

CHARTERED ACCOUNTANCY MEMBERSHIP EXAM

Suggested Answer 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 a guidance.

Corporate Laws

Marks

Attempt all questions.

Use separate answer book for each question.

1. Answer the following questions:

a) Kathmandu Supermarket Limited had advertised to sell their washing soap kits with huge discount of 65%. Niruta intending to purchase the washing soap kits at discount price purchased 20 piece of washing soap kits at the rate of Rs. 200/- per washing soap kit which was a normal price of the item. In fact, the price tag on the soap kit was not lowered as per the advertisement by some negligence of sales man of the supermarket. Niruta brought an action against the supermarket and claimed compensation for fraud. It was argued by the Supermarket that they are not liable for fraud as they were of company and in principle, the company cannot be held criminally liable on fraud. Answer the following questions:

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| i) State the reasons why a company cannot be held criminally liable. | 3 |
| ii) Mention the various theories of corporate criminal liability if any. | 4 |
| iii) Can the company be held liable for fraud? | 3 |

b) The Board of Director of Shangrilla Commercial Bank Ltd. decided to disburse loan of Rs. 5,000,000 to Excell Trading Pvt. Ltd. where Mr. Rajan Sharma, an elder son of Mr. Rajendra Sharma, a member of Board of Director of the Bank, was appointed as a Managing Director with majority of shares. While disbursing the loan, Rajendra Sharma has provided the guarantee to the company. The loan issued by the Bank was objected by NRB. The Bank appointed you for your opinion. Advise the Bank in the following issues by referring the provisions of BAFIA, 2073.

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| i) What types of acts cannot be carried out by the bank and financial institution? | 8 |
| ii) Whether the disbursement of loan by the Bank to the company is valid. | 2 |

Answer:

- a)
- i) The general principles governing criminal liability, in particular the requirement to prove the requisite *mensrea* and *actusreus* of an offence, were developed with individual offenders in mind. The imputation of criminality to corporations is particularly difficult in offences that are committed with a specific intent, for example murder, or the case of where the *actusreus* must be that of a natural person, as in a sexual offence.
- Legislation makes the imposition of corporate liability easier in some cases. Moreover, the difficulty of proving *mensrea* might be avoided by imposing a regime of absolute liability, which does not require proof that the accused knew or could reasonably have known that its act was wrongful, and which does not recognise any excuse of honest and reasonable mistake. However, most offences still require some element of fault, either by way of intent to commit the offence or some degree of knowledge or recklessness with respect to conduct.
- ii) A corporation can be held criminally liable under the following two doctrines-
 Doctrine of Vicarious liability:

Statute may impose vicarious liability on a corporation for the acts of its employees or agents acting within the scope of their authority. Under the prevailing legal rule corporations can be held criminally responsible for any act committed by an employee so long as that act is committed within the scope of his employment and with some intent to benefit the employer. In practice, this rule means that a corporation has little legal defense against prosecution when a single rogue employee commits a crime, even if the crime is committed in violation of every rule in the employee handbook and in the face of a strict and well-functioning compliance program.

Doctrine of Attribution

The principal basis on which a corporation is responsible for a criminal act is that a person who is the directing mind and will of the company and controls what it does, has committed an offence in the course of the company's business. Such a person is treated in law as being the company. This attribution of liability to the corporations later came to be known as the Doctrine of Attribution. The persons who can be considered the company's directing mind include its directors, the managing director, or the persons to whom the particular functions of the corporation have been delegated so that they may be performed without the need for supervision.

In the leading English case of *Tesco Supermarkets Ltd v Nattrass*, it was held that a corporation has no mind which can have knowledge or intention or be negligent and has hands to carry out his intentions but it must act through living persons, though not always one or the same person. Then the person who acts is not speaking or acting for the company. He is acting as the company and his mind which directs his acts is the mind of the company. If it is a guilty mind, that guilt is the guilt of the company.

- iii) In this case, the KTM Supermarket is not liable for fraud and the offence has not been committed by the manager with directing mind and will of the company but by a sales man who is subordinate employee and his acts and intent cannot be treated the act and intent of the company. Hence, the Supermarket is not liable for fraud.

In *Tesco Supermarkets Ltd v Nattrass*, the defense was that the company had taken all reasonable precautions and all due diligence, and that the conduct of the manager could not attach liability to the corporation. The House of Lords accepted the defense and found that the manager was not a directing mind of the corporation and therefore the conduct was not attributable to the corporation.

b)

- i) Section 50 of BAFIA, 2073 has provided that no bank or institution shall carry out or cause to be carried out the following activities:
- (a) Purchasing or selling goods for commercial purpose or constructing building or purchasing any immovable property except when it is required for its own use;
 - (b) Advancing credit against the security of its own shares;
 - (c) Supplying any type of credit or facility to any directors, persons who have subscribed one per cent or more of its shares, chief executive or any family member of such persons or managing agent or any persons, firms, companies or institutions or any firms, companies or institution which are entitled to nominate or appoint directors or any firms, companies or institutions in which the institution has a substantial ownership or financial interest;

- (d) Supplying credit or facility in an amount exceeding such percentage of its capital fund as may be prescribed by the Rastra Bank to a single customer, company and companies or partnership firms or concerned person;
- (e) Supplying any type of credit to any person, firm, company or institution against the guarantee given by the promoters, directors or chief executive;
- (f) Making investment in the securities of those bank or financial institution classified “A”, “B” and “C”;
- (g) Making investment of an amount exceeding the limit prescribed by the Rastra Bank in the share capital of any other institution;
- (h) Indulging with other licensed institutions to mutually create any type of monopoly or any other type of controlled practice in the financial transactions;
- (i) Doing any kind of act which is capable of creating an artificial obstruction in the competitive environment of the financial sector, with the intention of deriving undue advantage;
- (j) Doing such other acts prohibited from being done by a licensed institution as may be prescribed by the Rastra Bank.
- ii) In the given questions, Supplying any type of credit to any person, firm, company or institution against the guarantee given by the promoters, directors or chief executive is prohibited by the section 50(1) (e) . Therefore, the transaction is invalid and it is prejudice to the provision of the said provisions.
2. Answer the following questions:
- a) You are the chief of a Public Entity established under the prevailing law. Your office requires procurement of Data Server in Fiscal Year 2076/077. Who is responsible for procuring Data Server? What are the acts to be carried out by a Public Entity regarding public procurement? 7
- b) Pioneer Finance Company who appointed Pramod Jha, a Chartered Accountant and a Member ICAN as its auditor, lodged a complaint against the auditor to the ICAN charging that the auditor disclosed business-related information acquired by him in the course of professional service without the company's approval to its rival which prejudiced the company's business interests. Give your answer in the following issues: 7
- i) How is this charge investigated?
- ii) What punishment(s) can be imposed against him under Nepal Chartered Accountant Act, 2053?
- iii) Can he challenge the punishment imposed against him by ICAN?
- c) Nepal Rastra Bank (NRB) is the bank of the banks. It provides loan and refinance facilities to the commercial banks and financial institutions as prescribed in the NRB Act. State the loan and refinance provisions as mentioned in the NRB Act, 2058. 6

Answer:

- a) The chief of the concerned Public Entity shall be responsible for preparing a procurement plan carrying out or causing to be carried out all other activities relating to procurement to be made by fulfilling the procedures referred to in this Act. He/she, as a chief of public entity, has to carried out procurement related activity pursuant to Sub-section (1), carry out so through an employee who has the qualification prescribed by the Public

Procurement Monitoring Office and has knowledge or training on procurement business.
(1 for the background)

A Public Entity should carry out the following procurement activities:

- (a) Preparing a procurement plan,
- (b) Preparing prequalification documents, bidding documents and procurement contract related documents by making normally no any substantial difference and necessary amendments in the standard bidding documents, standard prequalification documents and standard procurement contract documents prepared by the Public Procurement Monitoring Office,
- (c) Preparing documents relating to proposals for consultancy services by making normally no any substantial difference and necessary modification in the standard request for proposal prepared by the Public Procurement Monitoring Office,
- (d) Publicly publishing the procurement notice,
- (e) Issuing pre-qualification documents, bidding documents or forwarding documents relating to proposals for consultancy service,
- (f) Receiving and safely keeping pre-qualification proposals, bids or consultancy service proposals,
- (g) Submitting the pre-qualification proposals, bids or consultancy service proposals to the evaluation committee for evaluation and submit the evaluated bids for acceptance,
- (h) Notifying the acceptance of the pre-qualification proposals, bids or consultancy service proposals,
- (i) Obtaining, examining and safely keeping the performance guarantee,
- (j) Examining, or causing to be examined, the quality standards of the goods, construction works or services that have been procured,
- (k) Making available the information and documents asked for by the Public Procurement Monitoring Office, and
- (l) Performing other functions as may be prescribed.

b)

- i) Section 34(5) of Nepal Chartered Accountants Act, 2053 requires that no member of ICAN shall supply or disclose any information and explanation which he has got in the course of his business to any person other than the person who employs him and the person to whom he is compelled by the laws in force to supply or disclose such information and explanation.

Pursuant to section 35 of this Act:

1. Where a member having obtained the professional certificate does not observe the conduct set forth in this Act or the Rules framed under this Act or such member violates this Act or the Rules framed under this Act, the concerned person may make a complaint to the ICAN against such member. (1)
2. Where there is found a fact to believe that a member having obtained the professional certificate has not observed the code of conduct required to be observed, the Executive Directors shall submit a motion, accompanied by the available fact, to the Council of ICAN for taking action against such member. (1)

Where such complaints are made to the Council of ICAN against any member pursuant to Sections 35 and 41(6) of this Act, the case shall be dealt with under Section 14 of this Act. (0.5)

- ii) Pursuant to section 14(5) of Nepal Chartered Accountants Act, 2053 the Disciplinary Committee so constituted for such purpose, shall investigate this case. It shall make recommendation, along with its opinion and finding, to the Council of ICAN for

- taking necessary action against Auditor Pramod Jha, if found guilty from its investigation. The Council of ICAN may, in view of such recommendation, impose any of the following penalties against him, according to the gravity of the offence:
- (a) Reprimanding;
 - (b) Removing from the membership for a period not exceeding Five years;
 - (c) Prohibiting from carrying on the accountancy for any specific period;
 - (d) Canceling the professional certificate or membership.
- Before imposing a punishment as above, the Council of ICAN shall provide reasonable opportunity to him to submit his clarification in this regard.
- (iii) The offender Pramod Jha may, if he is not satisfied with the decision of Council of ICAN referred to in section 14(5) of this Act to punish him, make an appeal to the concerned High Court against such decision in pursuance to section 14(8) of this Act.
- c) Section 49 of Nepal Rastra Bank Act, 2058 has explained the loan and refinance to the commercial banks and financial institutions for a maximum period of one year against the security of the following assets:
- (a) International negotiable instrument referred to in Clause (e) of Sub-section (1) of Section 66;
 - (b) The debt bond issued by Government of Nepal payable within Nepal;
 - (c) The deposits accumulated in the Bank or the gold and precious metals, which the Bank may transact under this Act;
 - (d) The bill of exchange or the promissory notes referred to in Sub-section (1) of Section 48;
 - (e) Other securities as prescribed.

Further NRB can also provide the loan for the sake of public interest and welfare as follow:

The Bank may provide any type of credit to a commercial bank and financial institution for a maximum period of one year in cases where Government of Nepal has, for the sake of public interest and welfare, deemed it appropriate to provide loan and has requested the Bank therefor and Government of Nepal has given a guarantee of securities of prevailing market rate for such loan or in extraordinary circumstances where the Bank has to work as a lender of the last resort. The credit offered as per Sub-Section (1) or (2) can be renewed for additional one year upon remaining under the conditions as per prescribed.

3. Answer the following questions:
- a) State the role of Financial Information Unit in order to combat Money Laundering and Financing of Terrorism under the existing Asset (Money) Laundering Prevention Act, 2064. 7
 - b) Industrial Enterprise Act, 2073 (IEA) has provided the various types of exemptions, facilities and concessions to industries. Among them additional facilities and concession has been provided for various sectors industries. State the additional facilities and concessions as provided in the Act. 7
 - c) State the legal provisions for the settlement of dispute between a Nepali and foreign investor under the Foreign Investment and Technology Transfer Act (FITTA), 2049. 6

Answer:

- a) Section 9 of the Asset (Money) Laundering Prevention Act, 2064 has made the provision of Financing Information Unit (FIU) to collect and analyze the information related to the money laundering activities. Section 11 of the same act has provided FIU the following functions, responsibilities, and powers:-
- (a) To receive threshold transaction report as per this Act,
 - (b) To receive suspicious transaction reports as per this Act,
 - (c) To receive the report of currency and BNI as per this Act,
 - (d) To receive other relevant information in accordance with the provision of this Act,
 - (e) To analyze suspicious transaction report, including others,
 - (f) To disseminate, spontaneously and upon request, analysis and related information to the Department or other investigation agency, if it suspects money laundering, terrorist financing, or other offence in its analysis pursuant to clause (e) above,
 - (g) To provide training on ML/TF to its own staffs, regulator, reporting entity and relevant government agencies having liability to perform under this Act,
 - (h) To provide feedback and guidance in relation to, including, the detection of suspicious activity, suspicious transaction report or information to the reporting entity or concerned agency,
 - (i) To prepare and submit an annual report, on its activities including the money laundering and terrorist financing typologies, techniques, methods and trends of offences, to the Government of Nepal through Rastra Bank.
 - (j) To assist in supervisions of RE in coordination with Regulator as per necessity so as to know whether RE has developed mechanism to identify suspicious activity and reported or provide feedbacks on supervision report.,
 - (k) To conclude MOU with foreign counterparts in order to exchange information upon reciprocity,
 - (l) To carry out other functions as prescribed.
- b) The Industrial Enterprise Act, 2073 (IEA) has been provided many exemptions, facilities and concessions to the industry and entrepreneur. In addition to this, Section 23 of the act has provided additional exemption, facilities and concession as follows:
- Industries based on forest products can be given possessory right pursuant to existing laws over forest in any region through lease or other promissory guarantee under prescribed conditions.
 - No fees or royalty pursuant to the existing laws shall be applicable in electricity produced by industry for its own consumption. Such industry willing to sell surplus electricity to and to any other industry may sell so pursuant to existing laws in the rate agreed upon by both parties.
 - Government of Nepal may provide additional exemptions and facilities to export based industries and prescribed industries established inside. Special Economic Zone or inside Government or Private Industrial Estate by publishing notice in Nepal Gazette.
 - Government of Nepal may provide additional exemptions and facilities by publishing a notice in Nepal Gazette to National Priority Industries or industry making optimum use of domestic raw materials, labor or skill or industries established by inventing new technology or goods inside Nepal upon recommendation of Industries and Investment Promotion Board.
 - Government of Nepal may provide exemptions in Demand Charge added in Electricity cost under prescribed conditions and procedures.

- Government of Nepal may provide and assistance as seed capital to cooperatives, micro industry, small and cottage industries to establish industries inside under Developed Region under prescribed conditions.
 - Industries operating under Foreign Investment may be given approval to import goods produced by the head office located in foreign countries for production, market development and production of new goods for a prescribed period under prescribed items and conditions.
- c) The investment dispute between a Foreign Investor and a Nepali Investor shall be settled pursuant to section 7 of the Foreign Investment and Technology Transfer Act (FITTA), 2049 as under:
- (1) If any dispute arises between a foreign investor, national investor or the concerned industry, the concerned parties shall be required to settle the dispute by mutual consultations in the presence of the Department of Industries.
 - (2) If the dispute could not be settled in the manner as referred to in Sub-section (1) above, it shall be settled by arbitration in accordance with the prevailing arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).
 - (3) The arbitration shall be held in Kathmandu. The laws of Nepal shall be applicable in the arbitration.
 - (4) Notwithstanding anything contained in Sub-sections (1), (2) and (3) above, disputes arising in regard to foreign investment made in the industries with investment as prescribed may be settled as mentioned in the foreign investment agreement.

Notwithstanding anything contained in the existing laws, matters stipulated under this Act and Rules made thereunder shall be dealt accordingly. In addition to this Act, the Industrial Enterprises Act, the taxation laws, labour law, Contract law, Arbitration Act, Trade law and other laws to the extent of relevancy shall also apply in this case.

4. Answer the following questions:

- a) Annual General Meeting (AGM) of Bhrikuti Public Company is set to be held on 18th June 2019 in Tahachal, Kathmandu-13. The Companies Act, 2063 has provided the different requirements for a public company to hold its AGM. Answer how is the AGM conducted, discussion made, and the decision arrived at in the AGM of a public limited company? 8
- b) In the modern economic era an insurance business has become very popular. The Insurance Act, 2049 has established the insurance board to develop and regulate the insurance business in Nepal that can play an important role regarding the promotion and operation of the insurance business. Answer the following questions: 7
 - i) How the Insurance Board is formed?
 - ii) How the Insurance Board functions, fulfills its duties and exercises its powers to fulfill the objectives of the Act?

Answer:

- a) Public notice under Section 67 of the Companies Act, 2063 should be served twice in a national newspaper before convening the annual general meeting of the company. Section 68 of the act said the compulsory presence of all board directors in the annual general meeting. Also it is mandatory to test the statutory compliance of the annual general meeting considering the presence of the number of shareholders and other procedural matters.

Each shareholder should have voting rights as per the section 71 of the act. The quorum of the annual general meeting should be more than 50% presence of the shareholdings.

Further Section 74 of the Companies Act, 2063 has explained the procedures for the annual general meeting as follows:

1. A general meeting shall be chaired by the Chairperson of the board of directors and, in his/her absence, by the person nominated by the directors from amongst themselves.
2. Every matter to be discussed in a general meeting shall be presented in the form of resolution. The chairperson of the meeting shall declare whether a resolution has been adopted or not.
3. The opinion of majority of the shareholders present in the meeting shall be deemed to be the decision of that meeting on every matter put to the vote. Such voting may be taken in such manner including a show of hands, voice voting, division of shareholders in groups or poll (use of ballot paper) as well as other appropriate method as prescribed by the Chairperson.

Provided, however, that in the case of a special resolution, the resolution shall be deemed to have been adopted by the meeting only if the shareholders representing seventy five percent shares out of the shareholders present in the meeting vote in favor of that resolution.

If the votes are evenly divided for and against at a general meeting, the Chairperson of the meeting may exercise his/her casting vote.

Provided, however, that the Chairperson shall not be deprived of the right to vote in the capacity of a shareholder.

- b)
- i) As per Section 3 of the Insurance Act, 2049, an insurance Board will be formed to systematize, regularize, develop and regulate the insurance business.

The Board as said above will consists of the following members:

- (a) A person nominated or designated by the Nepal Government – Chairperson
- (b) Representative, Ministry of Law, Justice and Parliamentary Affairs – Member
- (c) Representative, Ministry of Finance – Member
- (d) A person nominated by the Nepal Government from among the persons having the special knowledge in the Insurance Business – Member
- (e) A person nominated by the Nepal Government from among the insured – Member
- (f) An employee designated by the Board shall perform the duty as a Secretary of the Board.

However the Nepal Government may make alteration of the Members of the Board by publishing a notification in the Nepal Gazette, if it deems necessary.

Accordingly if it is deemed necessary, the Board may invite any national or foreign experts in the meeting of the Board as an observer.

The tenure of the nominated Members of the Board shall be four years. They may be re-nominated up to twice after the expiry of their tenure.

- (a) The functions, duties and powers of the insurance board has been prescribed under the Section 8 of the Act. According to it the functions, duties and powers of the board will be as follows: To provide necessary suggestions to the Nepal Government to frame the Policy regarding to systematize, regularize, develop and regulate the Insurance Business.
- (b) To frame a policy for the investment of the amount received from the insurance and to prescribe the priority sectors.
- (c) To register and renew the *Insurer, Insurance Agent, Surveyor or Broker and to cancel or cause to cancel such registration.
- (d) To arbitrate in the dispute which arises between the Insurer and the Insured.
- (e) To make decision on the complaints filed by the Insured against the Insurer regarding to the settlement of liability of the Insurance.
- (f) To issue necessary directives to the Insurer from time to time regarding to the Insurance Business.
- (g) To formulate necessary basis for the protection of interests of the Insured, and
- (h) To do or cause to do other necessary functions regarding to the Insurance business.

According to Section 9 of the Act the Board may constitute sub-committee as per necessary to conduct its functions smoothly by prescribing the functions, duties and powers of the sub-committee and the procedures regarding to the meeting.

5. Answer the following questions:

(3×5=15)

- a) Some customers of a commercial bank have made an application that the commercial bank is in a problematic condition. In such case discuss the circumstances in which banks or financial institutions will be deemed problematic as per the Nepal Rastra Bank Act, 2058.
- b) What is meant by audit? State the powers that can be exercised by the Auditor General in the course of audit under the Audit Act, 2048.
- c) State the objectives of International Financial Transactions Act, 2054 and the role of Promotion Board to achieve those objectives.

Answer:

- a) Under Section 86B of Nepal Rastra Bank Act, 2058, Nepal Rastra will declare any commercial bank or financial institution problematic by providing written notice to it when Nepal Rastra Bank is convinced that the following conditions are prevailing in any commercial bank or financial institution:
 - (a) In case any action against the interest of the depositors, shareholders, creditors or general public is evident,
 - (b) In case of not fulfillment of any financial liabilities or not having probability to do that or not payment of due amount,
 - (c) In case of insolvency or going to be insolvent or facing material financial difficulties,

- (d) In case of non-compliance with or breach of the Nepal Rastra Bank Act, prevailing law related to bank and financial institution, other prevailing law, terms of licenses or regulation, directives or order of bank,
 - (e) In case it is evident that the license has been obtained on the basis of submitting false, fraudulent, wrong document or data,
 - (f) In case of inability to maintain the capital fund as per Nepal Rastra Bank Act, prevailing law related to bank and financial institution and directives issued by the bank at time to time.
 - (g) In case of the initiation of legal proceedings for liquidation or resolution or insolvency of any commercial bank or financial institution under the prevailing law,
 - (h) In case of undue delay in the process of voluntary liquidation where such proceeding has been initiated,
 - (i) For the commercial bank or financial institution established with the joint venture of the foreign commercial bank or financial institution, while such foreign commercial bank or financial institution is insolvent or liquidator is appointed for the liquidation or the license of such commercial bank or financial institution is terminated under the provision of the law or respective country or transaction is banned either fully or partially or where it is evident that operation of banking transaction is done in association with such commercial bank or financial institution, or
 - (j) If the Nepal Rastra Bank is convinced that commercial bank or financial institution is unable to pay its due or can make negative effect in its liability or duties, which it has to perform.
- b) Audit is the examination or inspection of various books of accounts by an auditor followed by physical checking of inventory to make sure that all departments are following documented system of recording transactions. It is done to ascertain the accuracy of financial statements provided by the organization.

As per section 2 (c) of Audit Act, 2048 (with amendment 2073) audit mean an examination of the accounts and the analysis and evaluation thereof. In addition, it means the resolution or reconsideration of the audit issues already raised by the auditor in the past.

Section 3 (2) has provided the methods of audit in the Audit Act, 2048 (amendment 2073) as follows:

The Auditor General may, if it deems necessary in course of audit exercise the following powers -

- (a) To check at any time the status of the program and project being operated under the grants obtained by Government of Nepal and examine documents relating to accounts;
- (b) To require contractors or suppliers or any other organization or persons of government contracts to produce relevant documents or other evidence relating to the contract, which are supposed to be in his/her possession. In addition these documents, the Auditor General has power to get the detail tax audit file prepared by Inland Revenue office with additional supports from the contractors or the concerned parties of the contracts.

- (c) To hire services of any expert on the task of audit and, if necessary, engage someone under contract with reasonable remuneration.

Section 3 (3) has authorized the Auditor General to retrieve the system information from the software by his/her assistants from all government offices, government corporations fully owned or partially owned or any government organizations.

- c) Preamble to the International Financial Transaction act, 2054 provides the following as its objectives:

To develop Nepal as a center for international financial transactions to foster the economic development of the nation in the context of open, liberal and market oriented economic policies pursued by the country, and the globalization of international financial markets; and to regulate and manage the financial activities of international financial entities of Nepal.

The Promotion Board constituted under this Act, shall have the following functions, duties and powers to achieve the objectives of this Act:

- (a) To frame necessary policies for the promotion of international financial transactions.
- (b) To co-operate with the Government of Nepal in the formulation of necessary laws so as to promote international financial transactions,
- (c) To maintain or cause to be maintained coordination among the concerned governmental, non-governmental and international entities in matters of international financial transactions,
- (d) To make necessary recommendations to the Government of Nepal in respect of exemptions, facilities and concessions to be accorded to international financial entities for the purpose of establishing Nepal as an attractive center for international financial transactions,
- (e) To hear appeals filed by any international financial entity against the suspension or revocation of its license by the Accreditation Committee,
- (f) To perform such other functions as may be deemed necessary for promoting international financial transactions.

6. Answer the following questions:

- a) Write legal provisions for the registration of securities under the Securities Act, 2063. 4
- b) What is the procedure of serving the notice in the Banking Offence and Punishment Act, 2064? 3
- c) When an arbitrator's authority can be revoked under the Arbitration Act, 2055? 3

Answer:

- a) Section 27 of the Securities Act, 2063 has provided the registration of securities as follows:
 - A body corporate shall have to register its securities to be issued by it with the Board prior to their issuance.
 - 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.

- 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.

A body corporate which has already issued securities prior to the commencement of this act shall register such securities with the Board in accordance with this act within one year from the date of commencement of this act.

b) Section 22 is relates on provisions relating to serving the Notice. The provision is given below:

1. A notice to be served in the name of a foreign individual, in connection with the offenses under this Act, shall be served in the name of an office or representative of such individual in Nepal, if any, and the notice so served shall be deemed to be duly served.
2. In case the office or representative as stipulated under above is not existent, the notice shall be served at the main business place of such individual or his/her permanent residential address or at the mailing address if provided by him/her during the course of business, through telex, telefax or other means of recordable telecommunication or through post by registration and the notice so served shall be deemed to be duly served.
3. Notwithstanding anything contained in above, if there is a separate provision in any treaty where Government of Nepal or Nepal is a party, there shall be no obstruction in serving the notice in the name of a person residing in foreign country in the manner as specified in the same.

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 has provided the circumstances where a party may submit an application to revoke the arbitrator's authority 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:

- a) If any arbitrator is clearly seen to have shown a bias toward or discriminated against any party instead of working in an impartial manner.
- b) If any arbitrator engages in improper conduct or commits fraud in the course of arbitration.
- c) If any arbitrator frequently commits mistakes or irregularities in the course of arbitration.
- d) 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.
- e) If any arbitrator takes any action which is opposed to the principles or rules of natural justice.

Advanced Taxation

Marks

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

Use separate answer book for each question.

1. Organic Foods Company (OFC) and Fast Foods Company (FFC) decided to merge with each other from 1st Baishakh 2076. Shareholders of OFC shall get shares at 1:1 whereas that of FFC shall be 1:2. Par Value of shares of both the Companies are Rs. 100.

Transactions for the period of 1st Shrawan to 30th Chaitra 2075 are as follows:

Amount (Rs.)

Particulars	OFC	FFC
Sales	50,000,000	100,000,000
Cost of Goods Sold	20,000,000	40,000,000
Depreciation	5,000,000	10,000,000
Interest Expenses	10,000,000	5,000,000
Management Fee	-	10,000,000

Below is the detail of their assets and liabilities as on 30th Chaitra 2075:

Amount (Rs.)

Particulars	OFC		FFC	
	Book Value	Fair Market Value	Book Value	Fair Market Value
Share Capital	2,500,000		10,000,000	
Reserve	500,000		20,000,000	
Bank Loan	100,000,000	100,000,000	-	-
Current Liabilities	7,500,000	7,000,000	5,000,000	5,000,000
Provisions	1,500,000	500,000	25,000,000	25,000,000
Total Liabilities	112,000,000		60,000,000	
Non-Current Assets (Net Block)	50,000,000	50,000,000	30,000,000	30,000,000
Account Receivable	30,000,000	10,000,000	20,000,000	20,000,000
Inventory	20,000,000	30,000,000	4,000,000	5,000,000
Cash and Bank Balances	2,000,000	2,000,000	500,000	500,000
Other Receivables	10,000,000	10,000,000	5,500,000	5,500,000
Total Assets	112,000,000		60,000,000	

Other Information:

- i) OFC has issued invoice to FFC of Rs. 10,000,000 plus VAT during Chaitra, 2075 for providing management service during Shrawan to Chaitra, 2075. There was no such management fee during the previous years, and the said invoice is raised post decision of merger.
- ii) Interest expenses of OFC includes Rs. 1,000,000 incurred on loan Rs. 20,000,000 taken for purchase of land. But the land is not yet transferred in the name of OFC till the end of Chaitra, 2075.
- iii) Tax assessment of both the Companies are completed for upto Income Year (IY) 2074/75.

iv) OFC has carried forward loss as per tax of Rs. 30,000,000 as on the end of Ashadh, 2075.

Discussing the relevant provisions of Income Tax Act, 2058 and Rules, 2059; suggest the Company regarding total tax payable by both the Companies on the date of merger, if any.

20

Answer:

In the given case, OFC and FFC merged with each other and formed new Company. Income Tax Act, 2058 does not provide special treatment to this type of mergers except for merger of Banks, Financial Businesses or Insurance Companies u/s 47Ka. In this case, the tax liability will be computed as both the entities are dissolved, and their shareholders are paid through shares of the new Company. Hence, the tax will be calculated on the date of merger, i.e. 30 Chaitra 2075 as –

- (a) Disposal of all the assets and liabilities as per Section 40, and
 (b) Dividend Tax on distribution of profit by the Company u/s 55.

Calculation of Taxable Income				Amount (Rs.)
Particulars	OFC	Workings	FFC	Workings
Income from Operation				
Sales	50,000,000		100,000,000	
Less : Cost of Goods Sold	(20,000,000)		(40,000,000)	
Depreciation	(5,000,000)		(10,000,000)	
Interest Expenses	(9,000,000)	Interest expenses for loan for land is not deductible as the land is not yet entitled.	(5,000,000)	
Management Fee	-			The management fee is incurred only after the decision of merger. So not allowed.
Total Income (A)	16,000,000		45,000,000	
Gain/Loss on Disposal of Assets and Liabilities u/s 40(5)				
Gain on Current Liabilities	500,000	(7,500,000-7,000,000=500,000)	-	
Gain on Provisions	1,000,000	(1,500,000-500,000=1,000,000)		
Loss on Accounts Receivable	-	Not allowed u/s 25 as requirements of Act and Rules not fulfilled)		

Gain on Inventory	10,000,000	(3,00,00,000-20,000,000=10,000,000)	1,000,000	(5,000,000-4,000,000=1,000,000)
Gain/Loss on Disposal of Assets and Liabilities u/s 40(5) (B)	11,500,000		1,000,000	
Total Taxable Income (A+B)	27,500,000		46,000,000	
Carried forward loss adjustment	(30,000,000)		0	
Net Taxable Income	(25,000000)	This loss is not allowed to be carried forward.	46,000,000	
Income Tax @ 20% being Special Industry	0		9,200,000	

Calculation of Dividend Tax

Particulars	OFC	FFC
(A) Disposal of Liabilities		
Tax Liability	0	9,200,000
Bank Loan	100,000,000	-
Current Liabilities	7,000,000	5,000,000
Provisions	500,000	25,000,000
Value of Total Liabilities Disposed	107,500,000	39,200,000
(B) Disposal of Assets		
Fixed Assets (net block)	50,000,000	30,000,000
Accounts Receivable (Loss not allowed due to noncompliance of Section 25)	30,000,000	20,000,000
Inventory	30,000,000	5,000,000
Cash and Bank Balances	2,000,000	500,000
Other Receivables	10,000,000	5,500,000
Total Assets	122,000,000	61,000,000
Net Worth	14,500,000	21,800,000
Existing Share Capital	2,500,000	10,000,000
Distribution of Dividend	12,000,000	11,800,000
Dividend Tax @ 5%	600,000	590,000

2.

- a) Naulo General Insurance Nepal Ltd., has provided the following provisional financial information for Income Year (IY) 2075/76:

Particulars	Amount (Rs.)
Net premium received	700,000,000
Commission on insurance ceded	24,800,000
Opening unexpired risk reserve	251,000,000

Opening claims outstanding	40,020,000
Commission expense on reinsurance accepted	17,400,000
Agent commission payments expenses	26,100,000
Management expenses	186,000,000
Claim paid during the year	174,000,000
Closing claim outstanding	52,200,000
Interest income on fixed depots (Gross)	87,000,000
Allowable depreciation	104,400,000
Miscellaneous income	43,500,000
Claim received from reinsurance	97,000,000
Carried forward loss from IY 2074/75	194,000,000

Additional Information:

- i) Sale of salvage accepted by company from the insured at the time of claim settlement Rs. 50,000.
- ii) Depreciation expenses as per Income Tax Act 2058, is Rs. 70,000,000.
- iii) Management expenses include telephone expense Rs. 100,000 of Jestha and Ashadh 2075.

Calculate tax liability of the company, based upon the information above for IY 2075/76.

7

b)

7

- i) ABC Bank Ltd. has the following balances:

Amount (Rs.'000)

Particulars	As on	
	2074/75	2075/76
1. Loan and Advances	23,000,000	24,000,000
2. Non-Banking Assets	2,000,000	2,000,000
3. Loan Loss provision	1,400,000	1,450,000

You are required to calculate the inclusion or deduction under Section 59 (1Ka) of Income Tax Act, 2058 for IY 2075/76.

- ii) ABC Bank Ltd. acquired PQR Bank Ltd. on Ashadh 31, 2074. On Baisakh end 2076, ABC Bank Ltd. has distributed Rs. 1,000,000 as dividend to its shareholders who hold shares of the banks on or before the merger of the banks. Calculate the applicable TDS on the dividend distribution. If the dividend is distributed to shareholders by issue of Further Public Offer on Poush End 2075, would your advice be different?
- c) Ram Sharma had bought a house for Rs. 10,000,000 on 1st Baishakh 2050 where he has been residing since then. The area of the land is 10 anna and the house is built on 4 anna. He bought additional 10 anna land adjacent to the same land on 1st Baishakh 2072 for Rs. 15,000,000. He sold the entire property on 1st Jestha 2076 for Rs. 50,000,000 (Rs. 10,000,000 for house and Rs. 40,000,000 for land). The fair market value of the land and building on 2058 Chaitra 19 was Rs. 20,000,000 (Rs. 5,000,000 price of house and remaining price of land). Discussing the relevant provisions of the Income Tax Act, 2058 and Rules, 2059; calculate the amount of tax to be paid by Ram Sharma on disposal of the said house.

6

Answer:

- a) As per Provisions of Section 60 of Income Tax Act, the calculation of tax of the general insurance company is as follows:

Inclusions	Amount (Rs.)
Net Premium Received	700,000,000.00
Commission on insurance ceded	24,800,000.00
Opening unexpired risk reserve	251,000,000.00
Opening claim outstanding	40,020,000.00
Interest income on Fixed Deposit (Gross)	87,000,000.00
Miscellaneous income	43,500,000.00
Claim received from reinsurance	97,000,000.00
Sale of salvage	50,000.00
Total Income	1,243,370,000.00
Deductions	
Commission on reinsurance accepted	17,400,000.00
Agent Commission	26,100,000.00
Management expenses (less 100000 telephone prior period expenses)	185,900,000.00
Claim paid during the year	174,000,000.00
Closing claim outstanding (115% of closing claim outstanding is allowable)	60,030,000.00
Closing unexpired risk reserve (50% of net premium received)	350,000,000.00
Depreciation	70,000,000.00
Carried forward loss of IY 2074-075	194,000,000.00
Total deductions	1,077,430,000.00
Assessable Income	165,940,000.00
Taxable Income	165,940,000.00
Tax (@ 30%)	49,782,000.00

- b)

i) Calculation of Allowable Loan Loss Provision Expenses for IY 2075/076

Particulars	Amount (Rs. '000)
Closing Loans and Advances	24,000,000
Closing Non-Banking Assets (NBA)	2,000,000
Total	26,000,000
5% of Closing Loan and NBA	1,300,000
Opening loans and non-banking assets	25,000,000
5% of Opening Loan and NBA	1,250,000
Opening Loan Loss Provision	1,400,000
Loan Loss Provision disallowed in Previous Year	150,000

Loan loss provision Deductible during the year:

Loan loss provision for the year	50,000
Loan loss provision not allowed PY	<u>150,000</u>
Eligible deduction (A)	<u>200,000</u>
This year's 5% of closing loan & NBA	1,300,000

Previous years' deducted balance	1,250,000
Eligible balance this year (B)	50,000
Therefore, this year's Deduction is (A) or (B) the less i.e. Rs. 50,000.	

- ii) As per Section 47Ka(5) of Income Tax Act, 2058, if any bank which is merged with another bank or has acquired another and distribution of dividend is distributed to its shareholder who holding shares at the date of such merger/acquisition; there will be no dividend distribution tax for two years from the date of merger/acquisition. Hence no TDS is to be paid on dividend distributed by the bank to its shareholder.

Yes, in later case answer would be different.

If dividend is distributed to the shareholders who subscribe the Further Public Offer of the bank on Poush End 2075, then the distribution of dividend to these shareholders is not exempted from TDS. Hence applicable TDS would be 5% of the dividend.

c)

- i) Section 2(Da) provides that any house property of a natural person where he has been residing for a period of 10 years or more is considered as personal assets and not considered as a Non-Business Chargeable Asset (NBCA).
- ii) Further, it clarifies that a house property will mean a house and land on which such house is constructed plus equal amount of land on which such house is constructed but not exceeding 1 ropani land.
- iii) Here, Ram Sharma has purchased house on 1st Baishak 2050 which consisted of house which is built on 4 aana land and total land 10 aana where he has been residing for more than 10 years.
- iv) House is constructed on 4 aana land. Hence, as per Section 2(Da) house, and land on which house is constructed, i.e. 4 aana land plus equivalent quantity of land on which house is constructed, i.e. another 4 aana land will not be construed as NBCA, i.e. house and 8 aana land will not be construed as NBCA. (Capital Gain Guidelines, 2072).
- v) Remaining 2 aana land will be considered as NBCA.
- vi) Section 40(5) of Income Tax Act, 2058 provides that the value of asset which is under ownership of the person at the date of commencing this Act will be equal to fair market value of such asset on the date of application of this Act. Hence, the total value of a house where Ram Sharma has been residing will be Rs 50,00,000 value of house plus Rs 1,50,00,000 value of land (and not Rs 1,00,00,000 purchase value of house).
- vii) The new land which he has purchased later on will be considered as NBCA.
- viii) As per Section 1(4) of the Annexure 1 of Income Tax Act, 2058, the applicable tax rate will be 2.5% if the NBCA is held for 5 years or more than 5 years and 5% if such NBCA is held for less than 5 years.

Calculation of Tax Liability of Ram Sharma on Sale of house property:

Particulars	Workings	Amount (Rs.)
(A) Sale of House Property purchased on 1 st Baishakh 2050		
Cost of 2 anna land will be Rs 1,50,00,000/10 anna land*2 anna		3,000,000
Sale proceed of such 2 anna land – Total Sale value of whole property	50,000,000	
Less : Sale price of House where he is residing for more		

than 10 years	10,000,000	
Value of 20 anna land	40,000,000	4,000,000
Value of 2 anna land (4,00,00,000/20=20,00,000 per anna)	4,000,000	
Gain on sale of house property purchased on 1 st Baishakh 2050		1,000,000
Tax @ 2.5%		25,000
(B) Sale of Land Purchased on 1 st Baishakh 2072		
Cost of 10 anna land		15,000,000
Sale price of 10 anna land (20,00,000*10)		20,000,000
Gain on sale of 10 anna land purchased on 1 st Baishakh 2072		5,000,000
Tax @ 5%		250,000
(C) Total Tax Liability		275,000

3.

- a) Explain about the code of ethics to be adhered by a statutory auditor to provide tax calculations for the purpose of preparing accounting entries in the case of clients that are public interest entities. 5
- b) Wagley Associates, a partnership firm is the statutory auditor of a limited company. The firm is also appointed to provide taxation services. Explain about the conflict of interest that may arise and the remedy for the same as per revised ICAN Code of Ethics. 5

Answer:

- a) In case of statutory auditor preparing calculations of current and deferred tax liabilities / assets for the audit clients that are public interest entities. Such engagement also involves self-review threat. Previously, the provision was mentioned through Para 290.181 and this has recently been replaced by Para 290.181 mentioning as;

In case of an audit client that is a public interest entity, the statutory auditor should not prepare tax calculations of current and deferred liabilities (or assets) for the purpose of preparing accounting entries that are material to the financial statements on which the auditor will express an opinion.

In the case of the earlier provision, such engagement is permissible under emergency situations.

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

While taxation services are provided by a firm to an audit client, they are addressed separately under each of these broad headings; in practice, these activities are often interrelated. Performing certain tax services creates self-review and advocacy threats.

The significance of any threat shall be evaluated and safeguards shall be applied when necessary to eliminate the threat or reduce it to an acceptable level. The safeguards may include:

- Using professionals who are not members of the audit team to perform the service;
- Having a tax professional, who was not involved in providing the tax service, advise the audit team on the service and review the financial statement treatment;

- Obtaining advice on the service from an external tax professional; or
- Obtaining pre-clearance or advice from the tax authorities.

Professional accountants engaged in the audit of the financial statements and the tax returns to an audit client shall not provide any services falling under the responsibilities and obligations of the management of the client for example making accounting entries, posting into the ledgers, giving advice or consultancy services in regard to tax matters, tax planning, assisting in the resolution of tax disputes, representing clients to tax authorities etc.

4.

- a) Sungabha Chemicals Limited had filed VAT return for Magh 2075 within due date. It has also paid all the VAT liability on 25th Falgun 2075 through normal cheque which was encashed on 28th Falgun 2075.

Particulars	Transaction Amount (Rs.) (without VAT)	VAT (Rs.)
VAT Payable:		
Local Sales to VAT registered party (VAT items)	6,000,000	780,000
Local Sales to VAT non-registered party (VAT items) without VAT invoice	2,260,000	0
Local Sales to VAT registered party (VAT Exempt items)	1,000,000	0
Total VAT Payable		780,000
VAT Credit:		
Goods Purchased during the Month (VAT Applicable)	2,500,000	325,000
Service Bill Dated 1 st Mangsir 2074	500,000	65,000
Purchase of Car for CEO	2,000,000	260,000
Liquor Expenses	100,000	13,000
Total VAT Credit		663,000
Net VAT payable		117,000

Below are the other transactions for the month which was ignored while filing VAT return as the management of the Company believes that the said transaction is VAT exempt.

- During the month, the Company has taken service from a foreign consultant for internal audit for which it has paid Rs. 1,000,000.
- It has given VAT items worth Rs. 500,000 to local party without raising bill on the condition that the said party will return goods after few months.

You, as a VAT Officer, are required to carry out VAT assessment of the above period citing relevant provisions of the Act and Rules in detail as on 30th Chaitra 2075. Also calculate penalty, additional charges and interest, if any.

10

- b) Below is the email correspondence between Sumi Warehouse Operator and VRS Pvt. Ltd.:

From: Finance Manager of VRS Pvt. Ltd.

To: Sumi Warehouse Operator, Birgunj Customs Office

Subject: Claim of Damaged Goods Rs. 1,500,000

Dear Sir,

We have kept in your warehouse 10,000 litres of Sprite (HS code 2207.20.00) on 1st November 2018. In December 20, 2018, our representative visited your warehouse where he found a shortage of 1,000 litres of Sprite due to mishandling. The cost per litre of Sprite is Rs. 1,100 but the present market price per litre is Rs. 1,500. Considering the market price, please make payment of Rs. 1,500,000 to us.

Thank you for your cooperation,

Finance Manager

VRS Pvt. Ltd.

Reply by Sumi

From: Sumi Warehouse operator, Birgunj Customs Office

To: Finance Manager of VRS Pvt. Ltd.

Dear Sir,

Goods kept in warehouse should have been cleared within 45 days from the date of goods entered into the warehouse and therefore, no claims can be entertained of your company.

Thank you for your understanding.

Regards,

Assume the applicable customs duty is per litre Rs. 30.

Sumi, Advise in the following issues along with the relevant provisions of Customs Duty Act.

10

- i) Is the argument of Sumi correct?
- ii) Is the amount claimed by VRS correct?
- iii) How much amount has to be paid by Sumi to VRS?
- iv) Explain the provision of customs duty in these issues.

Answer:

a)

Calculation of VAT Liability of Sungabha Chemicals Limited:

Amount (Rs.)

Particulars	Value	VAT	Penalty u/s 29(2)	Remarks
(A) VAT Payable				
Local Sales to VAT Registered Party (VATable Goods)	6,000,000	780,000		
Local Sales to VAT Un Registered Party (VATable Goods)	2,000,000	260,000	260,000	VAT is applicable on sales made to unregistered party of VAT items. In this case, the invoice value is considered to be including VAT.
Local Sales to VAT Registered Party (VAT Exempt Goods)	1,000,000	0		
Total VAT Payable		1,040,000	260,000	
(B) VAT Credit				
Goods Purchased during the Month (VAT Applicable)	2,500,000	325,000		

Service Bill Dated 1 Mangsir 2074	500,000	0	65,000	Tax Credit for invoices which are more than 1 year old is not allowed.(Rule 39(2))
Purchase of Car for CEO	2,000,000	104,000	156,000	Tax Credit of 40% of VAT amount only allowed. Rule 41(2)
Liquor Expenses	100,000	0	13,000	No Tax Credit allowed (Rule 41(1))
Total VAT Credit		429,000	234,000	
(C) Other Adjustment				
Reverse VAT Charge for internal audit from foreign party	1,000,000	130,000	130,000	As per Section 8(2)
VAT on goods sold without bill	500,000	65,000	65,000	As per Rule 40(1)
Proportionate VAT Credit Reversal of Exempt Goods		47,662	47,662	Total Sales : 9,000,000 Total Exempt Sales : 1,000,000 % of VAT Credit for Exempt Goods : 11.11% Total VAT Credit : 429,000 VAT Credit Reversal : 11.11% of 429,000 = 47,662
Total Other Adjustment		242,662	242,662	
(D) VAT Liability (A-B+C)		853,662	736,662	
(E) Penalty u/s 29(2) as above		736,662		
(F) Additional Fee u/s 19(2)		7,160		On Total VAT Amount: Cheque Clearing date : 28 Falgun 2075 Due Date : 25 Falgun 2075 Late days = 3 days Fee : $853,662 * 10\% / 365 * 3 = 702$ On Short VAT amount: Total VAT Liability : 853,662 VAT Paid : 117,000 Shortfall amount : 736,662 Tax assessment date : 30 Chaitra 2075 Days upto 30 Chaitra 2075 from 28 Falgun 2075 = 2+30 = 32 days Interest : $736,662 * 10\% / 365 * 32 =$

				6,458 Total Fee : 702+6458 = 7,160
(G) Interest u/s 26		29,088		On Total VAT Amount: Cheque Clearing date : 28 Falgun 2075 Due Date : 25 Falgun 2075 Late days = 3 days No. of Month Delay = 1 Interest = $853,662 * 15\% / 12 * 1$ = 10,671 On Short VAT amount: Total VAT Liability : 853,662 VAT Paid : 117,000 Shortfall amount : 736,662 Tax assessment date : 30 Chaitra 2075 Month upto 30 Chaitra 2075 from 28 Falgun 2075 = 2 month Interest : $736,662 * 15\% / 12 * 2$ = 18,417 Total Interest : 10,671+18,417 = 29,088
(H) Total VAT Liability = (D+E+F+G)		1,626,572		

b)

- i) As per Rule 32 of Customs Rules, 2064; the goods can be kept in the warehouse for a maximum of 60 days. However, in case of hazardous goods or goods of perishable nature or not fit for keeping in warehouse or due to lack of space the goods cannot be kept until the maximum time allowed for keeping into warehouse, the customs officer will notify the owner to clear the goods within specified time. In the above case, the goods are not of perishable nature, the maximum of 60 days is available with the VRS to clear the goods. As such, the argument of the warehouse operator is not correct.
- ii) As per Rule 56 of Customs Rules, 2064; the amount that can be claimed in case of damage is the value of the goods as mentioned in the Invoice plus 5% additional amount. So claimed by VRS is not in line with Customs Rules. (i.e. 1000 liters and per liter is 1100 plus 5% addition of this invoice price).
- iii) Sumi Warehouse Operator has to pay to VRS the following amounts:

Lost	Per liter cost (Rs.)	Total cost (Rs.)
1,000	1,100	1,100,000
Add 5% of invoice price		55,000
Total claimed payable		1,155,000

- iv) As per Rule 56(3) of the Customs Rules, 2064, the private warehouse operator has to pay applicable customs duty to the customs office within 7 days from the date of payment of claims to the owner of the goods. In this case, Sumi Warehouse Operator shall pay customs duty Rs. 30 per liter of 1000 liters i.e. Rs. 30,000.

5.

- a) Trade Syndicate Limited imported machine parts costing Rs. 1 million and sold them to a unit situated in the Special Economic Zone. It has paid Custom duty of Rs. 150,000 on the same. Now, the importer wants to get refund of Custom duty paid. Is the claim of the importer valid in view of Custom Rule 18? 7
- b) Sita Packaging Industries Private Limited has stock of Rs. 10,000,000 at its Kalanki Godown on which total excise duty payable was Rs. 500,000. Out of the above goods, the Company has insured goods worth Rs. 6,000,000 and remaining goods were uninsured. Fire broke out at the godown and destroyed all the finished goods. Advise the management of the Company regarding various provisions contained in Excise Act, 2058 and Rules, 2059 for off-set of the excise duty liability on the damaged goods. 7
- c) A trader claimed purchase of Rs. 3 million in his VAT Return but purchase of Rs. 1 million was not correlated by the sales invoices of the respective supplier as per the VAT office. Based upon the relevant provisions of VAT Act, what action he should take to get relief in this case? 6

Answer:

- a) Custom Rule 18 provides the following conditions for getting refund of custom duty paid on goods supplied to Special Economic Zone (SEZ).
1. The refund of custom duty is available only if the SEZ exports its goods produced using the imported goods purchased from the local importer.
 2. The notice of the locally imported goods used in the goods exported by SEZ has to be proved and the SEZ has received payment in convertible currency by exporting the goods.
 3. SEZ / local importer should have furnished Bank guarantee for the custom duty payable for the value of import of the goods by the local importer.

It is, therefore, clear that refund of custom duty is possible only in the case of goods supplied which is directly used in the production of the goods exported by SEZ.

In the present case, the local importer has supplied machinery which cannot be used as raw material for the export of goods by SEZ. Therefore, no custom duty refund is possible in this case.

- b) Section 3Ka(4) of the Excise Act, 2058 provides that excise duty paid on goods damaged due to fire, theft, accident, riot or expiry can be waived off. In the given case, fire has been broke out at the godown of the Sita Packaging Industries Private Limited, and caused loss of the stock. However, for waiver of excise duty on such damaged goods, intimation of happening of such event should be provided to the Department promptly. If, intimation is not given, then the owner himself should bear the loss of Excise Duty.

The process for waiver of Excise Duty liability is as below –

- (1) Excise return should have been filed for all the periods.
- (2) In the case of insured goods, Company can apply to the Excise department along with detail of claim made to the insurance Company, and final claim passed by the insurance Company for waiver of Excise Duty within 30 days of receipt of claim from Insurance Company along with payment proof. After verifying the insurance detail, Department may waive off the Excise Duty, and allow adjusting the records.
- (3) In the case of uninsured goods, Company has to file application for waiver of Excise Duty along with prescribed documents.

(4) Department will verify the claim along with team as prescribed, and if satisfied, then allow for waiver of the Excise Duty.

c)

1. He should first approach the tax officer to find out the difference in the bills and the trader from whom he purchased the goods.
2. He must verify the bills issued by such trader during the month with the bills discovered by the Tax Office.
3. If he finds that the bills received by him are required, he should produce the original purchase bills with copies of the same so that the Tax Office can verify and retain the copies of the bills with them and return the original to be produced whenever required.
4. If it is found after verification of the bills with the copy of the bills with the concerned suppliers and if they tally with each of other, then the Tax Office will be required to give credit for these bills verified to be correct.
5. If there is discrepancy, then the trader will have to deposit $\frac{1}{3}$ of the disputed amount and follow the appeal procedure if there are sufficient grounds for going in appeal. Otherwise accept the discrepancy and deposit the VAT amount with interest and additional fees till the month of payment.

6.

- a) What do you understand by the term Capital Export Neutrality and Capital Import Neutrality in the context of double taxation? 5
- b) Thai Airways, Thailand has regular flight for the sector Bangkok-Kathmandu-Bangkok and it has also a regular working base in Kathmandu. Discuss about its income tax liability in Nepal. 5

Answer:

- a) Elimination of double taxation is must for international trade to thrive. This is because the basic rule with regard to taxation is that the tax should not interfere with business in investment decisions. In other words, the tax must remain neutral.

On the above background the two terms are described as follows:

Capital Export Neutrality: When capital is to be invested abroad, the tax should not increase the cost of capital through levy of tax.

Capital Import Neutrality: When capital is to be brought in the country, the tax should not increase the cost of capital to the investor through levy of tax.

In order to make the capital neutral, countries can enter into Double Taxation Avoidance Agreement (DTAA).

- b) According to Section 2 (KaDa) (3) of Income Tax Act, 2058, any place from where business/professional service is provided for more than 90 days in the previous continuous 12 months period, the place is considered as a permanent establishment. A permanent establishment in Nepal of a foreign entity is a resident person as per Section 2 (KaNga) of the Income Tax Act, 2058.

And a resident person in Nepal requires paying the income tax in Nepal for its global income. Section 73 of Income Tax Act, 2058 provides priority to DTAT over the local law. Accordingly, Thai Airways will not have income tax liability in Nepal.

However, Article 8 shipping, air transport & containers of The Double Taxation Avoidance Agreement between Nepal and Thailand stipulates that income or profit derived by an enterprise of a contracting state from the operation of aircraft in international traffic shall be taxable only in that contracting state.

