely or partially or may cancel any type of business being operated by the Insurer under the Insurance Business in any of the following cases:

- i. If the directives provided by the Board time to time regarding the procedures to be followed by the Insurer during the operation of the Insurance Business has been violated.
- ii. If the Insurer provides loan to any corporate body in which any of its Directors or his/her family is working as a Managing Agent or partner or provides guarantee or security of any kind for any loan provided to him/her by others by violating section 14.
- iii. If the Insurer does not provide information to the Board to be provided pursuant to section 15.
- iv. If the Insurer does not maintain the accounts and record to be maintained pursuant to section 19.
- v. If the insurer does not maintain separate accounts and records to be maintained separately pursuant to section 20.
- vi. If the Insurer does not maintain the fund to be maintained by it pursuant to section 21 or bears liability of one Insurance Business from the fund maintained for another business.
- vii. If the Insurer does not maintain the compulsory reserve fund to be maintained by it pursuant to section 22.
- viii. If the Insurer accepts the insurance risk without receiving the insurance premium pursuant to section 27.
- ix. If the Insurer does not re-insure pursuant to section 28.

In the above situation Sunlife insurance is going to provide gurantee to Lion Airlines where Mrs Neeta Chand wife of Rakesh Chand Managing Director of Insurance company so the Insurance board may impose ban on insurance business under clause 2 of Section 12A (1) of the Insurance Act, 2049.

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Answer No.3(c)

- (i). Section 7A of the Asset (Money) Laundering Prevention Act, 2064 requires Reporting Entities to undertake accurate Customer Identification as under:

(9)

- (1) Subject to sub sections (3) and (4) of this Section of this Act, Reporting Entity shall accurately identify the customer and verify such identification when carrying out the following acts:
 - (a) establishing business relationship
 - (b) opening an account,
 - (c) carrying out occasional transactions above a threshold as may be prescribed,
 - (d) carrying out wire transfers by electronic means,
 - (e) there is suspicion about the veracity or adequacy of previously-obtained customer identification information
 - (f) there is suspicion of money laundering or terrorist financing.
 - (g) at any time of transaction in relation to the high risked and politically exposed person,
 - (h) in any other situations as prescribed by the Regulator.
- (2) Reporting entities shall receive documents as prescribed in the customer identification process.
- (3) Reporting entity shall use such reliable and independent source documents, data information for the identification and verification of the customer as per this chapter.

(ii) Pursuant to section 7A (4) of this Act, reporting entity shall take following measures when undertaking the identification and verification of its customer:

- (a) Understanding and obtaining information and details clarifying on the objectives, purpose and intended nature of business relationships and transactions,
- (b) Obtaining name, address and date of birth including the documents as prescribed in sub section (2) above where the customer is a natural person.
- (c) Where the customer is a legal person or legal arrangement, understanding and verifying its ownership and control structure, and obtaining such information including the documents as prescribed in sub section (2) above,
- (d) When a person is establishing business relationship or conducting transaction on behalf of another customer, obtaining identification document of such person and person working on behalf of him including evidence verifying that such person is properly authorized to act,
- (e) Obtaining other information and details regarding customer, transaction and its nature to fulfill the obligation under this chapter;
- (f) Applying other measures as prescribed by the Regulator.

4. Answer the following questions:

- a) To regulate and manage the activities of the securities markets and persons involved in the business of dealing in securities by regulating the issuance, purchase, sale and exchange of securities for the purpose of protecting the interests of investors in securities, Securities Act, 2063 is enacted. Explain, how a body corporate issues securities under the Act.
- b) Mr. Joshi, AI Scientist of USA national, want to invest in Nepal in the area of AI Industry related to production of software business which can be used for upgrading the business in AI Industries, Mr. Joshi observed the immense scope of such industry and beneficial to Nepal as well. He wants your advice whether such

industry can be established under the Foreign Investment and Technology Transfer Act, 2075. Advise him is there any AI Industry or business restricted for the foreign investment in Nepal.

Answer No.4(a)

The body corporate will issue its securities under the Securities Act as follows:

Under section 27(1) a body corporate shall have to register securities to be issued by it with the Board prior to their issuance. For this a body corporate shall have to make an application in the prescribed format, accompanied by its memorandum of association, articles of association, documents related with such securities, and the prescribed fees, to the Board for registering securities pursuant to Sub-section (1).

Where an application is received the board shall make necessary inquiry into the matter and, if it considers appropriate to register such securities, register such securities in the register as prescribed, indicating the details of such securities and issue the securities registration certificate in the prescribed format to the concerned body corporate.

- Under section 28, where a body corporate allots or sells securities after registering such securities, the body corporate shall have to give a notice along with the details of securities so allotted or sold to the Board within seven days.
- Upon receipt of a notice as referred as above, where it appears necessary to make the allotment and sale of such securities fair and informative for the interests of investors and the body corporate, the Board may give necessary directive to the concerned body corporate. It shall be the duty of the concerned body corporate to abide by such directive.
- Under section 29 where a body corporate is to sell and distribute securities to more than fifty persons at a time, it shall make public issue for the sale and distribution of such securities. The period to be open for making application of the securities to be issued as above shall be as prescribed. The provisions relating to the value and allotment of securities for which public issue has to be made shall be as prescribed.

Where securities for which public issue has been made once could not be sold and have to be re-issued again within one year, the body corporate which so issues the securities may, with the approval of the Board, issue such securities by mentioning the matters which are different than the matters set forth in the previously published prospectus and the prospectus previously published.

Answer No.4(b)

As per section 3 of the Foreign Investment and Technology Transfer Act 2075, Foreign Investor may make investment in any industry and receive benefit (Interest, dividend) from such investment.

However foreign investment shall not be allowed in any industry prescribed in annexure of the Foreign Investment and Technology Transfer Act 2075

Industry or business restricted for Foreign Investment (Negative List)

- Primary Agriculture sectors such as fish farming, animal husbandry, horticulture, milk business and others
- Micro and cottage enterprise.
- Personal Service Business (such as Hair saloon, Tailoring, Driving etc.)

- Arm and ammunition industry, industry producing biological and chemical weapons, industries related to explosive, gun powder, radioactive materials, atomic energy.
- Real estate businesses (excluding construction industries), retail business, internal courier services, local catering services, money changer, remittance services.
- Tourism based travel agency, trekking agency, expedition service provider, home stay and rural tourism.
- Mass media business (such as newspaper, radio, TV and online news), movies of national language.
- Business and organizations providing management, accountancy engineering and legal consultancy services and language training, music training and computer training
- Business having more than 51% foreign investment in consultancy services.

As the industry related to production of computer software programme in Artificial Intelligence for Industry not restricted for Foreign Investment in Nepal, Mr. Joshi may establish such industry under Foreign Investment and Technology Transfer Act, 2075.

5. Answer the following questions:

- a) Discuss the functions, duties and power of Industrial Promotion Board specified under the Industrial Enterprises Act, 2073.
- b) A Cooperative is a way to structure a financial institution, it is owned and operated by its members. These cooperatives tend to offer quality service along with competitive rates. Unlike banks, they may be focused on the financial wellness of their members instead of maximizing profits. State the functions, duties and powers of Account Supervision Committee under the Cooperative Act, 2074.
- c) Bank and financial institutions are key players in any country's economy and financial system. What makes an act as a banking offence in Nepal under the Banking Offence and Punishment Act, 2064?

Answer No.5(a)

The Functions, Duties and Power of the Industry and Investment Promotion Board are listed in the section 19(1) of Industrial Enterprise Act, 2073. Major functions, duties and power of the Board are as follows:

- (a) To make policy decision regarding industrial promotion, safeguarding and promoting of investment and industrialization.
- (b) To make necessary cooperation in implementing policies, laws and regulations pertaining to the industry.
- (c) To make regular evaluation of the policy related, legal, institutional and procedural structure for industrialization of the whole country and recommend to the Government of Nepal for necessary amendment in those areas.
- (d) To make necessary policy decision on foreign investment and technology transfer based upon the related existing laws.
- (e) To make policy decision for the prevention of the industrial pollution.

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- (f) To carry out evaluation and review of development of industrial sector of the country and make recommendation to Government of Nepal to take necessary steps.
- (g) To address the issues, raise while providing service, facilities and concession to the industry as per this act and other related acts.
- (h) To resolve the complaint made by the industrialist by giving directives to the concerned body.
- (i) To make recommendation to Government of Nepal for the change of level, classification and nature of any industries.
- (j) To recommend the Government of Nepal to carry out necessary study, research and survey for the promotion and development Industrial and foreign investment.

Answer No.5(b)

Section 49 of this Act prescribes the following functions, duties and powers to that Accounts Supervision Committee:

- a) To conduct or cause to be conducted internal auditing of the Cooperative Organization in every quarter;
 - b) To comply with or cause to be complied with the basic principles of auditing while conducting internal auditing;
 - c) To inspect and evaluate and cause to be inspected or evaluated financial transactions;
 - d) To have regular supervision of the actions and activities of the Board and to provide necessary suggestions to the Board;
 - e) To monitor whether or not directives issued or decisions made by the General Meeting and decision of the Board have been implemented;
 - f) To submit to the General Meeting accounts, report and annual report on supervision of the functions of the Board;
 - g) To recommend the Board to call meeting of the extraordinary General Meeting showing the reasons thereof that adverse impact is caused in the interests of any Cooperative Organization due to non-compliance of the recommendations made by it frequently; that there have been embezzlement or massive misuse of cash or kind assets of such organization or in case the organization is likely to undergo serious financial crises.
 - h) To make recommendation of names of three persons to be appointed as internal auditor, if required.
- (2) The convener and members of the Accounts Supervision Committee shall not be involved in daily and administrative functions of the Cooperative Organization.

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Answer no. 5(c)

The government of Nepal introduced Banking Offence and Punishment Act, 2064 in order to minimise the effect and risks associated with banks and financial institutions that may be caused by the possible offences in banks and financial institutions. Likewise, the act was also implemented to promote public trust in the banking system.

The Banking Offence and Punishment Act has enlisted the following types of banking offences under sections 3 to 14:

1. Opening an account or demanding cash payment in an unauthorised manner
2. Making unauthorised withdrawals or payments
3. Obtaining or making payment by way of abuse or unauthorised use of electronic means
4. Making available or providing loans in an unauthorised manner,

5. Misusing credit facility
6. Misusing banking resources, means and assets
7. Acquiring assets or opening account by the borrower having dues
8. Stopping credit facility in the way to lose working project of the borrower
9. Making loss by altering account or ledger or by committing forgery or fraud
10. Doing transactions by misrepresenting bank or financial institution or cooperative institutions
11. Deriving excess, low or false valuation
12. Carrying out or causing to carry out irregular economic or financial transactions
13. Dhukuti transactions, and Illegal banking transactions.

6. Write short notes on the following:

- a) What are the deductions allowed from the remuneration to be obtained by the worker or employees as per Labour Act, 2074? 4
- b) Agreement as per the Arbitration Act 2055. 3
- c) Explain the jurisdiction of the Procurement Review Committee. 3

Answer No.6(a)

As per section 38 of Labor Act, 2074, the remuneration of workers or employees shall not be deducted expect under the following circumstances:

- (a) In case it is required to deduct in respect of income tax or any other tax levied under prevailing laws.
- (b) In case it is required to deduct in respect of contribution to provident fund or contribution amount in respect of insurance or such other contribution amount in respect of social security.
- (c) In case it is required to deduct any amount as per the order of judicial or quasi-judicial body,
- (d) In case it is required deduct in respect of providing prescribed facilities by the employer,
- (e) In case it is required to deduct against absence,
- (f) In case it is required to deduct against loss or damage of cash or kind of the Enterprise caused intentionally or negligently;
- (g) In case it is required to deduct any amount from remuneration as per collective agreement,
- (h) Trade union membership fee.
- (i) In case it is required to deduct in respect of advance or over payment of remuneration;

Answer No.6(b)

As per the section 2(a) of Arbitration Act 2055 Agreement means a written agreement reached between the concerned parties for a settlement through arbitration of any dispute concerning any legal issue that has arisen or may arise in the future under a contract or otherwise.

For the purpose of this clause, the concerned parties shall be deemed to have entered into a written agreement in case any of the following documents exists:

1. Any contract containing provision for arbitration or any separate agreement signed in that connection.
2. Letter, telex, telegram or telefax message or any other similar at time message exchanged through telecommunication media whose records can be maintained in written form, between the concerned parties which provide for referring their dispute to arbitration.

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3. In case any party has presented a claim for referring any dispute to arbitration and the objective of that claim submitted by the party objecting to that claim without rejecting the proposal for referring the dispute to arbitration.

Answer No.6(c)

Jurisdiction of the Procurement Review Committee could be found under the provisions of section 49 of the Public Procurement Act, 2063 as under:

A bidder or proponent may file an application for review before the Review Committee in the following conditions: -

- (a) If the chief of the Public Entity does not make a decision on the application filed before the Public Entity pursuant to Section 47 of this Act in respect of the procurement proceedings of the amount above the prescribed threshold within the period as referred to in Sub-section (6) of the same Section or if the applicant is dissatisfied with the decision made by him/her,
- (b) In the matter of the procurement contract concluded pursuant to Section 52 of this Act.

Advanced Taxation
Suggested Answer

Roll No.....

Maximum Marks - 100

Total No. of Questions - 6

Total No. of Printed Pages - 20

Time Allowed - 3 Hours

Marks

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

1. Pawan Cement Industries Limited, registered on 2072.05.25, is a company situated in Saptari district and also listed in Nepal Stock Exchange and engaged in manufacturing and sale of premium grade cement in domestic as well as overseas market. The industry was established in 2073. Following is the provisional Income Statement of Pawan Cement Industries Ltd., for the year ended Ashad 31, 2078. Figures are in thousands.

Particulars	Amount(Rs)
Income	
Export Sales	12,000,000
Domestic Sales	8,000,000
Dividend Received (Net of Tax)	300,000
Rent Income (Gross) (Related with Business)	100,000
Total Income	20,400,000
Expenditure	
Cost of Materials Consumed	6,000,000
Manufacturing Expenses	1,000,000
Employee Cost	2,000,000
Selling and Administrative Expenses	3,000,000
Interest and Bank Charges	1,000,000
Exchange Loss	500,000
Depreciation	1,000,000
Bad Debt Written Off	140,000
Loss on Sale of Assets	600,000
Total Expenditure	15,240,000
Operating Profit	5,160,000
Add: Provision for Doubtful Receivables Written Back	720,000
Less: Provision for Bonus	534,545
Profit before Tax	5,345,455

Additional information:

- a) Cost of material consumed:
For export sales: NPR. 36,00,000
For local sales: NPR. 24,00,000
- b) Exchange loss includes NPR. 1,00,000 against revaluation of creditors at the year-end date.
- c) Asset detail for income tax purpose is as below –

Particulars	Building	Plant and Machinery	Computer, Office Equipment and Furnitures	Vehicles
Opening Depreciation Base	25,00,000	200,00,000	1200,000	2800,000

Addition up to Poush End 2077				400,000
Addition Magh to Chaitra end 2077	900,000		240,000	
Addition Baisakh to Ashad end 2078				700,000
Sales Proceed				1000,000

- d) Manufacturing expenses includes repair and maintenance expenses as below:
- Building Repair and Maintenance: NPR. 1,50,000
 - Office Equipment Repair and Maintenance: NPR. 50,000
 - Vehicle Repair and Maintenance: NPR. 20,000
- e) Selling and Distribution Expenses includes NPR. 7,00,000 donated to COVID Relief Fund established by GoN and NPR. 4,00,000 given for construction of a private school.
- f) Company has policy not to claim bad debts or written off for self-tax assessment purpose.
- g) Bonus of NPR. 4,00,000 only distributed to the employees till the time of filing of income tax return. It has been decided by the management not to pay the undistributed portion.
- h) Following expenses are of below nature:
- i. NPR. 60,000 included in employee cost for staff welfare is for personal use of directors.
 - ii. Manufacturing expenses includes NPR. 30,000 for electricity bill of previous years.
 - iii. Selling and administrative expenses includes NPR. 20,000 for business promotion which is not related to business.
- i) Company employed 1,200 Nepali employees during the whole year out of which 100 employees are foreign employee.
- j) Pollution control expenses of Rs.100,000 incurred by the company in last year, out of which only Rs. 75000 was allowed in that year as per section 17 of the income tax act, 2058.

As on Tax Expert advice Pawan Cement Ltd. regarding.

- i) Various tax exemptions available to the company as per Income Tax Act, 2058, and which tax exemptions Pawan Cement Ltd. should opt for minimum tax liability? 6
- ii) Compute taxable income and tax liability of the company segregating income on the basis of cost of material consumed for common cost and income. 14

Answer:

i) Various Tax Exemptions Available to Pawan Cement Limited as per Income Tax Act, 2058 are:

As per section 11 of Income Tax Act, 2058 below are the exemptions available to Pawan Cement Limited being a Special Industry. As the company is manufacturing industry and by virtue of EXPLANATION in section 11, it falls under Special Industry.

- Pawan Cement Limited employs more than 1,000 Nepali employee's whole year. So, it is entitled for 30% tax rebate as per section 11(3)(Ka) for employing 1,000 or more Nepali Employees

- Pawan Cements Limited has export sales. So, 20% rebate for export entity and additional 25% rebate for manufacturing export entity is available as per section 11(3Nga).
- Pawan Cements Limited is a listed production based Company. Hence, it is entitled to 15% rebate as per section 11(3chha).
- As per section 11 (3) (Kha), Pawan Cement Limited, being a special industry operating in Saptari District, a least developed area by virtue of EXPLANATION (kha) of section 11, can enjoy tax rebate @ 70% for first 10 years from the date of commercial production. Saptari District is categorized under least development area in Annexure 10 of Industrial Enterprises Act 2076. The Company was established in 2073.

b. Selection of Tax Exemption

- As per section 11(5), if more than one tax exemption is available for the same income, then only one tax exemption should be availed as per choice of the Taxpayer
- Hence, Pawan Cement Limited should choose the most beneficial option among the following exemptions.

Particulars	Export	Local
Tax Rate as per Anusuchi 1	25%	25%
Less Rebate u/s 11 (2 Kha)	20%	20%
Tax Rate After rebate u/s 11 (2Kha)	20%	20%
Available Other Rebate Option:		
Rebate u/s 11 (3) (ka) - For employing more than 1000 Nepali Citizens	30%	30%
Rebate u/s 11 (3) (kha) - For Operating in least development area	70%	70%
Rebate u/s 11 (3Nga) (Kha) - For Export by Entity	20%	
Rebate u/s 11 (3Nga) (ga) - For Export by Manufacturing Entity	25%	
Effective Tax Rate After Availing rebate u/s 11 (3) (ka)	14%	14%
Effective Tax Rate After Availing rebate u/s 11 (3) (kha)	6%	6%
Effective Tax Rate After Availing rebate u/s 11 (3Nga)	12%	20.00%

Lowest Tax Rate can be Chosen by the Taxpayer

6% 6%

ii) Computation of Taxable Income of Pawan Cement Limited for the year ended Ashadh 31, 2078:

Figures are in thousands

Particulars	Export Income	Domestic Income	Total	Remarks
Income From Business:				
Export Sales	12,000,000		12,000,000	
Domestic Sales		8,000,000	8,000,000	
Dividend				Final withholding tax
Rent income		100,000	100,000	
Total Income	12,000,000	8,100,000	20,100,000	
Allowable Expense:				

Particulars	Export Income	Domestic Income	Total	Remarks
Cost of Material Consumed	3600,000	2400,000	6000,000	WN #1
Manufacturing expenses	450,000	300,000	750,000	WN#2
Employee cost	1,164,000	776,000	1940,000	WN#3
Selling & Administrative Expenses	1,548,000	1,032,000	2580,000	WN#4
Interest and Bank Charges	600,000	400,000	1,000,000	
Exchange loss	240,000	160,000	400,000	WN#5
Bad debt Written Off	0	0	0	- Not Allowed
Loss on Sale of Asset	0	0	0	- Separate Treatment
Provision for doubtful receivables written back	0	0	0	Earlier disallowed, hence not considered in Income
Provision for Bonus	320,727	213,818	534,545	WN#6
Depreciation	3,188,333	2,125,556	4,313,889	WN#7
Repair and Maintenance	132,000	88,000	220,000	WN#8
Total Allowable Expenses	11,201,606	7,467,738	18,669,344	
Net taxable Income	798,394	632,262	1,430,656	
Effective Income Tax	6%	6%		
Net Tax Liability	47,904	37,936	85,840	

WN# 1 Common Cost and Income Allocation Ratio for Export Income and Local Income

Particular	Amount Rs.	Ratio for Allocation
Cost of Material Consumed for Export Sales	3600,000	60% of total Cost or Income
Cost of Material Consumed for Local Sales	2400,000	40% of total Cost or Income
Total	6000,000	

WN#2

Particulars	Amount Rs.
Manufacturing Expenses as per Income Statement	1000,000
Less : Repair and Maintenance Expenses (Separate Treatment)	
Building Repair and Maintenance	150,000
Office Equipment Repair and Maintenance	50,000
Vehicle Repair and Maintenance	20,000
Less : Prior Period Electricity Expenses not allowed u/s 21	(30,000)
Net Allowable Manufacturing Expenses	750,000
Manufacturing Expenses for Export Income – 60% of Total Expenses	450,000
Manufacturing Expenses for Domestic Income – 40% of Total Expenses	300,000

WN#3

particulars	Amount Rs.
Employee Cost as per Income Statement	2000,000
Less : Personal nature staff welfare expenses not allowed u/s 21	60,000

(19)

Net Allowable Employee Cost	1940,000
Employee Cost for Export Income – 60% of Total Expenses	1164,000
Employee Cost for Domestic Income – 40% of Total Expenses	776,000

WN#4

particulars	Amount Rs.
Selling and Administrative Expenses as per Income Statement	3000,000
Less : Donation given to Private School not allowed	(400,000)
Less : Business promotion Expenses not related to business	(20,000)
Net Allowable Selling and Administrative Expenses	2580,000
Selling and Administrative Expenses for Export Income – 60% of Total Expenses	1548,000
Selling and Administrative Expenses for Domestic Income – 40% of Total expenses	1032,000
Donation given to COVID Relief Funds established by GoN is allowable as deductible expenses as per section 29 of Finance Act 2078.	

WN #5

Particulars	Amount Rs.
Exchange Loss as per Income Statement	500,000
Less: Unrealized loss on revaluation of Creditors	100,000
Allowable Exchange Loss	400,000
Exchange Loss for Export Income – 60% of Total Expenses	240,000
Exchange Loss for domestic Income – 40% of Total Expenses	160,000

WN#6 : Provision for Bonus

Particulars	Amount Rs.
Provision for Bonus as per Income Statement	534,545
Less : Undistributed Bonus of Rs. 134,545 shall be included in the taxable income of FY 2078-79 as per Circular of IRD	0
Net Allowable Staff Bonus	534,545
Bonus for Export Income – 60% of Total Expenses	320,727
Bonus for Domestic Income – 40% of Total Expenses	213,818

Bonus is provided as per Bonus Act & remaining bonus after distribution shall be taxable in subsequent year as per the circular of IRD.

WN#7 Depreciation

Note: Opening base for block D will include Rs.25000 being un-allowed pollution control expenses of previous year(20,000,000+25,000=20,025,000) as per Section 18 and schedule 2 of Income Tax Act.

Particulars	Block A Building	Block B Computer, Office Equipment and Furniture	Block C Vehicles	Block D Plant and Machinery	Total
Opening Depreciation Base	2,500,000	1,200,000	2,800,000	2,0025,000	26,525,000
Addition up to Poush –100%			400,000		400,000
Addition from Magh to Chaitra – 2/3 rd	600,000	160,000			760,000
Addition for Baishak to Ashad – 1/3 rd			233,333		233,333

(21)

Less : Disposal of Asset			1,000,000		1,000,000
Depreciation Base for income year	3,100,000	1,360,000	2,433,333	2,0025,000	26,918,333
Depreciation rate	5%	25%	20%	15%	
Depreciation Amount	155,000	340,000	486,667	3,003,750	3,985,417
Additional Depreciation for Special Industry 1/3rd of normal Depreciation	51,667	113,333	162,222	1,001,250	1,328,472
Total Depreciation	206,667	453,333	648,889	4,005,000	5,313,889
Depreciation for Export Income – 60% of Total Expenses					3,188,333
Depreciation Expenses for Domestic Income – 40% of Total Expenses					2,125,556

WN # 8 Repair & Maintenance

Particulars	Block A Building	Block B Computer, Office Equipment and Furniture	Block C Vehicles	Block D Plant and Machinery	Total
Depreciation Base for income year	3,100,000	1,360,000	2,433,333	20,025,000	26,918,333
Allowable Repair and Maintenance- 7% of Depreciation Base	217,000	95,200	170,333	1,401,750	1,884,283
Actual Repair and Maintenance	150,000	50,000	20,000	0	220,000
Allowable Repair and Maintenance	150,000	50,000	20,000	0	220,000
Balance to be Capitalized Next Year	0	0	0	0	0
Repair and Maintenance for Export Income – 60% of Total Expenses					132,000
Repair and Maintenance Expenses for Domestic Income – 40% of Total Expenses					88,000

2.

- a) Sitaram Oli had acquired 10 ropani land for Rs. 6 crores in the year 2060 in Budhanilkantha, Kathmandu. Looking at the increasing price of property he decides to develop the land further, the market price of the land on as is basis was Rs. 10 crores. He incurs Rs. 50 lakh on road construction, Rs. 10 lakh on electricity set ups and Rs. 20 lakhs on drainage system. After the development of the land, he could create 25 developed plots which he sold for Rs. 70 lakhs each plot.

The development of land started and completed in the FY 2076/77 and all the plots got sold in the FY 2077/78. Explain the tax treatment and tax liabilities in this case referring the provisions of Income Tax Act 2058. Assume these are the only transaction Mr. Oli had during those years.

7

- b) Mr. Bharat Panday is a salaried employee of Modi Hydro Power Company Ltd. located at Parbat. He was appointed on 1st chaitra, 2077 in this company. He is retired employee of the Nepal government. He retired on 1st poush, 2077 after 25 years of service from Kaski district. After retirement he is receiving monthly 50 % pension of his last month's salary. He provides the following details with respect to his employment for the Income Year 2077/78.

Particulars	Hydro Power	Nepal Government
Monthly salary	Rs.280,000	Rs. 26,000
Contribution to Social Security Fund (SSF), EPF by the employer and employees	As per the SSF act and rules	10 % from government 10 % from him
Vehicle facility (pick & drop)	Monthly car hiring charge Rs.10,000 and driver's salary Rs. 15,000 paid by the employer	Vehicle along with driver provided by the office
Residential facility	Monthly amount Rs. 5,000 is given to him for residential purposes as per the company's rules	no residential facilities
Remote area allowance	Rs. 10,000 monthly	-----
Reimbursement of medical expenses	Rs. 20,000	-----
Reimbursement of traveling expenses	Rs. 50,000	Rs. 10,000

Additional information:

- He paid Rs. 250,000 for medical treatment; such cost is treated approved medical expenses as per tax act. He received Rs. 200,000 as per the health insurance policy.
- Insurance premium paid by Hydro Company on his behalf, Rs. 25,000 for his life health insurance policy. In addition, he has paid Rs. 15,000 and Rs. 12,000 for his and his wife's investment insurance policy respectively.
- He has donated Rs. 55,000 to a tax-exempted entity and Rs. 100,000 to Municipality's COVID-19 Fund during the year.
- Festival allowance is provided as per Nepalese general practice.

He has income from these employments and opted for single status. You are required to assess income from employment, his tax liability and carry forward medical tax credit as per the provisions related to the Income year 2077/78.

7

- Chandragiri Pvt. Ltd. has submitted Income Tax Return for Fiscal Year 2077/78 on 2078 Magh 10 in related IRO. Total taxable income for Fiscal Year 2077/78 was Rs. 125 lacs and the tax liability as per self assessment was Rs. 5 lacs. Chandragiri Pvt. Ltd. has deposited advance tax of Rs. 100,000, Rs. 100,000 and Rs. 180,000 on Poush 2077, Chaitra 2077 and Ashadh 2078 respectively. Total amount deposited was Rs. 380,000. Balance of Rs. 120,000 was deposited along with Income Tax Return in the month of Magh 2078. The company has not submitted estimated tax return for the FY 2077-78, however, it has obtained time extension till 29th poush 2078.

Calculate the fee & interest to be paid as per section 117, 118 and 119, if any under Income Tax Act, 2058.

6

Answer:

- As per Section 40(3)(d) of Income Tax Act, 2058 in case of an asset which is a business asset, non-business chargeable asset, depreciable asset or trading stock, immediately before the person begins to use the asset in such a way that it ceases to be an asset of the type it was immediately prior to that use is deemed to have been disposed. Similarly, as per Section 41 of Act, in case where a person disposes of an asset or liability in any of the manners described in Section 40(3)- (c), (d), (e) and (f), the following shall be relevant: (a) In case of an asset:

- (1) The person is deemed to have received an amount in respect of the disposal equal to the market value of the asset at the time of disposal; and
- (2) For the purpose of the subsequent disposal of the asset, the net outgoings for the asset till the time of the disposal under this Section shall be treated as equal to the amounts derived.

Going with what has been prescribed in the Act, Mr. Oli changed the purpose of the assets from what it was originally acquired for in FY 2076/77. This is deemed disposal of land and disposal with retention. The capital gain arising as on the date of conversion of this non-business chargeable asset shall be as follows:

Incomings	Rs. 10 crores
Outgoings	Rs. 6 crores
Capital gain	Rs. 4 crores

Calculation of Tax Liabilities

Computation of Income Tax Liability of Mr. Oli for the Income Year 2076-77 as per Schedule 1 Section 1(3) and (4)

Step 1:

Higher of the following shall be taxed as per Schedule 1 Section 1(2) (Assuming Couple U/s 50)

a) Taxable Income –	Gain on disposal of Non-Business Chargeable Assets
= 4 crores	- 4 crores = 0
b) Rs. 450,000	

Higher = Rs. 450,000

Tax on Rs. 450,000 as per Schedule 1 Section 1 (2) will be 0

Step 2:

Balance taxable income shall be taxed @ 2.5% as per Schedule 1 Section 1(4)(Kha)(2)

Balance Taxable Income	=	40,000,000	-	450,000
	=	39,550,000		
Income Tax Payable @ 2.5%	=	988,750		

Cost of trading stock of land would be Rs.10.80 Crore (Rs.10 Crore + Development Cost Rs.0.8 Crore) at the end of FY 2076/77.

When the land is developed further with the intention to sale, it changes the nature of asset from non-business chargeable asset to business asset and this change is a taxable event.

When the land is developed and sold in the FY 2077/78, there is actual sale happening. In this case the incoming and outgoing shall be as follows:

Incomings (25 X 70 lakhs) 17.50 crores

Outgoings

Incoming at earlier stage	10 crores	
Development cost	0.8 crore	10.80 crores
(50+10+20) lakh		
Business income		6.70 crores
Tax liability:		
On first Rs. 400,000 @ 0%		0
On next Rs. 100,000 @ 10%		10,000
On next Rs. 200,000 @ 20%		40,000
On next Rs. 13,00,000 @ 30%		390,000

On remaining Rs. 6.5 crore @ 36%	2,34,00,000
	2,38,40,000

b) **Calculation of Assessable Income and tax liability**

Particulars	Hydro Power	Nepal Government	Total Rs.
Salary (280,000*4) and (26,000*5)	1,120,000	130,000	1,250,000
Festival (Dashain) allowance	----	26,000	26,000
Pension income (50 % of 26,000 for 7 months)		91,000	91,000
Contribution to SSF (Hydro Power)= 1120,000*.2 Provident Fund (PF) Nepal Gov. 10% of salary	224,000	13,000	237,000
Vehicle facility (0.5 % of 1120,000) & (0.5 % of 130,000)	5,600	650	6,250
Accommodation facility (5000*4)	20,000	----	20,000
Remote area allowance (10,000*4)	40,000	---	40,000
Reimbursement of Medical expenses	20,000	---	20,000
Insurance Premium	25,000	----	25,000
Assessable income	1,454,600	260,650	1,715,250
Less			
Deductible Amount against the contribution to PF and SSF Which is lower of Actual Contribution Rs.373,200 Hydro power (1120000*31%)= 347200 Nepal Gov = 26,000 Total Rs. 373,200 1/3rd of Assessable Income Rs.571,750 Maximum Limit Rs. 500,000		-----	373,200
Less Donation to COVID-19 Fund			100,000
Adjusted Taxable Income			1,242,050
Donation Expenditure to tax-exempt entity whichever is lower 5% of Adjusted Taxable Income Rs.62,102.50 Actual Donation Expenditure Rs. 55,000 Maximum Limit of Rs. 100,000			55,000
Taxable Income			1,187,050
Deductions			
Deduction against Insurance premium lower of Actual payment Rs. 25,000 Maximum Limit Rs. 20,000			20,000

Particulars	Hydro Power	Nepal Government	Total Rs.
Deduction against Investment Insurance premium lower of Actual payment Rs.15,000 Maximum Limit Rs. 25,000			15,000
Deduction of Remote area allowance			10,000
Taxable Income			1,142,050
Computation of Tax Liability			
Up to Rs. 400,000 @0%			0
Next Rs. 100,000 @, 10%			10,000
Next Rs. 200,000 @, 20%			40,000
Balance @ 30% on Rs.442,050			132,615
Total Tax Liability			182,615
Less Medical tax credit			750
Net tax liability			181,865

Calculation of Carry forward Medical tax credit:

Approved Medical expenses	Rs. 250,000
Less: reimbursed from Health insurance	<u>(Rs. 200,000)</u>
Net Medical Expenses	Rs. 50,000
15% of medical expenses	Rs.7,500
Claim in income year 2077/78	Rs. 750
Carry forward medical credit	Rs.6,750

Note:

- Monthly Car hiring charge and driver salary are not taxable income
- Premium paid by the Hydro Company is a taxable income; premium paid by him for his wife is not deductible because he opted for single tax assessment status.
- Reimbursed medical expense by the company is taxable, so included under income.
- Exemption of pension income is not provided in FY 2077/78

- c)
- Fee u/s 117 of Income Tax Act for not submitting estimated tax return would be higher of 0.01% of assessable income or Rs. 5000.

In the question, taxable income is given, hence, it is assumed that there is no any deductible expenses u/s 12, 12A, 12B and 63. In such case, assessable income assumed as equals to taxable income.

Total assessable income of the company is Rs. 125 lacs

Fee @ 0.01% of assessable income = Rs. 1250

Minimum Fee = Rs. 5,000

Likewise, fee u/s 117 for not submitting the tax return as per section 96 would be higher of Rs. 100/month or 0.1% p.a. of assessable income without deducting any expenses.

(26)

In the question, total inclusions and deductions are not given, hence, assessable income without any deduction could not be computed and hence fee u/s 117(1)(ga) can be calculated on the assessable income. Therefore the interest for non submission of returns will be:
 $12,500,000 \times 0.1\% \times 4/12 = 4,167$

b) Interest as per Section 118

Time period for deposit	Installment Rate	Installment to be deposited	90% of the Installment (A)	Total Installment Deposited(B)	Amount less Deposited (A-B)
2077 Poush End	40%	200,000	180,000	100,000	80,000
2077 Chaitra End	70%	350,000	315,000	200,000	115,000
2078 Ashad End	100%	500,000	450,000	380,000	70,000

Since, less than 90% of the installment is deposited interest @ 15% (Standard rate of interest) shall be levied on difference amount up to the date when tax return is to be submitted i.e.

Ashwin end 2078. Calculation is as follows:

Time period for deposit	Installment Rate	90% of Installment to be deposited	Total Installment Deposited(B)	Amount less Deposited (A-B)	Period for which interest need to be deducted (in months)	Interest
2077 Poush End	40%	1,80,000	1,00,000	80,000	3	3,000
2077 Chaitra End	70%	3,15,000	2,00,000	1,15,000	3	4,312.5
2078 Ashad End	100%	4,50,000	3,80,000	70,000	3	2,625

Interest as per Section 119

<u>Particulars</u>	<u>Amount</u>
Time limit for Submission of Income Tax Return	Ashwin End 2079.
Amount to be deposited	=500,000-380,000 =Rs. 120,000
Income Tax submitted & Amount Deposited	2078 Magh10.
Time Period for Interest	4 months (part of month to be considered as full month)
Rate of Interest	15% (Standard Interest Rate)
Interest	=120,000 X 4/12 X15% =6,000

Thus, Chandragiri Pvt. Ltd. needs to pay Rs. 9,937.50 interest under section 118 & Rs. 6,000 under Section 119 in addition to Rs. 9,167 u/s 117 of Income Tax Act 2058.

- a) A Chartered Accountant firm engaged as a Statutory Auditor of a Company is also appointed as tax auditor as per the provisions of Income Tax Act, 2058. What will the tax auditor be certifying on the tax returns? Will that create any threat to the fundamental principles of Code of Ethics issued by Institute of Chartered Accountants of Nepal? What safeguard do you suggest in this case? Answer in light of the provisions of Income Tax Act and Code of Ethics of ICAN. 5
- b) Discuss provisions contained for write off of loan provided by the Bank as per direction of Nepal Rastra Bank if Bank has practice of maintaining loan loss provision as per income tax act, 2058. 5

Answer:

- a) Section 96(3) of Income Tax Act, 2058 requires a person who is not the employee of the tax payer, to certify the following if he is preparing or helping in preparing by taking the payment, the income tax return or documents & details which are forming part of the income tax return:
- a. That he has examined the documents as per Section 81, and
 - b. Details and information reflects the real situation in fair manner.

Inland Revenue Department (IRD) has accepted the members licensed by Institute of Chartered Accountants Of Nepal (ICAN) to do the audit to be such certifiers, in other words the tax auditors.

In this case, what the tax auditor is ensuring that the documents required to be enclosed in the income tax returns are enclosed and these documents ascertain the assets, liabilities, income, expenses and taxable income of the tax payer. Further, it needs to be certified and signed that he has checked the records of the tax payer and the tax return reflects the income, expenses, profit/loss of the tax payer.

Code of Ethics of ICAN has provided various services which a member in public practice can provide to its clients. Depending on the nature of the services provided, it may create self-review or advocacy threat.

The service mentioned above is a Tax Return Preparation service. Which the Code has defined to include the following:

- Assisting clients with their tax reporting obligations by drafting and compiling information, including the amount of tax due (usually on standardized forms) required to be submitted to the applicable tax authorities.
- Advising on the tax return treatment of past transactions and responding on behalf of the audit client to the tax authorities' requests for additional information and analysis.

Tax Return Preparation service does not usually create the threat to the fundamental principles of the Code.

In above case, the requirement of the Act is somehow expanded than what the normal Tax Return Preparation activity as defined by the Code. The auditor has to go beyond the ambit of Tax Return Preparation service in order to provide the certification that the taxable income is 'fairly derived'. Further, if the tax auditor is providing the services of statutory audit also then he is anyway reviewing the fairness of assets and liabilities including the tax provisions. However, there could be self-review threat which has to be managed by the following ways:

- Using professionals who are not audit team members to perform the service.
- Having an appropriate reviewer who was not involved in providing the service review and audit work or service performed.

b)

- (a) Section 59(2) of the income tax act, 2058 provides that 5% of total outstanding loan and non banking assets of the bank shall be allowed for deduction as a loan loss provision. Loan loss provision in excess of such limit is not allowed.
- (b) Further, section 25 of the income tax act, 2058 provides that any loan can be written off only if all the actions required for recovery of the loan is taken and then also the said loan is not recovered. Further, section 25(2) provides that in the case of Banks, loan is classified as bad debts only after following due process as prescribed by the Nepal Rastra Bank.
- (c) Further, section 59(1c) of the income tax act, 2058 provides that if any bad loan is written off by charging off from the profit and loss account without adjusting from loan loss provision, then such charge off will be disallowed.

4.

- a) M/s Jasmine Food Company Pvt. Ltd. produces food and beverages in Nepal. It produced and sold following item in the month of Kartik 2078 at the factory cost given below. You are required to calculate Excise Duty and VAT payable by the Company for the month, ignore other applicable taxes.

10

1701.14.10	Sakhhar (gund) (30,000 kg)	1,800,000
1902.19.00	Instant Noodles(1,000 kg)	20,000,000
1902.20.00	Pasta (1,000 kg)	24,000,000
1905.90.20	Cheese Balls (5,000 kg)	3,800,000
1905.90.30	Moong Papad (5,000 kg)	2,600,000
2004.10.10	French Fry (1,000 kg)	2,100,000
2106.90.10	Bhujia (2,000 kg)	3,400,000
2105.00.00	Ice Cream (10,000 kg)	5,800,000
2206.00.20	Apple Cider (3,000 ltr)	4,500,000

Excise Duty as per tariff on:

- Sakhhar – 138 per quintal
- On Noodles/Pasta / Cheese balls- Rs. 17 per kg
- On French Fry - 10%
- On Papad – 5%
- On Bhujia – Rs. 17 per KG
- On Ice Cream – 10%
- On Apple Cider – 516 per liter

- b) Omicron Ltd. imports/purchases the taxable raw materials to manufacture them into different taxable and non-taxable items for VAT purpose. The company furnished following information for the month of Ashad 2078. Details of total imports excluding VAT are as follows;

Cost of raw materials ¹ declared at Custom Point by the company	Rs. 40
crores	
Revised cost fixed by customs officer for custom valuation	Rs.
45crores	
Freight upto custom point	Rs.
6crores	
Insurance	Rs.
6,000,000	
Import duty	@ 7%
In addition, it has purchased following raw materials locally:	
Raw material 2 (Exclusive of VAT)	Rs. 200,000,000

(29)

Raw material 3 (Exclusive of VAT)	Rs. 45,000,000
The products manufactured out of the above raw materials are sold in domestic market during the month as given below:	
Ammonium Sulphate	Rs. 30,000,000
Sodium Nitrate	Rs. 30,000,000
Potassium Chloride	Rs. 20,000,000
Pedestrian Controlled Tractor	Rs. 300,000,000
Furniture	Rs. 200,000,000
Sale of manufactured taxable items to a industry established in special economic zones as per prevailing law.	Rs. 300,000,000.

Calculate:

(5+2+1+2=10)

- Amount of net VAT receivable or payable for the month. Assume all the raw materials are vatable.
- If the amount calculated is receivable and the same amount remains unadjusted upto Poush 2078, whether the company could apply for refund? If so, what will be the final date for application of refund?
- The company insists that the refund, if any, shall have to be deposited in the bank account of the company. Is the company request tenable as per law?
- If the tax office delays the payment of refund, if any, whether the tax payer is entitled for interest? If so, from which date such interest shall be given?

All the raw materials are consumed for all the manufactured goods but the exact consumption value could not be identifiable.

Answer:

- a) Excise duty is levied on items mentioned in the Annexure of the Excise Act that are produced and released, imported and services sold. The item whether they attract Excise duty or not is therefore is mentioned in the Annexure of Excise Act.

In the given question, Jasmine Food Company is a food and beverage company, its products will attract Excise duty. We therefore need to refer if each such item attracts Excise duty or not. Further, the Annexure provides that even if the tariff rate is prescribed, some of the goods when produced domestically, the Excise duty is waived. In such case the production of such item does not attract Excise duty. VAT however is applicable in all cases except the ones provided in Annexure 1 and Annexure 2 of the Value Added Tax Act.

Calculation of Excise and VAT

H Code	Details	Unit / kg/ltr	Amount	Excise Duty	Value for VAT	VAT
1701.14.10	Sakhhar (gund)	30,000	1,800,000	Exempt	1,800,000	234,000
1902.19.00	Instant Noodles	1,000	20,000,000	17,000	20,017,000	2,602,210
1902.20.00	Pasta	1,000	24,000,000	17,000	24,017,000	3,122,210
1905.90.20	Cheese Balls	5,000	3,800,000	85,000	3,885,000	505,050
1905.90.30	Moong Papad	5,000	2,600,000	Exempt	2,600,000	338,000
2004.10.10	French Fry	1,000	2,100,000	Exempt	2,100,000	273,000
2106.90.10	Bhujija	2,000	3,400,000	34,000	3,434,000	446,420
2105.00.00	Ice Cream	10,000	5,800,000	Exempt	5,800,000	754,000
2206.00.20	Apple Cider	3,000	4,500,000	928,800	5,428,800	705,744

	Total			1,081,000	69,081,000	8,980,634
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(1 marks each for above calculation and 1 marks for total Excise and VAT derivation)

Notes:

- Note 11 of Annexure of Excise Act has exempted following items produced locally to be exempt from Excise Duty.

- Sakhhar (gund)
- Moong papad
- Icecream (21.05)
- French fry

Note 9 of the Annexure has provided rebate in excise duty @ 40% as locally produced cider (H.S. Code 22.06)

- VAT remains applicable for all items.

b)

i)

In the case given, ammonium sulphate Rs. 3 crore, sodium nitrate Rs. 3 crore, potassium chloride Rs. 2 crore and pedestrian controlled tractor are Value Added Tax (VAT) exempted items as per Group 4: Agricultural Items of Schedule 1 of VAT Act. Hence, no VAT shall be collected on those items.

Accordingly, input tax credit for that proportion shall also be disallowed.

Further, sale of manufactured items to special economic zones established as per prevailing law shall be charged VAT at the rate of zero percent.

Computation of input VAT amount on import

Cost of raw materials 1	Rs. 450,000,000
Freight	Rs. 60,000,000
Insurance	Rs. 6,000,000
Total	Rs. 516,000,000
Import Duty @7%	Rs. 36,120,000
Total cost for VAT purpose	Rs. 552,120,000
Input VAT on import @13%	Rs. 71,775,600

Computation of Input VAT amount on local purchase

Raw material 2 (Exclusive of VAT)	Rs. 200,000,000
Raw material 3 (Exclusive of VAT)	Rs. 45,000,000
Total cost	Rs. 245,000,000
Input VAT @13%	Rs. 31,850,000
Total VAT paid on Input	Rs. 103,625,600

Computation Vat on sales

VAT exempted sales Rs.380,000,000 (30,000,000 + 30,000,000 + 20,000,000 + 300,000,000)	Rs. 0
Furniture @13% on Rs. 200,000,000	Rs. 26,000,000
Sale of manufactured items to an industry established in special economic zones as per prevailing law @ 0% on Rs. 300,000,000	Rs. 0
Total VAT collected on sales	Rs.26,000,000
Ratio of taxable and non-taxable sales is 500,000,000:380,000,000 i.e. 57:43	
Input tax credit which can be claimed is: 57% of Rs. 103,625,600 is Rs. 59,066,592	
Amount of net VAT receivable is Rs. 59,066,592 – Rs. 26,000,000 is Rs. 33,066,592	

ii)

As per Section 24(3) of the Act, a registered person may file an application to a tax officer for a lump sum refund, as prescribed, for an excess remaining amount that

remains after taking tax credit for a consecutive period of four months under this section. Hence the company may file an application for refund.

As per Section 24ka of the act, notwithstanding anything mentioned in Section 24 of the Act, the amount to be refunded as per VAT act shall not be refunded if the application for such refund is not made within 3 years from the end of the tax period. In this case, last date for application of refund is end of Ashad, 2081.

iii)

As per Rule 45(2) of the VAT Rules 2053, if refund of more than twenty thousand rupees has to be made, payment has to be made so that the amount is credited in his bank account. Hence, the request of the company is tenable as per law.

iv)

As per Rule 47 of the VAT Rules 2053, the rate of interest to be given by government of Nepal for purposes of Section 24(5) of the Act shall be fifteen percent per annum. Such interest amount shall be calculated only after sixty days from the date of claim for refund pursuant to subsections (3) and (4) of Section 24 of the Act.

5.

- a) Customs officers have arrested Mr. Ramesh Neupane on the charge of illegally importing goods to Nepal from China u/s 40(2) of Customs Act, 2064. Please advise the provisions contained for release of Mr. Ramesh Neupane on cash deposit under Customs Act, 2064.
- b) Kumar & Associates, Chartered Accountants registered with Inland Revenue Department on 5th Ashwin 2077. On 15th Kartik 2078 the proprietor estimated the turnover for the year to be 25 lakhs and therefore registers the firm in VAT on 1st Mangsir 2078. It had following transactions including VAT which were paid through Tax Invoice since the establishment of the firm.

10 th Aswin 2077 Purchase of Computers	565,000
12 th Ashwin 2077 Purchase of furniture	452,000
10 th Mangsir 2077 Purchase of printer	56,500
15 th Poush 2077 Purchase of a car	3,955,000
20 th Poush 2077 Launching party	113,000
5 th Shrawan 2078 Stationary	226,000
10 th Ashwin 2078 Purchase of multi-function device	226,000
25 th Mangsir 2078 Purchase of Laptop computer	339,000

- On 15th Mangsir 2078 the firm paid 200,000 to an IT firm in India for set up online meeting including license fees.
- The printer got destroyed due to electric shock and is no more usable.
- The stationary item is consumed.

It had fee invoicing of following in the financial year, amount does not include VAT:

Shrawan	200,000
Bhadra	300,000
Ashwin	550,000
Kartik	450,000
Mangsir	350,000

Mangsir – from client in Bhutan 300,000

You are required to answer the following:

7

- i) Calculate the VAT payable / receivable for the first month of registration.
 - ii) Explain the process the firm has to fulfill including the timelines and conditions.
- c) State the consequence in the action taken by Excise office and Custom Officer in the following cases: (2×3=6)

- i) Mr. Kohli is dealing with the excise goods in his home town Doti. Due to financial crisis, Mr Kohli has applied for the suspension of Excise license in accordance with the provision of Excise Act 2058. Excise office has suspended the excise license for three years as requested by Mr. Kohli in accordance with the section 9ka of Excise Act, 2058, on 27th Magh 2076. Mr. Dotel, Excise Officer visited the office of Mr. Kohli on 23rd Jestha 2079 and fined Mr. Kohli for non renewal of excise license as required by the Excise Act, 2058. Is the action taken by Mr. Dotel, Excise Officer is in accordance with the provision of Excise Act 2058?
- ii) Ms. Chetanya has purchased Wega goods from United Kingdom. The good arrived on 27th Magh 2078 and the declaration form of such goods was registered with custom office on 1st Magh, 2078. The custom duty applicable as per declaration form date is 32% and as per goods arrival date is 40%. Mr. Neupane, Custom Officer is demanding custom duty from Ms. Chetanya based on the arrival date of goods at custom. As an expert on Customs duty affairs, advice whether demand of Mr. Neupane Custom Officer in accordance with the provision of the Custom Act, 2064?
- iii) Ms. Himel Medicine has purchased medicine raw material from Bangladesh. The raw materials were purchased on custom duty exemption with the condition that imported raw materials will be exported with value addition. While testing the imported raw material, it was found that they do not meet the standard quality. Himel Medicine wants to return back the imported material to Bangladesh. However, Customs department demands custom duty, since materials were purchased on customs duty exemption pursuant to Custom Duty Act 2064. Is the argument of the custom officer is in accordance with provision of Custom Duty Act 2064?

Answer:

- a) Section 41 of Customs Act, 2064 provides below provisions with respect to release of a person arrested for charges illegally importing goods to Nepal:
 - (a) Customs officer can release the person arrested by taking cash deposit equivalent to estimated Customs Duty liability and amount of penalty and equivalent amount for imprisonment.
 - (b) The person shall be kept in custody till such amount is deposited by the arrested person.
 - (c) If customs officer has reasons to believe that such arrested person may destroy the evidence if released from custody, the customs officer may carry investigation by keeping him under custody.
 - (d) The person arrested shall not be kept under custody for more than 24 hours without taking approval of person responsible for looking after case.
 - (e) The deposit amount for 1 day of imprisonment will be equal to Rs 300 per day of imprisonment

- b) (i) In the given case the firm got registered in VAT on 1st Mangsir 2078.
Statement of VAT Receivable / Payable - Mangsir 2078

VAT Payable	Details	Amount	Remarks
Export Sales	Client in Bhutan	Nil	
Local Sales	350,000	45,500	
Total VAT Payable		45,500	
VAT Receivable			
Purchase of Printer	56,500	Not allowed	As not in working condition
Purchase of Computer	565,000	Not allowed	Above the 1 year
Purchase of Furniture	452,000	Not allowed	Above the 1 year
Purchase of Car	3,955,000	182,000	Proportionate credit - 40%
Launching party	113,000	Not allowed	VAT on entertainment
Stationary	226,000	Not allowed	No more available
Purchase of MFD	226,000	26,000	Full allowed
Purchase of Laptop	339,000	39,000	Full allowed
Total VAT Receivable		247,000	
Net VAT Receivable		201,500	
Further, it has to pay reverse VAT on import of Service		26,000	cannot be adjusted with receivable in the same month

(ii) As per Rule 43 of VAT Rules, a Taxpayer shall file an application to the Tax Officer in the format set forth in Schedule -16 within fifteen days of being registered for tax deduction of goods lying at stock at the time of registration. The application shall be accompanied by following documents:

- (a) Details of goods in stock during the time of registration, if any
 (b) Details of tax invoices and declaration forms up to one year before the registration, if any
 (c) Other necessary evidences.

If the claim made is approved by the Tax Officer, the concerned taxpayer may deduct tax paid on the stock that will be used in taxable transaction. Further, the tax officer may verify the stock physically as declared in Schedule -16 and the supporting documents.

- c)
 i) As per Section 9ka of Excise Act, 2058, there are several reasons and condition of suspension of Excise license and moreover this section stated that in case of suspension, the licensee is not required to get its excise license renewed, as required under Section 9, during the entire period of suspension. In the given

cases Mr. Kohli's Excise license is suspended for three years from the date of 2076 Magh 27 to 2079 Magh 26. In this period of suspension Excise license need not be renewed as per section 9Ka of Excise Act 2058 provision. Mr. Dotel, Excise officer visited Mr. Kohli business and demand fine for not renewed excise licensee is not in accordance with the provision of excise Act 2058.

- ii) As per section 8 of Customs Act, 2064, the custom duty of any goods to be exported or imported shall be determined according to the tariff prevailing on the date on which the declaration form of such goods is registered in the customs office. Provided that where the declaration form has been registered in the custom office prior to the arrival of goods at the custom office, the duty shall be determined according to the tariff prevailing on the date of arrival of such goods at that custom office. In the given case, Ms. Chetanya purchased goods is arrived at custom office on dated 27th Magh 2078 but declaration form date is 1st Magh 2078. According to this provision custom duty is applicable based on the date of arrival of goods i.e 40% custom duty is applicable. Based on this provision demand of custom duty by Mr. Neupane custom officer is in accordance with the provisions of customs Act 2064.
- iii) In the given case Himal Medicine Company return back its Raw material purchased due to raw material is not as per standard quality under Custom duty exemption facticity. As per Rule 8(1) of Custom Regulation 2064, when goods imported in Nepal cannot used for intended purpose or the laboratory test proves that the goods are not of the quality it should be, then the Chief of Custom Office may allow within 90 days of the import or such goods reaching the Custom to re-export with the condition that the similar goods shall be imported or if the foreign exchange has already been remitted then such foreign exchange be brought back. Rule 8(2) requires the importer to bring back similar goods or bring back the foreign currency within 6 months from the date of return, if it does not happen then the Custom Office will write to concerned for filing the legal case. It is important that the return is happening within 90 days in order to get the exemption provided in the Regulation. In the given case, assuming that it was returned within 90 days and it is given that the duties were not paid on import of raw materials; the claim of Custom Officer is not valid to claim the duty on return of goods to the supplier in Bangladesh.

6.

- a) Discuss the concept of independent agent and depended agent for determining Agency PE as per income tax act, 2058 and directives thereon. Please also discuss the basis for determining independent agent and depended agent. 5
- b) Define and explain the provisions related to Shipping and Air Transport business with reference the DTA agreement between Nepal and India. 5

Answer:

- a) Section 2(ka,da) of the income tax act, 2058 provides that except for in the case of ordinary business process where business is carried out from independent agent, a place from where a business is carried out through agent then such place shall be Permanent Establishment such other person. Hence, concept of dependent agent and independent agent is crucial for determination of Permanent Establishment.

Dependent Agent

Only Dependent agent can be a Permanent Establishment. Hence, Independent Agent can not be permanent establishment. A dependent agent is an Agent who carries out the business decisions taken by the main Company. A person whose main business is carrying out activities for the main Company is a Dependent Agent. Dependent Agent can be created by :

- (a) If a person carries out business activities as per the agreement with main Company.
- (b) Even if all the business rights are not provided in agreement, if such agreement provides right of entering into business to main Company
- (c) Even if agreement does not provide right to enter into agreement, such agent has apparent authority to enter into agreement.
- (d) If the agent has full authority to collect purchase orders on behalf of main Company.

Independent Agent

Any person who acts freely in ordinary course of business is considered as an independent agent. A person is independent agent in below cases :

- (a) If he works in the ordinary course of business
- (b) If such person is not working wholly or mainly for principle
- (c) If such person does not work under common control of principle.

b) Article 8 of “The Avoidance of Double Taxation and The Prevention of Fiscal Evasion with respect To Taxes on Income between India and Nepal” Shipping and Air Transport applicable provisions are:

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that Contracting State.
2. Profits derived by a transportation enterprise which is a resident of a Contracting State from the use, maintenance, or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise in international traffic which is supplementary or incidental to operation of its ships or aircraft in international traffic shall be taxable only in that Contracting State unless the containers are used solely within the other Contracting State.
3. For the purposes of this Article interest on investments directly connected with the Operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft if they are integral to the carrying on of such business, and the provisions of Article 11 shall not apply in relation to such interest.
4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.