

**Income Tax & VAT
Suggested**

Roll No.....

Maximum Marks - 100

Total No. of Questions - 6

Total No. of Printed Pages -6

Time Allowed - 3 Hours

Marks

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

1.

- a) Mr. Robert Wooster, a citizen of USA, is employed in research department of Mokshya Pvt. Ltd., Nepal with effect from 1st Poush 2071. Due to nature of his job requirements Mr. Wooster has to reside in Nepal. His employer furnishes him pay slip showing deduction of Rs. 265,000 as withholding Tax under sec. 87 of Income Tax Act, 2058 for financial year 2071-72. Mr. Wooster has obtained following information about remuneration from Mokshya Pvt. Ltd.

Particulars	Amount (Rs.)
Basic salary per month	50,000
Uniform allowance	7,000
Technical allowance per month	60,000
Flat rent of Mr. Wooster paid by employer	60,000
Telephone facility per month	500
Free vehicle facility provided	
Compensation paid by current employer to previous employer of Mr. Wooster which had to be paid by Mr. Wooster	200,000
Advance salary for Shrawan 2072 and Bhadra 2072	100,000
leave pay	50,000
Value of accumulated leave provision payable at the end of service period	10,000
Tuition fees of son of Mr. Wooster for learning Nepali language paid directly by employer to private tutor	40,000
Air fare of Mr. Wooster from USA to Nepal paid by employer	100,000
Canteen bill paid by employer	40,000
Drivers salary of vehicle provided by employer	100,000

Required:

(7+2+1=10)

- i) Mr. Wooster now seeks your advice whether withholding Tax deducted by his employer under sec. 87 of Income Tax Act, 2058 is correct.
- ii) Whether Mr. Wooster is required to file income Tax Return for financial year 2071-72 in Nepal as per Income Tax Act, 2058?
- iii) Mr. Wooster contends that as he is a citizen of USA, he is required to pay tax in USA and not in Nepal. Is Mr. Wooster Correct? If not explain why is he required to pay Taxes in Nepal.

(2)

- b) The investment income and expenses related to Mr. Narayan for the financial year 2071-72 are as follows:

Particulars:	Amount (Rs.)
A. Income:	
House rent income net of TDS	180,000
Bank interest income net of TDS- Nepal Bank Ltd.	190,000
Natural resources payments net of TDS	170,000
Interest income net of TDS from ABC Ltd.	2,125,000
Compensation received from loss of last year investment	25,000
Income from investment insurance net of TDS- Rastriya Beema Sanstha	95,000
Gift related to investment income	50,000
Dividend income net of TDS from Sanima Bank Ltd.	47,500
B. Expenses:	
Expenses related to collection of house rent	4,000
Expenses related to natural resources	8,500
Allowable depreciation allowance as per the Act	5,500
Life insurance premium paid to Rastriya Beema Sanstha	22,500
Donation paid to tax exempt organization	40,000

Required:

(8+2=10)

- Compute total Taxable income from investment.
- Compute net Tax liability for the financial year 2071-72, assuming Mr. Narayan is a married and had no other income.

Answer 1.a.

Computation of taxable Income of Mr. Wooster for the financial year 2071-72

Particulars	Details	Amount
Basic Salary (Poush 2071 to Ashad 2072)	50000*7 month	350000
Uniform allowance		7,000
Technical Allowance	60000*7 month	420,000
Flat Rent of Mr. Wooster Paid by employer		60,000
Telephone Facility	500*7 month	3,500
Vehicle Facility (0.5 % of Basic Salary- Perquisites Valuation)	350000*0.5%	1,750
Compensation paid by current employer to previous employer of Mr. Wooster which had to be paid by Mr. Wooster		200,000
Advance salary for Shrawan 2072 and Bhadra 2072		100,000
Leave pay		50,000
Value of accumulated leave provision payable at the end of service period (Only provision- taxable on cash basis)	Not taxable	0
Tuition fees of son of Mr. Wooster for learning Nepali language paid directly by employer to private tutor		40,000
Air fare of Mr. Wooster from USA to Nepal paid by employer		100,000
Canteen bill paid by employer		40,000
Drivers salary of vehicle provided by employer	Not taxable	0
Total Taxable Income		1,372,250

Computation of Tax

Up to 300,000 (1% Social Security Tax)	3000
From 300,000 to 400,000(max of Rs. 100,000)	15,000
Remaining Amount 972,250 @ 25 % (Max of Rs. 2,500,000)	243,063
Total Tax Liability of Mr. Wooster for 2071-72	261,063

Hence:

- The amount of tax as per pay slip computed by company is not correct which is more than Rs. 3,973 as computed by the company.
- Mr. Wooster is not required to file income tax return assuming that he is employed by only one employer in Nepal for the income year and does not have any other income.
Further his information does not say that he wants to claim for deduction of donation and medical tax credit.
- All person resident in Nepal during Income Year are required to pay tax in Nepal irrespective of nationality.

Note: In case of flat rent if any student considers it as residence facility and calculate perquisite of 2% of basic and give answer, full marks will be awarded.

Answer (1) (b)**Computation of assessable investment Income of Mr. Narayan for the F. Y. 2071-72**

Particulars	Details	Amt. in Rs.
A. Investment Income:		
House Rent Income net of TDS	Final withholding	-
Bank Interest Income net of TDS- Nepal Bank Ltd	Final withholding	-
Natural resources payments net of TDS Rs. 170,000 (15% TDS)	TDS – Rs. 30,000	200,000
Interest Income net of TDS Rs. 2,125,000 from ABC Ltd.(15%TDS)	TDS – Rs. 375,000	2,500,000
Compensation received from loss of last year investment		25,000
Income from investment insurance net of TDS- Rastriya B. Sanstha	Final withholding	-
Gift related to investment income		50,000
Dividend income net of TDS from Sanima Bank Ltd	Final withholding	-
A. Total Investment Income		2,775,000
B. Investment Expenses:		
Exp. to collect house rent (related to final withholding income)	Not deductible	-
Expenses related to natural resources	Deductible	8,500
Allowable depreciation allowance as per the Act	Deductible	5,500
B. Total Investment Expenses		14,000
C. Net Assessable Investment Income (A-B)		2,761,000

Particulars	Details	Amt. in Rs.
Net Assessable Investment Income		2,761,000
Less:		
1. Donation to tax exempt organization (least of following):		
i. 5 % of Adj. taxable income Rs. 2,761,000 = Rs. 138,050		(40,000)
ii. Actual donation = Rs. 40,000		

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iii. Maximum limit of Rs. 100,000		
2. Life Insurance premium (least of following): - Actual life insurance premium paid = Rs. 22,500 - or Maximum limit of Rs. 20,000 per annum		(20,000)
Total Taxable Income		2,701,000
Computation of Tax		
Up to 300,000 (1% Social Security Tax- Not applicable)		-
From 300,000 to 400,000(max of Rs. 100,000)		15,000
From 400,000 to 2,500,000(max of Rs. 2,100,000)		525,000
Remaining Amount 201000 @ 35 % (In excess of Rs. 2,500,000)		70,350
Total Tax Liability		610,350
Less: Withholding tax (Rs. 30,000 + Rs. 375,000)		(405,000)
Net Tax Liability of Mr. Narayan for 2071-72		205,350

Hence:

- Total taxable income from investment of Mr. Narayan for F.Y. 2071-72 is Rs. 2,701,000.
- Net tax liability of Mr. Narayan (after calming withholding Tax of Rs. 405,000) is Rs. 205,350.

2.

- XYZ & Co. has provided the following details of its assets during the Income Year 2071-72.

Block	Opening Depreciation Basis	Additions during the Year (in Rs.)	Date of Purchase	Disposal during the year (In Rs.)
A	3,000,000	Nil	-	Nil
B	500,000	300,000	Bhadra 01, 2071	50,000
C	1,500,00	500,000	Chaitra 30, 2071	175,000
D	700,000	Nil	-	Nil

Additional Information:

Before Magh 01, 2071, the company incurred Rs. 300,000 to acquire the patent right for the period of 5 years and 7 months.

Required:

(8+2=10)

- Calculate the allowable depreciation allowances for the Income Year 2071.72 in respect of all the block of assets.
 - What will be the implication on depreciation allowance if XYZ & Co. is a special industry as defined under the Income Tax Act, 2058?
- Gorkhali Cement (P.) Ltd., Rupendehi, has the following transactions during the year 2071/72:

Profit & loss Account

Particulars	Amount (Rs.)
Sales	31,000,000
Cost of Sales	17,600,000
Gross profit	12,400,000
Other Income	500,000
Administrative expenses	2,000,000
Selling & Distribution Expenses	600,000
Depreciation	6,800,000
Interest expenses	2,000,000

UKZ

P.T.O.

(5)

Profit before tax	2,500,000
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Additional Information:

- Other income was the interest from Bank of Kathmandu. It has presented net of Tax.
- Cost of sales includes the following:

Particulars	Amount (Rs.)	Amount (Rs.)
Opening stocks		700,000
Clinker and Other raw material purchase		18,000,000
Manufacturing Expenses		
Salary and wages for factory	1,200,000	
Repair and maintenance expenses	400,000	
Other overhead expenses	300,000	
Total manufacturing expenses		1,900,000
Closing stocks		3,000,000
Cost of sales		11,900,000

- Cost of stocks includes the repair and maintenance expenses, which is approximately 2 % of the valuation.
- Depreciation includes Rs. 2,000,000 for the construction of Factory which was completed on 20 Mangsir, 2071 with total cost of Rs. 40,000,000 without charging the interest. Depreciation for others are as follows:

Block	Depreciation base (Rs.)	Depreciation (Rs.)
B	1,200,000	300,000
D	30,000,000	4,500,000

- Interest expense was charged for the loan borrowed for factory construction. The loan Rs. 20,000,000 with 10 percent interest rate was disbursed on 1st Ashadh 2071 from concerned bank and remains even during the year.

Based on the above information, you are required to calculate Taxable income and Tax liability of the Pvt. Ltd. for Income Year 2071/72.

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Answer (2) (a)

i) Computation of Depreciation Allowance for the Income Year 2071.72

Particulars	Blocks			
	A	B	C	D
Opening Depreciation Base Rs.	3,000,000	500,000	150,000	700,000
Add: Absorbed Additions Rs.				
For Block B: $\frac{3}{3} \times \text{Rs. } 300,000$		300,000		
For Block C: $\frac{2}{3} \times \text{Rs. } 500,000$			333,333	
Less: Disposals Rs		(50,000)	(175,000)	
Depreciation base for the year Rs	3,000,000	750,000	308,333	700,000
Rate of Depreciation	5%	25%	20%	15%
Allowable Depreciation	150,000	187,500	61,667	105,000

UKZ

P.T.O.

Computation of Allowable Amortization on patents right, intangible asset, for the Income Year 2071.72

Allowable Amortization = Rs. 300,000/5.5 = Rs. 54,545

Note:

As per section 3 of Schedule 2 of Income Tax Act, 2058, the useful life of an intangible asset is rounded down to the nearest half year.

(ii)

Entities referred to in section 19 (2) and paragraph 2(3) and (4) of schedule 1 shall be entitled to an additional depreciation rate added by 1/3 in the depreciation rates referred to in subparagraph (1) applicable to pools of depreciable assets in Class A, B, C, and D.

Computation of Allowable Depreciation if XYZ & Co is a special Industry

For Block A: 6.67% of Rs. 3,000,000 = Rs. 200,000

For Block B: 33.33% of Rs. 750,000 = Rs. 250,000

For Block C: 26.67% of Rs. 308,333 Rs. 82,232.42

For Block D: 20% of Rs. 700,000 = Rs. 140,000

For Block E: Rs. 54,545

Additional 1/3 depreciation allowance is not applicable for the pool of asset under Block E.

Answer (2) (b)

Calculation of taxable income and tax liability

<u>Incomes</u>	<u>(Rs.)</u>
Sales	31,000,000
Other Income (WN 1)	<u>588,235</u>
Total Income	31,588,235
Less allowable Deduction	
Interest under section 14 (WN 2)	2,000,000
Cost of sales under section 15 (WN 3)	17,246,000
Repair & maintenance expenses under section 16 (WN4)	400,000
Depreciation under section 19 (WN 5)	9,079,116
Other expenses under section 13 (WN 6)	<u>2,600,000</u>
Total allowable expenses	31,325,116
Taxable Income	263,119
Tax @ 20 %	Rs.52,624
Less TDS on interest income	Rs. 88,235
Net Tax liability (Excess Tax paid)	(Rs. 35,611)

Working Notes (WN)

WN 1

Interest Income 500,000 (Net of Tax)

Gross interest Income 500,000/.85= 588,235 [15% is applicable u/s. 88(1)]

WN 2

Interest expense related to this income Year shall be allowable, the factory building was used for the business, and the date of completion is irrelevant.

WN 3

Opening Stock Rs. 686,000 (700,000 less 2 % of 700,000)

Raw material purchase Rs. 18,000,000

Salary & wages Rs. 1,200,000

Other overhead Rs. 300,000

Less closing stock (Rs. 2,940,000) (3,000,000 less 2 % of 3,000,000)

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Cost of sales 17,246,000

WN 4

Repair and maintenance expense is within the limit of depreciation base as per section 16.

WN 5

Calculation of allowable depreciation

Loan was utilized for factory construction; the one month interest related to the Ashad, 2070 shall be capitalized. So, Depreciation base for factory = $40,000,000 + (10\% * 20,000,000) / 12$
= 40,166,667

Block	Depreciation base Rs.	Depreciation rate (Normal rate +1/3 for special industry)	Depreciation Rs.
A (Factory building)	40,166,667	6.67 %	2,679,116
B	1,200,000	33.33%	400,000
D	30,000,000	20%	6,000,000
Total			9,079,116

WN 6

Administrative expenses Rs. 2,000,000
Selling & Distribution expenses Rs. 600,000
Total other expenses Rs.2,600,000

3. State whether following statements are true or false with appropriate provision of Income Tax Act, 2058:

(5×2=10)

- Any person who fails to pay Tax within prescribed time without reasonable excuse shall be liable on contravention for a fine of an amount ranging from Rs. 50,000 to Rs. 80,000 or an imprisonment for a term of not less than one month and not more than three months or both.
- In case of person fails to maintain books of account and records as per section 81, the person is responsible to pay fee higher of following amounts:
 - 0.1 % of turnover or gross receipt during the period for which the person fails to maintain the accounts and records or
 - Rs. 1000 per annum.
- The listed resident company deducted 15% withholding tax while paying interest having source in Nepal to Tax exempt organization. The Tax exempt organization claims interest earned by it from listed resident company as final withholding income.
- In case of gain on the disposal of land & buildings owned by M/S ABC limited which has been owned for less than 5 years, applicable Tax rate will be 5% and if the disposed land & buildings has been owned for more than 5 years, applicable tax rate will be 2.5%.
- Cooperatives societies are allowed to claim as expenses an amount equivalent to the amount set aside in risk bearing fund to the extent of 15% of outstanding loan.

Answer (3)

- a. False, as per section 123, any person who fails to pay tax within prescribed time without reasonable excuse shall be liable on contravention for a fine of an amount ranging from 5,000 to Rs. 30,000 or an imprisonment for a term of not less than one month and not more than three months or both.
- b. True, under section 117(2) In case of person fails to maintain books of account and records as per section 81, the person is responsible to pay fee higher of following amounts:
- 0.1 % of turnover or gross receipt during the period for which the person fails to maintain the accounts and records or
 - Rs. 1000 per annum
- c. True, as per section 92(1) the interest income net of 15 % TDS having source in Nepal earned by tax exempt organization from listed resident company is final withholding income.
- d. False, the given tax rate is applicable for natural person only for non business chargeable assets. Whereas the company is liable to pay applicable normal tax rate for gain realized on disposal of land & buildings i.e. @ 25 % or 30%.
- e. False, Finance Act 2071 under section 59 (1Kha) extended facility of the loan loss provision to the cooperatives society, Now they are allowed to claim as expenses an amount equivalent to the amount set aside in risk bearing fund to the extent of 5% of outstanding loan.
- 4.
- a) Mention the timings of payment of taxes under the Income Tax Act, 2058 prescribed in the following cases; (5×1=5)
- Deposit of amount of withholding taxes by the person who is required to withhold Taxes.
 - Amount of Tax payable by a person who has submitted the Income Tax Return as per section 96 and who has due to be paid as per assessment made under section 99
 - Amount of Tax payable under jeopardy assessment under section 100 (2)
 - Amount of Tax payable under amended assessment under section 101
 - Installments amount of Tax payable based on estimated Tax
- b) Define the followings with reference to Income Tax Act, 2058. (2+3=5)
- "Payment"
 - "Business Asset", "Depreciable Asset" and "Trading Stock"

Answer (4)

a)

Followings are the timings of payment of taxes prescribed in Income Tax Act, 2058 in each case;

SN	Particulars	Timings of Payments
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i.	Deposit of amount of withholding taxes by the person who is required to withhold taxes.	Within 25 days from the end of the month wherein withholding tax is being withheld
ii.	Amount of tax payable by a person who has submitted the Income Tax Return as per section 96 and who has due to be paid as per assessment made under section 99	Date of filing of Income Tax Return i.e. within three months from the end of Income Year (Ashwin end)
iii.	Amount of tax payable under Jeopardy Assessment under section 100 (2)	Within the time limit mentioned in the tax assessment notice issued under section 102 related to Jeopardy Assessment of that person
iv.	Amount of tax payable under Amended Assessment under section 101	Within the time limit mentioned in the tax assessment notice issued under section 102 related to Amendment Assessment of that person
v.	Installments amount of tax payable based on estimated tax	First Installment – Within Poush end of the Income Year whose Installment to be paid Second Installment - Within Chaitra end of the Income Year whose Installment to be paid Third Installment - Within Ashad end of the Income Year whose Installment to be paid

b)

i.

Section 2(ha) of Income Tax Act, 2058 defines the term "Payment" as follows;

Payment means;

- a. The transfer of money, an asset, or a liability by a person to another person;
- b. The creation of an asset by one person that on creation it is owned by another person or the taking of an obligation of liability owned by another person;
- c. Service provided by one person to another person; and
- d. The use, or making available for use, of an asset owned by one person to another person.

ii.

As per section 2(ka ta) of Income Tax Act, 2058, "Business Asset" means an asset used in business.

Provided, the term shall not include trading stock or a depreciable asset in business.

As per section 2 (ka, ra) of Income Tax Act, 2058, "Depreciable Asset" means an asset which is used for generation of income from any business or investment and whose value declines due to wear and tear, obsolescence, or the passing of time.

Provided, the term shall not include trading stock.

As per section 2 (ka yng) of Income Tax Act, 2058, "Trading Stock" means the assets owned by a person and for sale in the ordinary course of business, work-in-progress on such assets and inventories of materials that are to be included into such assets.

Provided that the term shall not include an asset in foreign currency.

5.

- a) Cycle Tyre Co. Ltd. of Biratnagar imports raw materials from India for manufacturing of BLAST brand of bicycle wheels. It sales its product both in Nepal and India. During Magh, finance controller of the company resigned and the company has not paid any amount of VAT nor has filed monthly VAT return for Magh and Falgun and you are appointed as finance officer of the company during Chaitra.

The details of VAT related transaction of company are:

Month	Magh		Falgun	
	Taxable	VAT	Taxable	VAT
Particulars				
Opening VAT credit		20,000		
Domestic-purchase raw materials	21,000	2,730	30,000	3,900
Import of raw materials	280,000	36,400	400,000	52,000
Raw materials consumed out of domestic purchased	18,900	2,457	27,000	3,510
Raw materials consumed out of imports	252,000	32,760	360,000	46,800
Diesel consumed	22,400	2,912	32,000	4,160
Diesel purchased	63,000	8,190	90,000	11,700
Payment to labour contractor for supply of workers	36,400	4,732	52,000	6,760
Consumables used from stock	14,000	1,820	20,000	2,600
R&D service procured from Germany (Unregistered)	300,000			
Value of finished goods produced	900,000		1,200,000	
Sales domestic	810,000		345,600	
Sales export	-		734,400	

Required:

Prepare a memo to be forwarded to the Board of Directors of the company referring the relevant provisions of VAT Act, amount indicating VAT payable, refund receivable and amount of VAT credit available for each month.

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- b) OLIZ Trading Pvt. Ltd. trades in various vatable goods. The company sold goods on credit for 60 days whereas creditors provide credit facility for 50 days. The company's receivables on account of taxable goods sold is Rs. 3,390,000 for the month of Kartik 2071. Input Tax credit of previous month is Rs. 21,000.

Details of taxable purchase of the company in the month of Kartik are as follows:

- i) Total payable to computer for the Taxable purchase of the trading goods
Rs. 2,260,000
- ii) Total payable for computer and printer purchased Rs. 67, 800
- iii) Payable made for motorcycle purchased Rs. 226,000
- iv) Payable made to Hotel Rs. 24, 860 for dinner party organized for party meeting.

Find out the VAT amount paid on purchases and collected on sales. Also, workout amount of allowable input Tax credit and VAT payable.

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Answer (5)(a)**Computation of vat payable, vat credit available & amount of vat refundable**

Month	Magh		Falgun	
		VAT		VAT
Particulars				
I. Input VAT				
Opening Balance of VAT credit		20,000		5,752
Domestic-Purchase Raw materials		2,730		3,900
Import of Raw Materials		36,400		52,000
Raw Materials Consumed out of Domestic Purchased	not relevant		not relevant	
Raw Materials Consumed out of Imports	not relevant		not relevant	
Diesel Consumed	not relevant		not relevant	
Diesel Purchased		8,190		11,700
Payment to labor contractor for supply of workers		4,732		6,760
Consumables used from stock	not relevant		not relevant	
VAT to be assessed and paid under section 8 (2) for service imported from Germany	Reverse charge	39,000		
Total input VAT		111,052		80,112
II. Output VAT				
Value of Finished goods produced	not relevant	-		-
Sales Domestic		105,300		44,928
Sales Export (Schedule 2- @ zero %)	not relevant			-
Total Output VAT		105,300		44,928
VAT credit/(payable)		5,752		-
VAT Refundable		-		35,184
VAT Payable	u/s 8(2)	39,000		
VAT Refundable		NIL		
VAT credit carried forward		5,752		

As a newly appointed finance officer, I have computed the required vat payable, vat credit available & amount of vat refundable as per above calculation sheet for the kind attention of board:

The company has no vat payable for both the months. The company is eligible to set off VAT paid on purchase with vat collected under section 17 of VAT Act. After setting off VAT to be paid on sales, the company is eligible to carry forward VAT credit of 5,752 for the month of Magh. Under section 24(4) a VAT refund can be claimed if an export sale of any particular month exceeds 40% of its total sales. The export sales of company exceed 40% for the month of Falgun hence it is eligible to claim refund under section 24 (4) of VAT Act.

Answer (5)(b)

Receivable (sale inclusive of VAT)	Rs. 33,90,000
Sales (excluding VAT)	30,00,000
VAT on sale	3,90,000

VAT paid on purchases

	Total Purchase (with VAT)	VAT Paid	Allowable VAT credit
Raw materials	Rs. 22,60,000	Rs. 2,60,000	Rs. 2,60,000
Computer	67,800	7,800	7,800
Motor cycle	2,26,000	26,000	26,000
Hotel Bill	24,860	2,860	-
Total	25,78,660	2,96,660	2,93,800

Calculation of VAT Payable

VAT collected on sales	Rs. 3,90,000
Allowable VAT credit	(2,93,800)
Input tax credit b/f from previous month	(21,000)
Total VAT Payable (net)	75,200

Notes:

1. Since under VAT Rule 41, Motorcycle is not covered under the definition of automobiles, 100% tax credit is allowable to be deducted.
2. 100% tax credit is allowed in computer.
3. In the case of entertainment expenses and Hotel bill, Input tax credit is not allowed as per the VAT Rule 41.

6.

- a) Answer the followings with reference to Value Added Tax Act/Rules, whether the statements are correct or not, with reasons.

(5×1=5)

- i) While filing an appeal to Revenue Tribunal, the undisputed amount of the assessed Tax due shall have to be deposited and fifty percent of the amount of the Tax in dispute plus the amount of fine shall have to be deposited.
- ii) In case the person has not made the accounts available for inspection under section 16 (1), the penalty amount is Rs. 5,000 for each time.
- iii) The color of tax registration number plate for registered person shall be green, for unregistered person doing Taxable transaction shall be yellow and for person dealing in tax exempted goods and services shall be white.
- iv) Nepal Government is not required to collect Value Added Tax even if it engages in supply of goods or services which attract VAT.
- v) No Tax is to be levied for a supply of service by a person residing in Nepal to a person outside Nepal who has no business transaction in Nepal.

- b) Nepali Rice Mill Industries purchases the rice in the husk (Dhan) to produce the rice. The Chitawan based mill sales its packed rice to the local markets. The company has the following transactions from Bhadra 2071 to Chaitra 2071.

Sales	Rs. 3,000,000
Dhan purchase	Rs. 2,000,000
Machinery purchase	Rs. 2,500,000 (Net of VAT)
Factory construction	Rs. 5,500,000 (Payment to the Contractor)

State the relevant provisions for VAT implications on this case with references to the VAT Act, 2052 and VAT Rules, 2053.

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- c) Nepal Philanthropic Society is a “Company not Distributing Profit” registered under the Company Act, 2063. The source of fund of this company comes from membership fees, donation from the member groups and other outsiders. The company deals with various goods other than those mentioned in schedule 1 to VAT Act 2052. Annual turnover of this company ranges from Rs. 50 lakh to 75 lakh every year.

Though profits earned by the company are not for the distribution amongst its members, more than 50% of its profits are utilized towards activities related to the Corporate Social Responsibilities (CSR) every year.

The members of the company when approached by IRD staffs for VAT registration contended that the company need not be registered in VAT. As you are the tax consultant of the entity you are required to comment this statement by the company.

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- d) Mr. Krishna K.C is a proprietor of KKC & Co. which is a VAT registered firm. Due to the occurrence of destructive Earthquake on Baisakh 12, 2072, Mr. K.C could not deposit VAT amount of Rs. 10 lakh collected by the goods sold by his firm for the month of Chaitra 2071.

IRD vide public notice has extended the VAT submission date from 2072/01/25 to 2072/02/07. Finally, Mr. K.C has been successful to deposit the said VAT amount on Jestha 08, 2072.

The Tax officer intends to levy additional fee of 10% p.a. due to failure to pay VAT even within the extended time of 2072/02/07. Since the failure to pay VAT was due to the circumstances beyond his control, suggest Mr. K.C to obtain waiver from paying such extra charges on total VAT amount due.

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Answer (6)(a)

i.

True.

As per section 33 of Value Added Tax Act, 2052, while filing an appeal to Revenue Tribunal, the undisputed amount of the assessed tax due shall have to be deposited and fifty percent of the amount of the tax in dispute plus the amount of fine shall have to be deposited or a bank guarantee for the same has to be furnished.

ii.

False.

As per section 29 (1) (ng) in case the person has not made the accounts available for inspection under section 16 (1), the penalty amount is Rs. 20,000 for each time as amended by Finance Act, 2071.

iii.

True.

As per Rule 14(ka) of Value Added Rules, 2053, registered person shall have to place tax registration number plate in the format prescribed by Inland Revenue Department (IRD) in his place of transaction in a clearly visible manner within thirty days from the effective date of VAT rule.

Further, as per circular dated 2062.06.21 by IRD, the color of tax registration number plate for registered person shall be green, for unregistered person doing taxable transaction shall be yellow and for person dealing in tax exempted goods and services shall be white.

iv.

False.

Notwithstanding anything contained in subsection (1) or (2) of section 15, local body or International institution/association/commission based in Nepal or Nepal Government or corporations engaged in non-VAT transactions shall collect value added tax if they engage in supply of goods or services which attract VAT.

v.

False.

As per clause 2 of schedule 2 of Value Added Tax, 2052, a supply of service by a person residing in Nepal to a person outside Nepal, who has a no business transaction, business representative or legally recognized agent in Nepal, is subjected to zero rate of tax.

Answer (6)(b)

Rice is the VAT exempt goods as per the schedule 1 of the VAT Act, 2052. Any person, who carries out the transactions of goods or services mentioned in schedule 1, shall not be required to be registered as per section 10(3). Input tax credit is allowed only to the VAT registered person as per section 17. So, VAT paid on machinery is added only on the cost.

Further, section 8(3) of VAT Act, 2052 states that even though the construction of a building or apartment or shopping complex and similar other structure as specified by the Department, of which value is more than Rs. 50 lakhs, and which is built for business purpose is procured from a person who is not registered, tax shall be assessed and collected from a person who has ownership in that structure as if such construction were procured from a registered person.

As per the rule 6(Kha), any person who is constructing building, apartment, shopping complex or similar structure as specified by the Department for business purpose amounting more than Rs. 50 lakhs, he has to get it constructed only from VAT registered person. As per these provisions, the Mill should made contract with VAT registered contractor to construct the Factory building. If it has paid to non-registered contractor, it has to pay VAT amount, however it is not registered in VAT and it cannot claim for credit.

Answer (6)(c)

The criteria for the requirement of a company to be registered under VAT Act are not dependent on whether Company distributed its profits or not.

If a company fulfills following two conditions, then it needs to be registered under VAT Act.

- 1) If such Company/entity deals with goods/services that are VAT attractive, and are not exempted as per schedule 1 of the VAT Act.
- 2) The transaction of such company exceeds the threshold provided under the Act i.e. annual business transactions crosses present taxable limit of 20 lakh.

In the case of our question, both above criteria are attracted; Nepal Philanthropic society is required to be registered under the VAT Act.

Therefore, the statements of the company that it need not be registered under VAT Act do not hold true.

Answer (6)(d)

It is apparent that the failure to deposit VAT of Rs. 10 lakh to the concern IRO has been caused by extra ordinary circumstances beyond Mr. K.C's control. He even failed to deposit the said VAT amount within the time extension granted by IRO office i.e. 2072/02/07.

As per Sec 19(4) of VAT Act to be read with VAT rule 35, such earthquake of Baisakh 12, 2072 is deemed to be circumstances beyond the control.

Under such situation, up to 30 days (in the case of the question, it is up to 11th Jestha, 2072) ~~from form~~ the date of occurrence of earthquake (i.e. 12-01-2072) is considered as circumstances beyond Mr. K.C's control.

Pursuant to Sec 19(4) to be read with Rule 36 of VAT rule, under such situation, MR. K.C has to submit an application to the Director General within 30 days time limit as mentioned above requesting for waiver of the additional charges levied due to nonpayment of VAT within 2072/02/07. Also, in the application, he has to mention that such failure to make timely payment was caused by extra ordinary circumstances beyond Mr. K.C's control.

The Director General after necessary verification of the matter, and if finds reasonable ground there, can waive such additional fee that intended to be levied.

In case, such application is not submitted within the time limit of 30 days as aforesaid, the waiver of such additional charges will not be granted.