

Roll No.....

Maximum Marks - 100

Total No. of Questions - 8

Total No. of Printed Pages - 4

Time Allowed - 3 Hours

Marks

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

1. Management has provided the following income statement and additional information for the FY 2069/70. From the following details given below compute the tax liability of the business income of Kumar & Co. for the FY 2069/70. Tax rate is 25%.

15

	Rs.
Sales	25,000,000
Misc. Income	5,000
Dividend Income	2,500,000
Cost of Sales	
Opening stock	1,500,000
Raw material	11,000,000
Freight	900,000
Custom duty	1,500,000
Repair & Maintenance	700,000
Closing Stock	<u>1,600,000</u>
Interest paid to Financial Institution	300,000
Govt. Penalties	200,000
Repair expenses of hired vehicle (all revenue nature)	50,000
Donation	200,000
Depreciation	258,000
Other expenses	2,000,000
<u>Details of depreciable assets</u>	
<u>Vehicles</u>	
Gross cost	7,000,000
Accumulated depreciation at the end of last FY	6,000,000
Addition (before Pouch)	500,000
<u>Other information</u>	
Other expenses include personal nature expenses of telephone	100,000
Personal travelling cost included in other expenses	500,000
Profit on sale of One Vehicle (WDV 20,000, sales proceeds 100,000)	80,000
Deferred tax liabilities	500,000

Make your own assumptions.

Answer

Working Notes		
1. Allowable cost of sales		Remarks
Opening Stock	1,500,000	
Purchase of raw	110,00,000	

material			
Freight	9,00,000		
Custom duty	<u>15,00,000</u>		
	1,490,000		
Less, Closing Stock	<u>1,600,000</u>		
Allowable amount	<u>1,33,00,000</u>		
2. <u>Repair & Maintenance of Vehicle</u>			
Claimed amount	700,000		
allowable 7% of depreciation basis	98,000		
<i>Disallowed to be capitalized</i>	602,000	Will be added to WDV	
<u>Depreciation basis</u>			
Opening WDV	1,000,000	Gross cost less accumulated depreciation	
Addition	500,000	Since procured before poush	
Less: Sales proceeds	100,000		
Depreciation basis	1,400,000		
3. <u>Depreciation</u>			
Depreciation basis	1,400,000	Refer W.Note 2	
Depreciation @20%	280,000		
4. <u>Allowable donation</u>			
Claimed amount	200,000		
allowed 5% of adjusted taxable income subject to maximum of Rs 100,000			
(Note: Since the question is silent, there are alternative treatment where the donation is not given to prescribed Institution as per Income Tax Act, 2058, the whole amount is disallowed.)			
5. <u>Calculation of adjusted taxable income</u>			
Income	25,005,000	Since Dividend income is under FINAL TDS not to be included in income	
<u>Expenses</u>			
Cost of sales	13,300,000		
Interest	300,000		
Depreciation	280,000		
	1,450,000	Including repairs of hired vehicle	
Other expenses (1,400,000+50,000-100,000-500,000)		Net of personal nature expenses Allowable limited to 7% of depreciation basis	
Machinery repair	98,000		
Total allowable deduction	15,428,000		
Taxable income	9,577,000		
5%	483,750		

Allowed	100,000
---------	---------

Calculation of Taxable income of Kumar & Co. for the FY 2069-70		
Particular	Rs	
		Refer W.Note 5.
Income	25,005,000	
<u>Allowable deduction</u>		
Interest paid to FI	300,000	
Cost of goods sold	13,300,000	Refer W.Note 1
Depreciation	280,000	Refer W.Note 3
Other expenses	1,450,000	
Repair & Maintenance of vehicle	98,000	Refer W.Note 2
Total expenses	15,428,000	
Assessable income	9,577,000	
Donation	100,000	Refer W.Note 4
Taxable income	9,477,000	
Tax liability @ 25%	2,369,250	
<i>Note: Govt. penalties has not been allowed as deduction</i>		

2.

- a) What are the conditions to be fulfilled to be called as finance lease under the Income Tax Act? How the Income Tax Act has envisaged the characterization of payments under annuities, installment sales and finance leases? 5
- b) M/s ABC Construction Company Pvt. Ltd., a construction company, has purchased a heavy duty earth moving machine from M/s XYZ Company Pvt. Ltd. with the amount payable in five installments which are payable at the beginning of the year. The amount of each installment is Rs. 10 lakhs. Calculate the amount of interest to be claimed under Section 14 of the act by showing the year wise interest and repayment of debt claim. 5
- c) Define interest, debt claim and debt obligation as per the Income Tax Act. 5

Answer:

- a) Section 32(5) of the act states that the following conditions are required to be fulfilled for a finance lease:
- Ka) The term of the lease agreement provides for transfer of ownership to the lessee at the end of the lease term or the lessee has an option to purchase the asset after expiry of the lease term for a fixed or estimated price.
- Kha) The lease term exceeds seventy five percentage of the useful life of the asset.
- Ga) The estimated market value of the asset after expiry of the lease term becomes less than twenty percentage of its market value of the asset at the commencement of the lease.

Gha) In the case of a lease that commences before the last twenty five percentage of the useful life of the asset, the present value of the minimum lease payments equals or exceeds ninety percent of the market value of the asset at the commencement of the lease term or

Nga) The asset is specially made for the lessee and after expiry of the lease term the asset will not be of practical use to anyone other than the lessee.

“ Lease Term” means the term including an additional period for which the lessee has an option to renew the lease.

Section 32 of the act deals with characterization of payments under annuities, installment sales and finance leases.

Payments made by a person for acquiring an asset under annuity or installment sales or for the use of an asset under finance lease shall be treated as interest and repayment of capital under a debt claim. All the payments shall be aggregated and the total be divided into two sections: A) Capital portion being equal to all payments made under annuity or the market value of any asset at the time it is sold or leased and B) Interest portion being the total of all payments minus the capital portion.

Interest portion shall be treated as interest paid or to be paid and the capital portion shall be treated as repayment of capital under a debt claim.

At the time of concluding an agreement of the annuity, installment sale or finance lease, it is required to segregate the portions of interest and capital while determining installments and provide with the list of total payment. If list is not provided, it is required to treat the interest and capital portion of annuity, installment sale or finance lease as a blended loan with the interest compounded on six monthly basis. A borrower under a blended loan is required to make in part a payment of interest and in part a repayment of capital where the interest part is calculated on capital outstanding at the time of each payment so as to be the uniform rate of interest over the term of the loan.

The lessee shall be treated as the owner of the property leased to the lessee under a finance lease and the lessor shall be treated as the holder of a debt claim against the lessee. Present value of lease payments shall be calculated using a discount rate equal to the standard interest rate.

b) In the case given,

- Per Installment amount Rs. 10 Lacs payable at the beginning of the year.
- Standard Interest Rate for discounting as per Section 32(8) : 15 percent per annum.

Year	Installment amount (Rs.)	Discount Factor	Discounted Value(Rs.)
1	10,00,000	1	1,000,000
2	10,00,000	0.8695	869,500
3	10,00,000	0.7561	756,100
4	10,00,000	0.6575	657,500
5	10,00,000	0.5717	571,700
Present value of payments (Rs.)			<u>3,854,800</u>
Total payments(Rs.)			5,000,000
Interest (Rs.)			<u>1,145,200</u>

Yearwise Break Up (Rs.)

Year	Opening Balance	Total	Interest Portion	Principal Portion	Outstanding Principal
1	3,854,800	1,000,000	-	1,000,000	2,854,800
2	2,854,800	1,000,000	428,220	571,780	2,283,020

3	2,283,020	1,000,000	342,453	657,547	1,625,473
4	1,625,473	1,000,000	243,821	756,179	869,294
5	869,294	10,00,000	130,706	869,294	-
	Total	50,00,000	11,45,200	38,54,800	

The amount of total interest to be claimed as interest under section 14 is Rs. 11,45,200 on year wise basis as shown above.

c) Definitions:

Interest – As per section 2(kajha) of the act, interest means the following payments or gains:

1. A payment under a debt obligation that is not repayment of principal amount.
2. A gain realized by way of a discount, premium, swap payment or similar payment under a debt obligation.
3. The portion which is treated as interest from the payments made to a person by a person who acquires assets under an annuity or installment sale or for use of assets under a finance lease.

Debt Claim – As per section 2(tha) of the act, debt claim means a right of one person to receive a payment from another person and the expression includes a right to receive back of an amount paid by one person, deposits in banks and financial institutions, receivable amount, debentures, bills of exchange, bond, annuities, finance leases and installment sale.

Debt Obligation – As per section 2(ta) of the act, debt obligation means the obligation equivalent to a debt claim.

3. State the correct answer in the following with proper reasoning. (5×2=10)

- a) Excel Insurance Co. Ltd. issued a life insurance policy for Rs. 500,000 to Mr. Murali on 1.4.2068 for 25 years at an annual premium of Rs. 1200 with a condition that if the premium is not paid every year on due date, the policy will be cancelled.

Mr. Murali did not pay the premium for FY 2070/071 and the insurance company cancelled the policy within 5 years of its issue. Is this investment insurance or not?

- b) Mr. Govinda took a loan of Rs. 5,000,000 for building his house at 12% p.a. interest on 1.4.2067. The interest amounted to Rs. 600,000 per annum. For the year 2069/70, the bank reduced the interest from 12% to 10% p.a. Now the Tax Office says Rs. 100,000 difference between the interest is income of Mr. Govind. Is it income or not?

- c) A Ltd. receives dividend of Rs. 400,000 and interest (net) of Rs. 200,000. A Ltd. distributes Rs. 450,000 as dividend. How much tax A Ltd. should deduct from the dividend distributed by it?

- d) A Ltd. has a taxable income of Rs. 600,000 during the year 2068/69. It had paid advance tax of Rs. 100,000 on 25th Ashadh 2069. The return was filed on 25th Ashwin 2069 after paying the balance tax and interest. How much amount the A Ltd. has to pay as interest under the Income Tax Act?

- e) Mr. Madan Lal is running a lodge for stay only on a daily rent basis. It is not registered under VAT Act. The guests where stay there should deduct TDS on payment. But it is not practicable in practice. Is the practice right according to the provision of Section 88 and no guest deducts TDS and pay to the government?

Answer:

- a) Here the policy is for more than 5 years. But it was cancelled as per the terms of the contract. Even though it is cancelled for non-payment of premium within 5 years, it is an investment Insurance.
- b) Interest covers any payment other than payment towards principal amounts. According to Sedic.2(ka jha)(1). 2(ka jha)(2) states that any discount or variation in payment or any profit / benefit received from such payments. In this case, the interest rate of bank is reduced by 2% during the financial year 2069/070. Therefore, there is no question of refund of interest. It is not any special discount given to Mr. Govinda but a general reduction in interest charged by the Bank. Therefore, it is not income of Mr. Govinda.
- c) As per Income Tax Act, if the dividend is declared from dividend income which is final tax withholding income, there is no need to pay again dividend tax from such income.

Unless a Company specifies, from which source how much dividend is paid, it will be assessed that dividend is paid proportionally that the total such available. The total such is 4,00,000+2,00,000=6,00,000 out of which Rs.2,00,000 is $\frac{1}{3}$ of the total remain. So, the dividend paid shall be deemed to have been paid Rs.1,50,000/- out of interest income and on that 5% viz. Rs.7,500 have to be deducted at source.

Note: There may be alternative solution. Since the question said Interest income is net of Tax that is gross Interest Income is 2,35,294. Therefore proportion is 4,00,000+2,35,294= 6,35,294 out of which Rs. 2,35,294 is 37.04% of total. Therefore dividend paid shall be deemed to have been paid Rs.1,66,680 out of Interest Income and 5% of such amount is subject to Tax i.,e., 8,334.

- d) A Ltd. has not paid the advance tax as per Sec. 118(2)

	<u>Tax</u>	<u>Paid</u>	<u>Balance</u>	<u>Interest@15%</u>
Poush end(40%)	60,000	0.00	60,000	2,250.00
Chaitra end (70%)	1,05,000	0.00	1,05,000	3,937.50
Ashadh end (100%)	1,50,000	1,00,000	50,000	<u>1,875.00</u>
			Total Interest u/s 118	8,062.50

- e) If the lodge is registered under VAT and issued VAT bill, then no deduction at source is applicable.

If the lodge is not registered under VAT but only under Income-tax Act, as per Sec. 88, the guest is required to deduct tax on rent paid by him and remit to the government. But the guests may not have PAN registration and then it becomes difficult to remit the tax also. Since it is not practicable, it cannot be insisted on.

But the lodge owner has to submit his advance tax return within time with the required advance tax payment.

4. Write short notes on the following:

(4×2.5=10)

- a) Foreign Permanent Establishment
- b) Transfer Pricing Arrangement
- c) Perquisites
- d) Jeopardy Assessment

Answer:

- a) A Foreign Permanent Establishment (FPE) is a permanent establishment of such a person who is a resident of some other country. (Section 2 (KaNga) read with 2 (Bha)). The person may be a company or a partnership registered in a foreign country, a trust established abroad, a foreign government or its political subdivision up to village level etc. When any one of these foreign persons establishes a foreign permanent establishment in Nepal under the same incorporated status in Nepal, the permanent establishment is said to be a foreign permanent establishment.

Test of a foreign permanent establishment:

- It is entirely owned by a foreign person. Owner foreign person may be controller foreign entity too.
 - It is a branch, a division, warehouse, construction site, factory, sales outlet or site office of a foreign person.
 - It has not got any incorporated status in Nepal.
 - It has its effective control and management situated outside Nepal.
- b) Transfer pricing is an arrangement of transferring the profit by way of cost rather than by repatriation of income after tax. Transfer pricing generally happens between associated parties where the resulting loss and profit from the planned transaction go to the same person. The better test of whether transfer pricing has happened or not is whether the transaction is at the arm's length or not. According to the test, the payment for transaction is 'over' or 'under' if it is greater or lesser than the hypothetical price (the arm's length price), which the parties would have been paid, had their ties been unrelated to business. Tax authorities see the risk of transferring the income of one person to another between associated person, Inland Revenue Department or Inland Revenue Office may by a notification in writing, distribute, apportion, or allocate the amounts to be included or deducted in the income between the persons as to reflect their taxable income or tax liability.
- c) Perquisite is a facility provided in kind by the employer to an employee under the terms of employment. Such facilities include residence facility, vehicle facility, facility from driver for vehicles, facility of house maid, gardeners, telephone facility for his/her residence etc. All facilities other than residence and vehicle are included in income from employment of the employee on the basis of the actual expenses incurred by the employer. But Rule 13 of the Income Tax Rules has quantified the residence facility and the vehicle facility and the expenses borne by the employer in providing the facility.

Residence facility: quantification for house facility is 2% of the salary for the year. Here salary means the basic salary and the grades. There is no difference whether the house provided is furnished or unfurnished one. Also it does not matter if the house was taken on rent and the employer paid different amount to the land lord.

Vehicle facility: quantification for vehicle facility by the employer for employees exclusive use or for a part time use, an amount equal to 0.5% of the salary regularly being paid is quantified as income.

- d) Assessment of tax within income year or after the closure of the income year or before the due date of filing of the returns, when an assessment of tax is done, then that is called jeopardy assessment. Jeopardy assessment is of two types; jeopardy assessment as self assessment (Sec 100(1)) and jeopardy assessment by taxation authority (Sec 100(2)). Jeopardy assessment by the IRO is possible only under any of these conditions:

- The person becomes bankrupt, is wound up, or goes into liquidation,
- The person is about to leave Nepal indefinitely,
- The person is about to leave the business, or
- The IRD otherwise considers it appropriate.

Under any one of the above conditions the IRO may serve a notice to the tax payer to submit a tax return for the specified period of the year within specified days. In the case of a taxpayer who submits the return as per the notification or does not submit it, in either case, the income tax assessment is supposed to be made as per the provisions of the Act. Section 100 (2) has given authority to the respective Inland Revenue Office to make a jeopardy assessment in the above case on the basis of the best judgment. When a jeopardy assessment is done for the full year, then separate return is not required to be submitted, similarly if the jeopardy assessment is done for the part of the financial year, then returns for full year should be submitted and the tax paid for jeopardy assessment can be adjusted with full year assessment.

5. Consider who should pay and how much VAT in the following circumstances with explanations according to the relevant section and rules:
- a) AX & Company receives machinery valued at equivalent to Rs. 500,000 including freight for repair and testing them and return to the owner in Thailand. (Assure custom duty if imported for use in Nepal, 5%). Will it make a difference if AX & Company exports it within one month or after 6 months? 5
- b) Exilin Nepal imports £ 40,000 worth 8,000 ltrs. of Scotch Whisky from UK for sale through duty free shop. Assume custom duty is Rs. 540 per ltr. and excise duty is Rs. 464 per ltr. and exchange rate £ 1 = Rs. 160 at the time of import. 3
- c) Mr. Buddhi Bahadur builds his house through a contractor who is not registered in VAT for own living. The total value of the contract comes to Rs. 90 lakhs. He gets built another house from the same contractor for a cost of Rs. 45 lakhs for letting out on hire. 3
- d) American Embassy is putting on sale its old furniture, computers, cars etc. on auction. Except car all are local purchase. The car was imported about 6 years earlier. Value at the time of import assessed at Rs. 500,000. The other locally

purchased items were sold for Rs. 300,000. Custom duty paid on car at that time was 1%. The normal duty rate was 85%. The car was sold for Rs. 100,000. The car was manufacture about 2 years before its import into Nepal.

Answer:

a)

1. AX & Company should submit the agreement for inspection and testing and return to the owner at Thailand and with its condition to the Custom Office for his approval for importing the machinery.
2. AX & Company shall provide a Deposit of Bank guarantee to the extent of Rs.25,000/- custom duty as directed by the Custom Officer to the amount of Custom Duty & VAT leviable if imported for use in Nepal and fill up Pragyapan Patra quoting the agreement to be returned.
3. AX & Company should give proof of receipt of fees / remuneration for doing the inspection & testing from the person who has agreed to pay for the services as per the agreement.
4. The machinery should be re-exported within the time allowed by the Custom Office. Normally time upto 90 days is allowed. If more time is required, AX & Company shall apply for extension of time with relevant documents.
5. While returning the machinery, AX & Company should prepare Pragyapan Patra along with the copy of the Pragyapan Patra and other documents executed at the time of import of the machinery.
6. After the machinery is exported, AX & Company should apply for refund of the deposit or cancellation of Bank guarantee within one year of the date of Pragyapan Patra exporting the machinery.

- b) Since the Whisky is imported by Exilin Nepal for duty free shop, Bank guarantee is to the extent of custom duty Rs.43,20,000 + Excise duty Rs.37,12,000 + VAT 18,86,160 as follows. The goods shall be sold within one year from the date of import.

Value of goods £40,000 @ 160	64,00,000
Custom duty on 8000 ltrs. at Rs.540 per ltr.	43,20,000
Excise duty on 8000 ltrs.at Rs.464 per ltr.	<u>37,12,000</u>
	1,44,32,000
VAT at 13% >	<u>18,76,160</u>
	<u>1,63,18,160</u>

- c) According to Section 8(3), in the case of construction of Buildings for commercial purpose like House, Apartment or shopping etc. of value of Rs.50 lakhs and more the owner has to pay VAT on the same if the contractor does not issue VAT bill. Therefore when a person builds his building for own living, it is not for commercial purpose and no VAT is payable by the owner.

In the case of the other house also, since the value is less than Rs.50 lakhs, no VAT is payable.

- d) Total Duty payable is 13% on Rs.3,00,000 + Rs.1,00,000 = Rs.4,00,000 = Rs.52,000 only. Since VAT is payable on sale proceeds while sold at auction. But custom duty is payable on Rs.5,00,000 Rs.2,50,000. Since the car has been in Nepal for more than 5 years, as per clause 9(1) of the Custom Tariff schedule 1, but less than 10 years from manufacture the depreciation is to be calculated at 10% for 5 years i.e. 50%. Custom Duty paid on Rs.2,50,000/- @ 85% = Rs.2,12,500.

6.

- a) M/s Jagadish Impex Ltd. has imported 30 sets of Diesel Generating Sets (Harmonic code 8502.11.00) of 20 KW at a total price of Euro 498,645. The Customs officer wants to levy duty as per Chapter 85 of the Tariff Book which shows applicable custom duty @ 15 % but the executives of Jagadish Impex says the lower duty is applicable in this case. Further, along with the generating sets, Jagadish Impex also imported consumable spare parts for generator sets (Harmonic code 8503.00.00) at a total price of Euro 18,375. As a tax professional, you have to advise the correct duty applicable and compute the applicable customs duty, VAT and total amount payable to the Government. Exchange rate is Rs. 134.43 per Euro. 5
- b) What are the general rules/principles for the interpretation of the Harmonized System? 7
- c) Does the Finance Act, 2070 provide any rebate in customs duty for goods produced in and imported from India, goods produced in the People's Republic of China and goods produced in SAARC country? 3

Answer:

- a) Although Chapter 85 of the Tariff Book says applicable customs duty for harmonic code 8502.11.00 as 15% but the finance act 2070 states that for a generator with a capacity of 10KW or more, applicable customs duty is 1%. Hence the correct duty applicable is 1%.

For Generators (A)

Invoice Value	Exc. Rate	Total Value(Rs.)	Duty	Rate %	Amount(Rs.)
498,645	134.43	67032848	Customs	1	670,328
			VAT	13	88,01,413
			Total(A)		94,71,741

For Spare parts (B)

18,375	134.43	2470152	Customs	5	123,508
			VAT	13	337,176
			Total (B)		460,684
			Total (A +B)		99,32,425
			Declaration Fee (Rs. 500 Plus VAT)		565
			Total Payable		99,32,990

- b) Classification of goods in the nomenclature of Harmonized System shall be governed by the following principles:

1. The titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and provided such headings or notes do not otherwise require, according to the following provisions:
2. a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented; the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished b virtue of this rule), presented unassembled or disassembled.
b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance shall be according to the principles of Rule 3.
3. When by application of Rule 2(b) or for any other reason, goods are prima facie classifiable under two or more headings, classification shall be effected as follows:
a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the material or substances contained in mixed or composite goods or to part only of the items in a set up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
b) Mixtures, composite goods consisting of different materials or made up of different components and goods put up in sets for retail sale, which cannot be classified by reference to 3(a) shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.
4. Goods which cannot be classified in accordance with the above rules shall be classified under the
Heading appropriate to the goods to which they are most akin.
5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:
a) Camera cases, musical instruments cases, gun cases, drawing instrument cases, necklace cases and similar containers specially shaped or fitted to contain a specific article or set of articles, suitable for long term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not however apply to containers which give the whole its essential character.
b) Subject to the provisions of rule 5(a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.
6. For legal purposes, the classification of goods in the subheading of a heading shall be determined according to the terms of those sub headings and any related subheading notes and mutatis mutandis, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this

rule the relative section and chapter notes also apply, unless the context otherwise requires.

- c) Finance Act 2070 provides the following rebates in customs duty for the referred cases:
1. Goods produced in and imported from India into the country of Nepal shall be granted a rebate in the chargeable customs duty based on ad valorem (besides specific duty) 7% on the goods upto 30% and 5% on the above of it.
 2. Goods produced in the Peoples' Republic of China and imported through Tibet Autonomous Region under L/C shall be granted a rebate of 4% in the chargeable customs duty based on ad valorem.
 3. Goods produced in the SAARC country and imported, invoiced and shipped from the same country unde L/C shall be granted a rebate at a specified rate on specified goods under SAPTA agreement.

7.

- a) What are the penalties specified for committing the following offences as per Section 16(6) of the Excise Act, 2058. (12×0.5=6)

- i) Reassessment or additional assessment as per Section 7(4).
- ii) Engaged in selling and storing excisable goods or providing excisable services without license.
- iii) Failure to submit statement as per Section 10 Ka on time.
- iv) Failure to maintain undated accounts as per Section 10 Kha (1).
- v) Failure to maintain accounts approved by excise officer as per Section 10 Kha (2).
- vi) Failure to maintain books of accounts of the past six years as per Section 10 Kha (3).
- vii) Obstructing excise duty officer in determining excise duty as per Section 10 Gha (3).
- viii) If the content of alcohol is found deviated by more than one percentage point on inspection as per Section 10 Chha.
- ix) Failure to maintain stipulated ratio of output of excisable goods or services.
- x) Failure to comply with the provision of controlling selling and distribution of excisable goods as specified by the government as per Section 4 Gha.
- xi) Violating excise act and rules framed under this act.
- xii) Failure to collect or short collection of excise duty in Self Removal (Nishkashan) System.

- b) Who is the responsible person liable to pay excise duty under Excise Act, 2058? 4

Answer:

- a)
- i) 100 percent of resulting additional excises duties.
 - ii) Rupees Five thousand to fifteen thousand.
 - iii) 0.05 percent per day or Rs. 1000 per return whichever is higher.
 - iv) Rs. 10,000 for not maintaining up to date accounts and Rs. 5000 each time for obstructing the inspection.
 - v) Up to Rs.5000.
 - vi) Rs. 10,000
 - vii) Rs. 5000 each time.
 - viii) 100 percent of the revenue loss.
 - ix) 100 percent of the shortfall of excise duty.
 - x) Rs. 10,000 each time.

- xi) Rs. 1000 each time.
- xii) 100 percent of the not collected or short collected excise duty.

b)

- i) In case of goods or services produced in Nepal – Producer.
- ii) In case of Import of goods – Person mentioned in Bill of Lading, Airway Bill or application for checking.
- iii) Auction of excisable substance – Person accepting the auction.
- iv) Sale from duty free shop except liquor or cigarette if resold or used in any other purpose – Person reselling or reusing the goods.
- v) Change in status from not excisable goods or services to excisable goods or services – Person in ownership of goods.
- vi) Apart from above referred in a to e – Person specified by the department.

8. Answer the following questions:

(2×5=10)

- a) What is harmonized coding system? How are these determined in Nepal?
- b) What is liquor? Mention the conditions a producer of liquor should fulfill as per Excise Act.

Answer:

- a) Goods imported or exported are valued as per Harmonized System. As there could be multiple variation on the similar products, custom tariff are determined based on the harmonic code of the goods rather than their names. According to Section 89 of the Customs Act, if in determining the customs duty, there is a doubt as to in which heading or sub-heading of the harmonized system do any goods fall, the Custom Officer shall classify such goods in the heading or sub-heading as prescribed by the Director General.

There may be ambiguity as to which code a particular goods fall, in such case prior to the exportation or importation of any goods, exporter or importer submits and application to the prescribed committee also comprising an expert in the field concerned for the specification of the heading or sub-heading of commodity classification of such goods, the committee may, also examining a sample of such goods, prescribe the heading or sub-heading of such goods. The Director General and the committee shall, in prescribing a heading or sub-heading, respectively, so prescribe based on the authentic text of the harmonized system of the “World Customs Organization”.

For the purposes of prescribing the heading or sub-heading of any goods, advice of the concerned expert or national or international body may be sought.

- b) Section 2(Nga 1) of the Excise Duty Act has defined Liquor, as per which liquor means an alcoholic substance made by organic chemical reaction in decayed fruits or starchy materials, or otherwise, having more than 0.5% alcohol contents. Liquor includes rakshi, jand, chhyang, whiskey, rum, gin, brandy, vodka, beer, wine, sherry, cider, perry, mead, malt, industrial alcohol, rectified spirit, ENA (extra Neutral Alcohol) and heads spirit.

Every person holding license for producing liquor should fulfill the following conditions:

- Should produce liquor using the blending of spirit manufactured by patent steel plant.

- Must bottle liquor of 15, 25, 30, 40 and 50 UP power.
- Must bottle liquor of 70 UP power in pet bottles of 300 ml.
- Make arrangements for preservation of molasses, spirit, other raw materials.
- Properly labeling in each of the bottle before sending the items to the godown with batch number, serial number, trade mark, power and producers name.
- Should keep batch control register in the prescribed form.
- Should maintain records explicitly mentioning particulars thereof, of raw materials and water used at the time of fermentation for manufacturing wash.
- Should maintain records of the quantity and vat number of the wash to be distilled before pouring the wash ready for distillation into the wash distillation plant.
- No outsider other than staff of the distillery and brewery may enter into the place where the liquor is manufactured or where it is preserved.
- Should maintain the accounts of sales of liquor and excise duty chargeable on the sales in the format prescribed.