

The Suggested Answers for Part I of Paper – 5: Taxation are based on the provisions applicable for A.Y.2008-09, which is the assessment year relevant for November 2008 examination.

PAPER – 5: TAXATION

Answer all questions

Question 1

State with reasons, for any five out of the following six sub-divisions, whether the following statements are true or false having regard to the provisions of the Income-tax Act, 1961 for the Assessment Year 2008-09:

- (a) Compensation on account of disaster received from a local authority by an individual or his/her legal heir is taxable.
- (b) Filing of belated return under section 139(4) of the Income-tax Act, 1961 will debar an assessee from claiming deduction under sections 80-ID or 80-IE of the Act.
- (c) Rural branches of the co-operative banks are not allowed to claim provision for bad and doubtful debts.
- (d) Income deemed to accrue or arise in India to a non-resident by way of interest, royalty and fee for technical services is taxable in India irrespective of territorial nexus.
- (e) Depreciation is allowed only when it is claimed.
- (f) Capital gain of Rs.75 lakh arising from transfer of long term capital assets will be exempt from tax if such capital gain is invested in the bonds redeemable after three years, issued by NHA1 under section 54EC of the Act. (5 x 2 =10 Marks)

Answer

- (a) The statement is false.

As per section 10(10BC), any amount received or receivable as compensation by an individual or his/her legal heir on account of any disaster from the Central Government, State Government or a local authority is exempt from tax.

- (b) The statement is true.

As per section 80AC, the assessee has to furnish his return of income on or before the due date specified under section 139(1), to be eligible to claim deduction under, inter alia, section 80-ID or 80-IE.

(c) The statement is false.

The Finance Act, 2007 has amended sub-clause (a) of section 36(1)(viiia) to allow the co-operative banks to claim deduction for provision for bad and doubtful debts in respect of advances made by rural branches of such banks. However, the deduction should not exceed 10% of the aggregate average advances made by the rural branches of such banks computed in the prescribed manner.

(d) The statement is true.

Explanation to section 9 clarifies that income by way of interest, royalty or fee for technical services which is deemed to accrue or arise in India by virtue of clauses (v), (vi) and (vii) of section 9(1), shall be included in the total income of the non-resident, whether or not the non-resident has a residence or place of business or business connection in India.

(e) The statement is false.

According to the Explanation 5 to section 32(1), depreciation is mandatory. Therefore, depreciation has to be provided mandatorily while calculating business income, whether or not the assessee has claimed the deduction in respect of depreciation in computing his total income.

(f) The statement is false.

The exemption under section 54EC has been restricted, by limiting the maximum investment on or after 1.4.07 in long term specified assets (i.e. bonds of NHAI or RECL, redeemable after 3 years) to Rs.50 lakh during any financial year. Therefore, in this case, the exemption under section 54EC can be availed only to the extent of Rs.50 lakh.

Question 2

Dr. Smt. Niranjana, a resident individual, aged 60 years is running a clinic. Her Income and Expenditure Account for the year ending March 31st, 2008 is as under:

Expenditure	Amount (Rs.)	Income	Amount (Rs.)
To Medicine consumed	5,38,400	By Consultation and Medical charges	18,85,850
To Staff salary	3,80,000	By Income-tax refund (Principal Rs.5,000, interest Rs.450)	5,450
To Clinic consumables	1,10,000	By Dividend from units of UTI	10,500
To Rent paid	90,000	By winning from game show on T.V. net of TDS (TDS Rs. 16,830)	33,170
To Administrative expenses	2,55,000	By Rent	27,000

To Amount paid to scientific research association approved under section 35	1,50,000	
To Net profit	<u>4,38,570</u>	
	<u>19,61,970</u>	<u>19,61,970</u>

- (i) Rent paid includes Rs.30,000 paid by cheque towards rent for her residential house.
- (ii) Clinic equipments are:
- | | | |
|-------------|-----------------|---------------|
| 1. 4. 2007 | Opening W.D.V. | - Rs.5,00,000 |
| 7. 12. 2007 | Acquired (cost) | - Rs.2,00,000 |
- (iii) Rent received relates to property situated at Surat. Gross Annual Value Rs.27,000. The municipal tax of Rs.2,000, paid in December, 2007, has been included in "administrative expenses".
- (iv) She received salary of Rs.7,500 p.m. from "Full Cure Hospital" which has not been included in the "consultation and medical charges".
- (v) Dr. Niranjana availed a loan of Rs.5,50,000 from a bank for higher education of her daughter. She repaid principal of Rs.1,00,000, and interest thereon Rs.55,000 during the year 2007-08.
- (vi) She paid Rs.1,00,000 as tuition fee (not in the nature of development fees/ donation) to the university for full time education of her daughter.
- (vii) An amount of Rs.18,000 has also been paid by cheque on 27th March, 2008 for her medical insurance premium.

From the above, compute the total income and tax payable thereon by Dr. Smt. Niranjana for the Assessment year 2008-09. (20 Marks)

Answer

Computation of Total Income and Tax Liability of Dr. Niranjana for A.Y. 2008-09

Particulars	Amount (Rs.)	Amount (Rs.)	Amount (Rs.)
I Income from Salary			
Basic Salary (Rs.7,500 x 12)			90,000
II Income from house property			
Gross Annual Value (GAV)		27,000	
Less : Municipal taxes paid		2,000	
Net Annual Value (NAV)		<u>25,000</u>	
Less : Deduction under section 24 (@ 30% of Rs. 25,000)		7,500	17,500

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III	Income from profession			
	Net profit as per Income and Expenditure account		4,38,570	
	Less : Items of income to be treated separately			
	(i) Rent received	27,000		
	(ii) Dividend from units of UTI	10,500		
	(iii) Winning from game show on T.V. (net of TDS)	33,170		
	(iv) Income tax refund	5,450	76,120	
			<u>3,62,450</u>	
	Less : Allowable expenditure			
	Depreciation on Clinic equipments			
	on Rs.5,00,000 @ 15%	75,000		
	on Rs.2,00,000 @ 7.5%	15,000		
	(On equipments acquired during the year after September 2007, she is entitled to depreciation @ 50% of normal depreciation)			
	Additional deduction of 25% for amount paid to scientific research association (Since weighted deduction of 125% is available in respect of such payment)	37,500	1,27,500	
			<u>2,34,950</u>	
	Add: Items of expenditure not allowable while computing business income			
	(i) Rent for her residential accommodation included in Income and Expenditure A/c	30,000		
	(ii) Municipal tax paid relating to residential house at Surat included in administrative expenses	2,000	32,000	2,66,950
			<u>2,66,950</u>	
IV	Income from other sources			
	(a) Interest on income-tax refund		450	
	(b) Dividend from UTI	10,500		
	Less : Exempt under section 10(35)	10,500	Nil	
	(c) Winnings from the game show on T.V. (Rs.33,170 + Rs.16,830)		<u>50,000</u>	
				50,450
	Gross Total Income		<u>4,24,900</u>	

Less: Deductions under Chapter VI A			
(a)	Deduction under section 80C		
	Tuition fee paid to university for full time education of her daughter	1,00,000	
(b)	Deduction under section 80D		
	Medical insurance premium (maximum allowable upto Rs.15,000)	15,000	
(c)	Deduction under section 80E		
	Interest on loan taken for higher education is deductible	55,000	1,70,000
	Total income		<u>2,54,900</u>
Tax Payable			
	Tax @ 30% on winnings of Rs.50,000 from T.V. game show	15,000	
	Tax on balance income of Rs.2,04,900		
	On Rs.1,45,000	Nil	
	On next Rs.5,000 @10%	500	
	On Rs.54,900 @ 20%	10,980	11,480
	Add: Education cess @ 2%		530
	Add: Secondary and higher education cess @ 1%		265
	Total Tax payable		<u>27,275</u>
	Less: TDS		16,830
	Tax Payable		<u>10,445</u>
	Tax Payable (rounded off)		10,450

Notes:

- (i) The principal amount received towards income-tax refund will be excluded from computation of total income. Interest received will be taxed under the head "Income from other sources".
- (ii) Winnings from game show on T.V. should be grossed up for the chargeability under the head "Income from other sources" (Rs.33,170 + Rs.16,830). Thereafter, while computing tax liability, TDS of Rs.16,830 should be deducted to arrive at the tax payable. Winnings from game show are subject to tax @30% as per section 115BB.

Question 3

- (a) Mr. M is an area manager of M/s N. Steels Co. Ltd. During the financial year 2007-08, he gets the following emoluments from his employer:

Basic Salary	
Up to 31.8.2007	Rs. 20,000 p.m.
From 1.9.2007	Rs. 25,000 p.m.
Transport allowance	Rs. 2,000 p.m.
Contribution to recognised provident fund	15% of basic salary and D.A.
Children education allowance	Rs. 500 p.m. for two children
City compensatory allowance	Rs. 300 p.m.
Hostel expenses allowance	Rs. 380 p.m. for two children
Tiffin allowance (actual expenses Rs. 3,700)	Rs. 5,000 p.a.
Tax paid on employment	Rs. 2,500

Compute taxable salary of Mr. M for the Assessment year 2008-09. (6 Marks)

- (b) Mr. X owns one residential house in Mumbai. The house is having two units. First unit of the house is self occupied by Mr. X and another unit is rented for Rs.8,000 p.m. The rented unit was vacant for 2 months during the year. The particulars of the house for the previous year 2007-08 are as under:

Standard rent	Rs. 1,62,000 p.a.
Municipal valuation	Rs. 1,90,000 p.a.
Fair rent	Rs. 1,85,000 p. a
Municipal tax	15% of municipal valuation
Light and water charges	Rs. 500 p.m.
Interest on borrowed capital	Rs. 1,500 p.m.
Lease money	Rs. 1,200 p.a.
Insurance charges	Rs. 3,000 p.a.
Repairs	Rs. 12,000 p.a.

Compute income from house property of Mr. X for the A.Y. 2008-09. (9 Marks)

Answer

- (a) Computation of taxable salary of Mr. M. for the Assessment Year 2008-09

Particulars	Amount (Rs.)	Amount (Rs.)
Basic Salary (Rs.20,000 x 5) +(Rs.25,000 x 7)		2,75,000
Transport allowance (Rs.2,000 x 12)	24,000	
Less : Exempt under section 10(14) (Rs.800 x 12)	9,600	14,400

Children education allowance (Rs.500 x 12)	6,000	
Less: Exempt under section 10(14) (Rs.100 x 2 x 12)	2,400	3,600
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City Compensatory Allowance (Rs.300 x 12)		3,600
Hostel Expenses Allowance (Rs.380 x 12)	4,560	
Less: Exempt under section 10(14) (Rs.300 x 2 x 12 i.e. Rs.7,200 but restricted to the actual allowance of Rs.4,560)	4,560	Nil
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Tiffin allowance (fully taxable)		5,000
Tax paid on employment		2,500
Employee's contribution to R.P.F in excess of 12% of salary (i.e 3% of Rs.2,75,000)		8,250
Gross Salary		<hr/> 3,12,350
Less : Tax on employment under section 16(iii)		2,500
Taxable salary		<hr/> 3,09,850

Notes:

- (i) The question states that contribution to recognised provident fund is at 15% of Basic salary + D.A. However, since the amount or rate of D.A. is not given in the question, contribution to recognised provident fund has been taken as 15% of basic salary.
- (ii) Professional tax paid by employer should be included in the salary of Mr. M as a perquisite since it is discharge of monetary obligation of the employee by the employer. Thereafter, deduction of professional tax paid is allowed to the employee from his gross salary.
- (b) Computation of Income from house property for A.Y. 2008-09

(A) Rented unit (50% of total area – See Note 1 below)

Step I - Computation of Annual letting Value	Rs.	Rs.
Municipal valuation (Rs.1,90,000 x ½)	95,000	
Fair rent (Rs.1,85,000 x ½)	92,500	
Standard rent (Rs.1,62,000 x ½)	81,000	
Annual letting value is higher of Municipal valuation and fair rent, but restricted to standard rent	81,000	

Step II - Actual Rent

Rent receivable for the whole year (Rs.8,000 x 12)	96,000
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Step III – Computation of Gross Annual Value

Actual rent received owing to vacancy (Rs.96,000 – Rs.16,000)	80,000
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Since, owing to vacancy the actual rent received is lower than the annual letting value, the actual rent received is the Gross Annual value

Gross annual value	80,000
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Less: Municipal taxes (15% of Rs.95,000)	14,250
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Net Annual value	<u>65,750</u>
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Less : Deductions under section 24

(i) 30% of net annual value	19,725
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(ii) Interest on borrowed capital (Rs.750 x 12)	9,000	28,725
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Taxable income from let out portion	<u>37,025</u>
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(B) Self occupied unit (50% of total area – See Note 1 below)

Annual value	Nil
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Less : Deduction under section 24

Interest on borrowed capital (Rs.750 x 12)	9,000	-9,000
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Income from House property	<u>28,025</u>
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Notes:

- (1) It is assumed that both the units are of identical size. Therefore, the rented unit would represent 50% of total area and the self-occupied unit would represent 50% of total area.
- (2) No deduction will be allowed separately for light and water charges, lease money paid, insurance charges and repairs.

Question 4

- (a) Mr. P, a resident individual, furnishes the following particulars of his income and other details for the previous year 2007-08:

	Rs.
(i) Income from salary	18,000
(ii) Net annual value of house property	70,000
(iii) Income from business	80,000
(iv) Income from speculative business	12,000

(v) Long term capital gain on sale of land	15,800
(vi) Loss on maintenance of race horse	9,000
(vii) Loss on gambling	8,000

Depreciation allowable under the Income-tax Act comes to Rs.8,000 for which no treatment is given above.

The other details of unabsorbed depreciation and brought forward losses are:

	Rs.
(i) Unabsorbed depreciation	9,000
(ii) Loss from speculative business	16,000
(iii) Short term capital loss	7,800
(iv) Unrealised rent	17,000

Compute the gross total income of Mr. P, for the Assessment year 2008-09, and the amount of loss that can or cannot be carried forward. (6 Marks)

- (b) Mr. Prasad is the Karta of Hindu undivided family. The family declares gross total income Rs. 4,00,000 for the assessment year 2008-09. The gross total income includes taxable long term capital gain Rs. 65,000 and short term capital gain Rs. 35,000 which is taxable @ 10% under section 111A of the Income-tax Act, 1961. The details of HUF fund investment made during the year 2007-08 are:

	Rs.	Rs.
(i) Amount deposited in public provident fund in the name of members of HUF		10,000
(ii) Medical insurance premium paid by cheque –		
a) in the name of Karta	4,000	
b) in personal name "Prasad"	5,000	9,000
(iii) Contribution made to –		
(a) Indira Gandhi Memorial Trust	7,000	
(b) Delhi University (declared as an institution of national eminence)	3,000	
(c) Zila Saksharta Samiti	5,000	
(d) An approved charitable institute	30,000	
(e) Government for the purpose of promoting family planning	10,000	
(f) Hanuman Temple in Mohalla	20,000	75,000

Compute the total income of HUF chargeable to tax for the Assessment year 2008-09

(8 Marks)

Answer

(a) Computation of Gross Total Income of Mr. P for the A.Y. 2008-09

	Rs.	Rs.
(i) Income from salary		18,000
(ii) Income from House Property		
Net annual value	70,000	
Less : Deduction under section 24 (30% of Rs.70,000)	21,000	49,000
(iii) Income from business and profession		
(a) Profit from business	80,000	
Less : Current year depreciation	8,000	
	72,000	
Less : Unabsorbed depreciation	9,000	63,000
(b) Income from speculative business	12,000	
Less : Brought forward loss from speculative business	12,000	Nil
(Balance loss of Rs.4,000 (i.e. Rs.16,000 – Rs.12,000) can be carried forward to the next year)		
(iv) Income from capital gain		
Long term capital gain on sale of land	15,800	
Less : Brought forward short term capital loss	7,800	8,000
Gross total income		1,38,000

Amount of loss to be carried forward to the next year

Particulars	Rs.
Loss from speculative business (to be carried forward as per section 73)	4,000
Loss on maintenance of race horses (to be carried forward as per section 74A)	9,000

Notes:

- (i) Loss on gambling can neither be set-off nor be carried forward.
- (ii) It has been assumed that the brought forward losses relate to P.Y. 2004-05 or thereafter. Only then speculative business loss can set off against income from speculative business of the current year and the balance loss can be carried forward to A.Y. 2009-10. It may be noted that speculative business loss can be carried forward for a maximum of four years as per section 73(4).

(b) Computation of Total Income of HUF for the A.Y. 2008-09

Particulars	Amount (Rs.)	Amount (Rs.)
Gross total income		4,00,000
Less : Deduction under section 80C to 80U		
(a) under section 80C on investment of HUF fund in PPF in the name of members of HUF	10,000	
(b) under section 80D		
Medical insurance premium paid by cheque		
(i) in the name of Karta	4,000	
(ii) in personal name "Prasad"	<u>5,000</u>	9,000
(c) under section 80G (as per working note 2)	<u>30,550</u>	49,550
Total income		<u>3,50,450</u>

Notes:

1. Medical insurance premium paid by cheque in the personal name of Mr. Prasad is also allowable under section 80D, since the premium payment has been made out of HUF funds.

2. Computation of deduction under section 80G

(a) Adjusted gross total income	Rs.	Rs.
Gross total income		4,00,000
Less : Taxable long term & short term capital gain	1,00,000	
Deductions u/s 80C to 80U except u/s 80G	<u>19,000</u>	1,19,000
		<u>2,81,000</u>
10% of adjusted gross total income		28,100
(b) Gross qualifying amount		
Donation to Indira Gandhi Memorial trust		7,000
Donation to Delhi University		3,000
Donation to Zila Saksharta Samiti (it is assumed that all the conditions for claiming deduction are satisfied)		5,000
Donation to approved Charitable Institute		30,000
Donation to Government for promoting family planning		10,000
		<u>55,000</u>

(c) Net qualifying amount	Rs.	Rs.
Donation to Indira Gandhi Memorial trust		7,000
Donation to Zila Saksharta Samiti		5,000
Donation to Delhi University		3,000
Donation to the following restricted to 10% of adjusted gross total income		
(i) Government for promoting family planning is restricted to Rs.28,100 or Rs.10,000, whichever is lower		10,000
(ii) Approved charitable institution is restricted to (Rs.28,100 – Rs.10,000) = Rs.18,100 or Rs.30,000, whichever is lower		18,100
		43,100
(d) Deduction under section 80G		
Donation to Indira Gandhi Memorial trust @ 50% of Rs. 7,000		3,500
Donation to Delhi University @ 100%		3,000
Donation to Zila Saksharta Samiti @ 100%		5,000
Donation to Government for promoting family planning (100 % of Rs. 10,000)		10,000
Donation to approved charitable institute (50% of Rs.18,100)		9,050
		30,550

Question 5

Answer any four of the following five sub-divisions with regard to the provisions of the Income-tax Act, 1961:

- (a) Mrs. X, an individual resident woman, wanted to know whether income-tax is attracted on sale of gold and jewellery gifted to her by her parents on the occasion of her marriage in the year 1979 which was purchased at a total cost of Rs.2,00,000?
- (b) Can an Assessing Officer make a request for withdrawal of approval which was granted to an institution by the National Committee for carrying out any eligible project or scheme, under section 35AC of the Income-tax Act, 1961?
- (c) Explain the concept of "Marginal Relief" under the Income-tax Act, 1961.

- (d) Briefly explain provisions of section 80U of the Income-tax Act, 1961, in respect of deduction available on permanent physical disability.
- (e) Explain with brief reason whether the return of income can be revised under section 139(5) of the Income-tax Act, 1961 in the following cases:
- (i) Defective or incomplete return filed under section 139(9).
 - (ii) Belated return filed under section 139(4).
 - (iii) Return already revised once under section 139(5).
 - (iv) Return of loss filed under section 139(3). (4 x 4 = 16 Marks)

Answer

- (a) The definition of capital asset under section 2(14) includes jewellery. Therefore, capital gains is attracted on sale of jewellery, since jewellery is excluded from personal effects. The cost to the previous owner or the fair market value as on 1/4/1981, whichever is more beneficial to the assessee, would be treated as the cost of acquisition. Accordingly, in this case, long term capital gain @ 20% will be attracted in the year in which the gold and jewellery is sold by Mrs.X.

- (b) The National Committee can withdraw the approval to an association or institution if it is satisfied that the project or the scheme (notified as an eligible project or scheme) is not being carried on in accordance with all or any of the conditions subject to which approval was granted or if the association/institution has failed to furnish to the National Committee, after the end of each financial year, a progress report within the prescribed time in the prescribed form. The National Committee should, however, give a reasonable opportunity to the concerned association or institution of showing cause against the proposed withdrawal.

A copy of the order withdrawing the approval or notification should be forwarded to the Assessing Officer having jurisdiction over the concerned association or institution. Therefore, the Assessing Officer is not empowered to make a request for withdrawal of the approval which was granted to an institution by the National Committee under section 35AC.

- (c) Marginal Relief

In case of individuals/HUFs/AOPs/BOIs having a total income exceeding Rs.10,00,000, the additional amount of income-tax payable (together with surcharge) on the excess of income over Rs.10,00,000 should not be more than the amount of income exceeding Rs.10,00,000. This is called 'Marginal relief.'

Illustration: Suppose Mr. X has total income of Rs.10 lakh.

$$\begin{aligned} \text{Tax on this income} &= \text{Rs.0} + 10\% \text{ of Rs.40,000} + 20\% \text{ of Rs.1,00,000} + 30\% \text{ of} \\ &\quad \text{Rs.7,50,000} \\ &= \text{Rs.2,49,000.} \end{aligned}$$

Surcharge is not attracted on this tax since the total income does not exceed Rs.10 lakh.

However, if his total income is Rs.10,30,000, then

Tax on this income = Rs.0 + 10% of Rs.40,000 + 20% of Rs.100,000 + 30% of Rs.780,000

= Rs.2,58,000.

Add: Surcharge = Rs 25,800 [10% of Rs.2,58,000]

Rs 2,83,800

On comparing the two situations, it is seen that for Rs.30,000 [i.e. Rs.10,30,000 – Rs.10,00,000] increase in the total income, the tax liability including surcharge has increased by Rs.34,800 [i.e. Rs.2,83,800 – Rs.2,49,000].

Marginal relief = Rs.34,800 – Rs.30,000 = Rs.4,800

Tax payable = Rs.2,49,000 + Rs.30,000 = Rs.2,79,000

This concept of marginal relief is also applicable in the case of firms and companies w.e.f. A.Y.2008-09. Marginal relief is available in case of firms/companies having a total income exceeding Rs.1 crore i.e. the additional amount of income-tax payable (together with surcharge) on the excess of income over Rs.1 crore should not be more than the amount of income exceeding Rs.1 crore.

- (d) Deduction under section 80U in case of a person with disability
- (i) Section 80U harmonizes the criteria for defining disability as existing under the Income-tax Rules with the criteria prescribed under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.
 - (ii) This section is applicable to a resident individual, who, at any time during the previous year, is certified by the medical authority to be a person with disability. A deduction of Rs.50,000 in respect of person with disability and Rs.75,000 in respect of a person with severe disability (having disability over 80%) is allowable under this section.
 - (iii) The benefit of deduction under this section has also been extended to persons suffering from autism, cerebral palsy and multiple disabilities.
 - (iv) The assessee claiming a deduction under this section shall furnish a copy of the certificate issued by the medical authority in the form and manner, as may be prescribed, alongwith the return of income under section 139, in respect of the assessment year for which the deduction is claimed.
 - (v) Where the condition of disability requires reassessment, a fresh certificate from the medical authority shall have to be obtained after the expiry of the period mentioned in the original certificate in order to continue to claim the deduction.

- (e) Any person who has furnished a return under section 139(1) or in pursuance of a notice issued under section 142(1) can file a revised return if he discovers any omission or any wrong statement in the return filed earlier. Accordingly:-
- (i) A defective or incomplete return filed under section 139(9) cannot be revised. However, the defect can be removed.
 - (ii) A belated return filed under section 139(4) cannot be revised. Only a return furnished under section 139(1) or in pursuance of a notice issued under section 142(1) can be revised.
 - (iii) A return revised earlier can be revised again as the first revised return replaces the original return. Therefore, if the assessee discovers any omission or wrong statement in such a revised return, he can furnish a second revised return within the prescribed time i.e. within one year from the end of the relevant assessment year or before the completion of assessment, whichever is earlier.
 - (iv) A return of loss filed under section 139(3) is deemed to be return filed under section 139(1), and therefore, can be revised under section 139(5).

Question 6

Answer any five of the following:

- (a) Can we say that levy of VAT will have effect on retail price of goods?
- (b) Explain as to how and when the amendments made in Finance Bill, in respect service tax matters come into force?
- (c) Who is responsible to pay service-tax when the recipient of sponsorship services is located outside India?
- (d) Whether "free services" after sale of motor vehicles, given by the authorized dealers, for which they are reimbursed by the vehicle manufacturers, are subject to service tax?
- (e) Who is liable to pay E-payment of service tax?
- (f) Whether life insurer carrying on life insurance business has option to calculate service tax at different rate?
(2 x5 = 10 Marks)

Answer

- (a) A persistent criticism of the VAT form has been that since the tax is payable on the final sale price, the VAT usually increases the prices of the goods. However, VAT does not have any inflationary impact as it merely replaces the existing equal sales tax. It may also be pointed out that with the introduction of VAT, the tax impact on raw material is to be totally eliminated. Therefore, there may not be any increase in the prices.
- (b) Amendments made by the Finance Bill, in respect of service tax matters, come into force from the date of enactment of the Finance Bill i.e., the date on which the Finance Bill receives the assent of the President of India. However, wherever it is specifically provided so in the Finance Bill, certain amendments like new taxable services introduced

vide the Bill and changes made in the scope of existing taxable services become effective from a date to be notified after the enactment of the Finance Bill.

- (c) As per rule 2(1)(d)(vii) of the Service Tax Rules, 1994, amended vide Notification No. 1/2007 ST dated 01.03.2007, in relation to sponsorship service provided to any body corporate or firm located in India, the person liable to pay service tax is the body corporate or firm, as the case may be, who receives such sponsorship service. However, where the recipient of sponsorship services (assuming the recipient of service to be a body corporate or firm) is located outside India, the service provider will be responsible to pay service tax.

Note: The situation covered by the question is that of an export of service. Service tax is not liable to be paid when a taxable service is exported in terms of Export of Service Rules, 2005.

- (d) Yes, "Free Services" of motor vehicles (where the customer does not pay any charges), the service charges of which are reimbursed by the vehicle manufacturer are subject to service tax.
- (e) With effect from 01.10.2006, the assessee who has paid service tax of Rs.50,00,000/- or above in the preceding financial year or has already paid service tax of Rs.50,00,000/- in the current financial year has to compulsorily deposit the service tax liable to be paid by him electronically, through internet banking.
- (f) An insurer carrying on life insurance business who is liable for paying service tax has the option to pay an amount calculated @ 1% of the gross amount of premium charged by him towards the discharge of his service-tax liability instead of paying service-tax @ 12%.

However, such option is not available in cases where:

- (i) the entire premium paid by the policy holder is only towards risk cover in life insurance; or
- (ii) the part of the premium payable towards risk cover in life insurance is shown separately in any of the documents issued by the insurer to the policy holder.

Question 7

- (a) Mr. X, the owner of a property had entered into an agreement with a bank. The agreement was entered into on 1st April, 2007 to give ground floor of the property on rent on monthly rent of Rs. 75,000 p.m. The bank had taken the property for commercial purpose. Explain whether Mr. X is liable to pay service tax on the transaction with bank?
- (b) Mr. Y, a consulting engineer raised a bill of Rs. 2,24,720 (including service tax) on his client for consulting services rendered by him in the month June, 2007. A partial payment of Rs. 1,68,540 was received by Mr. Y in the month March, 2008. Compute the service tax amount payable by Mr. Y and the due date by which service tax can be deposited. (3 x 2 = 6 Marks)

Answer

- (a) With effect from 01.06.2007, services of renting of immovable property have been made taxable. Service tax is exempt in respect of the taxable services of aggregate value not exceeding Rs.10 lakh in the year 2008-09 if the turnover of taxable services from one or more premises does not exceed Rs.10 lakh during the preceding year 2007-08. However, for the year 2007-08 (the period in question) the limit of turnover of taxable services was Rs.8 lakh, i.e. service tax would be exempt till Rs.8 lakh in the year 2007-08 only when the turnover of taxable services from one or more premises in the year 2006-07 did not exceed Rs.8 lakh.

The turnover of taxable service of Mr. X is mathematically zero in the year 2006-07 (which is less than Rs.8 lakh) as the agreement to render services was entered only in the year 2007-08. Therefore, it appears that Mr. X is not liable to pay any service tax in the year 2007-08 provided no other taxable services aggregating to more than Rs.8 lakh are rendered by him in the year 2006-07.

- (b) The service tax is payable to the Government only when payment is received, though the service provider charges service tax in his bill as and when the service is provided.

In the given case, amount of service tax liable to be paid by Mr. Y

$$= \frac{\text{Gross Amount} \times \text{Rate of tax}}{(100 + \text{Rate of tax})}$$

$$= \frac{1,68,540 \times 12.36}{112.36} = 18,540$$

Mr. Y is required to deposit service tax of Rs.18,540 on or before 31.03.2008.

Note: Rate of service tax is taken to be inclusive of 2% education cess and 1% secondary and higher education cess.

Question 8

Answer any three of the following:

- (a) Can service-tax return be revised by a person?
 (b) Explain "Input Tax Credit" in context of VAT.
 (c) What are the exceptions to input tax credit?
 (d) What are the due dates for payment of Service tax? (3 x 3 = 9 Marks)

Answer

- (a) An assessee can submit a revised return, in Form ST-3, in triplicate, to correct a mistake or omission, within a period of 90 days from the date of submission of the original return.
 (b) The Value Added Tax (VAT) is a multistage tax levied as a proportion of the value added (i.e. sales minus purchases) which is equivalent to wages plus interest, other costs and profits. The method of computing VAT on proportion of value added is taxes collected on sales less tax paid on purchases by a registered dealer over a period.

Accordingly, input tax credit means the amount of tax allowed to set off/ reduced to a dealer against the amount of output tax.

- (c) Input tax credit may not be allowed in the following circumstances:
- (i) purchases from unregistered dealers;
 - (ii) purchases from registered dealer who opt for composition scheme under the provisions of the Act;
 - (iii) purchase of goods as may be notified by the State Government;
 - (iv) purchase of goods where the purchase invoice is not available with the claimant or there is evidence that the same has not been issued by the selling registered dealer from whom the goods are purported to have been purchased;
 - (v) purchase of goods where invoice does not show the amount of tax separately;
 - (vi) purchase of goods, which are being utilized in the manufacture of, exempted goods;
 - (vii) goods in stock, which have suffered tax under an earlier Act but under VAT Act they are covered under exempted items;
 - (viii) purchase of goods used for personal use/consumption or provided free of charge as gifts (partial credit is available in the State of Maharashtra);
 - (ix) goods imported from outside the territory of India (commonly known as high seas purchases);
 - (x) goods imported from other States viz. inter-State purchases.

Note: Any three points can be given in the above answer

- (d) Rule 6(1) of Service Tax Rules, 1994 provides that service tax on the value of taxable services received shall be paid to the credit of the Central Government in the following manner:-

Assessee	Duration of payment	Due date of payment
Individual, Proprietary concern or a partnership firm	Quarterly	(i) by the 6th day of the month, if the duty is deposited electronically through internet banking; and (ii) by the 5th day of the month, in any other case, immediately following the quarter in which the payments are received, towards the value of taxable services.*

Any other Assessee	Monthly	(i) by the 6th day of the month, if the duty is deposited electronically through internet banking; and (ii) by the 5th day of the month, in any other case, immediately following the calendar month in which the payments are received, towards the value of taxable services.*
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*Also, the service tax on the value of taxable services received during the month of March, or the quarter ending in March, as the case may be, shall be paid to the credit of the Central Government by the 31st day of March of the calendar year.