

CHARTERED ACCOUNTANCY PROFESSIONAL III (CAP-III)

**Suggested Answer
Corporate Laws and Advanced Taxation
June 2019**



The Institute of Chartered Accountants of Nepal

Disclaimer: The Suggested answers are prepared by the institute with a view to assist the students in their study. The suggested answers are indicative and not exhaustive. Students are expected to apply their knowledge and write the answer in the examinations taking the suggested answers as guidance.

Paper 4: Corporate Laws



Marks**Attempt all questions.****Use separate answer book for each question.**

1. Answer the following questions:

a) Peoples' Technology Ltd. is willing to merge in Citizen Information Technology Ltd. Both companies have to do the merger process by passing the special resolution through their general meetings. You are appointed as a consultant on behalf of Citizen Information Technology Ltd. for such special purpose. The company has required your opinion. As a consultant to the special purpose, furnish your opinion in the following matters in accordance with the Companies Act, 2063.

(2+2+6=10)

- i) What is the special resolution?
- ii) Do you think that the merger of company with other is the subject matter of the special resolution?
- iii) What are the matters to be submitted in the general meeting as a special resolution?

b) Deepa Senjon from USA intends to carry on insurance business in Nepal. She has no knowledge about the legal provisions of Nepal in this respect. So, she approached you as an expert for the operation of an insurance company as an insurer. How would you advise her regarding following issues:

(5+5=10)

- i) Registration process of an insurance business.
- ii) Renewal and refusal of registration of an insurer.

Answer:

a)

- i) A resolution which requires special support of the shareholders is called a special resolution. So, a resolution requiring the special majority to get passed in the general meeting is a special resolution. As mentioned in the proviso of the section of Companies Act, 2063 74(3), it is deemed to have been passed a special resolution by the general meeting of shareholders representing 75% of shares present and cast vote in favour of the resolution.
- ii) The subject matter of merger of a company with other company is submitted as a special resolution. As per the Section 83 and Section 177 of Companies Act, 2063, a public company may, by adopting a special resolution in its general meeting to that effect, be merged with another company. The merger of People's Technology Limited with the given company is the subject matter of a special resolution as mentioned in the legal provisions of the Companies Act, 2063.
- iii) The subject matter, as provided in the section 83, including the merger of the company, to be presented in the general meeting of a company for decision on the following matters are as follows:
 - (a) Increasing the authorized capital of the company,
 - (b) Decreasing or altering the share capital of the company,
 - (c) Altering the name or main objectives of the company,
 - (d) Amalgamating one company into another company,

- (e) Issuing bonus share,
- (f) Buying back of own shares by the company,
- (g) Selling shares at a discount,
- (h) Converting a private company into a public company or vice versa,
- (i) Such other matter in respect of which the company is required by this Act or the articles of association to adopt a special resolution.

Apart from those, the following subject matters also are presented as a special resolution for the decision in general meeting.

- a. Amendment to the Memorandum and Article of company. (Section 21).
 - b. The alteration in the rights of the shareholders of any particular class. (Section 30(6)).
 - c. Any special proposal to determine a call may not be made in respect of certain portion of its share capital not called on except in the case of liquidation or insolvency of the company. (Section 53(7)).
 - d. Grant a reward in a sum not exceeding three per cent of the net profits after payment of income tax to the directors who work full time for the company so as to encourage them. (Section 91(2)).
 - e. A Proposal to be rectified by the general meeting in forms of special resolution regarding any act or transaction done by a director beyond the authority conferred to him/her.
 - f. A special proposal is required regarding transferring of property, borrowings more than the paid up capital and free reserve and making a contribution, donation or gift in a sum exceeding fifty thousand rupees in one financial year or a sum exceeding one percent of the average net profits of the company. (Section 105(1)).
 - g. Liquidation of company (Section 126).
- b)
- i) Section 10 of the Insurance Act, 2049 prescribes the provision regarding the Registration of The Insurer as follows :
 - (1) No Person shall operate or cause to operate the Insurance Business without obtaining a certificate pursuant to this Act.
 - (2) Any national or foreign corporate body desirous to operate an Insurance Business shall submit an application to the office of the Insurance Board in the prescribed form along with the following documents and prescribed fees for the registration of its name as an Insurer:
 - (a) Memorandum and articles of association of the corporate body,
 - (b) Insurance Business to be operated and its policies and terms and conditions,
 - (c) If life Insurance Business to be operated, documents displaying calculations of the premiums to be received in operating such business and liability,
 - (d) The documents regarding the methods of utilizing the amounts to be received from the Insurance, and
 - (e) Other necessary documents as prescribed by the Board.
 - (3) The Board shall make necessary investigation upon the application received pursuant to Sub-section (2) of Section 10 of the Act and shall make an inquiry with the applicant, if necessary, and shall register the name of such applicant in the prescribed register-book by mentioning the types of the Insurance Business to be operated by the applicant and shall provide the registration certificate of Insurer to the applicant in the form as prescribed. In case there is any reasonable ground for not registering the name, the Board shall inform the concerned applicant accordingly.
 - (4) Notwithstanding anything contained elsewhere in this Section, in the case of the Life Insurance, the Board shall, with the approval of the Nepal Government, issue a certificate to

operate the Business, based on the fulfillment of the criteria which it has fixed, from time to time, in respect of the operation of the Insurance Business.

ii) Section 11. prescribes the provision regarding Renewal of Registration of the Insurer as follows :

- (1) The Insurer shall have to submit an application to the office of the Board in the prescribed form along with the prescribed fees up to the last day of *Chaitra* of each year for the renewal of the certificate of registration.
- (2) Upon the receipt of the application pursuant to Sub-section (1), the Board shall have to renew the certificate of registration.
- (3) In case any Insurer submits an application to the Board within thirty days from the date of expiry of the time-limit pursuant to Sub-section (1), mentioning the reason for its failure to submit an application for the renewal of the certificate of registration within the aforesaid time-limit, the Board may, if it considers the reasons to be appropriate, renew the certificate of registration of such Insurer.

Pursuant Section 12 of this Act, the board may refuse to register the insurers in the following conditions: According to it no national or foreign corporate body shall be registered as an Insurer in the following circumstances:

- (a) If the name of an Insurer to be registered is identical to the name of another Insurer which has been already registered in the office of the Board, and
 - (a1) If any Insurer wants to be registered for operating Life Insurance and Non-Life Insurance Business,
 - (b) If the paid-up capital does not amount to at least two hundred fifty million rupees for the Life Insurance Business and to at least one hundred million rupees for the Non-life Insurance Business.
 - (c) In the event that the Board has made a decision to ban to register to additional corporate body as an Insurer to operate Insurance Business on the basis of the report, regarding to the study, research and evaluation of the Insurance Business market.

2. Answer the following questions:

a) Cooperative Association has right to collect deposit and carryout credit transaction with accompanying more than one hundred Nepalese citizen altogether as provided in the section 3 of Cooperatives Act, 2074. Cooperative Bank can also incorporate with motive of carrying credit transaction as set forth in the same Act. So, this Act also defined some act as an offence and provided punishment. State the acts deemed to be an offence under the Cooperatives Act, 2074.

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b) State 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.

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c) Sulaxmi Commercial Bank wants to get acquisition of Kuber Finance Company, which the later agrees. As a corporate consultant advise them in the following issues as per the Banks and Financial Institutions Act, 2073:

(2+1+4=7)

- i) What legal procedure these two financial entities have to follow for getting consent on principles of Nepal Rastra Bank (NRB) to such acquisition?
- ii) Under what circumstance(s) NRB may give consent on principles to continue the proceedings of acquisition of the finance company?

iii) Under what grounds NRB may grant its final approval for such acquisition?

Answer:

- a) Section 122 of Cooperative Act, 2074 has mentioned prohibited and finally declared as to be an offence acts. These are as follows:
- a. To provide credit without taking a guarantee or collateral while providing loan amount more than prescribed limit,
 - b. To embezzle amount of credit that is provided to any member of committee, relatives thereof or other person or an employee that is resembles that the credit amount may not to be recovered.
 - c. To take amount of credit with providing fraud or fake descriptions, collateral is proved immature or embezzle the credit amount.
 - d. The cooperative association has been carrying out the investment of amount or collecting any amount with an objective of investment in any manner contrary to this Act and rules or by rules framed under this Act.
 - e. To provide or cause to provide any credit with placing the artificial enterprise or cause to placed thereof.
 - f. To provide or cause to provide the credit amount carrying out the higher valuation of collateral in the unrealistic manner.
 - g. To provide or cause to provide the credit amount on the basis of fraudulent statement and adding more cost of project in the unrealistic manner.
 - h. To provide or cause to provide the credit amount in the manner that the collateral that is provided to any person or cooperative association once is not released with due process or such collateral has been provided in other institution in the manner of higher valuation than that of the value which the collateral has.
 - i. To use or cause to use the credit amount in the manner that the credit is provided for any certain purpose by a cooperative association but the credit amount is used in the area of vice versa.
 - j. To misuse the properties of cooperative or to embezzle the saving or the share money by the cooperative member, executive or the employee.
 - k. To provide or cause to be provided the cooperative in loss by evaluating the collateral with high value, or low value or doing wrong valuation by the valuator at the time of auction of the collateral security of the loan provided by the cooperative.
 - l. To conduct audit with careless and provide false report which resulted the loss to the cooperative, its members and stakeholders.
- b) 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 submitted 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) above, examine the bids in order to ascertain the following matters:-
- (a) Whether documents establish that the bidder is qualified under law to submit the bid are submitted or not,
 - (b) 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,

- (c) 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,
- (d) 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:-

- (a) Whether a power of attorney for the authorized agent or local agent of the bidder is submitted or not,
- (b) Where a joint venture agreement is necessary, whether such agreement is submitted or not,
- (c) Whether documents establishing the eligibility of the bidder and of goods mentioned by the bidder are submitted or not,
- (d) Whether necessary document relating to the qualifications of the bidder is submitted or not,
- (e) Where the bidding documents require the submission of a rate analysis, whether such rate analysis is submitted or not,
- (f) Other matters as prescribed.

(4) The Public Entity may ask bidders for necessary information.

(5) 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.

(6) In examining bids bidder shall be made to ascertain whether or not it conforms to the prequalification or not.

(7) While examining the qualification pursuant to Sub-section (6) above, 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.

(8) 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.

(9) Where there is a discrepancy between figures and words in a bid submitted by a bidder, the amount in words shall prevail.

(10) Where any error is corrected pursuant to Sub-section (8) or (9) above, information of such correction shall be communicated to the concerned bidder.

c)

- i) If Sulaxmi Commercial Bank want to get acquisition of Kuber Finance Company and the later agrees to that, in that case both the Financial Entities shall adopt a special resolution to that effect in their respective general meetings and get a decision thereof from their respective Board of Directors, and make a joint application setting out the following

matters for getting consent on principles of Nepal Rastra Bank (NRB) pursuant to section 70(2) of the Banks and Financial Institutions Act (BAFIA), 2073:

- (a) Necessity and justification of acquisition of the finance company, and the general impact therefrom on the banking and financial sector and the financial system,
 - (b) Audit report including balance sheet, statement of income and expenditure, cash flow, net worth and the like of the last fiscal year of the Sulaxmi Commercial Bank and the Kuber Finance Company,
 - (c) Details of the personnel management of Sulaxmi Commercial Bank and Kuber Finance Company,
 - (d) Approval proceeding under the prevailing Companies and Securities laws,
 - (e) Preliminary agreement of acquisition of the finance company.
 - (f) Other matters as are prescribed by NRB.
- ii) Upon receiving such joint application for acquisition of the Kuber Finance Company, NRB shall examine the documents so filed, and then may give its Consent on Principles for such acquisition pursuant to section 70(4) of this Act, if it feels satisfied that the acquisition of the finance company is not likely create an adverse impact on the country's banking and finance development, on the environment of healthy competition, and in the compliance of the prevailing laws of the country.
- iii) After obtaining NRB's Consent on Principles for acquisition, the applicants are required to cause up to date valuation of their assets, liabilities and turnover on the set parameters of NRB pursuant to section 71(2) through (7) of this Act. Thereafter, the Parties of acquisition are required to conclude an agreement between them containing suitable arrangement of the following matters pursuant to section 72 of this Act:
- (a) arrangement of protection of interests of depositors, creditors and shareholders,
 - (b) valuation method and adjustment arrangement of the assets and liabilities of the Applicant Bank and Financial Company,
 - (c) matters like management of investment and transaction, inter-corporate ownership and transaction, details of guarantee and undertaking, management of non-banking transactions, adequate arrangement of assets and liabilities,
 - (d) process, time frame and cost to be involved for such acquisition,
 - (e) structure of operation and management and name list of directors,
 - (f) arrangement and adjustment of job levels, service conditions of the concerned entities of acquisition,
 - (g) details of substantial shareholders and other shareholders,
 - (h) stakeholders' grievance management method
 - (i) prevailing law and the process for its compliance
 - (j) Such other necessary matters as are prescribed by NRB.

The Bank and Finance company obtaining NRB's Consent on Principle for acquisition are further required to get a special resolution passed by their respective general meetings and submit a copy of it along with a copy of agreement concluded under section 72 as above and file a joint application to NRB seeking its final approval for such acquisition.

NRB thereafter cause a thorough examination of that joint application for acquisition and may grant final approval for such acquisition setting certain terms and conditions if and/in case such acquisition shall not likely create an environment of unhealthy competition or give rise to the monopoly or controlled practice of any financial entity in the financial sector, and if there is no possibility of causing any serious impact on the whole structure of banking and finance, and the financial market and the depositors pursuant to section 73 of this Act.

3. Answer the following questions:

- a) Prevention of money laundering becomes totally successful when investigation and inquiry process is carried out properly by an appropriate investigation officer. State the provisions relating to investigation and inquiry under the Money Laundering Prevention Act, 2063. 6
- b) Mr. Heyman, US Nationals, willing to invest funds in World Link Ltd. Basically, he is interested to invest in share of the company. Do you think that it is a foreign investment and why? What kinds of facilities and concession he may enjoy? Have there any visa facilities to foreign investors? Justify your answer referring the Foreign Investment and Technology Transfer Act, 2049. 7
- c) What connotes 'International Financial Institutions' under the International Financial Transaction Act, 2054? What acts the International Financial Institutions are forbidden from doing in Nepal? State the facilities and concessions granted to such institutions in Nepal under the Act. 7

Answer:

- a) Chapter – 6 of the Money Laundering Prevention Act, 2063 prescribes Provision Relating to *Investigation and Inquiry* under the Act. Investigation and inquiry is a most important part in respect of fulfilling the objectives of the Money Laundering Prevention Act, 2063. It is the investigation process, by which it is possible to bring action against the culprits of assets laundering.

1. Pursuant to Sec 13 it is required to make Complaint regarding information of the offence. According to it any one of the person, who has information regarding an offence under this Act, may submit a complaint, application, to the Money Laundering Investigating Department in written or oral form. The Department on obtaining the information will register the complaint, application so received. As per Sec. 14 the Department will conduct necessary investigation and inquiry after receiving the application or information regarding the offence. In the course of investigation and inquiry, where there is risk of absconding or destroying the evidence or document, taking control of any document or asset by the person committing an offence, the Department may arrest the person involved in it, and may take control of such relevant evidences and assets at place where offence was committed or being committed. The Department may obtain opinion of government attorney in this respect.
2. In pursuant to Section 15 of this Act, on receipt of the complaint the Department may appoint or designate any officer of the Department or other officer as an Investigation

Officer, in order to conduct investigation and inquiry of the offences under this Act and designate other staff as required.

3. Pursuant to Section 16 the functions, powers and duties of the Investigation Officer, appointed or designated will be as follows:-
 - a) To take necessary action by arresting the suspect immediately,
 - b) To conduct search or cause to conduct search operation of any office, residence, building, storage, vehicles or of any place in the course of investigation and inquiry,
 - c) To exercise other powers vested to the above Department.

The investigation officer, while proceeding necessary action may keep the suspect on date, release him by obtaining bail or guarantee or keep under custody with the permission of the court if he/she fails to provide bail or guarantee.

As per Sec. 17, the investigation officer may detain the person against whom proceedings have been initiated as per this Act, if there is risk of extinction or destruction of any evidence or create obstacles or perverse effects in the proceedings of investigation and inquiry according to the prevailing law of the country. While detaining the person committing an offence it must be obtained prior approval by fulfilling required legal formalities before the adjudicating officer. However, the detainee will not be exempted from making a petition for his release with reasons thereof.

- b) In accordance with Section 2(b) of Foreign Investment and Technology Transfer Act, 2049, investment in share or equity of a company is deemed to be foreign investment. Apart from the investment in shares, reinvestment of the earnings derived from the investment in share and investment made in the form of loan or loan facilities shall be also deemed to be foreign investment. Therefore, in the instant case, the said investment is foreign investment.

This Act has provided some motivational factors to foreign nationals. While observing the legal provision mentioned in the Act, Section 5 is provided the facilities and concessions to such person. A foreign investor shall be entitled to repatriate outside Nepal the amount received under an agreement for the transfer of technology in such currency as set forth in the concerned agreement. He/ she has to make an investment in foreign currency and shall be entitled to repatriate the following amount outside Nepal:-

- a) The amount received by the sale of the share of foreign investment as a whole or any part thereof.
- b) The amount received as profit or divided in lieu of the foreign investment.
- c) The amount received as the payment of the principal of and interest on any foreign loan.

He/she, as a foreign investor, may enjoy visa exemption provision. Visa exemption has been provided in section 6 of the same Act. It provides as:

- (1) A foreign national visiting Nepal in connection with undertaking any study or carrying out any research with the objective of making investment in Nepal shall be provided a non-tourist visa for up to six months.
- (2) A foreign investor or dependent family or authorized representative of such a foreign investor and dependent family of such authorized representative shall for the purpose of stay in Nepal be provided a business visa until the foreign investment is retained.

- (3) A foreign investor who, at a time, makes investment in an amount no less than one hundred thousand United States dollar or in convertible foreign currency equivalent thereto, and his/her dependent family shall be granted a residential visa until such investment is retained.
- c) Pursuant to section 2(a) of International Financial Transactions Act, 2054 "International Financial Transactions" means any financial transaction carried out by any license holder entity under this Act.

International financial entities are not allowed to do the following acts pursuant to section 5 of this Act, as under:

- (a) To purchase any kind of immovable property within the Nepal or to keep in their name otherwise,
- (b) To carry out any type of international financial transaction with any person resident of Nepal,
- (c) To purchase shares or debentures of any company incorporated in Nepal under the existing laws,
- (d) To open an account in any commercial bank of Nepal:

Provided that an account may be opened in any commercial bank with the permission of the Accreditation Committee for the purpose of running the day-to-day administrative business of the office up to such amount as may be fixed by the Accreditation Committee.

Following facilities and concessions are granted to International Financial Institutions:

- (1) No restriction of any kind shall be imposed on a license holder entity to bring in foreign currencies as may be required for international financial transactions pursuant to Section 6 of this Act.
- (2) No restriction of any kind imposed by the existing laws relating to foreign exchange shall apply in relation to a license holder entity of this kind.
- (3) Section 7 of the act provided the facilities to repatriate the fund to the license holder entity outside Nepal the foreign currencies earned by it by carrying out international financial transactions and the foreign currencies brought in by such entity for the purpose of carrying out international financial transactions.

Provided that no property or capital accrued from any illicit or illegal act shall be allowed to be repatriated.

- (3) Pursuant to Section 8 of the Act, the capital or the property of any entity shall not be subjected to nationalization.

4. Answer the following questions:

- a) Audit report of the Himalayan Water Ltd. shows that the amount of liabilities exceeds the value of assets of the company. So, the company couldn't fulfill its

financial liability to its creditor. Possibly, there shall be the queue of creditor who demands their investment. Company is in dilemma that how the liability is settled. Other side, the creditors, shareholders, debenture holders of the company have their own claimant that how the investment being made to the company is restituted? In this situation, you are employed for as a liquidator of the company. Provide a report on following requirements referring Insolvency Act, 2063. (2+2+4=8)

- i) What is the conditions company deemed to be an insolvent?
 - ii) Who can submit an application for the institution of insolvency proceedings and where?
 - iii) What are the functions, duties and powers of a liquidator?
- b) Securities Act, 2063 has been enacted with a view to regulate and manage the activities of the securities markets and persons involved in the business of dealing in securities by regulating the issuance, purchase, sale and exchange of securities for the purpose of protecting the interests of investors in the securities. State how a body corporate issues securities under the Act.

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Answer:

- a)
- i) There is the insolvency situation in the said company. Section 2(b) of the Insolvency Act, 2063 has defined the word "being insolvent" as a state of being unable, or appearing to be unable, to pay any or all of the debts due and payable to or payable in the future to creditors or a situation where the amount of liabilities of a company exceeds the value of the assets. In regard to the company, it shall be deemed to have become insolvent on the following condition (Section 7).
 - (a) The general meeting of shareholders adopts a resolution that the company has become insolvent or a meeting of the Board of Directors of the Company makes such decision; or
 - (b) The Court issues an order requiring the company to pay the debt and the debt is not paid up within thirty five days from the date of receipt by the company of such order; or
 - (c) 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 said period to void such notice
 - ii) Any of the following persons may make an application before a court to initiate of the insolvency proceedings pursuant to Section 4 of this Act.
 - (a) A company itself which has become insolvent;
 - (b) Out of the total creditors of a company which has become insolvent, at least ten percent creditor or creditors who has or have lent money;
 - (c) Shareholder or shareholders that has or have subscribed at least five percent of shares, out of the total shareholders of a company;
 - (d) Debenture-holder or debenture-holders that has or have subscribed at least five percent of debentures, out of the total debenture-holders of a company;
 - (e) A liquidator who has been appointed to liquidate a company; or
 - (f) In the case of a company that carries on any specific type of business set forth in Section 8, a body authorized to administer and regulate such business.

iii) A liquidator shall be appointed by a court amongst the persons entitled to carry on insolvency business. He/she has following functions, duties and powers pursuant to Section 40 of Insolvency Act, 2063 as under:

- (a) To institute or defend any case or legal action on behalf of the company;
- (b) To appoint employees to assist in the discharge of his or her functions;
- (c) Where any installment on any share of the company is due, to make a call on the shareholder for payment of such installment;
- (d) To do and execute, or cause to be done and executed, all such acts and deeds or documents as required to be done and executed on behalf of the company and in the name of the company and use the seal of the company for that purpose;
- (e) To borrow loans against security of the assets of the company;
- (f) Where the liquidator considers that the sale and disposal of any property or termination of any contract or liability will render benefits to the company, to sell and dispose of such property or terminate such contract or liability;
- (g) To enter into compromise with any creditor of the company or any person who claims to be a creditor of the company in relation to the claim made by such creditor or person;
- (h) To enter into compromise with any person against whom the company may make a claim in relation to any loan, liability or any other claim;
- (i) To sell the assets of the company and distribute the proceeds of such sale pursuant to this Act; and
- (j) To perform, or cause to be performed all such other acts as may be necessary to liquidate the company.

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

Under section 27(1) of the Securities Act, 2063, a body corporate shall have to register securities to be issued by it with the Securities Board prior to their issuance. For this a body corporate shall have to make an application in the prescribed format, accompanied by its memorandum of association, articles of association, documents related with such securities, and the prescribed fees, to the Board for registering securities pursuant to Sub-section (1) above.

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

Under section 28 where a body corporate allots or sells securities after registering such securities, the body corporate shall have to give a notice along with the details of securities so allotted or sold to the Board within seven days.

Upon receipt of a notice as referred as above, where it appears necessary to make the allotment and sale of such securities fair and informative for the interests of investors and the body corporate, the Board may give necessary directive to the concerned body corporate. It shall be the duty of the concerned body corporate to abide by such directive.

Under section 29 where a body corporate is to sell and distribute securities to more than fifty persons at a time, it shall make public issue for the sale and distribution of such securities. The period to be open for making application of the securities to be issued as above shall be

as prescribed. The provisions relating to the value and allotment of securities for which public issue has to be made shall be as prescribed.

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

Under section 30 a body corporate shall have to get a prospectus approved by the Board for making public issue of securities in accordance with this Act and publish the prospectus for information to all the concerned. While publishing the prospectus in such a way, the prospectus shall also mention the place where the general public can obtain or inspect the prospectus.

However, it is not required to issue a prospectus in the following securities:

- (a) Securities issued by Nepal Rastra Bank.
- (b) Securities issued against the full guarantee of the Government of Nepal,
- (c) Securities proposed to be sold to up to fifty persons at a time,
- (d) Securities issued to own workers or employees,
- (e) Securities permitted by the Board as to issue and sell without issuing a prospectus.

Under section 31, the Board shall approve only a prospectus which contains such information as may be adequate for investors to make evaluation as to the assets and liabilities, financial status, profit and loss of the issuer and matters expected in future.

Under section 34, every body corporate issuing securities shall provide information on the following matters to the Board and its shareholders as soon as possible:

- (a) Such matters as may be necessary and supportive to evaluate its financial condition,
 - (b) Such information as may be capable of affecting the transaction of stock exchanges or the value of securities.
- (2) Every body corporate issuing securities shall also provide the Board and its shareholders with the notice and information as prescribed, in addition to the above matters

5. Answer the following questions: (3×5=15)

- a) How is the fund of the Institute of Chartered Accountants of Nepal created and operated and how the audit of accounts of the Institute of Chartered Accountants of Nepal is conducted? Answer in the light of Nepal Chartered Accountants Act, 2053.
- b) What types of funds the Government of Nepal may create pursuant to the existing Industrial Enterprises Act, 2073 for the industrial development of the country?
- c) State the types of employments that can be employed as per the Labor Act?

Answer:

- a) The Fund of ICAN is created under section 36 of Nepal Chartered Accountants Act, 2053 as under:
 - (1) The ICAN shall have a separate fund of its own; and the fund shall consist of the following amounts:
 - (a) Grants received from Government of Nepal;

- (b) Amounts received from international or foreign organizations or institutions; ICAN should obtain prior approval from the Government of Nepal in this case.
 - (c) Amounts received while registering the names of members of ICAN or issuing the professional certificates;
 - (d) Amounts earned from the movable and immovable properties of ICAN;
 - (e) Amounts received by ICAN from other sources.
- (2) All amounts to be received by ICAN shall be credited to an account to be opened with any commercial bank within Nepal.
 - (3) All expenditures to be incurred by ICAN shall be chargeable on the fund as referred to in sub-section (1) above of this section.
Specific Fund should be spent on the same purpose only.
 - (4) The Executive Director shall make expenses chargeable on the fund subject to the control and supervision of the Council of ICAN.
 - (5) The account of ICAN shall be operated as prescribed by its Council.

Pursuant to section 37 of this Act:

- (1) The accounts of the incomes and expenditures of ICAN shall be maintained in the format as prescribed by its Council.
 - (2) The accounts of ICAN shall be audited by a designated member having obtained the professional certificate.
 - (3) Government of Nepal may, if it so wishes, inspect, or cause to be inspected, any documents relating to the accounts of ICAN at any time.
- b) In pursuance to section 47(1) of the Industrial Enterprises Act, 2073, the Government of Nepal may by itself or in participation of the cooperatives sector constitute a necessary or all of the following funds for the country's industrial development, promotion and protection:
- (a) Fund for the entrepreneurial development of micro, cottage and small industries,
 - (b) Venture capital fund,
 - (c) Technology Development Fund,
 - (d) Industrial Investment Protection and Promotion Fund,
 - (e) Sick industries rehabilitation, reconstruction and Management Fund,
 - (f) Women Entrepreneurial Development Fund.

The procedure and other arrangement relating to deposition of money in those Funds, their management and operation shall be as prescribed, pursuant to section 47(2) of this Act. (1)

- c) As per section 10 of Labor Act, 2074, there are following types of employments that can be employed. Accordingly employer may engage a worker in any of the following employment:
- a) Regular employment: means any employment other than those specified in sub-sections (b), (c) and (d).
 - b) Task based employment means an employment in which a particular task or service specified by the employer is required to be accomplished.
 - c) Time based employment means an employment in which a worker is required to provide a service or accomplish a task within a period fixed by the employer.

- d) Casual employment means an employment in which a worker is engaged for seven or less than seven days within a period of one month to provide any service or accomplish a task given by the employer.
- e) Part time employment means an employment in which a worker is engaged by the employer for thirty five hours or lesser than thirty five hours in a week to accomplish any work.

Notwithstanding anything mentioned in the employment contract, where a question arises as to whether the employment relationship is regular or not, it shall be determined on the basis of the nature of the work as prescribed.

6. Answer the following questions:
- a) How does Nepal Rastra Bank act as the Fiscal Agent and Depository of the Government of Nepal? Answer in the light of Nepal Rastra Bank Act, 2058. 4
 - b) What are the punishments to a valuator providing false report to the bank under Banking Offence and Punishment Act, 2064? 3
 - c) Write short notes on Foreign exchange and foreign exchange transaction under the Foreign Exchange Regulation Act, 2019. 3

Answer:

- a) Pursuant to section 69(1) of Nepal Rastra Bank Act, 2058, Nepal Rastra Bank (NRB) shall be the banker and financial advisor of Government of Nepal and a financial agent of Nepal as under:
 - (2) The Government of Nepal shall consult NRB on any matters that are within the jurisdiction of its competence. It shall be the duty of the Bank to advice on matter consulted by the Government of Nepal.
 - (3) Government of Nepal shall, while preparing annual budget, consult NRB on the domestic debt including overdrafts.
 - (4) NRB shall submit a pre-budget review report to Government of Nepal each year on the economic and financial matters.

Pursuant to section 71 of this Act:

- (1) NRB shall accept the deposits of Government of Nepal or other bodies prescribed by Government of Nepal.
- (2) While accepting deposits pursuant to Sub-section (1) above, NRB shall receive and disburse monies, keep accounts therein, and provide banking services related thereto.
- (3) NRB may authorize commercial banks and other financial institutions to conduct the transaction as referred to in Sub-section (2) above subject to the terms and conditions prescribed by NRB.

Functions of NRB as a Fiscal Agent of Nepal are as provided under section 72 of this Act below:

NRB shall, subject to the terms and conditions stipulated in the agreement entered into with Government of Nepal, act as fiscal agent of Government of Nepal on the following matters:-

- (a) Marketing, purchase and sell of debt bonds issued by the Government of Nepal and to act as registrar and transfer agent there for;

- (b) Payment of the principal, interest and other fees of the debt bonds referred to in Sub-section (a) above;
- (c) Other necessary functions to be carried out as the agent.

b) Pursuant to Section 13(1) of the Banking Offence and Punishment Act, 2064, a valuator while carrying out the valuation of movable or immovable assets held by a bank or financial institutions as a collateral security of a loan or non-banking movable or immovable asset of a bank or financial institution, the valuator shall not cause any loss or harm to the bank or financial institution by deriving excess, low or false valuation of such assets while valuating for the purpose of auctioning sell or for other purpose relating to bank.

Section 15 of the Banking Offence and Punishment Act, 2064 has defined various punishments if anyone has committed banking offence as mentioned in the Act.

Sub Section (3) of the Section 15 has further defined the punishment as follow which applies in this case of the offending valuator:

If the valuator commits any offense specified under Clause (a), (b), (c) of Section 7 or Section 13, he/she shall be punished with a fine equivalent to the value of such collateral security and an imprisonment up to a period of four years.

In case the suit amount cannot be established in accordance with this section, he/she shall be punished with a fine up to rupees one million and an imprisonment up to two years.

In case any organization commits any offence specified under this act and if the concerned office bearer or the employee committing such offense be identified, he/she shall be held liable, if the office bearer or the employee could not be identified, the person working in the capacity of the organization head at the time of the occurrence of the offense shall be held liable.

c) Foreign exchange and foreign exchange transaction has been defined by the Foreign Exchange Regulation Act – 2019 as follows:

Section 2(d) “foreign exchange” means a foreign currency, deposits, credits and balances of all types which are paid or received in a foreign currency, foreign securities and cheques, drafts, travellers cheques, electronic fund transfers, credit cards, letters of credit, bills of exchange and promissory notes which are in international circulation and are or can be paid in a foreign currency, and this term also includes any other such monetary instruments as may be prescribed by the Bank by publishing and broadcasting a public notice;

Section 2(d1)“foreign exchange transaction” means the purchase, sale, lending and borrowing the foreign exchange or receiving or giving of the foreign exchange in any other manner, and this term also includes the act of giving permission by the Bank to convert the foreign exchange.

Specific Comments on the performance of the students

Batch: -June 2019

Level: - CAP-III

Paper IV: Corporate Laws

Question No. 1

Q.no.1 (a) is related to the Companies Act, 2063. The issues given here are related to the provision of special resolution pertaining to the merger of the company. Actually it is quite

simple issue. But the students have not sufficient knowledge regarding the provision of the special resolution and hardly written the Section of the concerned provision. So it is required to go through the text of the legal provision with knowledge of the concern section like Section 83 where the subject matter of the special resolution have been specially prescribed and under section 74 how the special resolution can be adopted.

Q.no.1 (b) is related apparently to the Insurance Act, 2049 indirectly related to IEA and FITTA. Thus the issues given here are related to the two aspect i) At first, process of registration and renewal of the insurance company, apparently ii) Secondly it is related to the Foreign Direct Investment where it requires specially to answer with reference to the IEA and FITTA. Although students are aware of the registration and renewal provision of the insurance company but they have hardly mentioned provision regarding the IEA and FITTA in the answer. So the students are not so much aware of the hidden question and substantial number of students has written answers as per the direct question only. Thus it is required to answer with reference to the indirect and hidden questions as well.

Question No. 2

- (a) No adequate preparation of Cooperative Act, 2074.
- (b) No systematic knowledge in most of the students and tried to justify assuming the procedure which is not correct.
- (c) Well preparation but could not proportionate the answer as per the question.

Question No. 3

Overall performance of student is satisfactory. Especially students should emphasize on question no. 3 (c).

Question No. 4

Most of the students did not answer properly question 4(b) they fail to mention relevant provision of law in the answer.

Question No. 5

- (a) Most of the students correctly understand the question & answered well.
- (b) Most of the students could not answer properly
- (c) Average students have correctly understood.

Question No. 6

- (a) In this question two different role of the NRB is asked. However students provide their response answer partly and incomplete deliberations of the provision.
- (b) It requires the definitions of false valuation of collaterals well as punishment. Students made a response surfacely.
- (c) In terms of definitions, punishment as its actual requirements. Some students have given actual answer with its corroboration of legal provision.
- (d) Foreign exchange and transaction is required to define. It concludes with foreign currency. However, students provided answer with partly and not relating to the foreign currency. So, it is recommended to the students that question's requirement, understanding of subject matter and knowledge of concern legal provision should be mentioned within time.

Paper 6: Advanced Taxation



Marks

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

Use separate answer book for each question.

1. Mr. Bipin Koirala is working as a manager in Nabil Bank Ltd. and he received the following amount during the income year 2074/2075.

Salary	Rs. 75,000 per month
Grade	Rs. 5,000
Dashain Allowance	Rs. 50,000
Gratuity	Rs. 75,000
Bonus	Rs. 150,000
Conveyance Allowance	Rs. 20,000 per month
Employer's contribution to approved P.F.	10% of salary

Following additional information is provided to you:

- He contributed similar amount to Provident Fund and contributed Rs. 75,000 gratuity amount received from the bank plus Rs. 100,000 to Citizen Investment Fund.
- He retired from service on 30th Poush 2074. He received a pension of Rs. 50,000 per month after the date of his retirement.
- He was allowed free accommodation by the employer, who allowed him to stay there till Ashadh 2075.
- He received his Provident Fund amount of Rs. 1,550,000 from the approved Provident Fund on Magh 2074. The balance of the Provident Fund amount in his account as on 18th Chaitra 2058 was Rs. 700,000.
- He was also paid the sum of Rs. 100,000 by the Managing Director as his personal token in appreciation of his sincere service to the employer.
- He received a sum of Rs. 150,000 as unutilized leave salary as per the rule on 1st Magh 2074.
- He has received Rs. 30,000 as fee for question setting for BBS students.
- He has taken loan from the company amounting to Rs. 2,000,000 @ 8% p.a. interest. The market interest rate of such loan is 12% p.a.
- He was provided car facility for both official and personal purposes. Employer allowed him to retain the car with him till end of Ashadh 2075 and also paid Rs. 5,000 per month for fuel and car maintenance expenses.
- During Aswin 2074, he was admitted to a private hospital for one week and the employer spent Rs. 150,000 on his medical treatment at the hospital and also reimbursed Rs. 175,000 his personal expenses.
- Other employees presented him with a silver casket engraving costing Rs. 250,000.
- He received dividend of Rs. 500,000 from various listed companies and received Rs. 150,000 bank interest.
- He had paid Rs. 50,000 life insurance premium and Rs. 30,000 medical insurance premium of his families to Shikhar Insurance Company Ltd.
- The company has provided 100 shares of Uniliver Co. as a gift to him at the time of his retirement. The market price is Rs. 22,500 per share.

Required:

- i) Calculate his taxable income and total tax liability explaining with reasons for including or for not including any particular item in the taxable income. **12**
- ii) Explain what type of payments are not included in remuneration income. **3**
- iii) Describe whether Bipin has to file an income tax return to Inland Revenue Office for the income year 2074/75. **3**
- iv) If same situation remains in income year 2075/76, what would be his tax liability? **2**

Answer:

Calculation of Taxable Income

of Mr. Bipin Koirala

for Income Year 2074/75

(Assumed Single Status) (See also WN 2)

S. No.	Particulars	Section/Rule of Income Tax Act, 2058	Amount (Rs.)	Basis and Workings
1	Assessable Income from Employment	8	1,351,875	
1.1	Salary	8(2) (Ka)	455,000	Salary @ Rs. 45,000 for 6 months plus grade (See also WN 1)
1.2	Festival Allowance	8(2) (Ka)	50,000	WN 2
1.3	Bonus	8(2) (Ka)	150,000	
1.4	Conveyance Allowance	8(2) (Kha)	120,000	Rs. 20,000 for 6 months
1.5	Additional Provident Fund	8(2) (Cha)	45,500	
1.6	Pension	8(2) (Cha)	300,000	
1.7	Free Accomodation	27(1) (Kha) (2) and Rule 13(2)	9,100	WN 3
1.8	Vehicle Facility	27(1)(Kha)(2) and Rule 13(1)	2,275	WN 4
1.9	Fuel and Maintenance Expenses	8(2) (Kha)	30,000	WN 5
1.10	Medical Treatment Reimbursements	8(2) (Ga)	150,000	
1.11	Reimbursement of Personal Expenses	8(2) (Ga)	175,000	
1.12	Concession of Interest on Loan		40,000	WN 6
2	Inclusion/Assessable Income from Business		30,000	Question setting fee is a professional income.
2.1	Question Setting Fee		30,000	

3	Total Assessable Income		1,381,875	
4	Less: Deduction for PF contribution	Sec 63 Rule 21	266,000	Being less than 1/3 rd of the assessable income or NRs 300,000 or actual contribution (20% PF contribution and CIT contribution) = 45,500 + 45,500 + 75,000 + 100,000); whichever is lower.
5	Pension Allowance	Schedule 1 Section 1 (9) and Rule 39	87,500	25% of Exemption Limit Rs. 350,000.00 or Actual Pension Rs. 300000.00; whichever is less.
	Net Taxable income		1,115,875	

Segregation of Net Taxable Income into Various Sources

The Net Taxable Income includes income from employment including pension, and also business. The exemption slab is taxed @ 0% for pension and business and @ 1% for income from employment except pension. So, the net taxable income should be segregated in all three sources, which can be done in the proportionate basis:		
Net Taxable Income		1,115,875
Segregated into:		
Income from employment except pension	$1051875/1381875*988375$	849,397.39
Pension	$300000/1381875*988375$	242,252.37
Business	$30000/1381875*988375$	24,225.24
Total	785,875.00	1,115,875.00

Calculation of Tax Liability (Single Status) for Income Year 2074-75

Particulars	Taxable Amount	Tax Rate	Tax
Exemption Limit from Pension	214,572.59	0%	-
Exemption Limit from Business	21,457.26	0%	-
Exemption Limit from Employment except Pension	83,522.39	1%	835.22
First Slab	100,000.00	15%	15,000.00
Rest	665,875.00	25%	166,468.75
Tax Liability			182,303.97

If the same situation remains in income year 2075/76, his taxable income shall have changed by excluding the question setting fees as it is taken as a final withholding income. Accordingly, the taxable income shall be less by Rs. 30000, and shall remain Rs. 1085875. The tax liability shall be changed as follows:

Calculation of Tax Liability (Single Status) for Income Year 2075-76

Particulars	Taxable Amount	Tax Rate	Tax
Exemption Limit from Pension	214,572.59	0%	-
Exemption Limit from Business	21,457.26	0%	-
Exemption Limit from Employment except Pension	113,970.15	1%	1,139.70
First Slab	100,000.00	10%	10,000.00
Next	200,000.00	20%	40,000.00
Rest	435,875.00	30%	130,762.50
Tax Liability			181,902.20

Tax Calculation on Retirement Payments

S N	Particulars	Total Amount	Tax Exempt Amount Related to Period before Income Tax Act, 2058	Taxable Amount Related to Period after Income Tax Act, 2058	Tax Calculation Workings	Tax Amount Rs.	Remarks
1	Provident Fund	1,550,000.00	700,000.00	850,000.00	(850000-500000)*5%	17,500.00	
2	Gratuity	75,000.00	33,870.00	41,130.00	41130*15%	6,169.50	Since he is already drawing pension; this gratuity should be something extra benefit at the retirement rather than the gratuity as per the Labour Act.
3	Unutilized Leave Pay	150,000.00	67,740.00	82,260.00	42260*15%	12,339.00	
4	Gift Shares at the Retirement	2,250,000.00	1,016,100.00	1,233,900.00	1233900*15%	185,085.00	
	Total	4,025,000.00	1,817,710.00	2,207,290.00		221,093.50	

Working Notes:

1. The amount of grade is given Rs. 5,000.00 without mentioning per month or per year. In lack of information, the grade amount Rs. 5,000.00 is assumed as on annual basis. (If a student assumes the grade per month, mark should be awarded as correct.)
 2. Normally, the festival allowance shall be of one month's salary including grade. However, the amount is included as provided in the question.
 3. Free accommodation to employee, worker and person drawing monthly salary is characterized and quantified @ 2% of salary. Free accommodation for about 6 months even after retirement is normally not provided. But, the question has mentioned so. Thus, free accommodation given to Mr. Bipin after retirement is attracted Rule 13 (2) (Kha), which mentions that the free accommodation should be characterized and quantified @ 25% of applicable rent. In lack of rent amount, the free accommodation for after retirement could not be quantified.
 4. Vehicle facility to employee, worker, and person drawing monthly salary is characterized and quantified @ 0.5% of salary. Vehicle facility for about 6 months even after retirement is normally not provided. But, the question has mentioned so. Thus, vehicle facility given to Mr. Bipin after retirement is attracted Rule 13 (1) (Kha), which mentions that the vehicle facility should be characterized and quantified @ 1% of market value of the vehicle. In lack of the market value, the vehicle facility for after retirement could not be quantified.
 5. The expenses given for 6 months during his service period can be taken within the vehicle facility and the monthly fixed amount given for after his retirement should be included in income at the market value of the facility.
 6. The loan should be supposed to have recovered at the time of retirement as is normally practiced. So, the concession in interest = $2,000,000.00 * (12-8\%) * 6/12$
 7. Normally, every natural person shall have single status unless they have elected for couple status.
 8. The gifts from the Managing Director and other employees are not included as they fall under personal nature.
 9. Dividend and interest from bank received by a natural person are final withholding incomes under Section 92. Such incomes are excluded for income tax purpose as per Sections 8 (3), 7 (3) and 9 (3).
 10. The insurance premiums paid for family is not reducible to the taxpayer. So, no reductions available for Rs. 50,000 life insurance premium and Rs. 30,000 medical insurance premium of his families to Shikhar Insurance Company Ltd.
 11. The question setting fee is an income from occupation/profession, and is not related to employment, so it should be income from business.
- i) The following payments are not included in course computing the income from employment:
- a) Any amount received by an employee for which exemption is given under Section 10 of the Act.
 - b) Any amount received which is subject to final withholding tax
 - c) Daytime meals or refreshment provided by the employer in equal terms for all the employees.
 - d) Any reimbursement of expenses incurred by the employee:
 - That serves the purpose of the business of the employer: or
 - That would otherwise be deductible in calculating the individual's income from the business or investment.
 - e) Any prescribed small amounts, which are too small and thus unreasonable or administratively not practical to make accounting for them. The amount prescribed by the Rule is Rs 500 at a time. The expenses prescribed by the Rule include tea

- expenses, stationary expenses, prizes, gift, emergency medical facility or other such payments as specified by IRD.
- ii) According to Section 97, unless a written order is issued or a public notice is published by IRD, the following person are not obliged to file an annual return:
- The person who has no liability to pay tax during the year
 - The person who has only incomes, subject to final withholding tax
 - A natural person having income from vehicles subject to payment tax at a fixed amount annually.
 - A resident individual under the following condition:
 - The income for an income year consists exclusively of income from an employment having a source in Nepal
 - Who has only one employer at a time and all of the employers are residents of Nepal during the year;
 - Who claims for medical allowance and a retirement contribution allowed by the employer only, but does not claim the donation given during the year.
- Hence, Mr. Bipin Koirala should file income tax return for the income year 2074/75 separately to IRO within Aswin end 2075.

2.

- a) Employees' Provident Fund, Nepal (EPF), established under the Employees' Provident Fund Act, has the following incomes for Income Year 2074/75. Find out its tax liability. 7

Interest Income from Bank Deposit Rs. 150,000,000

Dividend Income from Hydro-power projects from consortium financing with a bank Rs. 150,000,000

Rent Income Rs. 150,000,000

- b) Ms. Aksheta Sharma has received Rs. 23,000,000 on 2075.01.23 from Budhigandaki Hydro Power project as a compensation of land acquisition by the government. She had owned that land on 2072 Magh 1 after getting property transferred from her mother. The value of land at the time of ownership transfer was Rs. 3,000,000. She acquired another land at Rs. 20,000,000 on 2075/06/19. Find out her tax liability, if any, giving consideration to legal provisions. Will the tax liability be different if she acquired the land on 2076/02/14? 7

- c) Him Electronics Pvt. Ltd. has the following assets on Shrawan 1, 2074:

S.N.	Assets	Written down value on 2074/4/1
1	Building	45,050,000
2	Office Equipment	250,000
3	Motor Car	4,550,000
4	Plant & Machinery	1,275,000

Following additions have been made and following repair & maintenance expenses have been incurred during income year 2074/75:

S.N.	Assets	Date of Acquisition	Cost Rs.	Put to use	Repair and Maintenance Expenses
1	Building	Shrawan 4, 2074	2,575,000	Magh 25, 2074	1,500,000
2	Office Equipment	Magh 20, 2074	150,000	Baisakh 10, 2075	0
3	Motor Car	Poush 15, 2074	4,500,000	Baisakh 20, 2075	450,000
4	Plant & Machinery	Magh 30, 2074	500,000	Phalgun 30, 2074	520,000
5	Accounting software 5 years 4 months life	Chaitra 10, 2074	550,000	-	-

The company sold the following assets during income year 2074/075:

S.N	Assets	Date of Sale	Sale Consideration (Rs.)
1	Office Equipment	Ashadh 20, 2075	298,000
2	Plant & Machinery	Ashadh 25, 2075	520,000

Determine the amount of depreciation, repair and maintenance expenses allowable under Income Tax Act, 2058 for the income year 2074/2075. Also explain pooling date and mention whether the company can claim accelerated depreciation?

6

Answer:

- a) EPF is an Approved Retirement Fund (ARF) under Income Tax Act and Rules (Section 63 and Rule 20). Section 64 (2) of the Act has exempted for all incomes of an ARF from income tax. However, Rule 20 has prescribed that the investment of an ARF can be only in 'approved investment'. Approved investments are – the investments in Citizen Investment Trust, investment in banks established under the prevailing banking laws, investment in government bonds, investment in consortium financing with bank, and investment to the own beneficiaries of the ARF except to the own shareholders.

If the investment is not an approved investment, any income from the investment are not exempted. Accordingly, the rent income is taxable and the other two incomes are not taxable. Thus, the taxable income and tax liability shall be as follows:

S. No.	Particulars	Amount Rs.	Workings
1	Inclusion	150,000,000	
1.1	Interest Income from Bank Deposit	-	An ARF is tax exempted for the income from approved investment. The bank deposit is an approved investment, so, it is not taxable.
1.2	Dividend Income from Hydro-power projects from consortium financing with a bank	-	An ARF is tax exempted for the income from approved investment. The investment in a consortium financing with a bank is an approved investment, so, it is not taxable.

1.3	Rent Income	150,000,000	An ARF is tax exempted only for the income from approved investment. Renting a house is not an approved investment, so, it is taxable.
2	Taxable Income	150,000,000	
3	Tax Rate	25%	
4	Tax Liability	37,500,000	

- b) This is an involuntary disposal under Section 46. According to the Section, income tax is levied on the net gain from the disposal. The net gain is calculated as the surplus over the outgoings for acquiring the similar assets by the taxpayer within a year from date of involuntary disposal.

The tax amount if she acquired the land on 2075.06.19 will be as follows:

Particulars	Amount Rs.	Workings
Incomings	6,000,000	According to Section 46, if another similar asset is acquired within a year, the incomings shall be: Outgoings + Surplus. Where, surplus = compensation received – cost for newly acquired property = 3,000,000 + (23,000,000 – 20,000,000)
Outgoings	3,000,000	
Gain	3,000,000	
Reduction	0	
Net Gain	3,000,000	
Tax Rate	5%	
Tax	150,000	

The tax amount if she acquired the land on 2076.02.14:

Particulars	Amount Rs.	Workings
Incomings	23,000,000	If similar another asset is not acquired within one year, the incomings shall be the whole amount received as compensation. Since, she acquired the land on 2076.02.14, one year is elapsed from the date of compensation received.
Outgoings	3,000,000	
Gain	20,000,000	
Reduction	0	
Net Gain	20,000,000	
Tax Rate	5%	
Tax	1,000,000	

- c) Depreciation is computed on the date latest of date of payment for the assets or date of put to use. This latest date is called pooling date. In case of machinery, it is purchased in earlier period than its put to use in business. Here pooling date is later date i.e. date of put to use. If any assets have used in business under sale or purchase on approval basis, date of put to use will come first and then date of purchase (approval date). In this case, pooling date is date of approval.

The company cannot have claimed accelerated depreciation. According to Section 3(2) of Schedule 2, depreciation rate shall be increased by 1/3rd in the following entity for Pool A, B, C and D:

- Special Industry as defined in Section 11
- Construction of Road Bridge, Tunnel, Rope-way, Sky Bridge
- Operation of Trolley Bus and Tram
- Cooperative Union or Society (non-taxable business)
- Power house construction, generation and power transmission
- Built Own, Operate and Transfer (BOOT) business

Calculation of depreciation and repair and maintenance expenses:

Him Electronics Pvt. Ltd.
Computation of Allowable Depreciation
(Income Year: 2074/75)

I. Building:			Amount Rs.
Written down value on 2074/4/1 (Depreciation basis amount)			45,050,000.00
Addition during the year:			
Date of put to use	Cost	Depreciation basis amount	
2074/10/25	2,575,000	2,575,000 x 2/3	1,716,666.67
Total depreciation basis amount:			46,766,666.67
Allowable depreciation: (A) 46,766,666.67 X 5%			2,338,333.33
II. Office Equipment:			
Written down value on 2074/4/1 (Depreciation basis amount)			250,000.00
Addition during the year:			
Date	Cost	Depreciation basis amount	
2075/1/10	150,000	150,000.00 x 1/3	50,000.00
			300,000.00
Sold during the year: Sold on 2075/3/20			(298,000.00)
Total depreciation basis amount:			2,000.00
Allowable Depreciation: 2,000 X 25%			500.00
Balance:			1,500.00

However, as per Sec. 2 (6) of Schedule-2 of Income Tax Act, 2058, if the balance of depreciation basis amount becomes less than NRs. 2,000, additional depreciation equivalent to that balance amount should be charged. Therefore, in this case the allowable depreciation would be Rs. 2,000 (Rs. 500 + Rs. 1,500).
Allowable depreciation (B) = 2,000

III. Motor Car:			Amount NRs.
Written down value on 2074/4/1 (Depreciation basis amount)			4,550,000.00
Addition during the year:			
Date	Cost	Depreciation basis amount	
2075/1/20	4,500,000.00	4,500,000.00 X 1/3	1,500,000.00
Total depreciation basis amount:			6,050,000.00
Allowable depreciation: (C) 6,050,000.00 X 20%			1,210,000.00
IV. Plant & Machinery			
Written down value on 2074/4/1 (Depreciation basis amount)			1,275,000.00
Addition during the year:			
Date	Cost	Depreciation basis amount	
2074/11/30	500,000.00	500,000.00 X 2/3	333,333.33
Less:			1,608,333.33
Sold during the year: Sold on 2075.3.25			(520,000.00)
Total depreciation basis amount:			1,088,333.33
Allowable depreciation: (D) 1,088,333.33 X 15%			163,250.00
V. Accounting software			
Addition during the year 2074.12.10			550,000.00
Depreciation base 550,000*2/3			366,666.67

Life: 5 years 4 months	
Allowable depreciation= 366,666.67 * 20%	68,750.00

Calculation of allowable repair and maintenance expenses as per Income Tax Act 2058.

S.N	Particulars	Depreciation base for 2074/75 NRs	Actual R & M expenses NRs	7% of Depreciation base NRs.	Allowed repair expenses NRs
1	Building	46,766,666.67	1,500,000	3,273,666.67	1,500,000.00
2	Office Equipment	2,000	-	-	-
3	Motor Car	6,050,000	450,000	423,500	423,500.00
4	Plant and Machinery	1,008,333.33	520,000	112,583.33	112,583.33
5	Accounting software	366,666.67	-	-	-
	Total		2,470,000	3,809,750	2,036,083.33

Actual repair and maintenance expenses = Rs. 2,470,000.00

Allowed repair and maintenance expenses = Rs. 2,036,083.33

Disallowed repair and maintenance expenses = Rs. 433,916.67

Note:

Depreciation has been calculated as per Schedule 2 of the Income Tax Act, 2058.

3.

- a) As per the prevailing code of ethics, what are the taxation services that can be provided by a professional accountant to its client? 5
- b) Every officer of IRD or IRO shall keep the documents and information coming to his possession or knowledge secret while performing his duties under Income Tax Act. In which circumstances he can convey the information to other persons? 5

Answer:

- a) Taxation services comprise a broad range of services, including:
 - a. Tax return preparation;
 - b. Tax calculations for preparing the accounting entries;
 - c. Tax planning and other tax advisory services; and
 - d. Assistance in the resolution of tax disputes.

However, the professional accountant should maintain his integrity and independence.

- b) As per Income Tax Act Section 84, the tax officer can convey the information to the following person under the given circumstances:
 - a. To the extent required in order to perform the officer's duties under Income Tax Act;
 - b. To a court or tribunal as required to perform by them in proceedings with respect to a matter under this Act;
 - c. To the Finance Minister;
 - d. To any person when the disclosure is necessary for the purpose of any other fiscal law;
 - e. To any person in the service of GON, who requires the information for revenue or statistics related works;
 - f. To the Auditor-General or any person authorized by the Auditor-General when such a disclosure is necessary for the performance of his official duties; or

- g. To the competent authority of the foreign government with which Nepal has entered into an international agreement, to the extent permitted under the agreement.
- 4.
- a)
- i) ABC Co. is a transportation company which carry goods from one place to another. Mr. Hari Bhadur Thapa called the ABC Co. and entered into an agreement to hire a vehicle for carrying goods from Bhairahawa to Kathmandu. The price for the service was Rs. 100,000. Hari Bhadur Thapa loaded some barrels containing liquor and headed towards Kathmandu along with the driver. At Mugling, the vehicle was intercepted by Excise Police and on enquiry it was found that the liquor was illicit liquor. The person who hired the vehicle had run away in the meanwhile. The value of the liquor was estimated at Rs. 10 lakh. What is the punishment under the Excise Act in such circumstances? What enquiry is to be made before any punishment? **5**
- ii) Mr. Ram Krishna Neupane wanted to import the goods from USA. The goods which are to be imported did not arrive to Customs boarder but he wanted to make the payment of duty in advance so that goods after arrival could be cleared from Customs faster. He paid the customs duty on March 26, 2018 for the goods to be imported at the exchange rate of 1 USD = Rs. 112. The goods arrived on April 26, 2018 and Mr. Neupane wanted to clear the goods on that day and the exchange rate on that day was 1 USD = Rs. 116. Mr. Neupane claims that there will not be any impact of the difference in exchange rate as he has already paid the duty in advance. State your views on the claim of Mr. Neupane referring the provisions of Customs Act/Rules. Will there be any difference if the exchange rate on April 26, 2018 was 1 USD=Rs. 110? **5**
- b) Ram Private Limited deals in manufacturing and sales of VATable goods. It has started its operation from 15 Bhadra 2075 without registering under VAT. Below is it's transactions for the month of Bhadra 2075, Asoj 2075 and Kartik 2075 including VAT wherever applicable.

Particulars	Bhadra 2075	Asoj 2075	Kartik 2075
Purchase of Raw Materials (VATable)	5,000,000	3,000,000	4,000,000
Purchase of Car for CEO (VATable)	0	5,000,000	0
Liquor Expenses	200,000	100,000	0
Petrol Expenses	0	15,000	10,000
Machineries (VATable)	50,000,000	0	0
Sales	1,000,000	7,000,000	20,000,000

You are a Tax Official and came to know that Ram Private Limited is doing business without registering under VAT, and you intend to carry out VAT assessment of Ram Private Limited. Discussing the relevant provisions of VAT Act, 2052 and Rules 2053, assess the total VAT liability of Ram Private Limited including fine, interest and penalty, if any, as on 30 Poush 2075. **10**

Answer:

a)

i)

1. The liquor will be confiscated and penalty equivalent to the value of the liquor will be imposed on the manufacturer of the liquor after making proper investigation to find out the manufacturer of the liquor, under Sec. 12 (1) of Liquor Act and Sec 16 (1) of the Excise Duty Act.
2. The value of the confiscated liquor for the purpose will be its factory value plus Excise Duty on the same for the purpose of calculating the value of penalty payable.
3. Mr. Hari Bahadur Thapa may be punished with imprisonment for one year without the penalty or both imprisonment and penalty depending on the nature of the crime after due investigation.
4. If the vehicle used for the transportation of the illicit liquor is a vehicle registered as a hired vehicle, without the permission of the owner, the owner will be levied a penalty of Rs. 25,000.
5. The driver will be punished with imprisonment up to three months or a penalty of Rs. 15,000 or both on the basis of the nature of involvement of the driver in the crime. In this case, he has not knowingly allowed the transportation, he may be levied minimum penalty.
6. If the vehicle has been used with the involvement of the owner, then the vehicle can be confiscated. But since here the involvement of the owner is not established, the vehicle may not be confiscated.
7. Proper investigation has to be made with regard to the degree of involvement of each person before deciding the quantum of punishment.
8. They have to find out the person who ran away to ascertain the manufacturer and his involvement in the transaction.

ii) Section 24 of Customs Act, 2064 prescribes the following provisions.

As per Section 24(1) if any importer wishes to pay the duty chargeable on any goods to be imported by the importer prior to the arrival of such goods at the concerned Customs Office, the importer may, for that purpose, make an application, accompanied by the declaration form filled up and such documents relating such goods as referred to in Section 18, to the Customs Officer.

If on examination of the application received pursuant to sub-section (1), it appears reasonable to collect the duty, the Customs Officer may determine the duty pursuant to Section 22. The importer shall pay the duty so determined to the Customs Office.

If the rate of the duty determined pursuant to sub-section (2) or the exchange rate of convertible foreign currency prevailing on the day of payment of payment of duty differs from that prevailing on the day of clearance of goods, the rate prevailing on the day of clearance of goods shall be applied. Hence, the payment of duty prior to arrival of goods is possible. As per Section 24(3), if there is difference in exchange rate, the exchange rate prevailing on the day of clearance of goods shall be applicable. Mr. Ram Krishna has to pay the difference in duty due to increase in exchange rate (Rs. 116-Rs. 112=Rs. 4).

If the exchange rate is lesser than the amount paid prior to the arrival of goods (Rs. 112 - Rs. 110 = Rs. 2), Mr. Neupane has to apply for refund of excess duty paid and the Customs Officer has to refund the amount which arose due to exchange rate difference on the date of payment and the date of clearance of goods.

- b)
- i) Section 5(1) of the Value Added Tax Act, 2052 provides that until unless provided otherwise, VAT is to be levied on all goods and services supplied within Nepal. In the given case, Ram Private Limited deals in VATable goods. Hence, it should have registered itself under VAT. However, mere fact that it has not registered under VAT, that does not mean it has no liability for payment of VAT since section 5(1) has specifically cast VAT liability on sales of goods and services within Nepal. So, if any person who is required to be registered under VAT has not registered under VAT, and carries out transaction in Nepal, in the said case it will be assumed that the transaction done by the said Company is inclusive of VAT, i.e. even though Company has not collected VAT, it will be assumed that VAT is collected and included in sales.
 - ii) Further, section 20(g) of Value Added Tax Act, 2052 provides that VAT Officer can carry out VAT assessment of the person who is required to be registered but not registered.
 - iii) Section 17(1) of the Value Added Tax Act, 2052 provides that VAT credit will be allowed to a registered person. Here, since Ram Private Limited is not registered under VAT, VAT credit on input shall not be allowed.
 - iv) So, total VAT liability of Ram Private Limited will be as below

Particulars		Bhadra 2075	Asoj 2075	Kartik 2075
VAT Credit		Not Available since not Registered	Not Available since not Registered	Not Available since not Registered
VAT Payable				
Total Sales		1,000,000	7,000,000	20,000,000
VAT on Sales (Sales/113*100)	A	115,044.25	805,309.73	2,300,884.96
Penalty u/s 29(1)(a) – Rs 10,000 for each VAT period	B	10,000	10,000	10,000
Penalty u/s 29(2) – 100% of VAT Liability	C	115,044.25	805,309.73	2,300,884.96
Additional Fee u/s 19 – 10% per annum calculated on a daily basis	D	3,035.89	14,540.31	22,369.71
Interest u/s 26 – 15% per annum	E	5,752.22	30,199.11	57,522.12
Fee and Interest Month till 30 Poush 2075		4 Month	3 Months	2 Months
Total VAT Liability		248,876.61	1,665,358.88	4,691,661.75
			Grand Total	6,605,897.24

5.

- a) Nepali Pahichan, a typical handicraft exporting firm imported some VAT attractive auxiliary materials from India for INR 1,000,000. Kolkata-Jogbani freight and insurance are INR 50,000 and INR 5,000 respectively. Customs clearing charges is Rs. 10,000. Excise and Customs Duty Rates are 25% and 40%

respectively. The sales value is 25% more than the cost by adding 25% cost from Jogbani to sales level. 60% of the production has been sold. Calculate the amount of VAT payable and find out the VAT carry forward or payable amount, if any, on the transactions assuming there are no other purchases affecting in VAT calculation.

7

- b) Adrian EXIM Co. Ltd. has imported motorcycles by declaring INR 6,000,000 CFR Raxaul. Customs Officer assessed at the customs point and found that there is under-invoicing by 50%. How can the Customs Officer assess the import? If the under-invoicing was found out during post clearance audit, how would the assessment be done?

Customs and Excise Duty Rates are respectively 60% and 40%.

7

- c) Prabhu Helicopter Pvt. Ltd. had sent its engine for repair purpose to Singapore on Bhadra 5, 2075. The value of engine is US\$ 2,000,000 and incurred US\$ 200,000 repair cost (including spare parts replacement). The engine was back in Nepal after repair on Falgun 5, 2075. What is the time limit for goods to be brought back which were sent to a foreign country from Nepal for the purpose of repair? Calculate the amount of Custom deposit at the time of sending the engine to Singapore and Custom duty to be charged on returning of engine. Assume rate of custom duty is 14%. Exchange rate on Bhadra 5, 2075 is 1 US\$ = Rs. 115.50 and on Falgun 5, 2075 is 1 US\$ = Rs. 112.50.

6

Answer:

- a) Calculation of VAT Paid at the Customs Point:

Particulars	Amount Rs.	Working
Invoice Value	1,601,500.00	1000000*1.6015
Freight and Insurance	88,082.50	55000*1.6015
Customs Value	1,689,582.50	
Duty Rate	40.00%	
Duty Rate after discount for Import from India	38.80%	5% discount for duty rate upto 30% and 3% discount for above 30%.
Customs Duty	655,558.01	
Excise Value	2,345,140.51	
Excise Duty	586,285.13	25%
Customs Clearing Charges	10,000.00	
Taxable Value	2,941,425.64	
VAT	382,385.33	

Handicrafts are VAT-exempted items under Group 8 of Schedule 1 of the VAT Act. So, there shall not be VAT return filing and accordingly no matter arises about VAT carry forward or VAT payable.

- b)

As assessed by the Customs Officer:		
Particulars	Amount Rs.	Working
CFR Raxaul Value	19,218,000.00	12000000*1.6015
Insurance Charges Assumed	500,000.00	<i>Any reasonable assumption of the insurance charges shall be awarded the mark.</i>
Customs Value	19,718,000.00	
Duty Rate	60.00%	

Duty Rate after discount for Import from India	58.20%	5% discount for duty rate upto 30% and 3% discount for above 30%.
Customs Duty	11,475,876.00	
Excise Value	31,193,876.00	
Excise Duty	12,477,550.40	40%
As declared by the Importer:		
Particulars	Amount Rs.	Working
CFR Raxaul Value	9,609,000.00	6000000*1.6015
Insurance Charges Assumed	500,000.00	<i>Any reasonable assumption of the insurance charges shall be awarded the mark.</i>
Customs Value	10,109,000.00	
Duty Rate	60.00%	
Duty Rate after discount for Import from India	58.20%	5% discount for duty rate upto 30% and 3% discount for above 30%.
Customs Duty	5,883,438.00	
Excise Value	15,992,438.00	
Excise Duty	6,396,975.20	40%
Additional Duty and Penalty to be levied by the Customs Officer at the Customs Point:		
Additional Customs Duty as per Section 13 (15) of Customs Act	2,796,219.00	50% additional duty or buying the goods giving 5% more on the declared value.
Penalty as per Section 16 (4) (Ka) of Excise Act	6,080,575.20	100% additional duty
Penalty to be levied by the Customs Officer if assessed under Post Clearance Audit:		
Penalty for Customs Duty	5,592,438.00	100% (Section 34 (2))
Penalty for Excise Duty	6,080,575.20	100%

c)

- i) As per Rule 7, in case it becomes necessary to send any goods or machinery or spare parts thereof to a foreign country from Nepal for purpose of repair, deposit as defined below shall be taken.
0.5% of the value of the goods in case the goods are aircraft, helicopter and parts thereof, otherwise it shall be 5% of value.
Here, the value of machinery sent is for helicopter engine (US\$ 2,000,000 * Rs. 115.50) = Rs. 231,000,000.
The custom duty deposit shall be 0.5% of it i.e., 0.5% of 231,000,000 = Rs. 1,155,000.
- ii) As per Rule 7 of Custom Rule, such goods, machinery or spare shall have to be brought back within 3 months from the date of export.
- iii) In case the time limit prescribed above for bringing back such items after repair is inadequate, an application accompanied with documentary evidence of such inadequate shall be submitted to the Custom officer. The custom officer may, if he so deems appropriate, extend the time limit by a period not exceeding three months.

- iv) The time given in Rule 7 for reimports of machine sent for repair is three months if granted by custom officer. Here, Time limit shall be extended and re-import shall be done within time.

Thus custom officer shall charge custom duty at prevailing rate on the expenses involved in such repair or on the price of spare parts which are replaced.

From it, custom deposit furnished earlier shall be deducted and custom officer shall return the balance of the amount of the person.

Here,

Particulars	Amount Rs
Expenses of repair = US\$ 200,000 = 200,000 * 112.50	22,500,000
Rate of custom duty	14%
Custom duty on repair	3,150,000
Custom deposit given when machine sent for repair	1,155,000
Amount to be deposited	1,995,000

6.

- a) Discuss the main objectives of entering into double taxation avoidance agreement with various countries as mentioned in Income Tax Directives, 2068. 5
- b) What are the various methods used for determination of arm's length price under OECD model? 5

Answer:

- a) Every country levies income tax. Income tax is levied on two principles –

- (i) Source of Income Rule, and
(ii) Residence Rule

As per source of income rule, the income may be subject to tax in the country where the source of such income exists whether income earner is resident in that country or not. On the other hand, resident rule stipulates that the power to tax should rest with the country in which tax payer resides.

Nepal and many other countries follow mixture of these two systems. Accordingly, this leads to taxation of same income of a person in more than one country. Thus problem of double taxation arises if a person is taxed in respect of any income on the basis of source of income rule in one country and on the basis of residence in another country or on the basis of mixture of above two rules. Accordingly, same income is taxed multiple times. To address this problem, many countries enter into double taxation relief agreements with each other with below main objectives as mentioned in Income Tax Directives, 2068 –

- (i) To Eliminate Incidence of Double Taxation: As discussed above, the main principle of income tax is same income cannot be taxed twice. So, to provide relief of taxation of same income in different countries, double taxation avoidance agreement is entered into.
- (ii) To reduce the burden of Tax : It may happen that the rate of income tax on a particular income in the source of country may be higher than the rate of tax provided in the double taxation avoidance agreement. This helps to reduce the burden of tax in source country on the income earned by non-resident person.
- (iii) To reduce the uncertainty of tax liability: Income Tax Act is a flexible law. It can be modified by respective country anytime as per its own benefit. However, in the context of the global economy where big foreign investments are made by a resident of one country in another country, they want certainty of tax laws. To provide these certainties also, double taxation avoidance agreement are entered into between countries.
- (iv) To control tax leakage: In the context of current globalization, there is always a possibility of transfer of income from high tax rate country to low tax rate country or

altogether no taxation of income. This leads to leakage of income tax which is harmful to both of the countries. To stop this leakage also, double taxation avoidance agreement is being entered into.

b) Various Methods used for determination of arm's length price under OECD model :

- (a) Comparable uncontrolled price method (CUPM) : Under this method price is determined on the basis of price charged or paid for property transferred or services provided in comparable uncontrolled transaction or number of such transactions by adjusting for differences which could materially affect the price in open market.
- (b) Resale Price Method : Under this method, the price is calculated by identifying the price at which goods or services are sold to unrelated party and normal gross profit and normal expenses for transacting such transactions are deducted.
- (c) Cost Plus Method: Under this method, the cost of the product or service is identified and the same is increased by normal gross profit margin.
- (d) Profit Split Method: Under this method, combined net profit of all associated enterprises engaged in international transaction is determined, and the profit is apportioned on the basis of functions performed, assets employed, risk assumed by different enterprises.

