

**Corporate Laws  
Suggested**

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:

- a) Ms. Sita Santhal, a married daughter of late Mr. Shyam Santhal, claimed the deposit money of his father lying idle in a 'A' class commercial bank in Jhapa saying she is the only surviving person from amongst his father relatives. Mr. Shyam Santhal has not nominated the person in his deposit form. Based on this fact answer the followings:
- i) Write the various order of priority whoever shall have right to claim on such deposit in the first place referring the provisions of the Bank and Financial Institutions Act, 2073. 7
  - ii) What are the provisions for unclaimed deposits? 2
  - iii) Is Ms. Sita Santhal an authorized person to claim the deposit? Justify it from the answer as given in (i) above. 1
- b) Arun had lent NRs. 500 Lakh to Basu Sugar Mills Ltd. for 2 years under a loan agreement which was around 12% of the total loan of the company. Even after the expiry of the said period, as the company failed to repay the loan, he served a written notice for the repayment but remained unanswered for three months. Now Arun wants to sue the company under the Insolvency Act, 2063. Advise him in the following three issues-
- i) When a company is deemed to be an insolvent? 2
  - ii) Who can bring an action against an insolvent company? 3
  - iii) What documents required to institute a case against the insolvent company? 5

Answer

1 a)

- i) Section 111 of Bank and Financial Institution Act, 2073 has specified the order of priority to claims the deposit of a depositor holder in case he/she died. The section says further the claim of deposit as:
- (1) No claims of any person other than the actual depositors over the deposits made with a licensed bank or institution shall be entertained.
  - (2) In the event of the death of a depositor, a nominee appointed by him/ her, if any, and if such nominee also dies or if no nominee has been appointed by the depositor, the surviving person from amongst his/her relatives, in the following order of priority, shall have right to such deposits in the first place:
    - (a) The husband or wife living in the joint family,
    - (b) The son or daughter, or adopted son or adopted daughter or widow daughter-in-law, living in the joint family,
    - (c) The father, mother, grandson or granddaughter living in the joint family,

- (d) The husband or wife, son, daughter, father or mother, son, daughter-in-law or married daughter living separately,
  - (e) The grandfather, grandmother, brother, nephew, niece, sister living in the joint family, the grandfather or grandmother living separately,
  - (f) The step mother living in the joint family, and grandson and unmarried granddaughter of the son living separately,
  - (g) The elder or younger brother living separately and nephew, niece, sister, nephew, niece
  - (h) The uncle, widowed aunt, sister-in-law (elder or younger brother's wife), or grand-daughter-in-law living in the joint family,
  - (i) Married sisters, grand-daughter-in-law living separately.
- (3) If there is no one in the order of priority as referred to in Sub-Section (2), and as such a situation has arisen where a rightful successor according to the prevailing laws has not made any claim over the deposit, the deposit(s) shall be deposited in the Banking Development Fund of the Rastra Bank and be used for banking development.
- (4) Notwithstanding anything contained in the prevailing laws, no amount deposited with a bank or financial institution shall be handed over to anyone without the approval of the person who has the title thereto under Sub-Section (1).
- ii) Section 112 has made the provision of dealing unclaimed deposit as follows:
- (1) A bank or financial institution shall, within the first month of each fiscal year, submit to the Rastra Bank statements of any deposit accounts which have remained dormant for the last ten years, and of those which have not been claimed under this Act.
  - (2) A bank or financial institution shall publish a notice to collect the unclaimed deposits as referred to in Sub-Section (1) once in every five years in a national level daily newspaper. Details description thereof shall also be posted by the bank or financial institution on its website.
  - (3) In cases where the amount as referred to in Sub-Section (1) is not collected within a period of twenty years, such deposit shall be collected to the Banking Development Fund of the Rastra Bank and be used for banking development.
- iii) Ms. Sita Santhal as per the question is authorized person to claim the deposit provided that she is eligible in the order of priority as mentioned in answer (i) above. Otherwise the first order of priority before her order can claim the deposit.

1 b)

- i) A company shall be deemed to have become insolvent if the company fails to pay the debt within thirty-five days after the service by the creditor on the company a notice for the payment of the debt or fails to make an application to the Court within the period to void such notice. Similarly, where it is proved from any other matter that the liability of the company exceeds the value of the assets of the company or the company itself admits that it has become insolvent.
- ii) Pursuant to section 4 (1) of the Insolvency Act, 2063, any of the following persons may make an application to the Court in the prescribed form:
  - (a) Creditor or creditors who has or have lent at least ten percent of the total loan of the company;
  - (b) Shareholder or shareholders that have or have subscribed at least five percent of shares;
  - (c) Debenture-holder or debenture-holders that has or have subscribed at least five percent of debentures.

Arun being the creditor lending more than 10% of the total loan of the company can file an application to the Court for the insolvency proceedings if even after the written notice is given by him pursuant to Sub-section (2) of the section 4 the company failed to repay the amount with interest. Prior to making an application to the Court pursuant to Section 4 for insolvency proceedings, a notice shall be sent to the registered office of the company in the prescribed form for the payment of debt.

- iii) The documents required to institute an action against the insolvent company are provided under Sub-section 3 of Section 4 of the Insolvency Act, 2063. Which are as follows:
- (a) Where the company itself which has become insolvent makes such application:
    - i. A document certified by the board of directors of the company, mentioning that the company has become insolvent;
    - ii. A special resolution adopted by the board of directors of the company to institute the insolvency proceedings pursuant to this Act;
    - iii. Certified copies of the balance sheet and audit report of the company available at the time of making application for the institution of insolvency proceedings.
  - (b) Where the creditor of a company which has become insolvent makes such application:
    - i. A statement of the principal and interest of the debt which the creditor claims to be due and payable by the company;
    - ii. The date on which the company borrowed the debt claimed by the creditor and the reason why the debt was borrowed;
    - iii. Description that the amount referred to in Clause (1) is due and such amount is payable immediately;
    - iv. That the debtor believes or the reason and ground the debtor has to believe that the company in respect of which demand is made for insolvency proceedings has become insolvent.
  - (c) Where the liquidator makes such application:
    - i. Evidence that the company in respect of which application is made for insolvency proceedings has appointed the liquidator for the purposes of liquidation of the company; and
    - ii. The opinion expressed by the liquidator on the matter that the company in respect of which application is made for insolvency proceedings has become insolvent, and the ground for such opinion.

Notwithstanding anything contained elsewhere in this Section, any shareholder or debenture-holder of a company shall obtain permission of the Court to make an application for insolvency proceedings, and the shareholder or debenture-holder may, if so permitted, make an application on such terms and conditions as may be specified by the Court. The Court shall not give permission unless and until sufficient evidence proving that the company has become insolvent is produced.

2. Answer the following questions:

- a) Nepal Rastra Bank Act, 2058 has been enacted to provide for establishment of Nepal Rastra Bank to carry out the Functions of the Central Bank. State, how the NRB as a central bank perform its powers and duties regarding regulation, inspection and supervision of the banking institutions of Nepal as prescribed by the Act?
- b) Rajesh Karki was the single shareholder and managing director of Cotton World Pvt. Ltd., a leading textile industry in Nepal. He had also advanced substantial amount to the company as a secured creditor. He had insured the raw materials and cotton products of the company in his personal name. In a fire accident, all

products and raw materials destroyed without his fault. When he made claim to the insurance company for compensation, it was rejected for want of his insurable interest in the products. Advise him in the following issues-

- i) What is insurable interest? 3
  - ii) Is there want of insurable interest of Rajesh? 3
  - iii) Can the insurance company reject his claim? 1
- c) A professional accountant faces various threats from the client in his/her work and wants to alert and be safe from such threats. How can he/she safeguard and to address the threats so that he/she can perform the work without any pressure? Explain, referring the provisions of Code of Conduct of Institute of the Chartered Accountants of Nepal to safeguard the threats. 6

Answer

2 a) Chapter – 9 of the NRB Act, 2058 prescribe the provision regarding Regulation, Inspection and Supervision of the Banks as follows:

**Regulatory Powers of Bank:**

- (1) The Bank shall have full powers to regulate the functions and activities of commercial banks and financial institutions.
- (2) For the purpose of the regulation under sub-section (1), the Bank may frame rules and bye-laws on the matters which the Bank deems appropriate and issue necessary order, directives and circular and it shall be the duty of the concerned commercial bank and financial institution to abide by such rules, bye-laws, order, directives and circular.
- (3) The Bank shall issue appropriate directives to commercial banks and require them to submit the following particulars:-
  - a. Its balance sheet accounts, off balance sheet commitments, statement of income and expenditures and their ratio among accounts or items.
  - b. Prohibitions, restrictions or conditions concerning specific types or forms of credit or investments, or of credit or investments, forms of commitments of a risk-bearing nature which are not matching as to maturity of assets and liabilities and off-balance-sheet items, foreign currency, spot or advance rate of interest, swap, option or similar instruments or access to the payments system through electronic or other means.
  - c. Other particulars and documents prescribed by the Bank.
- (4) Bank may issue necessary directives to commercial banks on the following subjects and require to submit particulars on the following subjects:-
  - a. Books and accounts, profit and loss account, balance sheet and off-balance sheet transaction and commitment, statement of income and expenses and their ratio among accounts or items.
  - b. Prohibitions, restrictions or conditions concerning specific types or forms of credit or investments, loan and investment in excess of the ceiling prescribed by the Bank, risk bearing commitment, position of foreign exchange, payment and electronic and other means of payment.
  - c. Other particulars and documents prescribed by the Bank.
- (5) The Bank shall have the following powers with regard to commercial banks and financial institutions:-
  - a. To enforce authority and responsibility granted under this Act and any other Act enacted for licensing, supervising and regulating commercial banks and financial institutions and to revoke the license of commercial banks and financial institutions and to take over or to provide in trusteeship the commercial banks or financial institutions which have been declared insolvent or are on the verge of insolvency;
  - b. To investigate or inspect, or supervise or to cause to investigate, inspect or supervise by any official of the Bank or the person designated by the Bank the books and

accounts, records, documents or register of commercial banks or financial institutions in order to find whether or not any commercial bank or financial institution has conducted business and transaction in accordance with the provision made under this Act or the Rules, bye-laws framed thereunder and an order or directive issued thereunder;

- c. To issue order to the member of the Board of Directors, official or employee of any commercial bank or financial institution to provide necessary information about the bank or institution in cases where it is necessary to inspect and supervise the transaction of such bank or financial institution.

**Banking and Financial System and Credit Control:** The Bank may issue directives from time to time to commercial banks and financial institutions on banking financial system, currency and credit. It shall be the duty of commercial banks and financial institutions to abide by such directives.

**Inspection and Supervision:**

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

- 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. Rajesh Karki has no insurable interest on the cottons 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. Rajesh Karki as the cottons do 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.
- c) Code of Conduct of ICAN Section 300.8 A1 Paragraphs 120.10 to 120.10A2 set out requirements and application material for addressing threats that are not at acceptable level. Section 300.8 A2 has defined the safeguard addressing example as follows:  
Safeguards vary depending on the facts and circumstances. Examples of actions that in certain circumstances might be safeguards to address threats include:
- Assigning additional time and qualified personnel to required tasks when an engagement has been accepted might address a self-interest threat.
  - Having an appropriate reviewer who was not a member of the team review the work performed or advise as necessary might address a self-review threat.
  - Using different partners and engagement teams with separate reporting lines for the provision of non-assurance services to an assurance client might address self-review, advocacy or familiarity threats.
  - Involving another firm to perform or re-perform part of the engagement might address self-interest, self-review, advocacy, familiarity or intimidation threats.
  - Disclosing to clients any referral fees or commission arrangements received for recommending services or products might address a self-interest threat.
  - Separating teams when dealing with matters of a confidential nature might address a self-interest threat.
3. Answer the following questions:
- a) A Nepalese company with its Indian joint venture partner has established a separate company in Nepal. In the course of business of the joint venture company, a dispute arose between the Indian and Nepalese investors and they sought your legal advice on it. Suggest them the appropriate course of dispute resolution under the Foreign Investment and Technology Transfer Act, 2073.

- b) Money (asset) Laundering Prevention Act, 2064 has been enacted to provide for the prevention of money laundering and terrorist financing applicable to any person committing the offence of money laundering or terrorist financing irrespective of whether such person is located in Nepal or outside Nepal. State that is considered as terrorist individual or organization and what activities are considered as money laundering as per the Act? 7
- c) Fewa Hotel Pvt. Ltd. is running in difficult financial condition due to Covid 19 and current off-season of tourist and is contemplating to keep some of its permanent employees on reserve for 1 month. Advise the Hotel Manager regarding the approval to be taken and remuneration to be paid during the period. 6

#### Answer

- 3 a) Section 40 of Foreign Investment and Technology Transfer Act, 2073 prescribes about settlement of dispute as follows:
- i) In case any dispute arises regarding foreign investment between Nepalese investor and foreign investor, Department of Industry may facilitate to settle the dispute through mutual discussion or negotiation.
  - ii) If the dispute fails to settle by the procedure prescribed as above within 45 days of dispute arise and an agreement concluded between parties of the dispute relating to joint investment or dispute settlement for the settlement of dispute, dispute shall be settled as per such agreement.
  - iii) Parties shall provide information about the dispute settled as above to the entity permitting foreign investment within 15 days of dispute settlement. However, parties shall not be bound to provide the information regarding under what which condition such consent has been made.
  - iv) If the agreement concluded between parties does not mention any provision regarding the settlement of dispute, it shall be settled by arbitration in accordance with the prevailing law of Nepal.
  - v) Unless otherwise agreed by disputing parties relating to the dispute arise in foreign investment, arbitration shall be done in compliance with Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).
  - vi) The arbitration shall be held in Nepal and substantive law of Nepal shall be applicable in the arbitration.
  - vii) If parties have not concluded any agreement for dispute settlement before the arousal of dispute or the concluded agreement is inadequate, even after the arousal of dispute, concerned parties may conclude agreement. Information regarding agreement concluded in such a way shall be provided to the Body Registering the Entity.
- b) "Terrorist (individual)" means any natural person who commits the following acts:
- i) commits or attempts to commit terrorist acts by any means, directly or indirectly, unlawfully and willfully,
  - ii) participates as an accomplice in terrorist acts,
  - iii) organizes or directs others to commit terrorist acts, or
  - iv) contributes or cooperates to group of persons acting with a common purpose of commission of terrorist acts where such contribution or cooperation is made intentionally and with the aim of furthering the terrorist act or with the knowledge or the intention of the group to commit a terrorist act.
- "Terrorist organization" means any organized or unorganized group or organization of terrorists that commits the following acts:-
- i) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and willfully;

- ii) participates as an accomplice in terrorist acts;
- iii) organizes or directs others to commit terrorist acts; or
- iv) contributes or cooperates to group of persons acting with a common purpose of commission of terrorist acts where the contribution or cooperation is made intentionally and with the aim of furthering the terrorist act or with the knowledge or the intention of the group to commit a terrorist act.

Assets not to be laundered: According to Sec 3.

- i) Nobody shall cause or cause to do following act:
  - a. To hide or conceal money earned illicitly or to help to protect from legal action to the persons who are involved in the act of offence, by transferring or transforming money which can be easily believe that the money is earned illicitly or through offensive act.
  - b. To hide or conceal right or source over the money where there is good ground to believe that the money is acquired from an offensive act
  - c. To acquire, use or hold money where there is good ground to believe that the money is acquired from an offensive act.
- ii) No one should get engage or involved with a view to help or advise to commit an offence as said above.
- iii) Where anyone get engage or involve in the act as said in sub section (1) or (2) such act amounts to money laundering offense.

In other words anyone who is engaged or involved in the act of concealing or hiding money believed earned in an illicitly through offensive act or to hold money earned such money with a view to protect anyone who is involved in an offensive acts.

Section 4: prohibition of financial investment in an act or terrorism:

Under this provision it has been prohibited to attempt, support or provoke others to commit offences stipulated above.

Sec 4 of the Act prescribes the condition when it is considered as investment in the act of terrorism. No one should invest money in the act of organizing terrorism or to provide financial assistance directly or indirectly to carry out such act. No one should provoke to do act of terrorism or carryout or cause to carry out such act.

For this purpose, in case anyone has committed any act supposed to be an offence under the various international conventions relating to terrorist or provided or collected any money by any means for terrorizing knowingly or with grounds that such money is being used for committing such offence, he/she shall be supposed to have invested in terrorist activities.

As per Section 4 anyone who committed acts of terrorism will be considered as an offence of investment in the act of terrorism under the Act.

No one should commit any act of terrorist. Where any person engage to commit act of terrorism or intent to conduct or assisted or encouraged or contributed to commit such act will be considered as an offense under this Act.

Money investment in the act of nature of terrorism whether it has been materialized or not creating such circumstances in the nation or any part of the world either by residing or not is also deemed as investment in the act of terrorism.

Where an offense, which is punishable as per the international law of the nation is committed in abroad also will be considered as an offence committed under this Act.

*Act committed in Foreign State to be an Offence:* It shall be an offence of money laundering or terrorist financing for the purpose of this Act, if any act mentioned in sections laundering money or committing act of terrorist finance to occurs in a foreign state or territory and such act is an offence under the law of that state.

- c) Section 15 of Labour Act, 2074 prescribes about the provision of reserve period as follows:
  - i) Employer may stop the work and lay off the laborer's in case special circumstances arise.



Explanation: For the purpose of this section, "special circumstance" means shortage of electricity, water, raw material or lack of fund or inability to reach the workplace or work or operate the workplace because of any situation beyond control.

- ii) During the reserve period pursuant to sub section (1), the employment relationship between the employer and laborer's shall continue.
- iii) Any employer employing ten or more than ten laborer's may lay off laborer's for a period of maximum fifteen days. In case the laborer's need to be laid off for more than fifteen days, the employer shall be required to consult the authorized trade union or labour relation committee.
- iv) Other provisions relating to lie off of laborers shall be as prescribed.
- v) In addition, section 39 of the Act, laborers, who are laid off pursuant to this Act, shall be paid half of their remuneration (i.e. basic salary + allowance) which they are entitled to until the work is resumed by the employer.

Hence, if any employer employing ten or more than ten laborers lies off laborers for a period of more than fifteen days, the employer shall be required to consult the authorised trade union or labour relation committee only.

4. Answer the following questions:

- a) A newly established public limited company has appointed you as a consultant with the specific purpose to manage the notice and meetings of the Board of Directors. The Company has sought your clarifications to the following issues in this regard. Clarify them in the light of the relevant provisions of the Companies Act, 2063.
  - i) Who should call the meeting of the Board of Directors? **2**
  - ii) Whether the Board of Directors can call the meeting of the Board? **2**
  - iii) What is the total number of meetings the Board of Directors can hold in a year? **2**
  - iv) What is the quorum required for a Board meeting? **2**
- b) Uday Adhikari, an engineer with required qualifications applied to the Insurance Board to obtained license of surveyor. At the time of issuing the license by the board, an applicant complained to the board of disqualification of Uday that he was convicted and punished by 6 months by court in a cybercrime. Advise the board in the following issues-
  - i) What are the qualifications of surveyor under the Insurance Act, 2049? **3**
  - ii) When a person cannot be a surveyor? **3**
  - iii) Can the Board refuse to issue license to him on the above said ground? **1**

Answer

- 4 a) Section 98 of the Companies Act, 2063 provides for the Notice of meeting of board of directors of the Company, as under:
  - i) As per section 98 (1), except as otherwise provided in the articles of association of the company, the company secretary or Chairman of the board or chief executive of the company shall call a meeting of the board of directors of the company.
  - ii) As per Section 98(2) of the Companies Act, notwithstanding anything contained in sub-section (1) above, if at least twenty five per cent directors of the total number of directors make written requisition, setting out the subject to be discussed in the meeting, for calling the meeting of the board of directors, the Chairman shall call the meeting of the board no later than 15 days of the receipt of such requisition. If the

meeting of the board of directors is not called within that period, such requisition making directors themselves may call the meeting of the board of directors.

iii) The given company is a public limited company and as per Section 97 (2) meetings of the board of directors of a public company shall be held at least six times in a year. Provided, however, that the interval between any two meetings shall not exceed three months.

iv) As per section 97(4) of this Act, the quorum of the board of directors shall be at least fifty one per cent of the total number of directors of the company.

Provided, however, that any director who is not entitled to take part in any matter to be discussed in a meeting of the board of directors under this Act shall not be counted for the purposes of this sub- section.

b)

i) Surveyor means a person who has obtained a license pursuant to Section 30A of the Insurance Act, 2049 to make a financial valuation of the destroyed property and the word includes an adjuster and a person who makes a valuation of losses.

An applicant desirous of making an application for the Surveyor's License shall have possessed any one of the following qualifications:

a. Having gained at least ten years of work experiences on the Insurance Business, holding an officer level post at the office of any Insurer. Or,

b. Having possessed at least a Bachelor Degree in engineering subject. Or,

c. Having possessed at least a Bachelor Degree in Insurance subject from a Chartered Insurance Institute of international standard or from an organization recognized by such institute. Or,

d. Having passed the Chartered Accountancy Examination.

ii) As per section 32 of the Insurance Act, 2049, a person shall not become a Surveyor in the following circumstances:

a. If he/she has not attained the age of sixteen years,

b. If he/she is of unsound mind,

c. If he/she is an insolvent,

d. If he/she has been convicted and sentenced to punishment by a court in the offense involving any type of theft, fraud or misappropriation or embezzlement of the property entrusted to him, or

e. If he/she has done anything in the course of work regarding to the Insurance Business causing loss or damage to the Insurer or Insurance Policy-holder.

iii) The Board cannot refuse to issue the surveyor license as the cyber-crime is not included as a ground for disqualification of the surveyor as stated above.

5. Answer the following questions:

(3×5=15)

a) Discuss the process of examination of bid by the Public Entity as per the Public Procurement, Act 2063 where the goods are purchased through the bidding process?

b) Darma Cooperative Limited of Humla wants to have business transactions with other cooperatives of Karnali Province and rest of the other provinces of Nepal. How can it be done and what are the procedures as mentioned in Cooperative Act, 2074 and Cooperative Rules, 2075? Explain.

c) Mr. Simon Angel, a German citizen invested certain amount in the industry of Nepal following the provisions of Foreign Investment and Technology Transfer Act, 2075 and he also interested to know the validity period of such investment in Nepal so that his investment gives regular return to him in long run. You as a consultant kindly! Suggest the validity period of such investment as per the Act.

Answer

5 a) On receipt of the bid documents, the Public Entity shall have to open bids as prescribed at the time and place specified in the bidding documents on the same day immediately after expiry of the deadline for the submission of bids as per Section 22 of the Public Procurement Act, 2063.

According to Section 23 the bid opened pursuant to Section 22 should be submit to the evaluation committee by the Public Entity.

Under Section 23(2) the committee should, prior to evaluating the bids submitted pursuant to Sub-section (1), examine the bids in order to ascertain the following matters: -

- i) Whether documents establishing that the bidder is qualified under law to submit the bid are submitted or not,
- ii) Whether the bid is complete in accordance with the instructions to bidders set forth in the bidding documents or not and whether it is signed by the bidder or by the bidder's authorized agent or not,
- iii) Where a bid security is required to be submitted along with the bid, whether a bid security of such type, period and amount as set forth in the bidding documents is accompanied with the bid or not,
- iv) Whether the bid is substantially responsive to the technical specifications set forth in the bidding documents and the terms and conditions of procurement contract attached with the bidding documents or not.

Under subsection (3) in examining the completeness of bids pursuant to clause (b) of Subsection (2), the following matters shall be examined:-

- i) Whether a power of attorney for the authorized agent or local agent of the bidder is submitted or not,
- ii) Where a joint venture agreement is necessary, whether such agreement is submitted or not,
- iii) Whether documents establishing the eligibility of the bidder and of goods mentioned by the bidder are submitted or not,
- iv) Whether necessary document relating to the qualifications of the bidder is submitted or not,
- v) Where the bidding documents require the submission of a rate analysis, whether such rate analysis is submitted or not,
- vi) Other matters as prescribed.
- vii) The Public Entity may ask bidders for necessary information.
- viii) The concerned bidder should have to provide the information sought by the Public Entity without allowing any change or alteration in the bid price or other substance of the bid.
- ix) In examining bids bidder shall be made to ascertain whether or not it conforms to the prequalification or not.
- x) While examining the qualification pursuant to Sub-section (6), if the qualification of a bidder is found to be substantially lower than what was at the prequalification stage, the bid of such a bidder shall be rejected.
- xi) If any arithmetical error is found in a bid in examining bids the Public Entity may correct such an error, and where, in making such correction, there exists a discrepancy between unit rate and total amount, the unit rate shall prevail, and the total amount shall be corrected as per the same rate.
- xii) Where there is a discrepancy between figures and words in a bid submitted by a bidder, the amount in words shall prevail.
- xiii) Where any error is corrected pursuant to Sub-section (8) or (9), information of such correction shall be communicated to the concerned bidder.

- b) Rules 80 of Cooperative Regulation, 2075 has made provision of inter transactions of Cooperatives to each other under the following:
- i) Each cooperative who are interested inter cooperative transactions under section 140 of Cooperative Act, 2074 has made their members as per the bylaws of each cooperatives as required by them.
  - ii) Cooperatives associated with the inter cooperative transactions shall have operate a integrated work plan regarding the collection, processing and marketization of their products through a lead cooperatives.
  - iii) Each member of the cooperative can have electronically transferred their money to any cooperative all over Nepal's cooperatives however the cooperative shall have such clause in their bylaws.
  - iv) Cooperative who deal with the credit lending transactions to the members shall have to follow the same standards as the applied to the cooperative bank by the concerned ministry.
  - v) The concerned ministry may from time to time prescribed further procedures for such inter cooperatives transactions.

5(c) Section 43 of Foreign Investment and Technology Transfer Act, 2075 has explained the validity period of the approval of Foreign investment as follows:

- (1) The approval of foreign investment given by the foreign investment approving body shall remain valid for a period until such investment remains in Nepal.
- (2) Not withstanding anything contained in sub- section(1), such approval shall be deemed to be *ipso facto* ineffective in the following circumstances.
  - (a) In the event of failure, except for any reasonable reason, to commence bringing in to Nepal of the amount of such foreign investment within two years after the date of approval of foreign investment.
  - (b) In the event of transfer of cent percent ownership of an industry with foreign investment to a Nepali investor as a result of the sale of shares in the industry registered with the approval of foreign investment.
  - (c) In the event of the revocation of its registration as a result of a default on the part of the industry having got approval for foreign investment or the company establishing such an industry.
- (3) Other provisions relating to the validity period of the approval of foreign investment shall be as prescribed.

6. Write short notes on the following:

- a) State the functions of Accreditation Committee pursuant to the International Financial Transaction Act, 2054. 4
- b) State the objectives of the Foreign Exchange Regulation Act, 2019 along with its scope. 3
- c) When an arbitrator's authority can be revoked under the Arbitration Act, 2055. 3

Answer

6 a) Pursuant to Section 11(1) of the Financial Transactions Act, 2054, the functions, duties and powers of the Accreditation Committee shall be as follows: -

- i) To monitor and supervise the financial activities of license holder entities as to whether or not their activities are in line with the provisions of this Act or Rules made thereunder.

- ii) To make recommendations to the Promotion Board in respect of facilitates to be accorded to the international financial entities.
  - iii) To make recommendations to the Promotion Board in respect of improvements to be made in the existing laws.
  - iv) To inquire as to whether or not a license holder entity is fulfilling the conditions required to be fulfilled under the provisions of this Act.
  - v) To give necessary instructions to license holder entities in respect of international financial transactions.
  - vi) To avail itself of the service of national or foreign experts or specialized agencies for the promotion and development of international financial transactions.
  - vii) To comply with the instructions given from time to time by the Promotion Board,
  - viii) To suspend or revoke, as may be required, the license obtained by any license holder entity
  - ix) To perform such other acts for making international financial transactions effective.
- b) According to the Foreign Exchange Regulation Act 2019, the Objectives of the act have been prescribed as follows:
- To regulate foreign exchange related transactions.
  - To maintain the economic interest of the general public.
  - To promote the use of foreign exchange for the payment and receive of foreign trade.
  - To promote foreign investment and technology transfer,
  - To promote the use of foreign currency in loan exchange.
  - To maintain the balance of payment (BoP) in the nation.
- The Scopes as per the legal provisions can be listed out as follows:
- Use of foreign exchange investment and technology transfer.
  - Foreign exchange (buying & selling of FOREX).
  - Use of foreign exchange for the payment/receive of foreign trade.
  - Use of foreign currency in loan exchange (transaction) with foreign entities.
  - Regulations of foreign-related transactions.
- c) In general, the condition and procedure for removal of an arbitrator shall be as mentioned in the agreement.
- Section 11 (2) of the Arbitration Act, 2055 states that if the condition and procedure has not been mentioned in the agreement, in the following circumstances a party may submit an application to the arbitrator requesting for permission to remove an arbitrator within 15 days from the date of his/her appointment or from the date when the party learns that the concerned arbitrator has failed to act:
- i) If any arbitrator is clearly seen to have shown a bias toward or discriminated against any party instead of working in an impartial manner.
  - ii) If any arbitrator engages in improper conduct or commits fraud in the course of arbitration.
  - iii) If any arbitrator frequently commits mistakes or irregularities in the course of arbitration.
  - iv) If any arbitrator does not attend arbitration meetings or refuses to take part in arbitration proceedings for more than three times without furnishing satisfactory reasons with the objective of prolonging or delaying the arbitration proceedings in an improper manner.
  - v) If any arbitrator takes any action which is opposed to the principles or rules of natural justice.
  - vi) If any arbitrator is found to be lacking the necessary qualifications, or to have ceased to be qualified.

**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. Shree Om Hydro Power Pvt. Ltd. was incorporated on Shrawan 7, 2063. It developed a 10 MW installed capacity Hydro Power Project which achieved commercial production on Shrawan 2, 2067. The Company is listed in NEPSE. The company has provided the following extracted information for the Income year 2078/79 to assess the tax liability up to Aswin end 2079. You are requested to calculate the total tax liability highlighting the special provisions of tax concessions and special allowable expenses to the company as per the Income Tax Act, 2058.

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- a) Income and expenditure

Amount in thousand

| Particulars  | Rs.       | Rs.        |
|--|-----------|------------|
| Revenue from electricity   |           | 500,000.00 |
| Interest on Fixed Deposit and call account from Banks (Net of tax) Shrawan 1, 2078 to Chaitra 30, 2078 |           | 50,000.00  |
| Interest received from subsidiary on Ashad 30, 2079  |           | 10,000.00  |
| Dividend received on Mansir 15, 2078 (Net of Taxes)  |           | 2,500.00   |
| Land lease rental (Net of tax) received  |           | 3,000.00   |
| Leasing of assets (Net of tax) received in Poush 2078 end and Ashad 2079 end in two installment.       |           | 1,500.00   |
| Proceeds from Auction of assets (including all applicable taxes)                                       |           | 6,000.00   |
| Hydroelectric plant operating expenses   | 75,000.00 |            |
| Royalty paid to the government   | 1,500.00  |            |
| Employee benefits  | 10,000.00 |            |
| Administrative expenses  | 25,000.00 |            |
| Repair and maintenance expenses  | 10,000.00 |            |
| Corporate social responsibility expenses (provisional)   | 1,000.00  |            |

- b) Opening tax base depreciable assets; additions and disposal as per ledger during the year

Amount in

thousand

| Particulars            | Opening    | Additions | Disposal | Remarks   |
|------------------------|------------|-----------|----------|---|
| Hydro Mechanical works | 300,000.00 | 50,000.00 | -        | A equipment with opening value of Rs. 20 million has been replaced by new equipment on Chaitra 15, 2078 |

|  |            |          |          |  |
|--|------------|----------|----------|--|
| Electromechanical works                | 250,000.00 | -        | 8,000.00 | Replaced equipment in FY 2077/78 were disposed on auction during the year. The replaced book value was Rs 8 million, the auctioned value is Rs. 6 million. |
| Tools and equipment                    | 10,000.00  | 2,500.00 | -        | Purchased upto Poush end 2078.   |
| Transmission line                      | 40,000.00  | -        | -        |  |
| Land                                   | 100,000.00 | -        | -        |  |
| Buildings                              | 150,000.00 | -        | -        |  |
| Plant Civil structures                 | 150,000.00 | -        | -        |  |
| Others                                 | 50,000.00  | -        | -        |  |
| Vehicles                               | 20,000.00  | 6,000.00 | -        | Purchased on Ashad 30, 2079 and provided to a director on 5 Shrawan, 2079. Ownership was also transferred on 5 Shrawan 2079.                               |
| Other assets (Computers and furniture) | 15,000.00  | 500.00   | -        | Purchased on 15 Jestha, 2079.  |

c) Carried forward Loss

Carried forward taxable loss for last 11 years upto 2075/76: Rs. 200 million.

Company's taxable loss for the FY 2076/77: Rs. 20 million.

Company's taxable loss for the FY 2077/78: Rs. 5 million.

d) Repair and maintenance expenses

Amount in thousand

| Particulars              | Expenses  | Remarks  |
|--------------------------|-----------|--|
| Hydro Mechanical works   | 25,000.00 |  |
| Electro mechanical works | 3,000.00  |  |
| Transmission line        | 1,500.00  |  |
| Vehicles                 | 3,500.00  | Includes Rs. 300,000 for additional accessories purchased on Ashad 30, 2079. |
| Computers                | 50.00     |  |

e) Other additional information

i) As per Electricity Act, 2049, the company has to pay royalty to Government at a rate of Rs. 100,000 per Megawatt per annum for a term of upto fifteen years from the date of generation of electricity for commercial purpose. The given royalty amount is the amount paid to government for current year.

ii) Employee benefits include the provision of Rs. 2 million booked in compliance with Nepal Financial Reporting Standards as per the actuarial valuation.

iii) Administrative expenses includes lawyer's fee of Rs. 5 lakhs (including VAT) relating to legal services for drafting lease agreement.

- iv) The company provisions for corporate social responsibility activities annually. Rs. 4 lakhs was paid to community school during the current year as a grant for furniture maintenance.
- v) The company had paid advance tax of Rs. 5 lakhs during FY 2077/78. No others tax payment is made after that. The company has not submitted any estimated tax return.

**Answer:**

**Computation of Taxable Income of Shree Om Hydro Power Pvt. Ltd. For the Income Year 2078-79**

**(Amount in thousand)**

| Particulars   | Section                              | Note                                    | Revenue from Electricity | Other Income  | Total          |
|---|--------------------------------------|---|--------------------------|---------------|----------------|
| <b>Items to be included in Income</b>                 |                                      |   |                          |               |                |
| Revenue from Electricity                              | U/s 7(2)(Kha)                        |   | 500,000                  | -             | 500,000        |
| Interest on Fixed Deposit and call account from Banks | U/s 7(2)(Chha)                       | 15 % TDS rate applicable, so, 50000/.85 | -                        | 58,824        | 58,824         |
| Interest received from subsidiaries                   | U/s 7(2)(Chha)                       |   |                          | 10,000        | 10,000         |
| Dividend received                                     | U/s 7(3) read with Section 92(1)(Ka) |   | -                        | -             | -              |
| Land lease  | U/s 7(2)(Chha)                       | 10 % TDS rate applicable, so, 3000/.90  |                          | 3,333         | 3,333          |
| Leasing of assets                                     | U/s 7(2)(Chha)                       | 10 % TDS rate applicable, so, 1500/.90  |                          | 1,667         | 1,667          |
| <b>Total amount to be included in Income</b>          |                                      |   | <b>500,000</b>           | <b>73,824</b> | <b>573,824</b> |
| <b>Less Deductible Expenses</b>                       |                                      |   |                          |               |                |
| Hydroelectric plant operating expenses                | U/s 15                               | Note 1                                  | 76,000                   | -             | 76,000         |
| Employment Benefits                                   | U/s 13                               | Note 2                                  | 8,000                    | -             | 8,000          |
| Administrative Expenses                               | U/s 13                               |   | 24,500                   | 500           | 25,000         |
| Repair and Maintenance Expenses                       | U/s 13                               | Assuming of non depreciable assets      | 10,000                   | -             | 10,000         |
| Repair and Maintenance Expenses                       | U/s 16                               | Note 4                                  | 31,097                   | -             | 31,097         |
| Depreciation  | U/s 19                               | Note 3                                  | 202,921                  | -             | 202,921        |
| <b>Total Deductible Expenses</b>                      |                                      |   | <b>352,518</b>           | <b>500</b>    | <b>353,018</b> |
| <b>Carry forward loss</b>                             | <b>U/s 20(1)</b>                     | Note 5                                  | 5,000                    | -             | 5,000          |
| <b>Taxable Income</b>                                 |                                      |   | <b>142,482</b>           | <b>73,324</b> | <b>215,806</b> |

**Computation of Tax Liability of Shree Om Hydro Power Pvt. Ltd. For the Income Year 2078-79:**

| Particulars               | Note   | Revenue from Electricity | Other Income  | Total         |
|---------------------------|--------|--------------------------|---------------|---------------|
| Taxable Income            |        | 142,482                  | 73,324        | 215,806       |
| Income Tax Rate           | Note 6 | 12.50%                   | 25%           |               |
| <b>Income Tax Payable</b> |        | <b>17,810</b>            | <b>18,331</b> | <b>36,141</b> |
| Less: Advance Income Tax  |        |                          |               | 500           |
| Less: Withholding tax on  |        |                          |               |               |
| Fixed Deposit             |        |                          |               | 8,824         |
| Land Lease                |        |                          |               | 333           |



|                             |               |  |  |               |
|-----------------------------|---------------|--|--|---------------|
| Leasing of Assets           |               |  |  | 167           |
| <b>Income Tax Payable</b>   |               |  |  | <b>26,318</b> |
| <b>Interest U/s 118</b>     | <b>Note 7</b> |  |  | <b>1,822</b>  |
| <b>Interest U/s 117</b>     | <b>Note 8</b> |  |  | <b>24</b>     |
| <b>Total Amount Payable</b> |               |  |  | <b>28164</b>  |

### **Working Notes (WN)**

#### WN 1 cost of sales

Calculation of cost of sales under section 15

|  |                   |
|--|-------------------|
| Hydroelectric plant operating expenses | Rs. 75,000        |
| Royalty (10MW*100,000)                 | <u>Rs. 1000</u>   |
| <b>Total</b>                           | <b>Rs. 76,000</b> |

#### WN 2 Employee benefits U/s 13

|                            |                  |
|----------------------------|------------------|
| Given                      | Rs. 10,000       |
| Less provisions disallowed | <u>Rs. 2,000</u> |
| <b>Allowable</b>           | <b>Rs. 8,000</b> |

#### WN 3

### **Calculation of allowable depreciation**

As per Section 19(2), Special provisions applicable for hydro power: If the devices, equipment and other machineries installed previously become obsolete because of being old or worn and torn and new devices, equipment and other machineries have to be installed in lieu thereof, the value which remains by subtracting depreciation deduction until the income year from the cost of the property, which has become obsolete property because of being old or worn and torn, installed previously in that income year in which they were so installed may be deducted as expenses.

| Particulars                        | Pool A  | Pool B | Pool C | Pool D  | Total     |
|------------------------------------|---------|--------|--------|---------|-----------|
| Opening Depreciation Base          | 150,000 | 15,000 | 20,000 | 800,000 | 985,000   |
| Add: Absorbed Addition             |         |        |        |         |           |
| Upto Poush end                     | 0       | 0      | 0      | 2,500   | 2,500     |
| Upto Chaitra end                   | 0       | 0      | 0      | 33,333  | 33,333    |
| Upto Ashad end                     | 0       | 167    | 2,100  | 0       | 2,267     |
| Less: Amount Derived from Disposal | 0       | 0      | 0      | 6,000   | 6,000     |
| Depreciation Base                  | 150,000 | 15,167 | 22,100 | 829,833 | 1,017,100 |
| Depreciation U/s 19(2)             | -       | -      | -      | 20,000  | 20,000    |
| Balance Depreciation Base          | 150,000 | 15,167 | 22,100 | 809,833 | 997,100   |
| Additional Depreciation Rate       | 6.67%   | 33.33% | 26.67% | 20%     |           |
| Depreciation U/s 19(1)             | 10,005  | 5,055  | 5,894  | 161,967 | 182,921   |

\* Section 19 (1) states assets owned and used by the person, depreciation shall be deducted, the vehicles purchased on Ashad 30, 2079, so from this date the vehicle is owned and used by the

company. Official use of the vehicle can be determined by the company, so ownership transfer and use from the director does not change to calculate the depreciation of the assets. Additional facilities added in the vehicle is added in the assets values as per general accounting principles. It is not treated repair cost. Total purchased cost Rs. 6,000+300 (included in R&M), 1/3 of this cost is Rs. 2,100,000

\*\* As per special provisions provided to the hydro power, the book value of the replaced equipment shall be claimed as depreciation, so Rs. 8 million is claimed as depreciation in 2077/78 and auction value of Rs. 6 million is the disposal under the block during the year.

\*\*\* One equipment opening value of Rs. 20 million has been replaced by procuring new one on chaitra 15, 2078, the amount is claimed as depreciation.

#### WN 4

##### Calculation of Repair and maintenance U/s 16

| Particulars             | Pool B   | Pool C | Pool D | Total  |
|-------------------------|----------|--------|--------|--------|
| Actual Repair Expenses  | 50       | 3,200  | 29,500 | 32,750 |
| 7% of Depreciation Base | 1,061.67 | 1,547  | 58,088 | 60,697 |
| Allowed U/s 16          | 50       | 1,547  | 29,500 | 31,097 |

#### WN 5: Allowable carry forward loss

As per section 20(8), if any person has received full tax exemption in respect of income of business or investment in any income year, the loss incurred in that income year shall not be carried forward to upcoming income year. Further, section 11(3gha) provides full income tax exemption for the first ten years and fifty percent exemption for another five years for hydropower projects after commercial operation. It is assumed that the company has taken the full tax exemption from FY 2067/68 to 2076/77, i.e.10 years. In 11<sup>th</sup> year, company can get 50 % exemption, so loss of FY 2077/78 can be claimed in the income of FY 2078/79.

#### WN 6

##### Computation of effective tax

| Particulars        | Section                    | Option 1      | Option 2      | Option 3      |
|--------------------|----------------------------|---------------|---------------|---------------|
| Normal Rate        | Schedule 1<br>Section 2(1) | 25%           | 25%           | 25%           |
| Less: Rebate @ 50% | U/s<br>11(3Gha)            | 12.50%        | 0%            | 0%            |
| Balance            |                            | 12.50%        | 25.00%        | 25.00%        |
| Less: Rebate @ 15% | U/s<br>11(3Chha)           | 0%            | 3.75%         | 0.00%         |
| Balance            |                            | 12.50%        | 21.25%        | 25.00%        |
| Less: Rebate @ 20% | U/s<br>11(3Tha)            | -             | -             | 5%            |
| <b>Balance</b>     |                            | <b>12.50%</b> | <b>21.25%</b> | <b>20.00%</b> |

**Company should opt for Option 1.**

**WN 7: Computation of Interest U/s 118**

| Particulars     | Installment | Income Tax Payable | Advance Tax Paid | 90% of Income Tax Payable | Difference | Interest U/s 118 @ 15% |
|-----------------|-------------|--------------------|------------------|---------------------------|------------|------------------------|
| Upto Poush to   | 40%         | 14,456             | 583              | 13,010.40                 | 12,427.40  | 466.02                 |
| Upto Chaitra to | 70%         | 25,298             | 9,407            | 22,858.20                 | 13,451.20  | 504.42                 |
| Upto Ashad      | 100%        | 36,141             | 9,824            | 32,526.90                 | 22,702.90  | 851.35                 |
|                 |             |                    |                  |                           |            | <b>1,821.79</b>        |

**WN 8:****Interest U/s 117**

| Particulars                | Amount |
|----------------------------|--------|
| Monetary Limit             | 5      |
| 0.01% of Assessable Income | 23.58  |
| Higher                     | 23.58  |

2.

- a) Putalisadak Byapar Company Limited had filed its self-assessment income tax return for FY 2076/77. The return has been opened for reassessment. The company does not agree with everything that has been reassessed and decided to file for Administrative Review (AR). Not all that was objected by company was addressed by AR. It then filed case at Revenue Tribunal (RT). You are required to calculate the tax payment required for AR and appeal at RT.

|   |            |
|---|------------|
| Self-assessed Tax                           | 12,000,000 |
| Advance Tax deposited                       | 15,000,000 |
| Reassessed tax including interest & penalty | 18,500,000 |
| Tax related to undisputed items before AR   | 1,200,000  |
| Tax related to undisputed items before RT   | 1,500,000  |

What other option will the Company have if they do not have funds for filing the appeal?

**Answer:****Calculation of Payment & Deposit for AR as per Section 115(6)**

| Particulars                                       | Amount     |
|---|------------|
| Self Assessed Tax                                 | 12,000,000 |
| Reassessment of Tax                               | 18,500,000 |
| Total Differential Tax                            | 6,500,000  |
| Tax related to undisputed items before AR         | 1,200,000  |
| Disputed Item of Tax                              | 5,300,000  |
|   |            |
| Excess Advance Tax deposited (A)                  | 3,000,000  |
| (Advance tax less, self assessed tax)             |            |
| Deposit required - 25% of the disputed U/s 115(6) | 1,325,000  |
| Payment required - 100% of undisputed U/s 115(6)  | 1,200,000  |
| Total Payment and Deposit required (B)            | 2,525,000  |
| Excess Advance Tax (A - B)                        | 475,000    |

**Therefore, no additional payment required for AR.**

#### **Calculation of Payment & Deposit for RT**

|  |                  |
|--|------------------|
| Total Differential Tax                       | 6,500,000        |
| Tax related for undisputed items before AR   | 1,200,000        |
| Tax related for undisputed items before RT   | 1,500,000        |
| Remaining disputed tax amount before RT      | 3,800,000        |
|  |                  |
| Excess Advance Tax deposited (A)             | 3,000,000        |
| (Advance tax less, self assessed tax)        |                  |
| Deposit of 50% of disputed U/s 116(5)        | 1,900,000        |
| Undisputed before AR                         | 1,200,000        |
| Undisputed before RT                         | 1,500,000        |
| Total to be paid                             | 4,600,000        |
|  |                  |
| <b>Balance to be deposited for RT appeal</b> | <b>1,600,000</b> |

As per Section 116(6), The company will have option of submitting the bank guarantee for the same amount as mentioned above in place of cash deposit.

- b) Mrs. Santoshi Magar, a widow with three children, is operating a fruit juice trading business in Achham district since 2060. She exports fruit juice under brand "Himali juice". The juice is quite popular with Children.

Her transaction in the FY 2077/78 are given below:

| Particulars        | Local Sales<br>Amount Rs. | Export Sales<br>Amount Rs. |
|--------------------|---------------------------|----------------------------|
| Sales              | 35,000,000                | 70,000,000                 |
| Cost of good sold  | 15,000,000                | 22,000,000                 |
| Operating expenses |                           |                            |
| Salary             | 2,000,000                 | 5,000,000                  |
| Depreciation       | 1,000,000                 | 1,500,000                  |
| Repair             | 500,000                   | 800,000                    |
| Donation to VDC    | 200,000                   | 200,000                    |

|                             |        |        |
|-----------------------------|--------|--------|
| Donation to local villagers | 10,000 | 10,000 |
| Rates and taxes             | 13,000 | 13,000 |

Notes:

Rates and taxes includes Rs. 3,000 as tax penalty.

Salary includes Rs. 50,000 paid without deducting withholding tax in both local sales and export sales.

Calculate taxable income and tax liability of Mrs. Santoshi Magar.

**Answer:**

**Calculation of taxable income of Mrs. Santoshi Magar for the Income Year 2077-78**

| Particulars                           | Section                 | Note                            | Local Sales Amount Rs. | Export Sales Amount Rs. |
|---------------------------------------|-------------------------|---------------------------------|------------------------|-------------------------|
| <b>Items to be Included in Income</b> |                         |                                 |                        |                         |
| Sales                                 | U/s 7(2)(Kha)           |                                 | 35,000,000             | 70,000,000              |
| Total amount to be included in income |                         |                                 | 35,000,000             | 70,000,000              |
| Less: Deductible Expenses             |                         |                                 |                        |                         |
| Cost of Goods Sold                    | U/s 15                  |                                 | 15,000,000             | 22,000,000              |
| Salary                                | U/s 13                  | Note 2                          | 2,000,000              | 5,000,000               |
| Depreciation                          | U/s 19                  |                                 | 1,000,000              | 1,500,000               |
| Repair                                | U/s 16                  |                                 | 500,000                | 800,000                 |
| Rates and taxes                       |                         | Note 3                          | 10,000                 | 10,000                  |
| Total Deductible Expenses             |                         |                                 | 18,510,000             | 29,310,000              |
| <b>Assessable Income</b>              |                         |                                 | <b>16,490,000</b>      | <b>40,690,000</b>       |
| Less: Remote Area Allowance (Class C) | Schedule 1 Section 1(5) | In the ration of sales (Note 1) | 10,000                 | 20,000                  |
| <b>Taxable Income</b>                 |                         |                                 | <b>16,480,000</b>      | <b>40,670,000</b>       |

**Working Notes:**

- As per schedule 1 Section 1(5), for an individual working in such remote area as specified by the Government of Nepal, a maximum sum of fifty thousand rupees for the remote allowance shall be deducted as prescribed from the taxable income. Rs.30000 for remote area of category C can be deducted.
- Salary expenses are deductible u/s 13. salary paid without deducting withholding tax is deductible but withholding tax should be deducted and deposited in IRD. Beside that as per section 90(3) though withholding tax is not deducted ,it shall be deemed as deducted.
- Rates and taxes as given below                      Rs.13,000  
Less: tax penalty    Rs. 3,000 not deductible expense  
**Rs. 10,000**
- Local villagers are not tax exempt but though the income of VDC is tax exempted, but conditions mentioned U/s 12 is not satisfied in order to claim the reduction.

**Calculation of tax liability of Mrs. Santoshi Magar for the Income Year 2077-78:**

| Particulars              | Detail     | Provision                      | Local Sales | Export Sales | Total Amount |
|--------------------------|------------|--------------------------------|-------------|--------------|--------------|
| Upto Rs. 450000          |            |                                | No Tax      | No Tax       |              |
| Next Rs. 100000          |            |                                | 10%         | 10%          | 10,000       |
| Next Rs. 200000          |            | U/s 11(3Nga)                   | 20%         | 15%          |              |
| Local Sales              | 57,673     | In the ratio of Taxable Income |             |              | 11,535       |
| Export Sales             | 142,327    | In the ratio of Taxable Income |             |              | 21,349       |
| Next Rs. 1250000         |            | U/s 11(3Nga)                   | 30%         | 15%          |              |
| Local Sales              | 360,455    | In the ratio of Taxable Income |             |              | 108,136      |
| Export Sales             | 889,545    | In the ratio of Taxable Income |             |              | 133,432      |
| Balance                  |            | U/s 11(3Nga)                   | 36%         | 18%          |              |
| Local Sales              | 15,903,272 | In the ratio of Taxable Income |             |              | 5,725,178    |
| Export Sales             | 39,246,728 | In the ratio of Taxable Income |             |              | 7,064,411    |
| Total Income Tax Payable |            |                                |             |              | 13,074,041   |

Notes: As per Section 11(3Nha), Income earned from export by natural person-tax @ 15% on taxable income for which tax rates of 20% and 30% applicable.

c) From the following, determine the withholding tax to be deducted, if any, on following payments by mentioning relevant provision:

i) Nepal College Private Limited is running MBA program of Lincon University Malaysia since many years. During Income Year 2077-78 and 2078-79, it paid Rs. 1,500,000 and Rs. 2,500,000 as a Registration Fees and Examination Fee respectively. 2

ii) Everest Bank Limited borrowed USD 100,000 from Unicredit Bank Italy for period Poush 10, 2078 to Magh 7, 2079. Interest rate applicable was 4.67% p.a. and exchange rate USD/NPR is 130. 3

iii) Fly Nepal Air Pvt. Ltd., a Nepalese company has paid Rs. 32,000,000 to Fly Ireland Ltd. of Ireland for leasing an aircraft. Aircraft of Ireland's company was used due to ongoing repair of its own aircraft. For repair works, Fly Nepal has paid Rs. 42,000,000 and aircraft was sent to Ireland for repair. 2

**Answer:**

i) As per Clause (11) of Sub Section (1) of Section 88, TDS is deducted at the rate of 5 % on payment of registration fee, education fee, and exam fee to foreign university or school from Income Year 2078-79 ie. 5% of 25,000,00 Rs., 1,25,000. In income year 2077-78 it was 15% ie. 15% of 15 lakhs, Rs. 225,000.

- ii) As per Section 88, TDS is deducted at the rate of 10% on payment of interest by resident Bank and Financial Institutions to foreign Bank/Financial Institutions TDS to be deducted is Rs. 1,30,00,000@4.67% for 27 days is Rs. 44,908.76 and applicable TDS is Rs. 4,490.88.
- iii) According to section 88(1)(3), 10% TDS shall be deducted while paying for lease of aircraft. Hence, Fly Nepal Air Pvt. Ltd. has to deduct the TDS of Rs. 3,200,000 (10% of lease payment) while paying lease of aircraft to Fly Ireland Ltd.

Similarly, according to section 89(3) of Income Tax Act, while paying for contract of aircraft repair, a resident person shall withhold 5% . Hence, Fly Nepal Air Pvt. Ltd. has to deduct the TDS of Rs. 2,100,000 (5% of craft repair fee) while paying lease of aircraft to Fly Ireland Ltd.

3.

- a) A Chartered Accountant in practice is providing assurance services to a multinational private company operating in Nepal. The company requests him to provide his professional support in resolution of tax disputes with Inland Revenue Department at Revenue Tribunal. To what extent does the Chartered Accountant can oblige the company in such offer? Your answer should be based on the Code of Ethics of ICAN.

Answer:

|   |
|---|
| <b>Provision</b>  |
| As per the Code of Ethics of ICAN, a Chartered Accountant shall not provide tax services that involve assisting in the resolution of tax disputes to an audit client if:  |
| (a) The services involve acting as an advocate for the audit client before a public tribunal or court in the resolution of a tax matter; and  |
| (b) The amounts involved are material to the financial statements on which the firm will express an opinion.  |
| However, this does not preclude the CA from having a continuing advisory role in relation to the matter that is being heard before a public tribunal or court, for example:   |
| <ul style="list-style-type: none"> <li>● Responding to specific requests for information.</li> <li>● Providing factual accounts or testimony about the work performed.</li> <li>● Assisting the client in analyzing the tax issues related to the matter.</li> </ul>              |
| In this case therefore, the firm cannot provide the services to the extent where the CA has to present in in the Tribunal where hearing are public and he also provides the assurance services to the same client. However, he can provide the advisory services mentioned above. |

- b) Prabhu General Insurance Nepal Ltd. has provided the following information for FY 2077/78.

| Particulars                   | Amount (NPR) |
|-------------------------------|--------------|
| Net Premium Received          | 757,000,000  |
| Commission on insurance ceded | 44,800,000   |

|   |             |
|---|-------------|
| Opening unexpired risk reserve          | 261,000,000 |
| Opening claim outstanding               | 40,020,000  |
| Commission on reinsurance accepted      | 17,400,000  |
| Agent commission payments expenses      | 26,100,000  |
| Management expenses                     | 174,000,000 |
| Claim paid during the year              | 174,000,000 |
| Closing claim outstanding               | 52,200,000  |
| Interest income on Fixed Depots (Gross) | 87,000,000  |
| Depreciation                            | 104,400,000 |
| Miscellaneous income                    | 43,500,000  |
| Claim received from reinsurance         | 87,000,000  |
| Carried forward loss from FY 2076.77    | 174,000,000 |

**Additional Information:**

- Sale of salvage accepted by company from the insured at the time of claim settlement of Rs. 56,500 (including VAT) was not recorded above.
- Depreciation expenses as per Income Tax Act 2058, is NPR 70,000,000.
- Management expense includes: Telephone expense of NPR 100,000 for Jestha 2077.

Calculate taxable income and tax liability.

5

**Answer:**

Calculation of taxable income and tax liability of Prabhu General Insurance Nepal Ltd for the Income Year 2077-78.

| Particulars                              | Section              | Note   | Amount (NPR.) |
|--|----------------------|--|---------------|
| <b>Items to be included in Income</b>    |                      |  |               |
| Net Premium Received                     | U/s 60(2)(Ka)        |  | 757,000,000   |
| Commission on insurance ceded            | U/s 60(2)(Ka)        |  | 44,800,000    |
| Opening unexpired risk reserve           | U/s<br>60(2)(Kha)(3) |  | 261,000,000   |
| Opening claim outstanding                | U/s<br>60(2)(Kha)(3) |  | 40,020,000    |
| Interest income on Fixed Deposit (Gross) | U/s 7(2)(Chha)       |  | 87,000,000    |
| Miscellaneous income                     | U/s 7(2)(Chha)       |  | 43,500,000    |
| Claim received from reinsurance          | U/s 60(2)(Ka)        |  | 87,000,000    |
| Sale of salvage                          | U/s 7(2)             | (56500/1.13)                                   | 50,000        |
| Total Amount to be Included in Income    |                      |  | 1,320,370,000 |
| <b>Less: Deductible Expenses</b>         |                      |  |               |
| Commission on reinsurance accepted       | U/s 60(2)(Kha)       |  | 17,400,000    |
| Agent commission                         | U/s 60(2)(Kha)       |  | 26,100,000    |
| Management expenses                      | U/s 13               | Prior period expenses not deductible<br>U/s 13 | 173,900,000   |
| Claim paid during the year               | U/s 60(2)(Kha)       |  | 174,000,000   |
| Closing claim outstanding                | U/s 60(2)(Kha)       | 115% of closing claim outstanding is allowable | 60,030,000    |



|  |                |  |                      |
|--|----------------|--|----------------------|
| Closing unexpired risk reserve (50% of net premium received) | U/s 60(2)(Kha) |  | 378,500,000          |
| Depreciation   | U/s 19         |  | 70,000,000           |
| Carried forward loss of FY 2076-077                          | U/s 20         |  | 174,000,000          |
| <b>Total Deductible Expenses</b>                             |                |  | <b>1,073,930,000</b> |
| Assessable Income  |                |  | 246,440,000          |
| Taxable Income   |                |  | 246,440,000          |
| <b>Tax (@30%)</b>  |                |  | <b>73,932,000</b>    |

4.

- a) Professional Designers Private Limited is a service company operating in Kathmandu. It has following transaction in the month of Jestha 2079. You are required to calculate total VAT payable for the month and the carry forward of VAT credit, if any. Amount is in rupees unless otherwise indicated.

|  |           |
|--|-----------|
| 1) Opening VAT                                 | 11,500    |
| 2) Purchase of wall painting from an artist    | 45,000    |
| 3) Purchase of services from abroad            | 120,000   |
| 4) Purchase of 1 gold coin                     | 45,000    |
| 5) Purchase of Ipad                            | 70,000    |
| 6) Sale proceed of old motorbike               | 25,000    |
| 7) Write-off of software not fully depreciated | 30,000    |
| 8) Service sold to company in Pakistan         | \$10,000  |
| 9) Sale of services locally                    | 5,400,000 |
| 10) Purchase of electric vehicle               | 3,640,000 |

Note:

1. USD rate on the date of invoicing was Rs. 128 per USD however the rate was Rs. 125 on the payment date. Both the dates were within Jestha month.
2. Transaction amount mentioned above are exclusive of VAT wherever applicable.
3. The gold coin was purchased for award to an employee while the Ipad was gifted to a client.

**Answer:**

**Statement of VAT Receivable / Payable for the month of Jestha 2079.**

| VAT Payable                   | Amount    | VAT     | Total          | Remarks   |
|-------------------------------|-----------|---------|----------------|---|
| Sale of service - export      | 1,280,000 | -       |                | Export attracts 0% VAT                                      |
| Sale of service - local       | 5,400,000 | 702,000 |                | Local sale attracts full VAT                                |
| Sale proceed of old motorbike | 22,124    | 2,876   |                | VAT is applicable on scrap proceed                          |
| Write off of software         | 30,000    | 3,900   |                | VAT is applicable on write off if it is not informed to IRD |
| <b>Total VAT Payable</b>      |           |         | <b>708,776</b> |   |
| <b>Less: VAT Receivables</b>  |           |         |                |   |
| <b>Opening VAT Receivable</b> |           |         | <b>11,500</b>  |   |

|   |           |         |                |  |
|---|-----------|---------|----------------|--|
| Purchase of wall painting from an artist  | 45,000    | -       |                | Painting and artwork is an exempt item so no VAT                           |
| Purchase of Gold coin                     | 45,000    | -       |                | Gold coin is exempt from VAT   |
| Purchase of Ipad                          | 70,000    | -       |                | VAT credit on gift item is not allowed                                     |
| Purchase of electric vehicle              | 3,640,000 | 189,280 |                | 40% credit allowed for vehicle - Rule 41                                   |
| Purchase of service from abroad           | 120,000   | 15,600  | 204,880        | Reverse VAT credit is allowed. Assuming that it is paid in the same month. |
| <b>Total VAT Receivable</b>               |           |         | <b>216,380</b> |  |
| <b>Net VAT payable on the transaction</b> |           |         | <b>492,396</b> |  |

b) Bagmati Plastic Private Limited is a 100% Foreign Direct Investment (FDI) company established after taking necessary approval for FDI in Nepal. The company has obtained license from the excise department for manufacturing plastic packing materials and registered in VAT at Inland Revenue Department (IRD). The company is one of the largest manufacturers of Injection Stretch Blow Molded (ISBM) bottles and containers. Innovation, segment-wise market expansion, penetration and high degree of customer orientation have been the key factors behind its growth. The company commenced its commercial operation from 1st Ashad 2077.

In the production process of ISBM, input output ratio of Polypropylene and finished product is 1:0.9. Custom duty paid @ 25% of landed cost is not included in below data. The rate of excise duty on the product is 5 % of the value.

The company has appointed its wholly owned subsidiary company Gandaki Plastic Pvt. Ltd. for marketing and distribution of its product as sole distributor. It sells its product to the distributor @ Rs. 38.15 per Kg. Gandaki Plastic P. Ltd. in turn sells the product @ Rs. 75 per Kg. Normal commission to distributors as per standard practice is Rs. 18 per kg. and carriage outwards expenditure is Rs. 9 per Kg.

The company had following transactions during the month of Ashad 2077:

|   |           |
|---|-----------|
| Import of plastic 100 tonne Polypropylene (CIF Raxaul)  | 1,000,000 |
| Clearing and forwarding expenses at Raxaul              | 140,000   |
| Carriage Inward incurred                                | 96,000    |
| Factory Wage  | 245,000   |
| Other production cost                                   | 345,000   |
| Stock of plastic Polypropylene at the end of Ashad 2077 | 35 tonnes |
| Stock of finished products at the end of Ashad 2077     | 35 tonnes |
| Purchase of Scooter (inclusive of VAT)                  | 169,500   |
| Purchase of Mini Truck (inclusive of VAT)               | 2,260,000 |

Required:

i) On 25th Ashad 2077 fire broke out at midnight in factory of Bagmati plastic private limited and raw materials store was destroyed. Fire was doused with the help of Nepal Army at 4 a.m. in the morning. What are

the obligation, consequences and time limit to company as per VAT, Custom and Excise Act?

- ii) Tax officer is of firm belief that the company is under invoicing its product. IRD thinks to buy the stock of finished product at price invoiced by the company. Can IRD buy the product without consent of the company?
- iii) IRD has assessed additional VAT on finished goods sold on the ground that the product was heavily under invoiced than the prevailing market price. State the relevant provision of VAT Act.
- iv) Calculate amount of VAT payable for the month of Ashad 2077.
- v) Excise authorities are considering imposing additional excise on the company on the ground that factory price is not derived properly. State the relevant provision and advise the company on powers of the excise authorities to impose additional excise duty.

**Answer:**

- i) Rule 39Ka VAT Regulations 2053 requires such event to be informed within 30 days of such incidence along with the evidence of writing off the goods from stock due to fire. Similarly rule 17 of Excise Regulations 2058 requires such event to be informed as soon as possible. There is no obligation under Customs Act 2064. Therefore, the company should inform the authorities within stipulated time to enable it to write off the loss. If these authorities are not informed the company will not be able to write off the loss under VAT. Further under rule 40 of VAT regulations, tax officer may assume the stock as sold on physical verification and may order to pay VAT. Similarly, the company may be required to pay loss of excise suffered by Nepal Government under rule 17 of the Excise Regulations.
- ii) Under section 23GA(1) of VAT Act 2052, VAT authorities have power to buy stock of goods considered to be under invoiced. Under section 23GA(2), VAT authorities may choose to buy stock at the value sold by the company without the consent of the company and pay amount calculated at the rate invoiced by the company. As per this provision IRD can buy under invoiced goods.
- iii) As per section 20 1(Nga) of VAT Act 2052 Tax Officer is empowered to assess tax if he has reasonable ground to believe that the product is sold by under invoicing. Since in this case it seems to be under invoiced compared to similar products, VAT Officer may rightly assess additional tax.
- iv) Calculation of VAT payable for the month of Ashad 2077

| Particulars   | Amount<br>Rs. |
|---|---------------|
| Import of plastic 100 tonne Polypropylene(CIF Raxaul) | 1,000,000     |
| Clearing and forwarding expenses at Raxaul            | 140,000       |
| Carriage Inward incurred                              | 96,000        |
| Landed cost   | 1,236,000     |
| Custom Duty @ 25%                                     | 309,000       |
| Sub Total   | 1,545,000     |
| Excise Duty @ 5%                                      | 77,250        |
| Taxable Value for VAT                                 | 1,622,250     |
| VAT paid @ 13%  | 210,893       |
| Total Cost of raw material                            | 1,833,143     |

|  |                   |
|--|-------------------|
| Factory price to sole distributor per kg   | 38.15             |
| Excise duty @ 5% per kg                    | 1.91              |
| Sub total per kg                           | 40.06             |
| VAT per kg @ 13% per kg                    | 5.21              |
| <b>Total VAT collected 23500*5.21</b>      | <b>122,376</b>    |
| Less VAT paid:                             |                   |
| Paid at customs                            | 210,892.50        |
| Purchase of Scooter (169500/1.13*0.13)     | 19,500.00         |
| Purchase of Mini Truck (2260000/1.13*0.13) | 260,000.00        |
| <b>Total credit to be claimed</b>          | <b>490,392.50</b> |
| <b>Net credit to be claimed</b>            | <b>368,016.84</b> |

#### Working Notes:

1. Rule 41(2)(kha) restricts VAT credit for automobiles to 40% only but two wheelers and Mini truck are exempt from this category.
2. Stock of raw material is 35 tonne, so used is 65 tonne.
3. Input to out to ratio is 10: 9, 65 tonne materials used so output is 58.5 tonne and stock is 35 tonne.

#### 4. Quantitative Details:

| Particulars         | FG    | RM     |
|---------------------|-------|--------|
| Opening Stock       | -     | -      |
| Purchase of RM      | -     | 100.00 |
| Production of FG    | 58.50 | -      |
| Closing Stock       | 35.00 | 35.00  |
| Consumption of RM   | -     | 65.00  |
| Sale of FG          | 23.50 |        |
| Recovery (65 x 90%) |       |        |

- v) Section 3Kha (3) of Excise Act 2058, confers power to Excise Officer to collect excise if difference between consumer price and factory price is not reasonable. In this case excise officer may assess and collect excise duty after considering consumer price, commission to wholesaler or retailer, transport expenses and taxes in nearest market. It seems excise officer is not satisfied due to difference in consumer price and factory price. Therefore, such difference should be calculated before opposing excise officer's view.

|                                  |             |              |
|----------------------------------|-------------|--------------|
| Consumer price                   |             | 75.00        |
| Normal commission to wholesalers | 18.00       |              |
| Transport expenses               | <u>9.00</u> |              |
| <b>Estimated selling cost</b>    |             | <b>27.00</b> |
| Modified consumer price          |             | 48.00        |
| Factory price to wholesalers     |             | <u>38.15</u> |
| <b>Difference</b>                |             | <b>9.85</b>  |

Since the difference is unreasonable, excise officer's view is not contrary to the legal provisions. Therefore, Excise Officer may order rightly to pay additional excise duty.

5.

- a) Apache, a car manufactured in 2011, was imported in Nepal in 2014 by a project under customs duty privilege by paying 1% customs duty. The value determined at the time of import was FCY 15,000.00 and rate of exchange was Rs. 110 per FCY. The custom duty of Rs. 10,800.00 was paid as 1% whereas excise duty and VAT were exempted. On July 14, 2021 the project has allowed the General Manager in Nepal to get free ownership of the car. But the GM has to pay all duties and taxes, in case payable. All supporting documents have been submitted to the custom office for clearance on 30 July, 2021. The custom tariff 80% and excise duty 60% are applicable for such imported car. The exchange rate on 30 July is Rs. 126 per FCY. Calculate all duties and taxes payable to the customs office.

7

Answer:

Calculation of all duties and taxes payable to the customs office.

| Particulars   | FCY       |
|---|-----------|
| Value of the car at the time of import  | 15,000    |
| Depreciation allowed:   |           |
| Before import the car was in foreign for 3 years.<br>The maximum period for depreciation allowed is 5 years minus 3 years =2 years only as per Schedule 1 Section 9(4) of Finance Act, 2078 |           |
| Depreciation for 1st year import @ 10%  | 1,500     |
| Depreciated balance for 2nd year  | 13,500    |
| Depreciation for 2nd year import @ 10%  | 1,350     |
| Value for custom duty   | 12,150    |
| Value for custom duty in Nepali currency<br>12,150X126  | 1,530,900 |
| Calculation of duty and taxes payable   |           |
| Custom Valuation  | 1,530,900 |
| Applicable custom rate (80 %-60% of 80%)  |           |
| 60 percent of applicable rate is exempted as per Schedule 1 Section 13(1) of Finance Act, 2078 in this situation  | 32%       |
| Custom duty   | 489,888   |
| Less: 1% paid amount  | 10,800    |
| Net custom duty payable   | 479,088   |
| Excise duty (60 % of Value plus custom duty)  | 1,212,473 |
| Custom service fee  | 500       |
| VAT @13%  | 420,389   |

|   |           |
|---|-----------|
| Total duty and taxes payable as per above calculation | 2,112,450 |
|---|-----------|

- b) Aarohi Brick Factory deposited Rs. 30,000 being the installment payment of total excise license fee of Rs. 150,000 to acquire the license on Shrawan 2076. Balance payment was to be made on 2076 Magh and 2077 Jestha in equal installments. The factory could not deposit the balance two installments, however on 30th Bhadra 2077 applied for renewal of license. Calculate the amount to be paid on renewal of excise license by Aarohi Brick Factory.

**6**

Answer:

There is no provision for Brick industry regarding payment of excise duty license in installment. Therefore, as per Section 8 and 9 of Excise Act, 2058, no one should manufacture the goods without taking excise license under this Act. As per Section 9(4), Excise License shall be valid for 1 year only. Manufacturer shall renew its license within Shrawan of month after the expiry. If excise license is not renewed within the Shrawan month then it can be renewed by paying additional 50% of the renewal fee up to 3 months as per Section 9(6Ka). Therefore, total payment to be made by Aarohi Brick Industry shall be :

|  |               |
|--|---------------|
| a) Renewal fees for 2077/78                                | 150,000       |
| b) Fine of 50% for renewal within 3 months (150,000 X 50%) | <u>75,000</u> |
| Total to be paid for 2077/78 renewal                       | 2,25,000      |

- c) Thamel Agro Private Limited has imported hatchery plant set at the cost of USD 100,000 FOB Germany. The goods arrived at Customs point on 10 Jestha 2079, and Customs Agent filed Bill of Entry (Pragyapan Patra) on the same date. Transport bill of USD 2,000 and insurance bill of Rs. 20,000 was also submitted. Packing charge of USD 5,000 has also been incurred for the same. The Customs Officer refused to accept the invoice value of the machine set stating that it is under invoiced, and fixed transaction value of USD 125,000 on the basis of similar machinery imported by another importer in the same month and made assessment on 20 Jestha 2079. Rate of Customs Duty on the said machine on 10 Jestha 2079 was 10% and 1 USD = Rs. 100, and Rate of Customs Duty on the said machine on 20 Jestha 2079 was 15% and 1 USD = Rs. 110. Customs Officer applied rate of 20 Jestha 2079 for USD and Custom Duty. Thamel Agro Private Limited is not satisfied by the assessment done by the Customs Officer. Stating the relevant provisions of the Customs Act, 2064 and Rules 2064, advise the

management of the Thamel Agro Private Limited regarding process to be followed for correction of the same, and calculate the total Customs Duty payable by the company.

7

**Answer:**

**Determination of Base Date for Customs Valuation**

As per Section 8, The duty of any goods to be exported or imported shall be determined according to the tariff (rate of duty) prevailing on the date of clearance of such goods. So, act of the Customs Officer of assessing the Custom Duty on 20 Jestha 2079 is correct. Customs Duty should be levied on the basis of Customs Duty Rate and USD Rate Prevalent on the 20 Jestha 2079, i.e. date of clearance of such goods.

**Determination of Transaction Value for Customs Valuation**

Section 13 of the Customs Act, 2064 provides for the process to be followed for determination of the transaction value upon which Customs Duty is to be levied. It clearly states that transaction value will be determined on the basis of documents submitted by the importer. The Customs Act has given power to determine the transaction value on the basis of similar goods only if the Customs officer has reasonable doubt that the transaction value declared by the importer is not correct. Here, act of Customs officer of determining transaction value on the basis of import of similar goods by another importer may not be correct. Hence, act of the Customs Officer is not correct.

**Recourse to Importer**

As per Sub Section (1) of Section 61, A person who is not satisfied with any decision or order made by the Customs Officer pursuant to Section 13 may, for the review of such decision or order, file an application, as prescribed, to the valuation review committee formed pursuant to sub-section (2) no later than thirty days after the date of such decision or order.

The Valuation Review Committee shall, while making review pursuant to this Section, inquire into whether the customs valuation determined by the Customs Officer pursuant to Section 13 is accurate or not and may approve or void the valuation determined by the Customs Officer or make valuation of such goods pursuant to this Act or order Customs Officer for revaluation. The Valuation Review Committee shall also assign clear reasons and bases while so approving, voiding valuation or making valuation or ordering for revaluation.

As per Sub Section (1) of Section 62, A person who is not satisfied with the customs duty determined by the Customs Officer or other employee under this Act or with any order or punishment or decision issued or made by customs officer, except any decision or order referred to in Section 13, or with any decision made by the valuation review committee formed pursuant to Section 61 may make an appeal to the Revenue Tribunal within thirty five days after the date of the determination of such customs duty or the imposition of punishment or the making of decision.

**Determination of Customs Duty Payable by the Importer**

| Particulars          |                       | Amount(Rs.) |
|----------------------|-----------------------|-------------|
| FOB price of Machine | USD 125,000 x 100 NPR | 12,500,000  |

|                         |                                       |            |
|-------------------------|---------------------------------------|------------|
| Total Transaction Value |                                       | 12,500,000 |
| Customs Duty @ 15%      | Customs Duty on the date of clearance | 1,768,500  |

6.

- a) Describe the mechanism for taxation on "Government Service" in the light of Double Taxation Avoidance Agreement between the Government of Nepal and the Government of the Republic of India.

5

**Answer:**

Article 19 of the Double Taxation Avoidance Agreement between the Government of Nepal and the Government of the Republic of India has following provision regarding taxation on Government Service: 1. a) salaries, wages and other similar remuneration, other than a pension, paid by contracting state or political subdivision or local authority thereof to an individual in respect of services rendered to that state or subdivision or authority shall be taxable only in that state. b) however, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that other state and the individual is resident of that State who: i. is a national of that state; or ii. did not become a resident of that State solely for the purpose of rendering the service. 2. a) any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of service rendered to that state or subdivision or authority shall be taxable only in that State. b) However, such pension shall be taxable inly in the other contracting state if the individual is a resident of, and national of, that other State. 3. The provisions of articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration and to pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

- b) Mr. Goyal is resident of both Nepal and India in FY 2078/79. He has residential house in both countries. He earned income of Rs. 50 lakhs from his own Restaurant business in Bhutan during this year. Mr. Goyal has no permanent establishment to conduct the business in Nepal. However, he has earned rental income of Rs. 5 lakhs from the house situated in Birtamod, Jhapa, Nepal. He stays in the house during his visit to Nepal. Determine with reasons whether the business income of Mr. Goyal in Bhutan is taxable in Nepal.

5

**Answer:**

Section 73(4) shall be applicable if any international agreement contains a provision under which Nepal has to exempt income or payment or has to apply the reduced tax rate to income or payment. Where, Nepal has entered



Double Taxation Avoidance Agreement with foreign country, the provision of that agreement shall be applicable. In the given case, Mr. Goyal is resident of both Nepal and India. DTAA with India is applicable only if Mr. Goyal would have earned income either in India or in Nepal. In the given case Mr. Goyal has earned income from Bhutan therefore such income shall be taxable in Nepal. Further, rental income earned in Nepal is also taxable in Nepal subject to Section 92 of Income Tax Act, 2058.