

**SUGGESTED ANSWERS TO**  
THE QUESTIONS SET AT  
**CA MEMBERSHIP EXAMINATION**  
**SEPTEMBER 2023**



**The Institute of Chartered Accountants of Nepal (ICAN)**  
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The Institute of Chartered Accountants of Nepal

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## Corporate Laws

1. Answer the following questions:
- a) Mr. Sumit Bhatta has been appointed as a director of a company for five years. How the terms are possible and why? What are the provisions of the terms of office of the directors in the Companies Act, 2063? Justify and explain. **10**
- b) The Securities Market is a mirror of the economy of a country. The securities market is going down day by day and investors are losing their property. There are many reasons behind the situation, among them insider trading and other illegal activities are the most negative factors for the development of the market. It is necessary to restrict these types of activities in order to regulate and manage the activities of the securities markets and persons involved in the business of dealing in securities by regulating the issuance, purchase, sale, and exchange of securities for the purpose of protecting the interests of investors in securities, by developing the capital market to mobilize necessary capital for the economic development of the country. In the light of the above statements, point out the legal provisions regarding the following issues.
- i) What do you mean by insider trading and the Persons likely to be involved in insider trading? **3**
- ii) Mention the provisions of false trading and fluctuation in price. **3**
- iii) Discuss the acts that affect stock exchange. **3**
- iv) What is the effect of insider trading? **1**

### Answers

- 1 a) It is possible for the following reasons:
1. The Directors of a company are appointed by the general meeting of a company Subject to the conditions as prescribed in section 89 of the Companies Act, (Act) and its article of association.
  2. However, there is pending the first annual general meeting, the Director shall be appointed by the promoters. [section 89(1) proviso]
  3. If the company is a public company, the tenure of office of a director of a public company shall be as specified in its articles of association, which shall not exceed four years in accordance with sub-section (2) of section 90.
  4. A person retired from the office of director on the expiry of his/her tenure of office shall be eligible for reappointment to the office of director in accordance with sub-section (3) of section 90.

The terms of office of the Directors are as follows as given in section 90.

1. The tenure of office of a director of a private company shall be as provided in its articles of association.
2. The tenure of office of a director of a public company shall be as specified in its articles of association, which shall not exceed four years.
3. A director appointed by the Government of Nepal, or a corporate body shall hold office so long as the Government of Nepal or the appointing body desires.
4. A director appointed pursuant to Clauses (1) and (2) of the proviso to Section 87 shall hold office only until the holding of the annual general meeting.



5. The term of office of a director appointed to the office of any director which has fallen vacant before the expiry of his/her term of office shall be only the remainder of the tenure of office of that director whose office has so fallen vacant and in whose place, one is appointed.
6. A person retired from the office of director on the expiry of his/her tenure of office shall be eligible for reappointment to the office of director.

Let's explain first:

1. **Appointment by General Meeting and Articles of Association (Section 89):** Directors of a company are appointed by the general meeting of the company, subject to the conditions prescribed in Section 89 of the Companies Act and the company's articles of association. This means that the general meeting, which includes shareholders, has the authority to appoint directors and set the terms of their office.
2. **Appointment by Promoters (Section 89(1) Proviso):** In cases where the first annual general meeting has not taken place yet, the directors can be appointed by the promoters of the company. This provision allows for the initial setup of the company's board of directors.
3. **Tenure for Public Companies (Section 90(2)):** For public companies, the tenure of office of a director is specified in the company's articles of association, and it should not exceed four years as per Section 90(2) of the Act. This ensures that there is a maximum limit on the term of office for directors in public companies.
4. **Reappointment (Section 90(3)):** Section 90(3) of the Companies Act allows a person who has retired from the office of director upon the expiry of their tenure to be eligible for reappointment as a director. This provision encourages continuity and experience on the board of directors.

To justify Mr. Sumit Bhatta 's appointment as a director for five years:

- If Mr. Bhatta is being appointed to the board of a private company, his term can be as provided in the company's articles of association. There is no specific mention of a maximum term limit for private companies in the provided information.
- If Mr. Bhatta is being appointed to the board of a public company, the maximum term limit is four years, as stated in Section 90(2) of the Act. Therefore, his appointment for five years would not comply with the provisions of Company Act 2063.

In summary, Mr. Sumit Bhatta's appointment for five years as a director would be possible if he is appointed to the board of a private company, and the company's articles of association permit such a term. However, if it's a public company, the appointment would need to comply with the maximum term limit of four years as per the Companies Act 2063.

#### 1 b)

- i) According to the section 91(1) of the securities Act, 2063 Insider trading means if any person deals in securities or causes any other person to deal in securities on the basis of any insider information or notice that are unpublished or communicates any information or notice known to such a person in the course of the discharge of his or her duties in manner likely to affect the price of securities such a person shall be deemed to have been committed an insider trading in securities.

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



Likewise, as per section 92 for the purposes of this Act, the following persons shall be deemed to be those who have access to the insider information or notice not published by any body corporate:

- (a) A director, employee or a person, who can obtain any information or a notice in the capacity of a shareholder of that body corporate,
- (b) A person who can obtain any information or a notice in the capacity of a professional service provider to that body corporate,
- (c) A person who can obtain any information or a notice having a direct or indirect contact with the person or source as specified in Clauses (a) and (b).

ii) According to the section 94 of the securities Act, 2063 if the following trading is done, such a trading shall be deemed to be a fake or false trading:

- (a) The actual ownership is not changed, even though the purchase or sale of securities is done directly or indirectly.
- (b) An offer is made to purchase or sell securities in the line for the same price upon knowing the price offered by another for sale or purchase.

Likewise, as per section 95, if a person causes stability, increase, decrease or frequent change in the price of securities by doing or causing to be done a fake or artificial or false trading, such a person shall be deemed to have caused fluctuation in price.

iii) According to the section 96 of the securities Act, 2063, if an person individually or in association with others commits any of the following acts to affect directly or indirectly the transaction in securities, such a person shall be deemed to have affected the stock exchange:

- (a) To increase the market price of securities issued by any company with the intent to encourage others to purchase or sell the securities or to avoid the purchase or sale of such securities,
- (b) To decrease the market price of securities issued by any company with the intent to encourage others to purchase or sell the securities or to avoid the purchase or sale of such securities,
- (c) To stabilize the market price of securities issued by any company with the intent to encourage others to purchase or sell the securities or avoid the purchase or sale of such securities.

iv) The effect of insider trading is if any transactions already carried out shall not be deemed to be affected at all merely by the reason that an insider trading has been committed.

2. Answer the following questions:

a) Share capital holding of Kathmandu Waste Management Company Ltd (KWMCL) is as follows:

|                             |            |
|-----------------------------|------------|
| Government of Nepal         | 30 percent |
| Kathmandu Metropolitan City | 25 percent |
| General Public              | 45 percent |

Audit Committee has recommended ABC Associates, Chartered Accountants, holding certificate of practice from ICAN to be appointed as Auditor of KWMCL and placed agenda in its Annual General Meeting. One of the shareholders opposed the agenda stating that the agenda is in contravention to the prevailing law of Nepal.

Evaluate the objection of the Shareholder and describe the procedure for appointment of auditor and audit procedure to be followed in KWMCL as per Audit Act 2075.

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b) State the Functions, Duties and Powers of the Nepal Rastra Bank as provided in the Nepal Rastra Bank Act, 2058.



- c) What are the functions, duties and power of Registrar under Cooperative Act/Rules of Nepal? Explain

### Answers

- 2 a)** As per section 2(f) of the Audit Act 2075, a corporate body means a corporate body whose more than fifty percent shares or assets are owned by Government of Nepal, Province Government or Local Bodies and the term also means an body whose more than fifty percent shares or assets are owned by corporate body.

As per section 11 of Audit Act 2075, audit of corporate bodies shall be as follows;

- (1) A corporate body may appoint an auditor and have its accounts audited by the auditor subject to the principles specified by the Auditor General.
- (2) In appointing an auditor pursuant to (1) above, the corporate body shall consult the Auditor General.
- (3) The concerned corporate body shall forward a copy of the report presented by the auditor appointed pursuant to (1) above, to the Office of the Auditor General, as well.
- (4) If, from the report received pursuant to (3) above, there appears any error in the accounts of such a corporate body, the Auditor General may give necessary directives to the concerned corporate body and the auditor in respect of such error, and it shall be the duty of the concerned body and auditor to abide by such directives.
- (5) The concerned corporate body shall submit progress details of implementation, within the specified period by the Auditor General in respect of the matters indicated by the report received pursuant to (3) above, and the directives given pursuant to (4) above.

As the 55 percent of share capital of Kathmandu Waste Management Company Ltd (KWMCL) is owned by Government of Nepal and local bodies (Kathmandu Metropolitan City), KWMCL comes under the definition of a corporate body as prescribed by Audit Act, 2075.

Opposition of Shareholder on agenda regarding appointment of Auditor is valid. KWMCL should follow the provision of section 11 of the Audit Act, 2075.

- 2 b)** Section 5 of Nepal Rastra Bank Act 2058 states the Functions, Duties and Powers of the Nepal Rastra Bank.

As per the Act Functions, Duties and Powers of the Nepal Rastra Bank shall be as follows:

- (1) In order to achieve the objectives referred in the Act, the functions, duties and powers of the Bank shall be as follows:
  - i. To issue bank notes and coins;
  - ii. To formulate necessary monetary policies in order to maintain price stability and to implement or cause to implement them;
  - iii. To formulate foreign exchange policies and to implement or cause to implement them;
  - iv. To determine the system of foreign exchange rate;
  - v. To manage and operate foreign exchange reserve;
  - vi. To issue license to commercial banks and financial institutions to carry on banking and financial business and to regulate, inspect, supervise and monitor such transactions;
  - vii. To act as a banker, advisor and financial agent of Government of Nepal;
  - viii. To act as the banker of commercial banks and financial institutions and to function as the lender of the last resort;
  - ix. To establish and promote the system of payment, clearing and settlement and to regulate these activities;



- x. To operate open market transaction through necessary instruments for liquidity management, and
- xi. To implement or cause to implement any other necessary functions which the Bank has to carry out in order to achieve the objectives of the Bank under this Act;

(2) While exercising the powers conferred by this Act or any other prevailing law, the Bank shall have the power to carry out other functions and take actions, which are incidental thereto.

(3) No one shall violate powers conferred on the Bank under this Act.

**2 c)** As per Section 92 of Cooperative Act, 2074 Ministry of Land Management, Cooperatives and Poverty Alleviation shall designate any gazetted first class officer of civil service to work as the registrar of the department.

Section 93 of Cooperative Act, 2074 states that the functions, duties and power of registrar shall be as prescribed.

Rule 76(1) of Cooperative Rules 2075 prescribes about the functions, duties and power of registrar as follows:

- a) To register cooperative societies after conducting necessary investigations into applications received and issue certificates of registration.
- b) To approve the bye-rules framed by cooperative societies for operating their business subject to the Act and this Rules.
- c) To operate activities relating to amalgamate, division and jurisdiction re operation subject to the Act and this Rules.
- d) To conduct inspection and examine accounts of cooperative societies regularly and provide necessary direction by monitoring cooperative societies regularly on the basis of established information report system
- e) To monitor the audit of cooperative societies regularly and cause to audit of cooperative societies which fail to audit within the prescribed period
- f) To formulate plan and program for the promotion of cooperative farming or member labour or skill based self-employment industries of deprived rural females, disable persons, mukta kamaiya, mukta haliya, landless, unemployed, workers & dalit and minorities indigenous including marginalized group.
- g) To assist for cooperative business, price series development of agricultural products and its related inter cooperative transactions
- h) To coordinate for formulation, operation and expansion activities of cooperative education and training functions
- i) To provide necessary direction for the development of cooperative societies, practice of cooperative principles, norms and maintaining good governance at cooperative societies
- j) To penalize and impose other punishment as per the provision mentioned in the Cooperative Act if any cooperative societies do not work in compliance with Act, directives, standards, procedures framed under this Rules and bye rules.
- k) To submit annual inspection report of cooperative societies to the ministry within three months after expiry of each fiscal year
- l) To conduct necessary activities for operating the cooperative societies at inactive status.
- m) To grant permission for the operation of service centre, collection center and sales center fixing necessary standard
- n) To operate other activities as prescribed by Act, this Rules and Directives, Standards, Procedures made under it Directions received from the Ministry.





As per rule 76 (2), the registrar may, out of powers obtained as per the Act and the Rules, delegate few powers to officers under it as per necessity.

3. Answer the following questions:
- a) Define industry registration body. Explain the functions, duties, and powers of the One stop Service Centre as per The Industrial Enterprises Act, 2076 (2020). **10**
- b) Universal investment company Pvt. Ltd. filed a complaint to the department stating that the company has not been getting national treatment. You as a department chief make him clear about the national treatment to be accorded to any industries with foreign investment and the situations where national treatment shall not apply for those industries as per The Foreign Investment and Technology Transfer Act, 2075. **10**

### Answers

- 3 a) **“Industry registration body”** means the Department, and this term includes the department or office of a Provincial Government responsible for the administration of industries.  
The functions, duties and powers of the One stop Service Centre are as follows under section 38 of The Industrial Enterprises Act, 2076.
- a) To perform functions related to industry and business administration, including registration, permission or licensing, renewal, approval for transaction, enhancement of capacity of, and dissolution (except insolvency) of, any company, firm, or industry under the prevailing law,
- b) To perform functions related to approval of foreign investment under the prevailing law,
- c) To perform functions related to labor permit and consent for work approval under the prevailing law,
- d) To perform functions related to visa facility under the prevailing law.
- e) To perform functions related to initial environmental examination and environmental impact assessment under the prevailing law.
- f) To coordinate with concerned bodies with respect to provision of infrastructure services such as electricity, water, means of communication, land, roads required for industries and perform function related to focal point between other bodies.
- g) To implement, or cause to be implemented, decisions made by the Government of Nepal on the provision of the incentives, exemptions, facilities or concessions to which industries and investors are entitled under the prevailing laws.
- h) To perform functions related to approval of foreign currency exchange under the prevailing law.
- i) To provide Permanent Accounts Number under the prevailing law.
- j) To perform function on facilitating the obtaining of the export-import code and bonded warehouse to be provided by the Department of Customs and the Department of Commerce, Supplies and Consumer Interest Protection.
- k) To perform such functions as delegated by the Board out of the functions, duties and powers conferred on it.
- l) To receive applications on matters requiring institutional approval including on mines required for industries and make institutional coordination for the provision of approval.
- m) To identify and receive all the documents required for the registration of industrial enterprises electronically, by developing and enforcing an electronic system that links all bodies within it.



- n) To make necessary coordination and facilitation in the acquisition of law required for industries, assistance in the provision of land on lease, and make necessary coordination on the provision of land exceeding the ceiling.
- o) To provide permission under the prevailing law for the goods requiring import permission or recommend for that purpose.
- p) To establish and operate an investment portal and provide investment related notifications and information.
- q) To perform functions related to recommendation and facilitation of every kind required for industrial enterprises.
- r) To implement, or cause to be implemented, decisions or directions of the Ministry and Board.
- s) To perform such other functions as may be specified by the Government of Nepal, by publishing a notice in the Nepal Gazette.

**3 b) Provisions of National treatment is to be accorded under section 32 of The Foreign Investment and Technology Transfer Act, 2075.**

- (1) In respect of the terms applicable to the management, maintenance, use, transfer and sale of any foreign investment made in Nepal by a foreigner, subject to this Act and other prevailing law, after the commencement of this Act, such foreign investment shall, after the investment is brought into, and until it remains in Nepal, be accorded national treatment no less favorable than that accorded to any investment made by a Nepali person, in respect of the terms applicable to the management, maintenance, use, transfer and sale of such investment.
- (2) Notwithstanding anything contained in sub-section (1), in the case of a foreign investment approved prior to the commencement of this Act, the provisions contained in the prevailing law relating to foreign investment in force at the time of making such an investment shall apply, and no change shall, without his or her consent, be made that may prejudice to any facility obtained by any foreign investor in accordance with that law.

Notwithstanding anything contained in sub-section (1) of 32, national treatment shall not apply in respect of the following matters:

- a) Matters relating to the creation of such intellectual property rights, limits thereof, transfer of title thereto or provisions requiring compulsory licensing for the use thereof as specified in any agreement made under the World Trade Organization,
- b) Matters relating to the exemption or facility, if any, granted to any domestic industry or goods in accordance with the prevailing Nepal law relating to public procurement,
- c) Matter relating to any grant or concession to be made or provided by the Government of Nepal,
- d) Matter of non-commercial services to be provided by the Government of Nepal,
- e) Such measures relating to financial services as may be adopted or managed by the Government of Nepal upon considering appropriate on matters such as matters relating to the protection of investors, participants in the securities market, insurance policy holders or insurance policy claimants, or relating to financial institutions having liability to safeguard the financial interests of any persons or relating to maintaining soundness, morality or financial responsibility of financial institutions,
- f) Matters involving liability or provision to accord special treatment by the Government of Nepal because of being a party to any regional or multilateral economic, monetary organization or organization of similar nature to which the Government of Nepal is or will be a party,



- g) Matters relating to the terms that may be specified by the regulatory body in accordance with the prevailing law in respect of repatriation of investment to a foreign country, repayment of loan (including principal, interest, and fees), payment of service fees,
- h) Matters relating to the protection of human, animal and plant health or the environment.
- 4.** Answer the following questions:
- a)** A newly established public limited company has appointed you as a consultant with the specific purpose of managing the notice and meetings of the Board of Directors. The Company has sought your clarification on the following issues in this regard. Clarify them in light of the relevant provisions of the Companies Act, 2063.
- i)** Who should call the meeting of the Board of Directors? 2
- ii)** Whether the Board of Directors can call the meeting of the Board? 2
- iii)** What is the total number of meetings the Board of Directors can hold in a year? 2
- iv)** What is the quorum required for a Board meeting? 2
- b)** Mr. Susil, Chairman of the National Bank Ltd, consults you about the offence and punishment provision in the Bank and Financial Institution Act, 2073. He intends to operate the bank without any legal objection and offences. He also put his logic on the loan disbursing that the matter is double criminalized by the Banking offence and punishment Act, 2064. Discuss on the offence and punishment provision and his logic. 7

### Answers

- 4 a)** Section 98 of the Companies Act, 2063 provides for the Notice of a meeting of the board of directors of the Company, as under:
- i)** As per section 98 (1), except as otherwise provided in the articles of association of the company, the company secretary or Chairman of the board or chief executive of the company shall call a meeting of the board of directors of the company.
- ii)** As per Section 98(2) of the Companies Act, notwithstanding anything contained in sub-section (1) above, if at least twenty-five percent directors of the total number of directors make written requisition, setting out the subject to be discussed in the meeting, for calling the meeting of the board of directors, the Chairman shall call the meeting of the board no later than 15 days of the receipt of such requisition. If the meeting of the board of directors is not called within that period, such requisition-making directors themselves may call the meeting of the board of directors.
- iii)** The given company is a public limited company and as per Section 97 (2) meetings of the board of directors of a public company shall be held at least six times in a year. Provided, however, that the interval between any two meetings shall not exceed three months.
- iv)** As per section 97(4) of this Act, the quorum of the board of directors shall be at least fifty-one percent of the total number of directors of the company. Provided, however, that any director who is not entitled to take part in any matter to be discussed in a meeting of the board of directors under this Act shall not be counted for the purposes of this subsection.



- 4 b) Any person intending to operate the bank should have knowledge about the provision of Banking laws specially direction, restriction, objection, commanding, offence and punishment provision. The Bank and Financial Institution Act, 2073 has defined some acts as offences in section 103 and provided the punishment in section 104 as follows:

**Offences:**

- (1) Whoever commits any of the following acts in contrary with this Act or the Rules, Byelaws, Directives, Orders issued under this Act or terms or limitation as prescribed shall be deemed to have committed an offence under this Act:-
  - (a) Carrying out banking and financial transactions without obtaining license,
  - (b) Obtaining license for carrying on banking and financial transactions submitting wrong or false statements,
  - (c) Carrying out banking and financial transactions against the terms and limits of the license for carrying on banking and financial instruments,
  - (d) Carrying out foreign currency exchange related business without license,
  - (e) Disbursing credits or other financing against this Act,
  - (f) Committing irregularities while carrying out valuation in artificial price while disbursing credits, recovering credits, valuating securities, recovering loan or carrying out any act relating thereto, creating artificial price while auctioning the assets pledged as collateral, or while accepting the property as non-banking assets or while selling by accepting non-banking assets or while taking collateral,
  - (g) Committing irregularities by any Director, official, employee and other person while carrying out merger and acquisition, liquidating, or auditing,
  - (h) Attempting to commit in the offence referred to in Clauses (a) to (g) or abetting to the commission of such offence by any manner.
- (2) Except in cases where a Director, official or any other person abetting in commission of the offence referred to as Sub-Section (1) proves that he/she had tried his/her best effort to avoid committing such offence or that it was committed without his/her consent, the offence is deemed to have been committed by himself/herself.
- (3) Except in connection with regular transaction of the branch, in case an official or employee of a branch of a foreign bank transfers assets of such branch to another country, grants approval therefor, delegates authority to that effect, or abets the commission of such an act, it shall be deemed to be an offence under this Act.

**Punishment:**

Section 104 has provided the punishment on the offence as included in the section 103 as follows.

- (1) Any person who commits any of the following offenses shall be liable to the following punishment:-
  - (a) In case of commission of the offence as referred to in Clause (a) of Sub-Section (1) of Section 103, the amount involved shall be **confiscated** and the offender shall be punished with the **fine up to three times of the amount involved** and an **imprisonment up to five years**,
  - (b) In case of commission of the offence referred to in Clause (b) of Sub-Section (1) of Section 103, the amount involved shall be **confiscated** and the offender shall be punished with a **fine up to two times of the amount involved** and an **imprisonment up to two years**,
  - (c) In case of commission of the offence referred to in Clause (c), (d), (e), (f) or (g) of Sub-Section (1) of Section 103, the amount involved, if any, shall be confiscated and the offender shall be **punished with a fine equal to the amount involved and an imprisonment up to one year**,



- (d) In case of commission of the offence referred to in Clause (h) of Sub-Section (1) of Section 103, the amount involved, if any, shall be confiscated and the offender shall be punished with half of the punishment to be imposed to the principal offender.
- (2) While **ascertaining the amount involved** for the purpose of Sub-Section (1), the amount shall have to be calculated having taken into account to the entire amount involved.
- (3) While **imposing fines for the offences** as referred to in Clause (a) to (e) of Sub-Section (1), if the claimed amount is revealed, the fines shall be imposed accordingly and if no such amount is revealed, the amount from one million to five million has to be fined.
- (4) In case of commission to the offence as referred to in Sub-Section (3) of Section 103, the offender shall be punished with the **fine equivalent to the involved amount and an imprisonment upto five years**.
- (5) In case an offence as referred to in Section 103 is committed by any **firm, company or corporate body**, punishment according to this Section shall be **imposed on the concerned Director, official, employee or concerned person** of the concerned firm, company, or corporate body and if such concerned person could not be ascertained, the punishment shall be imposed on the chief of the firm, company, or corporate body.
- (6) In case anyone is found to have been committed in any offence as referred to in Section 103 and the proceeds of the offence is found to have been kept or concealed in name of himself/herself, any member of family or relative or in name of anyone else, such property and the **property accrued therefrom shall also be confiscated**.

In case of logic of double criminality, section 129 has clearly provided that matters as referred to this Act or the Rules, Byelaws, working procedures or Orders or Directives issued under this Act, it shall be dealt with in accordance with such provisions. And in other matters, it shall be dealt with according to the Rastra Bank Act and **other prevailing laws**. So, if it is deferent acts defined as to be offence except provided in this acts, it can be punished attracting the same laws to be provided. In Banking offence and punishment Act, 2064, section 7 has restricted to avail or provide loans in an unauthorized manner. Section 8 restricted to misuse credit facilities availed from a bank or financial institution or cause to misuse by diverting in the purpose other than for which the credit facilities were availed. Section 11 restricted to stop credit facility in the way to loss working project of borrower. Likewise, section 13 also restricted to derive excess, low or false valuation. Those acts, as defined to offence, has pertained to be separate offence other than defined in the Bank and Financial Institution Act, 2073. So, it is not the situation of double criminality in the both Acts.

5. Answer the following questions: (3×5=15)
- a) Sanghai Bank Ltd. is willing to do international financial transaction. Executive Director Mr. Lee Susan, asked you on the matter of process of licensing. As a consultant, provide the legal provision on licensing provided in the International Financial Transaction Act, 2054.
- b) Rorang Rural Municipality has to audit its accounts of F/Y 2079/2080. Chairperson of the Rural Municipality asked you about how the account of local level is audited? As a chief of the Fund and account control office, Dhading, provide the consultation on the audit provision of local level and implementation of the audit report basis of Audit Act, 2075.
- c) Nepal Rastra Bank has drawn a conclusion that Shreya Cooperatives has violated the terms and conditions specified at the time of granting of approval by the Nepal Rastra Bank or orders

issued. Then, what kind of punishment shall be enforced to the cooperatives as provided in the Cooperatives Act, 2074?

### Answers

#### 5 a) License to be obtained: Section 3

An international financial entity interested to carry out international financial transactions shall be required to obtain a license therefore from the Accreditation Committee in pursuant to Section 14.

#### Application for License: Section 13

An international financial entity interested to carry out international financial transaction shall, for the purpose of obtaining license to carry out such financial transaction, submit an application to the Accreditation Committee in the format as prescribed along with the prescribed application fee, details and documentations.

#### Granting of License: Section 14

If the Accreditation Committee, after the necessary inquiry made into an application submitted under Section 13 for obtaining license to carryout international financial transactions, deems it appropriate to grant a license to carryout international financial transactions, it shall, upon taking the prescribed amount of license fee, issue a license in the prescribed format setting out therein the necessary terms and conditions. If a license may not be issued, the applicant shall be informed thereof.

#### Information, Details and Documentations may be Demanded : Section 15

The Accreditation Committee may, before issuing a license to any international financial entity under this Act, demand from such entity such information, details and documentations as it may deem necessary in connection with issuing a license for carrying out international financial transactions. It shall be the duty 9 of the concerned international financial entity to furnish forthwith the information, details and documentations so requested by the Accreditation Committee.

#### Renewal of License: Section 16

A license issued under section 14 for carrying out international financial transaction shall be renewed every year. The license renewal fee and other provisions regarding renewal shall be as prescribed.

#### 5 b) Audit of Local Level: Section 20

Audit Act, 2075, its section 20, has expressly provided the audit provision of local level. In accordance with the provision, each Rural Municipality or Municipality shall have its accounts audited by the Auditor General. The Auditor General may, after completion of the audit of each Rural Municipality or Municipality, issue individual audit reports. The concerned Rural Municipality or Municipality shall submit the report issued by the Auditor General pursuant to sub-section (2) to, and have it discussed at, the Village Assembly or Municipal Assembly in accordance with the prevailing law of the Local Level.

#### Implementation of the audit report: Section 21

The Auditor General, shall be the duty of the concerned responsible official to implement the audit report issued by the Auditor General pursuant to this Act. The Auditor General may, in order to ensure whether the matters set forth in the report issued pursuant to this Act have been improved and the suggestions have been implemented, do acts including to obtain report of activities carried out by, explanation from the audited body, specify the period for





implementation, make re-examination and give necessary direction on the matter to the concerned body.

**5 c)** Nepal Rastra Bank has no power to regulate to cooperative institution. However, cooperative Bank, constituted under the Section 12 of Cooperative Act, 2074, is under the purview of regulation of the Nepal Rastra Bank. In concern of the cooperatives like Shreya Cooperative, in which Nepal Rastra Bank has regulatory authority, shall have the power to punish for not compliance of the regulatory measures. So, it is clear that the violation of terms and conditions specified on the granting of approval and other relevant directives issued by the Nepal Rastra Bank to Cooperative bank. On such violation, section 128 has provided the punishment provision as follows:

(1) Nepal Rastra Bank may punish as follows on a Cooperative Bank that violate the terms and conditions specified at the time of granting of by the Nepal Rastra Bank or orders issued from time to time or directives issued in the course of inspection, supervision or regulation:-

- a) To issue a warning or admonition in writing;
- b) To cause the Board of Directors to execute a bond for carrying out reformative actions;
- c) To issue order in writing to end frequent violations, to refrain from it and to begin reformative actions;
- d) To impose full or partial restriction on carrying out transactions;
- e) To suspend or revoke license of the Cooperative Bank.

(2) In case a **director or employee of a Cooperative Bank violates** orders, directives issued by the Nepal Rastra Bank or terms of the license; fails to submit document, statement, statistics or record demanded at the time of inspection and supervision; within the specified time or commits any act against interests of the depositors or members, the Nepal Rastra Bank may **impose the following punishment** on such a director or an employee:-

- a) To issue a warning or admonition in writing;
- b) To suspend him or her;
- c) To impose a fine not exceeding five hundred thousand rupees;
- d) To order the Board to suspend the payment of entire benefits such as salary, allowances;
- e) To order the Board to remove from the office if such a person is a director and to take departmental actions if such a person is an employee according to the Byelaws relating to terms and conditions of service.

(3) While imposing the fine under this Section, he/she shall be provided with reasonable opportunity to defend himself or herself.

**6.** Write short notes on the following:

a) Procedures for obtaining a license to carry on foreign exchange transactions pursuant to the Foreign Exchange Regulation Act, 2019?

4

b) Act considered as offence in the matter of opening bank account as set forth in the Banking Offence and Punishments Act, 2064.

3

c) Mention the person who shall not be qualified for appointment as Arbitrator under Arbitration Act 2055.

3



## Answers

- 6 a)** The procedure for obtaining license to carry on foreign exchange transactions are provided in section 3 of Foreign Exchange Regulation Act, 2019 as under.
- 1) A person, firm, company or body who intends to carry on the foreign exchange transactions shall obtain the license from Nepal Rastra Bank (Bank).
  - 2) A person, firm, company or body who intends to carry on the foreign exchange transactions shall make an application, accompanied by the details specified by the Bank, to the Bank to obtain the license.
  - 3) If an application is made pursuant to sub-section (1) above, the Bank shall make necessary inquiry into the matter on the basis of the specified criteria and may, if it considers appropriate, issue the license to the concerned person, firm, company or body to carry on the foreign exchange transactions. In so issuing the license, the Bank may also specify the type and limit of the foreign exchange to be transacted, the period for carrying on the transaction and other necessary terms.
  - 4) The Bank may, from time to time, give necessary order or directive to the licensee in relation to the regularization and management of the foreign exchange transaction. It shall be the duty of the licensee to abide by such an order or directive.
  - 5) The licensee shall pay to the Bank such annual fees and deposits as may be prescribed by the Bank. The Bank may cancel or suspend the license of the licensee who fails to pay the annual fees and deposits so prescribed.
  - 6) If any person, firm, company or body applies for a provisional (*Patake*) license to carry on the foreign exchange transaction, the Bank may issue the provisional license to such a person, subject to this Section.
- 6 b)** The Banking offence and Punishments Act, 2064 has prohibited unauthorized opening of bank account. Pursuant to section 3 of this Act, while opening an account with a bank or financial institution or demanding cash payment, no one shall undertake the following acts:
- a) Open or knowingly allow to open an account by submitting false documents, or deposit, caused to deposit or withdraw an amount from such an account or assist to do such acts or withdraw an amount from such account through using electronic card or instruments.
  - b) Open or allow to open an account in the name of a fictitious or other person or organization, except otherwise permitted by the laws.
  - c) Draw a cheque to obtain or to knowingly make payment from an account where he/she has an apparent knowledge that the account does not have sufficient balance to cover the amount of the cheque drawn.
- 6 c)** As per the section 10 of the Arbitration Act 2055, the following person shall not be qualified for appointment as arbitrator.
- a) Disqualified for entering into contracts as per prevailing laws.
  - b) Punished by a court on criminal charges involving moral turpitude.
  - c) Become insolvent or been declared bankrupt.
  - d) Any personal interest in the dispute which has to be settled through arbitration.
  - e) Not having any specific qualification specified in the agreement for becoming eligible for appointment.





## Advanced Taxation

1. Himalayan Export Pvt. Ltd., located at Hetauda Industrial area, Makwanpur, is manufacturer of readymade garments. The company was incorporated in Bhadra 2077 with 40% shareholding of Soul Enhance Community, a tax exempt entity. You are asked to assess the tax liability for the Income Year 2079/80 based on the following trial balance as on 31 Ashad, 2080.

**20**  
**Rs. in thousand**

| Particulars                       | Dr. Rs. | Cr. Rs.   |
|-----------------------------------|---------|-----------|
| Paid up capital                   |         | 100,000   |
| Reserve & surplus                 |         | 400,000   |
| Dividend Payable                  |         | 55,000    |
| Loan                              |         | 500,000   |
| Creditors                         |         | 200,000   |
| TDS payable                       |         | 5,400     |
| Land                              | 200,000 |           |
| Factory Building                  | 300,000 |           |
| Machineries                       | 200,000 |           |
| Furniture and fixtures            | 60,000  |           |
| Computers                         | 60,000  |           |
| Vehicle                           | 100,000 |           |
| Debtors                           | 200,000 |           |
| Advances                          | 300,000 |           |
| Stocks (10,000 meters)            | 100,000 |           |
| Thread purchase                   | 500,000 |           |
| Auxiliaries Raw material          | 40,000  |           |
| Wages                             | 240,000 |           |
| Other production expenses         | 11,000  |           |
| Clothing export (20,000 meters)   |         | 612,000   |
| Local sales (40,000 meters)       |         | 1,088,000 |
| Interest expenses                 | 72,500  |           |
| Depreciation                      | 116,084 |           |
| Staff salary                      | 116,316 |           |
| Office expenses                   | 35,000  |           |
| Donations                         | 5,000   |           |
| Research and development expenses | 345,000 |           |
| Machine repair expenses           | 20,000  |           |
| Computer repair expenses          | 3,000   |           |
| Interest payable                  |         | 102,500   |
| Salary payable                    |         | 5,000     |



|                    |                  |                  |
|--------------------|------------------|------------------|
| VAT receivable     | 19,000           |                  |
| Advance Income tax | 25,000           |                  |
|                    | <b>3,067,900</b> | <b>3,067,900</b> |

- The company has borrowed entire loan on 1<sup>st</sup> Aswin, 2078 from Soul Enhance Community. Opening interest payable was Rs. 30 million to the Community.
- Out of the total loan borrowed from Soul Enhance Community, Rs. 300 million loan was also provided to Chairman of the company and recorded as advance. The first advance of Rs. 150 million was provided on 1<sup>st</sup> Mansir 2078 and additional advance was provided on 1<sup>st</sup> Jestha, 2079. As per agreement, interest of Rs. 3 million was recovered from the Chairman against the advance and it was credited under interest expenses.
- Dividend payable of Rs. 5 million is carried forward from previous years and is due for payment to the Chairman amounting to Rs. 5 million and remaining to the Soul Enhance Community.
- Salary payable relates to a staff who left the company on Falgun 2079 without any prior notification. Any staff who resigns or leaves the company without a prior two months notification is not entitled to the salary due to him as per the company's Human Resource Policy.
- The thread purchase includes Rs. 339,000 (including VAT) of missing invoice dated 15 Jestha 2079. Such invoice was traced in Falgun 2079.
- The donation was given to the following entities:
  - For startup business seed capital: Rs. 500,000
  - Reconstruction fund of Nepal government: Rs. 2,000,000
  - Nepal Senior Citizen Society (Non-registered society): Rs. 1,000,000
  - A tax exempted entity: Rs. 1,500,000
- The VAT receivable is related to the input tax credit of the materials that were used for the production of exportable clothing in Jestha 2076. The VAT amount has not been adjusted nor claimed for refund.
- No addition to fixed assets was done during the year. The depreciation is calculated based on the normal depreciation rate as per Income Tax Act, 2058.
- The company had paid advance tax on 15 Baishak, 2080. It has not filed the estimated tax return. No extension of return filing has been granted. The income tax return was filed on Kartik end, 2080.

### Answer

#### 1) Calculation of taxable income and tax liability (Rs. in thousand)

| Particulars                           | Export Transactions<br>Rs. | Local Transaction<br>Rs. | Total               |
|---------------------------------------|----------------------------|--------------------------|---------------------|
| Sales                                 | 612,000.00                 | 1,088,000.00             | 1,700,000.00        |
| Other income                          | -                          | -                        | -                   |
| <b>Total income</b>                   | <b>612,000.00</b>          | <b>1,088,000.00</b>      | <b>1,700,000.00</b> |
| <b>Eligible Expenditure</b>           |                            |                          |                     |
| Cost of sales under section 15 (WN 1) | 320,652.00                 | 570,048.00               | 890,700.00          |
| Depreciation under section 19 (WN 2)  | 55,720.32                  | 99,058.35                | 154,778.67          |



|   |   |                   |                   |
|---|---|-------------------|-------------------|
| Repair and Maintenance section 16 (WN 3)                          | 7,009.41  | 12,461.17         | 19,470.58         |
| General deduction under section 13 (WN 4)                         | 52,673.76   | 93,642.24         | 146,316.00        |
| Total Deductible Expenses   | 436,055.49  | 775,209.76        | 1,211,265.25      |
| Assessable Income   | 175,944.51  | 312,790.24        | 488,734.75        |
| Donation under section 12Kha (WN 5C)                              | 720.00  | 1,280.00          | 2,000.00          |
| Donation under section 12Ga (WN 5C)                               | 36.00   | 64.00             | 100.00            |
| <b>Adjusted Taxable Income</b>                                    | <b>175,188.51</b>   | <b>311,446.24</b> | <b>486,634.75</b> |
| Interest under section 14(WN 5)                                   | 10,872.00   | 19,328.00         | 30,200.00         |
| Research & Development section 18 (WN 5)                          | 82,158.25   | 146,059.13        | 228,217.38        |
| Donation (WN 5)   | 36.00   | 64.00             | 100.00            |
| <b>Taxable income</b>   | <b>82,122.26</b>  | <b>145,995.11</b> | <b>228,117.37</b> |
| Tax rate (Note 2)   | 8%  | 10%               |                   |
| Total tax   | 6,569.78  | 14,599.51         | 21,169.29         |
| Advance tax Paid  |   |                   | 25,000.00         |
| Fees under section 117 for non-submission of estimated tax return | Rs. 5,000 or 0.01% of assessable income, whichever is higher  |                   | 48.87             |
| Fees under section 117 for not filling tax return                 | Rs. 100 per month or 0.1% Per annum of total income, whichever is higher, there is 1 month late filling |                   | 141.67            |
| Interest under section 118 (Note 4)                               |   |                   | 452.50            |
| Total Interest Payable  |   |                   | 643.04            |

**Working Notes (WN) (Rs. in thousand)****WN 1: Cost of Sales**Production expenses

|  |   |
|--|---|
| Thread purchase  | Rs. 500,000                                       |
| Auxiliaries raw materials                                      | Rs. 40,000  |
| Wages  | Rs. 240,000                                       |
| Other Production expenses                                      | <u>Rs. 11,000</u>                                 |
| Total Production expenses                                      | Rs. 791,000                                       |
| Less: cost of missing invoice expenses related to previous FY) | Rs. 300 (VAT amount can be claimed within a year, |

**Production expenses                      Rs. 790,700**Production Quantity

|                     |                        |
|---------------------|------------------------|
| Local sales         | 40,000 meters          |
| Export sales        | 20,000 meters          |
| Less: Opening stock | <u>(10,000 meters)</u> |



**Production quantity**                      **50,000 meters**

|                     |             |
|---------------------|-------------|
| Opening Stock       | Rs. 100,000 |
| Production expenses | Rs. 790,700 |
| Less closing stock  | <u>Nil</u>  |
| Cost of sales       | Rs. 890,700 |
| Cost of export      | Rs. 320,652 |
| Cost of local sales | Rs. 570,048 |

**WN 2: Calculation of allowable depreciation**

| Block   | Block A<br>(Factory Building) | B<br>(Furniture, Fixtures & computers) | C<br>(Vehicle)    | D<br>(Machineries) | Total             |
|---|-------------------------------|--|-------------------|--------------------|-------------------|
| Given in trial balance                                | <b>300,000.00</b>             | <b>120,000.00</b>                      | <b>100,000.00</b> | <b>200,000.00</b>  | <b>720,000.00</b> |
| Depreciation rate (Normal rate)                       | 5%                            | 25%                                    | 20%               | 15%                |                   |
| Opening depreciation base (given/1-depreciation rate) | 315,789.47                    | 160,000.00                             | 125,000.00        | 235,294.12         | 836,083.59        |
| Addition during the year                              | -                             | -                                      | -                 | -                  | -                 |
| <b>Disposal</b>                                       | -                             | -                                      | -                 | -                  | -                 |
| <b>Depreciation base</b>                              | <b>315,789.47</b>             | <b>160,000.00</b>                      | <b>125,000.00</b> | <b>235,294.12</b>  | <b>836,083.59</b> |
| <b>Normal Depreciation (given)</b>                    | 15,789.47                     | 40,000.00                              | 25,000.00         | 35,294.12          | <b>116,083.59</b> |
| 1/3 additional depreciation for the special industry  | 5,263.16                      | 13,333.33                              | 8,333.33          | 11,764.71          |                   |
| <b>Total Depreciation</b>                             | <b>21,052.63</b>              | <b>53,333.33</b>                       | <b>33,333.33</b>  | <b>47,058.82</b>   | <b>154,778.12</b> |

**WN 3: Repair and maintenance expenses**

| Block                    | A          | B          | C          | D          | Total      |
|--------------------------|------------|------------|------------|------------|------------|
| Depreciation base        | 315,789.47 | 160,000.00 | 125,000.00 | 235,294.12 | 836,083.59 |
| 7 % of depreciation base | 22,105.26  | 11,200.00  | 8,750.00   | 16,470.59  | 58,525.85  |
| Actual                   | -          | 3,000.00   | -          | 20,000.00  | 23,000.00  |
| Allowable                | -          | 3,000.00   | -          | 16,470.59  | 19,470.58  |

**WN 4: General deduction**

|                 |   |
|-----------------|---|
| Staff salary    | Rs. 116,316                                     |
| Office expenses | Rs. 35,000                                      |
| Salary payable  | (Rs. 5,000) (It is not actual paid or payable.) |
| <b>Total</b>    | <b>Rs. 146,316</b>                              |

**WN 5: Interest Expenses, Research and Development (R& D) Cost and Donation**

| Particulars                   | Interest   | R & D      | Donation   |
|-------------------------------|------------|------------|------------|
| Adjusted Taxable Income       | 486,634.75 | 486,634.75 | 486,634.75 |
| Less: Interest 14 (2) Note 1  | -          | 30,200.00  | 30,200.00  |
| Less: R & D cost (given)      | 345,000.00 | -          | 345,000.00 |
| Adjusted Taxable Income (ATI) | 141,634.75 | 456,434.75 | 111,434.75 |

**Allowable interest expenses under the condition of section 14(2)**

A resident entity controlled by an organization entitled to tax exemption can deduct the interest if paid to the person controlling or the concerned person. Further, the section specified that a person entitled to tax exemption pursuant to Section 11 in that year or a person associated with that person is included "a resident entity controlled by an organization entitled to tax exemption". This company has taken the loan from the tax exempt entity which is entitled to tax exemption. So, allowable interest expenses for the income year is calculated as follows:

|                                       |                   |
|---------------------------------------|-------------------|
| 50 % of ATI                           | Rs. 141,634.75    |
| Actual interest                       | Rs. 30,200        |
| <b>Deductible interest u/s 14 (2)</b> | <b>Rs. 30,200</b> |

**Calculation of actual interest for the business**

|  |             |
|--|-------------|
| Interest expenses as per trial balance | Rs. 72,500  |
| Add credited interest                  | Rs. 3,000   |
| Total interest accrued for the loan    | Rs. 75,500  |
| Loan amount                            | Rs. 500,000 |
| Interest percentage                    | 15.10%      |

**Calculation of interest on loan amount provided to chairmen for personal purpose**

|   |                                    |
|---|------------------------------------|
| Advance (provided in 2078/79)                     | = Rs 300,000 * 15.10% = Rs. 45,300 |
| Interest disallowed because of unused in business | = Rs. 45,300                       |

**As per explanation of nature of personal expenses under section 21**

|   |                              |
|---|------------------------------|
| Allowable interest for the year for the loan used in business | = Rs. 30,200 (75,500-45,300) |
|---|------------------------------|

The interest recovered from the chairman is considered against the advance out of loan provided to him, so such recovered interest is not assessed as income on the tax assessment.

**R & D Cost**

| Particulars                         | Total      |
|-------------------------------------|------------|
| Adjusted Taxable income for Sec. 18 |            |
| 50 % of ATI                         | 228,217.38 |
| Actual                              | 345,000.00 |
| Allowable                           | 228,217.38 |

**Allowable donations**

The donation amounting of Rs. 5 lakhs provided to five startup business shall be allowable only Rs. 1 lakh as per section 12Ga in the given question. Donation provided to reconstruction fund is fully allowable as per section 12Kha. Donation provided to the unregistered society is not allowable.



Expenses to calculate the limit of the donations under section 12. Donations provided to the tax exempt entity is required to assess under section 12.

So, Donation expenses shall be allowable as:

Section 12Kha: Rs. 20 lakh

Section 12Ga: Rs. 1 lakh

Section 12 :

ATI (Note 1)

Allowable donation =  $111434.75 * 5\% = 5571.74$

Actual = Rs. 1,500

Monetary Limit (In thousand) = 100

**Note 1:** The VAT receivable amount exceeded the three years period to claim the VAT amount. If the company claimed that amount, it would not be a loss of the company. So, it cannot be an allowable expenses in case of income tax as well.

**Note 2:** Effective tax rate

| Particulars  | Provision   | Export          | Local |
|--|---|-----------------|-------|
| Normal Rate  | Schedule 1 Section 2(1)   | 25%             | 25%   |
| Less: Exemption @ 20%  | U/s 11(2b)(b)   | 5%              | 5%    |
| Balance  |   | 20%             | 20%   |
| Less: Exemption @ 20%  | U/s 11(3e)(b)   | 4%              | 0%    |
| Balance  |   | 16%             |       |
| Less: additional Exemption @ 50% on balance  | U/s 11(3e)(c)   | 8%              |       |
| Effective Tax Rate (option I)  |   | 8%              | 20%   |
| Effective Tax Rate (option II)   | Date of establishment is 2077 Bhadra  |                 |       |
| 11(3r) The special industry established and operated in industrial area or industrial village shall have 50% tax exemption for three years of commencement of its transaction and 25% tax exemption for five years afterwards. | FY 2079/80 is under tax exemption period, i.e. three years. So, effective tax rate is $20\% * 50\% = 10\%$ for export as well as local. |                 |       |
| Selection  | Option I: 8 %   | Option II: 10 % |       |

**Note 3:** Interest under section 118

| Particulars       | Income Tax Payable | 90% of Income Tax Payable | Income Tax Paid | Balance Tax Payable | Interest U/s 118 |
|-------------------|--------------------|---------------------------|-----------------|---------------------|------------------|
| Upto Poush: 40%   | 8,467.72           | 7,620.94                  | -               | 7,620.94            | 285.79           |
| Upto Chaitra: 70% | 14,818.50          | 13,336.65                 | -               | 13,336.65           | 166.71           |
| Upto Ashad: 100%  | 21,169.29          | 19,052.36                 | 25,000.00       | -                   | -                |



2.

- a) Mrs. Mariyam was employed in a private school three years ago and had other sources of investment incomes too. She has furnished following particulars relevant to the income year 2080/81.

| Particulars   | Amount (Rs.) |
|---|--------------|
| Salary per month  | 200,000      |
| Vivah panchami allowance equivalent to one month salary   | -            |
| Dearness allowance per month  | 140,200      |
| Bonus   | 3,03,500     |
| House rent allowance from school per month  | 25,000       |
| Reimbursement of personal expenses by school  | 165,000      |
| Salary in lieu of leave   | 272,000      |
| Winning from lottery(net)   | 37,500       |
| Widow allowance received from the government per month  | 4,000        |
| Bus facility to commute home to school and back   | -            |
| Rent received from subletting apartments (annual)   | 80,000       |
| Donation to a political party   | 45,000       |
| Contribution to approved retirement fund - 15% self and 10% by school   | -            |
| Own contribution to CIT - 10% of salary   | -            |
| Tuition fees of her son was saved as school waived it   | 125,000      |
| Health insurance premium paid by her  | 25,000       |
| Net Gain on sale of land acquired four years and 3 months ago (used for agriculture purpose), (sale proceed Rs.5,000,000) | 2,850,000    |
| She has claimed medical expenses amounting to Rs 4,000 for deduction but could not produce bills for Rs.6,000             | -            |
| Royalty from natural resources (net)  | 1,700,000    |
| Interest from private money lending activities  | 94,200       |
| Gain from investment insurance(net)   | 375,000      |
| House rent received from a governmental office(net)   | 680,000      |
| Gift received from tenants  | 67,000       |
| Interest received from a finance company(net)   | 42,750       |
| Dividend received from a resident company(net)  | 95,000       |
| Gain from sale of residential building (owned and resided since last twelve years)  | 195,000      |
| Profit realized from joint investment profit  | 555,000      |
| Amount received for accepting investment restriction  | 161,000      |
| Donation to poor students   | 25,000       |
| Bad debts recovered (35% not allowed previously)  | 80,000       |
| Payment received for natural resources  | 86,000       |
| Returns received from mutual funds(net)   | 38,000       |



She has following additional incomes/expense:

- i) Rent paid for sublet of apartment - Rs.50,000
- ii) Collection charge of natural resources payments Rs.8,000 and dividend Rs.1,200
- iii) Interest on loan (loan used for investment purpose) - Rs.15,000
- iv) Allowable repair was Rs. 5000 and allowable depreciation was Rs.25,000 as per tax authorities.
- v) She was provided concessional loan facility of Rs.5,000,000 at interest rate of 10% p.a. from school but the prevailing rate of interest was 15% p.a.
- vi) TDS on sale of agriculture land- Rs.150,000
- vii) Loss from investment in previous year - Rs.80,000
- viii) Lottery ticket cost - Rs.3,000
- ix) She is a disabled resident.

**Required:**

7

Calculate her taxable income and total tax liability explaining with reasons for including or for not including any particular item in the taxable income.

- b) As a tax expert, you have been asked to calculate the TDS amount on the following transactions as per provisions of Income Tax Act 2058. The Accountant wants to know whether it is enough to deduct TDS and deposit it timely manner only or he has to comply with other provisions relating to the deducted TDS. 7
- i) NM Bank borrowed USD 2 million from Bank of Netherlands and paid interest of USD 80,000 during the income year 2078/79.
  - ii) Rs. 26,000 was paid per meeting to board members of Service Bank Limited as board meeting allowance.
  - iii) Payment made to an entity for VAT exempted service where the invoiced amount was Rs. 50,000
  - iv) House rent of Rs. 100,000 paid to Mr. Harihar Basudev .
  - v) Carriage service provided by Answer City Cargo amounting to Rs. 20,000.
  - vi) Interest of Rs. 125,000 paid against loan to a commercial bank in Nepal.
  - vii) Commission paid to a private company amounting to Rs. 250,000.
- c) You are required to suggest appropriate accounting entries for the following transactions with due consideration of Sec. 87-92 and Sec. 95Ka of Income Tax Act, 2058, Nepal Financial Reporting Standards and Value Added Tax Act, 2052: 6
- i) M/s S&S Investment Pvt. Ltd. received a cash dividend of Rs. 190,000 (after withholding of taxes) from a resident company and Rs. 450,000 (after withholding taxes of Rs. 50,000) from a non-resident company (which is a controlled foreign entity). These amounts were received in its bank account.
  - ii) M/s WHT Pvt. Ltd. bought trading goods worth Rs. 1,750,000 (excluding VAT) from M/s Sujan Associates, a VAT registered supplier. The amount is not yet paid. (In M/s WHT Pvt. Ltd.'s book)
  - iii) Mr. Ram Narayan, a resident of Nepal and an existing shareholder of M/s Sagarmatha Pvt. Ltd., a non-listed resident company, sold 50,000 kitta shares costing Rs. 100 each to Mr. Hari Kumar, a new shareholder at Rs. 120 each. Mr. Hari Kumar deposited the required amount in the company's bank account for the purpose of settlement of share sales/purchase transactions. (In M/s Sagarmatha Pvt. Ltd.'s book)





- iv) M/s Fruit Import Pvt. Ltd. imported fresh fruits from M/s Fruit Export Pvt. Ltd., India. The customs value of the said imported fruits is Rs. 3,000,000, whereas CIF- Birgunj (Incoterms used: CIF- Birgunj on invoice raised by the exporter of India) and value of the fruits is Rs. 2,850,000. The purchase amount is not yet paid. (In the books of M/s Fruit Import Pvt. Ltd. ignoring impact of customs duty).

### Answers

#### 2 a) Computation of assessable income from employment of Mrs. Mariyam for income year 2080/81

| Particulars  | Amount Rs. |
|--|------------|
| Salary   | 2,400,000  |
| Vivah Panchami allowance   | 200,000    |
| Dearness allowance   | 1,682,400  |
| Bonus  | 303500     |
| House rent allowance   | 300,000    |
| Reimbursement of personal expenses                                 | 165,000    |
| Salary in lieu of leave  | 272,000    |
| Provident fund contributed by school(10% of salary)                | 240,000    |
| Saving of tuition fee of son                                       | 125,000    |
| Concession of Interest on loan's from school [50,00,000*(15%-10%)] | 250,000    |
| Assessable income from employment                                  | 5,937,900  |

#### Working notes:

- If interest of a loan paid by payee is less than interest paid as per prevailing interest rate, the amount to the extent it is lower is included in income of the payee.
- Widow allowance is tax exempted under sec. 10
- Joint bus facility is not treated as vehicle facility.

#### Computation of assessable income from investment of Mrs. Mariyam for income year 2080/81

| Particulars   | Amount Rs.       |
|---|------------------|
| Gain from sale of land used for agriculture purpose                     | 2,850,000        |
| Royalty from natural resources (1,700,000*100/85)                       | 2,000,000        |
| Interest from private money lending activities                          | 94,200           |
| Rent received from subletting flats                                     | -                |
| Gifts received from tenants   | 67,000           |
| Net gain on sale of residential building(reside for more than 12 years) | -                |
| Share of profit from joint investment                                   | 555,000          |
| Amount received for accepting restriction                               | 161,000          |
| Bad debt recovered(65% of 80,000)                                       | 52,000           |
| Payment received from natural resources                                 | 86,000           |
| <b>Gross income from investment</b>                                     | <b>5,865,200</b> |



|   |                  |
|---|------------------|
| Less: Allowable deductions                                      | -                |
| Rent paid for flats sublet out                                  | -                |
| Collection charge for natural resources payment                 | 8,000            |
| Interest on loan  | 15,000           |
| Repairs (allowable)   | 5,000            |
| Depreciation  | 25,000           |
| <b>Assessable income from investment before loss adjustment</b> | <b>5,812,200</b> |
| Less: Loss from investment                                      | 80,000           |
| <b>Assessable income from investment</b>                        | <b>5,732,200</b> |

**Calculation of total taxable income**

| Particulars  | Rs.       | Amount In Rs.     |
|--|-----------|-------------------|
| Assessable income from employment  |           | 5,937,900         |
| Assessable income from investment  |           | 5,732,200         |
| <b>Total assessable income</b>   |           | <b>11,670,100</b> |
| Less: allowable reduction  |           |                   |
| a. Contribution to approved retirement fund (Section 63)                                   |           |                   |
| 1/3 * 11670100   | 3,890,033 |                   |
| Or Actual contribution (25% PF+10% CIT) (35% of Rs.2,400,000)                              | 840,000   |                   |
| Or Maximum (Whichever is lowest)   | 300,000   | 300,000           |
| b. Allowable donation(section 12)  |           |                   |
| 5% (Rs.11,670100-300,000)  | 568,505   |                   |
| Or actual donation paid  | 45,000    |                   |
| Or maximum(whichever is lowest)  | 100,000   | 45,000            |
| Total taxable income   |           |                   |
| Less: health insurance premium(actual Rs 25,000 or maximum Rs. 20,000) whichever is lowest |           | 20,000            |
| Less: exemption for disabled resident (50% of Rs.600,000) (as per schedule 1)              |           | 300,000           |
| Remaining taxable income(including capital gain)   |           | 11,005,100        |

**Income Year 2080/81 Calculation of Tax Liability (couple Status)**

| Particulars  | Rs. | Amount Rs.       |
|--|-----|------------------|
| Taxable income                                       |     | <b>8,155,100</b> |
| First Rs.600,000*1%                                  |     | 6000             |
| Next Rs.200,000*10%                                  |     | 20,000           |
| Next Rs.300,000*20%                                  |     | 60,000           |
| Next Rs.900,000*30%                                  |     | 270,000          |
| Next Rs.30,00,000*36%                                |     | 1,080,000        |
| Remaining Rs.3155100*39%                             |     | 1,230,489        |
| Tax liability  |     | 2,666,489        |
| Capital gain tax (agriculture land Rs.2850,000*7.5%) |     | 213,750          |
| Total tax liability                                  |     | 2,880,239        |



|  |         |                  |
|--|---------|------------------|
| Less: Advance tax                                      |         |                  |
| Royalty  | 300,000 |                  |
| Land   | 150,000 | 450,000          |
| Medical tax credit(15% of Rs.18,000 or maximum Rs.750) |         | -                |
| Woman Tax Credit                                       |         | 288023.9         |
| <b>Tax liability</b>                                   |         | <b>2,142,215</b> |

**Working notes:**

- Rent from that subletting is not taxable as being received by natural person & is considerable as sub letting is not for business purpose.
- Gain from investment insurance, winning lottery, House rent received from a governmental office and dividend from resident company are final withholding incomes as per sec.92.
- Donation to poor students are not allowed for deduction.
- Loss from investment can be carried forward upto 7 years as per section 20.
- Dividend paid by mutual fund received by a natural person is subject to 5% final TDS (sec. 88).
- A widow with dependent is treated as couple for the tax purpose as per section 50.
- Medical tax credit could not be claimed can be carried forward to next income year as per sec.51.
- 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).

**2 b) Applicability of TDS**

| Particular  | Applicable TDS Rate   | Remarks               |
|---|-----------------------|-----------------------|
| a) NM Bank borrowed USD 2 million from Bank of Netherlands and paid interest USD 80k during the income year 2079/80 | <b>10%</b>            | Section 88(1)(9)      |
| b) Rs. 26,000 per meeting paid to board members of Service Bank Limited as board meeting allowances                 | <b>15%</b>            | Section 88            |
| c) Payment made to an entity for VAT exempted service where the invoiced amount was Rs. 50,000                      | <b>1.5%</b>           | Section 88            |
| d) House rent of Rs. 100,000 paid to Mr. Harihar Basudev  | <b>Not applicable</b> | Section 88(1)(5)(kha) |
| e) Carriage service provided by Answer City Cargo amounting Rs. 20,000.   | <b>2.5%</b>           | Section 88(1)(8)      |
| f) Interest of Rs. 125,000 paid against loan to a commercial bank in Nepal  | <b>Not applicable</b> | Section 88(4)(kha)    |
| g) Commission paid to Private Company   | <b>15%</b>            | U/s 88(1)             |

Along with the deposit of deducted TDS amount the withholding agent shall be required to file with the department within 25 days after the end of each month a statement in the manner and



form prescribed U/s 90(1). Further, U/s 91, a withholding certificate shall be provided within 25 days after the end of the month specifying the period for which tax is withheld.

**2 c)**

- i. In case of dividend received from resident company

|              |                     |         |
|--------------|---------------------|---------|
| Bank A/c Dr. | 190,000             |         |
|              | To, Dividend Income | 190,000 |

In case of dividend received from non-resident company

|                                   |                           |         |
|-----------------------------------|---------------------------|---------|
| Bank A/c Dr.                      | 450,000                   |         |
| Advance Tax (foreign tax) A/c Dr. | 50,000                    |         |
|                                   | To, Investment in CFE A/c | 500,000 |

- ii. Purchase A/c Dr. 1,750,000  
 Value Added Tax A/c Dr. 227,500  
 To, Sujan Associates A/c 1,951,250  
 To, TDS Payable 26,250

- iii. As per Section 95Ka(2)(Kha), in case of gain from disposal of interest of any entity not listed in SEBON, the entity of which interest is disposed off shall recover the advance tax @ 10% on gain amount.

- iv. Purchase A/c Dr. 2,850,000  
 Advance Tax A/c Dr. 150,000  
 To, Bank A/c 150,000  
 To, Fruit Export Pvt. Ltd., India 2,850,000

**3.**

- a) You have been approached by one of your audit clients for providing assistance in resolving the tax disputes pending at IRD under administrative review. What are the threats that may affect you as an auditor and safeguarding measures can be applied? Explain according to the relevant provisions of ICAN's Handbook of the Code of Ethics for Professional Accountants, 2018. **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**

**Answers**

- 3 a)** According to subsection 604 of ICAN's Handbook of the Code of Ethics for Professional Accountants 2023, providing assistance in the resolution of tax disputes to an audit client might create a self-review or advocacy threat. In general, factors that are relevant in evaluating the level of threats created by providing any tax service include:

- The particular characteristics of the engagement.
- The level of tax expertise of the client's employees.
- The system by which the tax authorities assess and administer the tax in question and the role of the firm or network firm in that process.



- The complexity of the relevant tax regime and the degree of judgment necessary in applying it.

In addition to above, the factors that are relevant in evaluating the level of self-review or advocacy threats created by assisting an audit client in the resolution of tax disputes include:

The role management plays in the resolution of the dispute.

- The extent to which the outcome of the dispute will have a material effect on the financial statements on which the firm will express an opinion.
- Whether the advice that was provided is the subject of the tax dispute.
- The extent to which the matter is supported by tax law or regulation, other precedent, or established practice.
- Whether the proceedings are conducted in public. Examples of actions that might be safeguards to address threats include:
  - Using professionals who are not audit team members to perform the service might address self- review or advocacy threats.
  - Having an appropriate reviewer who was not involved in providing the service review the audit work or the service performed might address a self-review threat.

However, a firm or a network firm shall not provide tax services that involve assisting in the resolution of tax disputes to an audit client if:

- i) The services involve acting as an advocate for the audit client before a public tribunal or court in the resolution of a tax matter; and
- ii) The amounts involved are material to the financial statements on which the firm will express an opinion.

**3 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

**4.**

- a) Lumbini Nepal Ltd. is an emerging business house carrying diversified business activities with motto halo to hydro. Business activities of the group for the month of Bhadra 2080 are as follows:
  - i. Account receivable from a client for contract completed, approved and invoiced during the month is Rs. 4,655,646.
  - ii. Sales of cellular mobile phone during the month was Rs. 1,555,660 out of which Rs. 556,360 was sold to non registered customers.



- iii. Carrot, cucumber & salad beetroot and other vegetables sales during the month was Rs. 634,650 out of which Rs. 253,600 was sales of beans in stock since last 3 months.
- iv. Deep cycled lid acid battery sales was Rs. 1,296,400 out of which Rs.355,800 was sold to Safa Tempo workshop with recommendation from Ministry of Population & Environment.
- v. Industrial machineries for bakery, confectionary & distillery falling under Harmonized code 84.39 sold during the month was Rs. 6,524,500
- vi. Sale of onion was Rs. 350,500

Following purchase/Import during the month (exclusive of VAT, where applicable):

- i. Cement, Iron Nails, Bricks - Rs. 3,122,000
- ii. Cellular Mobile & its parts – Rs. 1,856,000
- iii. Battery - Rs. 785,000
- iv. Tower cranes for construction use - Rs. 5,560,300
- v. Carrot, cucumber & salad beetroot - Rs. 339,000
- vi. Onion - Rs. 426,300
- vii. Bakery, confectionary & distillery machineries for trading purpose - Rs. 6,065,480
- viii. Statutory & internal audit fees - Rs. 585,000
- ix. Computer for official use - Rs. 325,000
- x. Stationeries - Rs. 425,000
- xi. Purchase of car for group president - Rs. 6,500,000

During the same month internal auditor of the group submitted report to the management that reveals:

- i) Purchase book of VAT for the month of Shrawan 2079 was over casted by Rs. 107,500.
- ii) No credit claim for the VAT amount of Rs. 66,850 paid to department of roads for auction purchase of road roller during the month of Kartik 2079.
- iii) No adjustment for batteries used for office purpose amounting to Rs. 55,900 during the month of Jestha 2080.

**Required:**

**10**

VAT statement for the month of Bhadra 2079 and VAT payable by Lumbini Nepal Ltd. assuming there was no opening VAT credit.

- b) Mr. Shankar Kripson is Chief Executive Officer of a manufacturing company that imports raw materials, auxiliary raw materials and packing materials and manufacture goods for sales in Nepali market. The company wants to expand its business across borders. The team of Company held a preliminary discussion on how to reduce cost of production of goods that will be exported, where the Chief Financial Officer shared his views about avoiding payment of customs duty, excise duty and value added tax on imported materials and referred provisions of current tax laws, which he is aware of but is not expert at. The company then decided to hire a professional accountant and approached you to make a detailed study on the possibility of importing materials without having to pay customs duty, excise duty and value added tax at the time of import.

The company desires to import raw materials worth Rs. 5,000,000 (250,000 units, import duty @10% of value and excise duty @ Rs. 2 per unit), auxiliary raw materials worth Rs. 2,500,000 (500,000 units, import duty @15% of value and excise duty @ 8% of value), packing materials worth Rs. 1,000,000 (150,000 units, import duty @15% of value and excise duty @ 5% of value) and packing materials (manufacturer is available in Nepal) worth Rs. 5,00,000 (50,000 units, import duty @20% of value and excise duty @ 5% of



value) from India. The total cost of transportation, insurance and other associated costs until Nepal customs frontier is Rs. 475,000. All these items are VAT applicable. The company is planning to use 75% of the imported materials to manufacture goods to be exported.

You are requested by the company to draft your opinion on their following queries:

- i) Is it possible to import raw materials, auxiliary raw materials, and packing materials without paying customs duty, excise duty and value added tax at the time of import to manufacture goods to be sold in domestic market and in foreign market? **2**
- ii) Are there any conditions for the company to import materials without paying duties. If it is possible, is the company required to provide any assurances to the tax authority? What would be the assurance that must be provided along with the possible financial obligation for the company? **4**
- iii) Can the company import semi-finished goods from foreign countries without having to pay duties in cash, complete the packaging and then export the packaged goods to the foreign country? **1**
- iv) Assume that the company has the legal options to import materials without having to pay duties in cash and illustrate to the company the value of surety they need to produce before the tax authority. How much cash is payable at Customs Frontier to release goods? **3**

### Answers

#### 4 a) Statement of VAT collection by Lumbini Nepal Ltd. during Bhadra, 2080

| Particulars  | Taxable             | Exempt           | Total                |
|--|---------------------|------------------|----------------------|
| Construction Revenue<br>(46,55,646/1.13)   | 4,120,040.71        |                  | 4,120,040.71         |
| Sales of cellular mobile   | 1,555,660           |                  | 1,555,660            |
| carrot ,cucumber & salad beetroot and other vegetables                           | 253,600             | 381,050          | 634,650              |
| Sale of onion  | 350,500             |                  | 350,500              |
| Battery Sales  | 940,600             | 355,800          | 1,296,400            |
| Industrial Machineries   |                     | 6,524,500        | 6,524,500            |
| Deemed sales of self use battery during Jestha 2080 reported by internal auditor | 55,900              |                  | 55,900               |
| <b>Total</b>   | <b>7,276,300.71</b> | <b>7,261,350</b> | <b>14,537,650.71</b> |
| Tax rate   | 13%                 |                  |                      |
| Tax Collection   | 945,919.09          |                  |                      |

#### Calculation of proportion of taxable and nontaxable sales

| Particulars         | Taxable       | Exempt | Total  |
|---------------------|---------------|--------|--------|
| Total Transaction   | 145,37,650.71 |        | 100%   |
| Taxable Transaction | 72,76,300.71  |        | 50.05% |
| Exempt Transaction  | 72,61,350     |        | 49.95% |



**Statement of VAT Credit during the month of Bhadra 2080**

| <b>Particulars</b>              | <b>Full</b>      | <b>Partial</b>   | <b>Total</b>     |
|---------------------------------|------------------|------------------|------------------|
| Cement, iron, nail & bricks     | 3,122,000        |                  | 3,122,000        |
| Cellular mobile                 | 1,856,000        |                  | 1,856,000        |
| Battery                         | 785,000          |                  | 785,000          |
| Statutory & internal Audit fees |                  | 585,000          | 585,000          |
| Computer for office             |                  | 325,000          | 325,000          |
| Stationeries                    |                  | 425,000          | 425,000          |
| Car Purchase (6500000*0.4)      |                  | 2,600,000        | 2,600,000        |
| <b>Total</b>                    | <b>5,763,000</b> | <b>3,935,000</b> | <b>9,698,000</b> |
| VAT paid on Purchase            | 749,190          | 511,550          | 1,260,740        |
| Credit eligible VAT Ratio       | 100%             | 50.05%           |                  |
| Credit eligible VAT amount      | 749,190          | 256,030.77       | 1,005,220.77     |
|                                 |                  |                  |                  |

**VAT Statement for the month of Bhadra 2080**

| <b>Particulars</b>  | <b>Amount</b>       |
|---|---------------------|
| VAT Collected on sales  | 945,919.09          |
| VAT Paid on Purchase  | 1,005,220.77        |
| VAT payable/(credit forward)  | (59,301.68)         |
| Opening VAT Credit  | -                   |
| Adjusted VAT credit (Road Roller Purchased from DOR during Kartik 2079) | (66,850)            |
| <b>Total VAT credit forwarded for Ashwin 2080</b>                       | <b>(126,151.68)</b> |

**Note:**

- i) Of the total purchase of cellular mobile of Rs 999,300 was sold to registered buyers. Shantanu group can claim for refund of 40% VAT paid on purchase/import of cellular mobile & accessories sold to registered buyers.
- ii) Mistake in casting of VAT purchase account has no adjustments as the period of mistake has already elapsed one year.
- iii) Onion and beans are vatable where carrot, cucumber & salad beetroot is exempt in schedule 1 of VAT Act 2052.

**4 b)**

- i) As per Rule 10 of Customs Regulations, 2064; an industry with bonded warehouse facility can import raw material, auxiliary raw materials and packing materials not produced in Nepal on recommendation of Department of Industries that is to be used for the purpose of manufacturing goods to be exported or to be sold in foreign currency in domestic market by submitting bank guarantee without having to pay import duties in cash. As per Sec. 8Ka of Value Added Tax Act, 2052; an industry can import raw materials under a bank guarantee facility for the purpose of manufacturing goods that are to be exported. There is no provision in Excise law that enables industries to release such goods without having to pay any duty in cash.





- ii) The bonded warehouse facility under Customs Regulations can be obtained if all the following conditions are satisfied:
- Bonded warehouses can be used only if the industry is a textile industry that exports goods, or any other industry that exports goods to a third country or any other industry that exports 20% of its production or Rs. 1 Crore in value in India, and for this it has to submit the proof that it is such industry or if the operation is less than one year, a commitment letter is to be submitted, and
  - There is at least 10% value addition while manufacturing goods from the imported materials, and  
As per Sec. 8Ka of Value Added Tax Act, 2052; the bank guarantee facility can be utilized only if:
    - There were export sales of more than 40% of total sales during last twelve months, and
    - The value addition was 10%.
- iii) Yes, the company shall submit a bank guarantee. The value of bank guarantee is equal to 115% of customs duty or agriculture reform fee under Rule 10 of Customs Regulation and 100% of value added tax under Sec. 8Ka of Value Added Tax law of the materials to be imported for the purpose of manufacturing goods to be exported.  
The possible financial obligation is the bank commission payable to the bank for the bank guarantee and any other cash margin to be held by the bank.
- iv) Yes, only if the conditions in answer (ii) are satisfied.
- v) The calculation of various duties:

| Particulars                   | RM        | ARM       | PM not produced in Nepal | PM produced in Nepal |
|-------------------------------|-----------|-----------|--------------------------|----------------------|
| Invoice price                 | 5,000,000 | 2,500,000 | 1,000,000                | 500,000              |
| Other costs                   | 125,000   | 250,000   | 75,000                   | 25,000               |
| Customs Value                 | 5,125,000 | 2,750,000 | 1,075,000                | 525,000              |
| Import duty rate              | 10%       | 15%       | 15%                      | 20%                  |
| Import duty                   | 512,500   | 412,500   | 161,250                  | 52,500               |
| Excise duty                   | 500,000   | 253,000   | 61,812.50                | 28,875               |
| Taxable value for VAT purpose | 6,137,500 | 3,415,500 | 1,298,063                | 606,375              |
| VAT                           | 797,875   | 444,015   | 168,748.13               | 78,828.75            |

If it is assumed that the industry has license for bonded warehouse, the bank guarantee under Custom Regulation = 115% of import duty on raw materials, auxiliary materials and packing materials (not produced in Nepal, and assuming there is recommendation from DOI) that would be utilized to produced goods to be exported= 115% of Rs. 814,687.50 = Rs. 936,890.63

The import duty to be paid in cash = Rs. 324,062.50



Excise duty payable in cash = Rs. 843,687.50

Bank Guarantee for Raw materials to be used to produce goods to be imported = Rs. 598,406.50

VAT payable in cash = Rs. 891,060.63

5.

- a) M/S Lavish Furniture and Furnishings, a VAT registered firm has committed following offences. What are the fines and penalties that can be imposed as per VAT Act? **7**
- Not displayed the VAT registration certificate at branch office.
  - Goods sold but VAT invoice not issued.
  - Has refused to provide access to VAT authorities for inspection of the books of accounts.
  - Has issued invoice of Rs.42,000 to a firm and not handed over the goods.
  - Has sold some goods worth Rs.500,0000 by under-invoicing to Rs.250,000.
  - While examining the stock by Tax Officer, the stock was found to be more than the goods mentioned in the purchase book. The market value of such excess stock is NPR 1,500,000.
- b) You are an expert in Customs law. Your customer, an importer of goods, has highlighted the following problems that they are facing: **7**
- The license of their customs agent has been cancelled by the Customs officer.
  - The Customs officer has revised the classification of goods in one of the consignment.
  - While importing goods they provided all required information as per Customs law to the Customs officer in Biratnagar Customs office to determine customs value. However, the customs officer did not consider any document and plea and revised the custom value based on his judgement.
  - The customs officer made an accusation of declaring one type of goods as another and decided to release goods after imposing penalty equal to 200% of value of such goods.  
Your customer wants to challenge the decision of customs officer and requires you to advise him about the legal procedures to challenge above decisions (you are not required to discuss on the formation of any adjudicating authority under Customs Act, 2064).
- c) What is the fine and penalty under Excise Act in following cases: **6**
- Excess stock than what is recorded in books.
  - Produced excisable wine without obtaining approval of brand name.
  - Producing excisable goods without obtaining license.
  - Using duplicate excise sticker used in production of tobacco products.
  - Not maintaining safe records for the required period of 6 years.
  - Person other than hotel, restaurant and party palace doing business of alcohol and tobacco mixing with other business.
  - Obstructing the review by Inland Revenue Department and its officers.

### Answers

- 5 a) Fines and penalties that can be imposed as per VAT Act will be as follows:
- One thousand Rupees
  - Ten thousand for each breach
  - Twenty thousand for each restriction.
  - Fine of at least fifty percent of the amount of the invoice or imprisonment up to six months or both.



- v) A fine of cent percent of the amount of tax payable or an imprisonment up to six months or both.
- vi) Fine amount of fifty percent of the market value of the goods so found.

**5 b)** The legal provisions to challenge the decision of customs authority are as follows:

- i) In case a customs agent is not satisfied with the decision of the customs officer to suspend or cancel the license of the agent, the agent can file a review petition in the form of the Director General of the Customs Department (Sec. 56 of the Act).
- ii) If an importer is not satisfied with the decision of customs officer to classify goods, i.e., HS classification, then the importer can make a petition in front of Director General of Customs Department (Sec. 61Ka of the Act) within thirty days of clearance of goods. The importer can release the goods after making a cash deposit.
- iii) The Director General shall make the decision within sixty days unless an opinion has to be obtained from an international body.
- iv) In case there is dispute as to the valuation of goods under Sec. 13 of Customs Act, 2064; the importer can make an application in front Valuation Review Committee within thirty days of decision or order from customs authority. The amount of customs duty has to be paid in cash or in the form of a cash deposit. A copy of the application is to be submitted to the customs authority concerned within seven days of filing such an application.
- v) In case the applicant is not satisfied with the decision of the Director General or Valuation Review Committee, a petition can be filed in the Revenue Tribunal. Further, in all cases other than those specified above, an appeal can be directly filed in the Revenue Tribunal.

**5 c)**

- i) Excise officer may ask to record such excess stock and 100% of the market value of such stock may be levied as fine. Section 16 (4) (Dha)
- ii) Confiscation of goods and 200% of the value of such goods (including Excise duty that would have been applicable for such products) or Rs. 1 lakh whichever is higher as fine or imprisonment for 1 year or both may be imposed by the Excise Officer. Section 16 (2) (Ga) & Section 16 (3).
- iii) Confiscation of goods and 100% of the value of such goods as fine or imprisonment for 1 year or both may be imposed by the Excise Officer. Section 16 (1) (Kha)
- iv) Confiscation of goods and 100% of the value of such goods (including Excise duty that would have been applicable for such products) as fine or imprisonment for 1 year or both may be imposed by the Excise Officer. Section 16 (1) (Nga) & Section 16 (3)
- v) Fine of Rs. 10,000 may be imposed by the Excise Officer. Section 16(4)(Cha)
- vi) Fine of Rs. 10,000 for the first time and Rs. 20,000 for each subsequent violation may be imposed. Section 16(4)(Da)
- vii) Fine of Rs. 5,000 for each instance of obstruction may be imposed. Section 16(4) (Chha)

**6.**

- a) Discuss the role of tax auditors in preventing money laundering and tax crimes. **5**
- b) Miss Poonam Awale is a professor of Agriculture & Forestry University and was a resident of Nepal during income year 2079/080. On Ashwin 1, 2079, she went to Beijing under an assignment for carrying out specific forest research work in Shangai University. For her outstanding work, Shangai University paid remuneration of Chinese Yuan 200,000 for the period Ashwin 1, 2079 to Ashadh 31, 2080. Discuss the tax liability of Miss Poonam giving consideration to the agreement between Nepal and China for



avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income. You are not required to calculate the tax payable.

5

### Answers

- 6 a) The role of tax auditors in checking taxpayers' books and records for tax assessments puts them in a unique position to identify not only tax crimes, but also money laundering and other financial crimes. Auditors can help combat money laundering by identifying and then reporting unusual or suspicious transactions in accordance with domestic law and practice. The role of tax auditors in preventing money laundering and tax crimes can be summarized as below:

**Conducting Customer Due Diligence:** Tax auditor should conduct Customer Due Diligence (CDD) which includes keeping and verifying identification document of the key persons (Directors/ owners/ senior management personnel), the address of the registered office, and, if different, a principal place of business, appointing a contact person in firm and communicating the details of the contact person to Financial Information Unit (FIU) of Nepal Rastra Bank in case of Nepal.

**Detecting unusual transactions:** Generally, their education and training allow them to detect suspicious transactions. For instance: cash movements such as transporting, exchanging, depositing or spending; the use of known money laundering methods or processes; the increase in income and/or capital gains; unusual income, taxpayers appear to live beyond their means, unusual possessions (e.g. works of art, expensive vehicles), unusual loan arrangements and increased prosperity that is not proportionate to legitimate income during tax audit.

**Reporting of unusual transactions:** All tax auditors should make themselves aware of the domestic reporting requirements so that appropriate action is swiftly taken. In Nepal, tax auditor should make a suspicious transaction report (STR) to the financial intelligence unit (FIU) of Nepal Rastra Bank.

**Completing or referring the audit:** Tax examiners or auditors should adhere to their country's legislation, policies and procedures when considering whether any further audit steps can or should be undertaken. If appropriate, the audit should be referred to the appropriate body for a criminal investigation either on the predicate offence or money laundering. Many tax administrations may conduct their own criminal investigation related to tax crimes and money laundering.

**International exchange of information:** Tax auditors should be aware of the international flows of money related to national and international crime. Exchange of information between tax administrations of countries, sometimes referred to as mutual assistance, is of great importance in the fight against tax crimes and money laundering. Where there are legal instruments for exchange of information in place, tax auditors should consider passing on information spontaneously to another country regarding unusual transactions that are relevant for that country, through the competent authority for exchange of information. Tax auditors should also consider making a request for information from a foreign tax administration if there are issues about cross border activities or transactions.

The Institute of Chartered Accountants of Nepal (ICAN) has also issued guidelines on Anti-money laundering and Counter-financing of terrorism, which requires to conduct



CDD, enhanced CDD, keeping records of politically exposed persons, risk assessment and management, reporting suspicious transactions to FIU etc. Tax auditor should follow the guidelines to prevent money laundering and tax crimes.

- 6 b)** According to Article 20 of the agreement between Nepal and China for avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income, a professor or teacher who is or was a resident of one of the contracting states immediately before visiting the other contracting state for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other contracting state shall be exempt from tax in that other state on any remuneration for such teaching or research for period not exceeding two years from the date of his arrival in that other state. This provision applies to Miss Poonam because she was resident in Nepal during FY 2079/080 and her stay in China has not exceeded two years. Therefore, remuneration of Chinese Yuan 200,000 received by Miss Poonam during income year 2079/80 is exempt from tax in China. However, the income is taxable in Nepal, as he has been in Nepal for a continuous period of 183 days before departure to Beijing.