

## PAPER – 5: TAXATION

### QUESTIONS

1. State with reasons whether the following statements are true or false [A.Y. 2009-10] –
  - (a) The accounts of the trust for the previous year should be audited if the total income exceeds Rs.1,00,000.
  - (b) Gift received on the occasion of marriage from non-relatives is chargeable to tax under the head "Income from other sources".
  - (c) In case the parents are non residents, the income of the minor child who is resident in India, should be clubbed with the income of the non resident parents.
  - (d) The provisions of section 79 are applicable only in case of carry forward of losses.

#### Residential Status and Scope of total income

2. The following are the particulars of income of Mr. Umesh for the previous year 2008-09:

Particulars	Rs.
(a) Rent from a property in Mumbai received in New York	1,90,000
(b) Income from a business in New York controlled from Chennai	1,50,000
(c) Income from a business in USA controlled from Coimbatore	2,60,000
(d) Rent from a property in Coimbatore received there but subsequently remitted to India	85,000
(e) Interest from deposits with an Indian company received in Coimbatore	25,000
(f) Past untaxed profits for the year 2006-07 of a business in Coimbatore remitted to India during the previous year 2008-09	50,000
(g) Gifts received from his parents-in-law	1,60,000
(h) Gifts received from friends	40,000

Compute his income for the assessment year 2009-10 if he is:

- (i) Resident and ordinarily resident in India,
- (ii) Resident but not ordinarily resident in India,
- (iii) Non-resident in India.

#### Incomes which do not form part of total income

3. Examine the taxability of the following:
  - (a) PQ, a film director, is awarded a cash prize of Rs.1 lakh under the scheme of State award for films instituted by the Central Government. PQ claims this to be exempt from tax as a casual receipt.

- (b) Ram, Shyam and Mohan are three medical doctors who have formed a partnership to establish and run a nursing home. The profits of the nursing home for the year amounted to Rs.25,00,000, which is claimed by the partners as exempt under the Income-tax Act.
- (c) Ravi is the coparcener of a Hindu Undivided Family consisting of himself, his father and two elder brothers. The assets of the family have not yet been partitioned. Out of the rental income of the family, Ravi's father sends Ravi Rs.20,000 to enable him to maintain his family. Besides, the above receipt, Ravi has received a salary of Rs. 2,60,000 from his employer.
- (d) Manish suffered a loss of Rs.1,00,000 due to loss of stock because of Tsunami, out of which a sum of Rs.80,000 was allowed as deduction. He received a sum of Rs. 2,00,000 from Central Government on account of the disaster occurred.

Incomes which do not form part of total income

4. Explain the method of determining the amount of expenditure in relation to income not includible in total income.

Income from house property

5. Rohit owns two houses. Relevant details are given below –

	House I	House II
Let out	April 1, 2008 to June 30, 2008 (rent being Rs.8,000 per month)	Jul 1, 2008 to March 31, 2009 (rent being Rs. 15,000 per month)
Self-occupied	Jul 1, 2008 to March 31, 2009	April 1, 2008 to June 30, 2008
	Rs.	
Municipal valuation per annum (a)	90,000	1,50,000
Fair Rent per annum (b)	85,000	1,20,000
Standard rent per annum (c)	80,000	1,25,000
Rent of let out period (d)	25,000	1,35,000
Interest on borrowed capital	5,000	45,000
Municipal tax paid	15,000	25,000

Assuming that income of Rohit from business is Rs.6,00,000 (he does not have any other income) and he deposits Rs.70,000 in public provident fund. Find out his total income and tax liability for the assessment year 2009-10.

### Income from House Property

6. How is income from self occupied property or property meant for owner occupation, but remaining wholly or partly unoccupied computed? Discuss.

### Profits and gains of business or profession

7. Ramesh owns the following commercial vehicles:
- (i) 3 light commercial vehicles – One for 8 months and 11 days, one for 11 months and 2 days and one for 7 months and 29 days.
  - (ii) 2 heavy goods vehicles – One for 9 months and 5 days and the other for 4 months.
  - (iii) 1 medium goods vehicle – One for 3 months and 15 days.
- (a) Compute the income from business if Ramesh opts for the scheme under section 44AE. You are also required to compute his tax liability for the assessment year 2009-10, if he deposits Rs.15,000 in PPF Account during the previous year.
- (b) What will be the income if the trucks were not used for business for one month during the year due to strike?

### Profits and gains of business or profession

8. M/s. Sigma Pvt. Ltd. furnishes the details of the following expenditure incurred during the year 2008 -09:

Nature of payment	Amount (Rs.)	Details of tax deduction
a. Contract payment	2,65,000	Tax not deducted at source
b. Salary	6,50,000	Tax not deducted at source
c. Rent	12,00,000	Tax deducted at source on 31-12-2008. Actual remittance made on 31-03-2009.
d. Interest	5,00,000	Tax deducted only on 01-04-2009 and remitted on 07-04-2009.
e. Professional charges	7,00,000	Liability towards this expense was accounted in the books on 31.03.2009 and TDS was remitted on 18.11.2009.

Advise the company on the allowability of the above expenses for the A.Y.2009-10.

9. State with reasons whether the following statements are true or false [A.Y. 2009-10] -
- (i) An assessee can claim the additional depreciation @ 20% over and above the normal depreciation for new plant and machinery acquired and installed in the trading concern.
  - (ii) All dividend incomes are exempt under section 10(34).

- (iii) An individual repays a sum of Rs.25,000 towards principal and Rs.15,000 as interest in respect of loan taken from a bank for pursuing eligible higher studies, the deduction allowable under section is Rs.40,000.
- (iv) Loss under the head house property and unabsorbed depreciation can be carried forward even if return is not filed in accordance with the provisions of section 139(3).

#### Salaries

10. Raman has been in the service of a private company since 1<sup>st</sup> January, 1993, in Chennai. During the financial year ending 31-3-2009, he received from the company, salary Rs.15,000 p.m. dearness allowance Rs.3,000 p.m., city compensatory allowance Rs.400 p.m., entertainment allowance Rs.1,500 per month and house rent allowance Rs.5,000 p.m. Raman resides in the house property owned by his HUF for which he pays a rent of Rs.5,500 p.m. Raman has been in receipt of entertainment allowance from the company since January, 1993.

Raman contributes Rs.2,000 p.m. to the recognised provident fund. The company is also contributing an equal amount. Raman retires from the service of the company on 31-12-2008 when he was paid a gratuity of Rs.95,000 and pension of Rs.8,000 p.m. He is not covered under the Payment of Gratuity Act, 1972. On 1-2-2009, he got one-half of the pension commuted and received Rs.1,95,000 as commuted pension. He also received Rs.4,00,000 as the accumulated balance of the recognised provident fund.

Compute his income under the head salary for the A.Y. 2009-10.

#### Capital Gains

11. Nakul acquired a plot of land on 8.7.1993 for Rs.8,00,000, which was sold 28.2.2009 for Rs.40,00,000. The expenses of transfer were Rs.85,000.

Nakul made the following investments on 10.3.2009 from the proceeds of the above plot:

- 1. Bonds of National Highways Authority of India redeemable after a period of 3 years Rs.6,00,000.
- 2. Deposits under Capital Gain Scheme for purchase of a residential house as he does not own any house Rs.15,00,000.

Compute the capital gain chargeable to tax for assessment year 2009-10.

[Cost Inflation Index for F.Y.2008-09 – 582 and F.Y.1993-94 – 244]

Set-off and Carry forward of losses

12. (a) Shiv furnishes the following particulars of his income for the P.Y. 2008-09:

Particulars	Rs.
(i) Business income (before providing for depreciation)	1,80,000
(ii) Depreciation	90,000
(iii) Income from house property (computed)	80,000
(iv) Income from other sources	6,000
The following information is also available -	
Brought forward loss relating to P.Y.2007-08	
Business loss	50,000
Loss from house property	45,000

Compute the total income of Shiv for the assessment year 2009-10.

(b) From the following details, compute the Gross Total Income of Mr. Manas for the A.Y.2009-10:

Particulars	Rs.
1. Taxable income from salary	95,000
2. Income from let-out house property House 'A'	1,50,000
3. Loss from self-occupied house property House 'B'	(1,65,000)
4. Short-term capital gain	50,000
5. Long-term capital loss	(15,000)
6. Interest on securities (Gross)	10,000

Income from other sources

13. Ms. Roshni, who draws a salary of Rs.18,000 p.m. received the following gifts during the previous year 2008-09 -

- (i) Gift of Rs.3,00,000 on 17-8-2008 from her best friend.
- (ii) Gift of gold jewellery worth Rs.7,00,000 on 14-9-2008 from her fiancée.
- (iii) Gifts of Rs.80,000 each received from her 3 friends on the occasion of her marriage on 13-12-2008.
- (iv) Gift of Rs.70,000 on 14-11-2008 from her mother's brother.
- (v) Gift of Rs.40,000 on 15-12-2008 from her father's sister.
- (vi) Gift of Rs.50,000 from her husband's friend on 1-11-2008.
- (vii) Gift of Rs.15,000 on 2-02-2008 from her father's friend.

(viii) Gift of Rs.25,000 on 2-02-2008 from her sister's mother-in-law.

(ix) Gift of Rs.51,000 from her husband's sister.

Compute her gross total income for the assessment year 2009-10.

#### Deductions from Gross Total Income

14. Anand carries on his proprietary business with three industrial undertakings. One of the unit is eligible for deduction under section 80-IA, suffered loss in the initial year and derives profit in the later year. The other two non-eligible units earn profit in all the years. Advise how deduction under section 80-IA should be computed.

#### Computation of total income and tax liability of an individual

15. The following are the particulars of the income of Mr. Pandey, a Government servant, for the year ended 31.3.2009.

(a) Salary at Rs.25,000 per month.

(b) He contributed @ 10% to his Provident Fund to which the Government contributed an equal amount.

(c) He owns two flats one of which is let out at Rs.5,000 p.m. and the other is occupied by him for residence, the annual rental value of which is Rs.40,000. He has paid Rs.2,000 as ground rent and insurance charge in respect of the first flat and Rs.1,000 in respect of the second. The municipal taxes paid by him in respect of the two flats amounted to Rs.800 and Rs.850 respectively.

(d) He received during the year Rs.7,000 as interest on Government securities and Rs.2,800 as dividend from an Indian company. He has insured his life and pays an annual premium of Rs.35,000 on the policies.

Ascertain the total income and the tax payable by Mr. Pandey for the A.Y.2009-10.

#### Computation of Total Income

16. From the following information submitted by Rajan the Karta of a HUF consisting of four members viz., Rajan, Siya, Tina and Uday sharing the income equally, compute (A) the Total Income of the HUF and its members; (B) the tax liability of the HUF and its members for the assessment year 2009-10:

Particulars	Amount (Rs.)
1 Rent received from a joint family property let out	30,000
2 Salary received by Siya from P Ltd.	1,78,000
3 Profit from Business of HUF	2,00,000
4 Long-term capital gain on sale of gold belonging to HUF	50,000

5	Short-term capital gain on sale of shares on 5-11-2008 through a recognized stock exchange held in the name of Rajan (purchased out of family funds)	30,000
6	Dividends received from units held in the name of Rajan (purchased out of family funds (Gross))	15,000
7	Share of profit from a firm in which the Karta was a partner representing the HUF	55,000
8	Donation to National Defence Fund (out of family funds)	20,000
9	Director's remuneration received by Tina on account of his personal qualifications from a company in which shares are held by Rajan, the Karta (shares purchased out of family fund)	1,95,000
10	Dividend received by Rajan on units of equity oriented fund purchased out of his own funds	18,000
11	Short – term capital gains on sale of above units on 15.11.2008 through recognised stock exchange	1,75,000
12	Amount deposited in PPF account in the name of Karta, (out of family funds)	50,000

#### Advance Tax

17. Discuss the provisions about the interest chargeable
- under section 234B for defaults in payment of Advance Tax
  - under section 234C for deferment of advance tax

#### Tax deducted at source

18. Examine the applicability of tax deduction at source in the following situations:
- Akshay, an individual carrying on business and made gross turnover of Rs.80,00,000 for the year ended 31.03.2008, effected a payment of Rs.50,000 to Times of India news paper for recoupment of staff;
  - RBS private limited has paid a sum of Rs.2 crores to Sical C & F limited towards clearing and forwarding charges;
  - Colors limited paid a sum of Rs.18,000 to ABT parcel service and Rs.15,00,000 to Indian Railways towards freight charges.
  - S Private limited entered into a contract with Thermax Limited for supply of materials amounting to Rs.40,00,000.

### Provisions for Filing of Return of Income

19. Can a return submitted by the assessee be revised? If so, what are the circumstances under which it can be revised? What is the time limit for submission of such revised return?

### Levy of service tax

20. State briefly whether the following services provided are taxable services under the Finance Act, 1994 as amended:
- (i) Services provided in the State of Rajasthan by a person having a place of business in the State of Jammu and Kashmir.
  - (ii) Services provided by the Reserve Bank of India to any person.

### Special provision for payment of service tax in case of air travel agent

21. Explain the special provision for payment of service tax in case of an air travel agent.

### Due date for payment of service tax

22. Prahlad has paid the amount of service tax for the quarter ending June 30, 2009 by cheque. The date of presentation of cheque to the designated bank is July 5, 2009 and it is realised by the bank on July 7, 2009? What is the date of payment of service tax in this case? Whether any interest and penalty is attracted in this case?

### Exemption to services provided to a developer or units of SEZ in relation to authorized operations

23. Explain the procedure for claiming the exemption of service tax paid on the services provided in relation to the authorized operations in a Special Economic Zone, and received by a developer or units of a Special Economic Zone.

### Variants of VAT

24. Briefly explain, the three variants of VAT. Which of these methods is most widely used and why?

### Computation of VAT

25. Compute the VAT liability of Mr. S. Banerjee, for the month of January 2009, using 'invoice method' of computation of VAT, from the following particulars:-

Particulars	
Purchase price of the inputs purchased from the local market (inclusive of VAT)	Rs. 26,000

VAT rate on purchases	4%
Storage cost incurred	Rs. 250
Transportation cost	Rs. 950
Goods sold at a profit margin of 5% on cost of such goods	
VAT rate on sales	12.5%

#### SUGGESTED ANSWERS/HINTS

1. (a) False - The accounts of the trust for the previous year should be audited if the total income exceeds the basic exemption limit i.e. Rs. 1,50,000 for the assessment year 2009-10.
  - (b) False - Gift received on the occasion of marriage of an individual is fully exempt irrespective of whether the donors are relatives or not.
  - (c) False – In case where the parents are non residents and the minor child is a resident deriving the income which accrues or arises outside India, the clubbing of such income does not arise as the provisions of section 64(1A) cannot override the provisions of section 5. In such a case, the minor child shall be chargeable to tax.
  - (d) True - The carry forward of unabsorbed depreciation is covered by section 32(2), its carry forward and set off is not affected by section 79.
2. Computation of Total Income of Mr. Umesh for the Assessment Year 2009-10

Particulars	Resident and ordinarily resident	Not Ordinarily Resident	Non- Resident
(1) Income earned/deemed to accrue/arise in India			
Rent from a property in Mumbai	1,90,000	1,90,000	1,90,000
Income from business in USA	2,60,000	2,60,000	2,60,000
Interest from Indian company	25,000	25,000	25,000
(2) Income earned and received outside India, from a business controlled from India			
Income from business in New York	1,50,000	1,50,000	-

- (3) Income earned and received outside India other than (2)

Rent from property in Coimbatore	85,000	-	-
	7,10,000	6,25,000	4,75,000

Note -

1. Profits of 2006-07 are not income of the previous year 2008-09 and hence, cannot be included in the income for assessment year 2009-10.
  2. Gifts received from parents-in-law are not taxable, since gifts received from relatives are not treated as income under section 56(2)(vi). Parents-in-law fall under the definition of relative as defined in section 56(2).
  3. Since the aggregate of gifts received during the year from non-relatives is less than Rs.50,000, gift of Rs.40,000 received from friends is not taxable.
3. (a) According to section 10(17A), any award either in cash or in kind instituted in the public interest by the Central or State Government or by any approved body is exempt from tax. The award received by PQ, film director, is professional income, since it is earned during the course of carrying on of his profession. In this case, Rs.1,00,000 cash prize is awarded under the scheme of state award for films instituted by the Central Government. Therefore, the amount received is exempt.
- (b) Section 10(23C) of the Income-tax Act provides exemption for any income earned by a hospital or medical institution which is established not for the purposes of profit and:
- (i) which is wholly or substantially financed by the Govt.; or
  - (ii) whose aggregate annual receipts do not exceed the prescribed amount i.e. Rs.1 crore or
  - (iii) which may be approved by the prescribed authority.
- In the given case, Ram, Shyam and Mohan have formed a partnership firm (Nursing home) for the purpose of earning profits and sharing them. Exemption under section 10(23C) is not available to hospitals established with profit motive. Therefore, the entire profit of Rs. 25,00,000 earned by the firm during the year is taxable under the head 'Business income'.
- (c) The amount of Rs.20,000 has been received by Ravi from out of the rental income of the family in which he is a coparcener. Since the Hindu Undivided Family consisting of himself, his father and two elder brothers has not yet been partitioned, the income of the family is assessable in the status of the HUF. The share received by Ravi as a member is exempt on account of the specific provision under section 10(2). In respect of the salary of Rs.2,60,000 earned by Ravi from his employer, he is chargeable to tax in his individual status. The taxable salary income shall have to

be computed subject to any other deduction or exemption available to Ravi based on the particulars of salary and the provisions of the Act.

- (d) According to section 10(10BC), any amount received or receivable as compensation by individual or legal heir on account of any disaster is exempt from tax. In the given case, Manish has received a sum of Rs.2,00,000 towards compensation for the loss caused because of Tsunami. A sum of Rs.80,000 already allowed as a deduction for the loss occurred. Therefore, balance Rs.1,20,000 (Rs.2,00,000 - Rs.80,000) alone will be exempt under section 10(10BC).

4. The CBDT has, vide Notification No. 45/2008 dated 24.3.2008, inserted a new Rule 8D which lays down the method for determining amount of expenditure in relation to income not includible in total income.

If the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with –

- (a) the correctness of the claim of expenditure by the assessee; or  
(b) the claim made by the assessee that no expenditure has been incurred in relation to exempt income for such previous year,

he shall determine the amount of expenditure in relation to such income in the manner provided hereunder -

The expenditure in relation to income not forming part of total income shall be the aggregate of the following:

- (i) the amount of expenditure directly relating to income which does not form part of total income;  
(ii) in a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula, namely :

$$A \times \frac{B}{C}$$

Where,

A = amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year;

B = the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;

C = the average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;

- (iii) an amount equal to one-half per cent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year.

5. Computation of Total Income and tax liability of Rohit for A.Y. 2009-10

Particulars	House I	House II
	Rs.	Rs.
Municipal Valuation per annum (a)	90,000	1,50,000
Fair Rent per annum (b)	85,000	1,20,000
Standard Rent per annum (c)	80,000	1,25,000
Annual Letting value (ALV)		
Annual Letting value higher of Municipal Valuation and Fair Rent but restricted to Standard Rent	80,000	1,25,000
Actual rent for let out period	25,000	1,35,000
Gross annual value (Higher of Annual letting value and Actual rent)	80,000	1,35,000
Less : Municipal tax	15,000	25,000
Net annual value	65,000	1,10,000
Less : Deductions under section 24		
Standard deduction (30% of NAV)	19,500	33,000
Interest on borrowed capital	5,000	45,000
Income from house property	40,500	32,000
Income from House property		72,500
Business income		6,00,000
Gross total income		6,72,500
Less : Deduction under section 80C		
Contribution to public provident fund		70,000
Total Income		6,02,500
Computation of tax liability		
Income-tax		85,750
Add : Surcharge (not applicable as total income does not exceed Rs.10,00,000)		Nil
		85,750
Add :Education cess @ 2%		1,715
Add : Secondary and higher education cess @ 1%		857
Tax liability		88,322
Tax liability (rounded off)		88,320

Note-

1. In this case, since both the houses are not self-occupied the benefit of section 23(2)(a) would not be available. The income will have to be computed as if the properties were let out.

6. Occupied Property or Unoccupied Property – Section 23(2)

The annual value of a self-occupied property can be adopted as Nil. Similarly, if a property cannot be actually occupied by reason of the fact that owing to his employment, business or profession carried on at any other place, the assessee has to reside at that other place in a building not belonging to him, the annual value of such house shall also be taken to be nil. Accordingly, the municipal and other taxes levied by the local authority and the adhoc deduction of 30% are not deductible. However, interest on loans borrowed up to a maximum of Rs. 1,50,000 (or Rs. 30,000 in certain specific situations) shall be allowed as a deduction. Therefore, computation in the case of self-occupied property shall be as follows:

Annual value as per section 23(2)	Nil
Less: Deduction under section 24(b) - Interest on loan borrowed paid or payable	XXX
Loss from house property	<u>XXX</u>

In case such a property is acquired or constructed out of loan borrowed on or after 1- 4 - 99 and where such acquisition or construction is completed within 3 years from the end of the financial year in which such loan is borrowed, then interest shall be allowed up to Rs. 1,50,000 instead of Rs. 30,000. In respect of a self occupied property not falling in this category, the limit of such deduction shall continue to be Rs.30,000.

If the assessee owns more than one house property falling under the above mentioned category, then the income from anyone such property, at the option of the assessee, shall be computed as indicated above. The other self-occupied property shall be treated as "deemed let-out property."

7. (a) Computation of business income of Mr. Ramesh for the A.Y.2009-10

As per section 44AE, in the case of an assessee who carries on the business of plying, hiring or leasing goods carriages and who owns not more than 10 goods carriages at any time during the year, the income shall be deemed to be Rs.3,500 from a heavy goods vehicle and Rs.3,150 from a vehicle other than a heavy goods vehicle for every month or part of the month during which such goods vehicle is owned by the assessee in the previous year or such higher sum as declared in the return of income by the assessee. In this case, Mr. Ramesh owns 6 commercial vehicles and opts for the scheme under section 44AE. Therefore, his income has been computed as per the presumptive tax provisions contained in section 44AE.

The income under section 44AE shall be computed as under :

Particulars	Rs.
(i) $(9 \times 3,150) + (12 \times 3,150) + (8 \times 3,150)$	91,350
(ii) $(10 \times 3,500) + (4 \times 3,500)$	49,000

(iii) 4 x 3,150	12,600
Income from business	<u>1,52,950</u>
Less : Deduction under section 80C	15,000
Total income	<u>1,37,950</u>
Tax on Rs.1,37,950	Nil

(b) Income from vehicles is to be computed for every month or part of the month during which these were owned by the assessee even though these are not actually used for business. Therefore, there will be no change in the answer.

8. According to Section 40(a)(ia), where tax has not been deducted or the amount of tax deducted has not been remitted to the credit of Central Government as per the provisions of Tax Deduction at source, the expenditure shall not be allowed as deduction while computing income under the head "Profits and gains from business and profession. In case, the tax is deducted and remitted in the subsequent years, such expenditure shall be allowed in the year in which TDS is remitted to the credit of Central Government.

Sl. No.	Date of credit or payment	Due date for remittance of TDS
A.	In case where the credit payment is recorded in the books of the assessee during the financial year.	Within 7 days from the end of the month in which credit or payment is made or within the end of the financial year.
B.	In case where the credit entry (payable entry) is recorded in the books of the assessee on the last day of the financial year (31st March)	Within 2 months from the end of the financial year in which credit entry is recorded (31 <sup>st</sup> May).

Note:

- (a) Though the relevant provisions of TDS warrants payment by 7th of subsequent month in situation (A) as stated above, for the purpose of complying Section 40(a)(ia), it is sufficient that the tax deducted is remitted on or before the end of the financial year. Accordingly, 31<sup>st</sup> of March of the financial year shall be the due date for remittance of TDS.
- (b) Again, where tax was deductible in the month of March, and the same was deducted, the remittance of TDS shall be made on or before due date for filing of return of income under section 139(1) to avoid disallowance under section 40(a)(ia).

Accordingly, in the situations given in question, the following shall be the tax consequences:

Sl. No.	Nature of payment	Compliance/ Violation	Tax consequence
(a)	Contract payment	TDS not deducted	Rs. 2,65,000 shall be disallowed.
(b)	Salary	TDS not deducted	Though tax is not deducted at sources, disallowance is not warranted as salary payments are not covered by the disallowance under section 40(a)(ia).
(c)	Rent	Delay in remittance of TDS	TDS should have been remitted on 07-01-2009. However, the same has been made on 31.03.2009. Accordingly, no disallowance of expenditure under section 40(a)(ia) warranted.
(d)	Interest	Non deduction of tax during the financial year	Since the tax has not been deducted on or before 31-03-2009, interest expenditure of 5,00,000 shall be disallowed for the A.Y. 2009-10. However, the same shall be allowed as deduction for the A.Y. 2010-11 as the assessee has deducted and remitted TDS in the subsequent year.
(e)	Professional charges	Liability recorded on the last day of financial year	Entire sum of Rs. 7,00,000 is subject to disallowance under section 40(a)(ia), since the remittance of TDS was made beyond the due date for filing return of income under section 139(1), which in this case falls on 30.09.2009.

9. (i) False – In order to claim enhanced depreciation under section 32(1)(ia), the assessee must have engaged in the business of manufacturing or production of an article or thing. In the instant case, the assessee is engaged in trading activity and hence, is not eligible for additional depreciation under section 32(1)(ia).
- (ii) False – Exemption under section 10(34) is available only when dividend is received from a domestic company and domestic company is subject to dividend distribution

tax under section 115-O. Deemed dividend under section 2(22)(e) is not subject to dividend tax. The recipient will have to pay tax on it. In respect of dividend covered by section 2(22) (a) to (d), company will pay dividend distribution tax and the dividend is exempt in the hands of the shareholder.

- (iii) False – Payment of interest on any loan availed for the purpose of pursuing full time education is alone eligible for deduction under section 80E. The principal portion of the loan repaid during the previous year cannot be claimed as a deduction under section 80E.
- (iv) True – As per section 139(3), an assessee is compulsorily required to submit return of loss, on or before the due date mentioned under section 139(1) for carry forward of losses under section 72, 73, 74 and 74A. However, the above provisions are not applicable for carry forward of unabsorbed depreciation under section 32(2) and loss under the head “Income from house property” under section 71B.

10. Computation of income under the head “Salaries” for the A.Y.2009-10

Particulars	Rs.
Salary (Rs.15,000 x 9)	1,35,000
Dearness allowance (Rs.3,000 x 9)	27,000
City compensatory allowance (Rs.400 x 9)	3,600
Entertainment allowance (Rs.1,500 x 9)	13,500
House rent allowance [See Note 1]	9,000
Pension (Rs.8,000 + Rs.4,000 x 2)	16,000
Commuted pension (Rs.1,95,000 – Rs.1,30,000) [See Note 3]	65,000
Gross salary	<u>2,69,100</u>
Less: Deduction under section 16 [See Note 5]	Nil
Income from salary	<u>2,69,100</u>

Note -

1. As per section 10(13A), house rent allowance will be exempt to the extent of minimum of the following three amounts:
  - (i) 50% of salary i.e. Rs.67,500.
  - (ii) Rent paid minus 10% of salary i.e., Rs.5,500 – Rs.1,500 = Rs.4,000 x 9 = Rs.36,000
  - (iii) HRA received Rs.5,000 x 9 = Rs.45,000

Therefore, out of Rs.45,000, Rs.36,000 will be exempt and the balance Rs.9,000 will be included in Gross Salary.
2. Gratuity of Rs.95,000 is fully exempt under section 10(10)(iii), being the minimum of the following amounts:

- (i) Actual gratuity received, i.e., Rs.95,000  
(ii) Half month's average salary for every completed year of service i.e.

$$\frac{\text{Average monthly salary}}{2} \times 16 \text{ i.e. } \frac{15,000 \times 16}{2} = \text{Rs. } 1,20,000$$

- (iii) Notified limit i.e., Rs.3,50,000

3. As Raman is receiving gratuity, one-third of commuted pension will be exempt and the balance would be taxable. 50% of the pension commuted is Rs.1,95,000. Therefore, 100% would be Rs.3,90,000 and one-third of the same would be Rs.1,30,000. The taxable portion of the commuted pension would be Rs.65,000 (i.e. Rs.1,95,000 - Rs.1,30,000).
4. Since employer's contribution to recognized provident fund is less than 12% of salary, it is not taxable. Accumulated balance of the recognized provident fund received is exempt from tax, since Raman has rendered continuous service of more than five years.
5. Deduction under section 16(ii) in respect of entertainment allowance can be claimed only by Government employees. Therefore, Raman is not eligible for any deduction in respect of entertainment allowance received by him.
11. Computation of capital gain chargeable to tax for A.Y.2009-10

Particulars	Rs.	Rs.
Gross sale consideration		40,00,000
Less : Expenses of transfer		<u>85,000</u>
Net sale consideration		39,15,000
Less: Indexed cost of acquisition Rs. 8,00,000 $\times \frac{582}{244}$		<u>19,08,197</u>
		20,06,803
Less : Exemption under section 54EC [Investment in bonds of National Highways Authority of India]	6,00,000	
Exemption under section 54F for purchase of residential house [Capital gain $\times$ Amount invested / Net sale consideration] (20,06,803 $\times$ 15,00,000 / 39,15,000)	7,68,891	13,68,890
Taxable long-term capital gain		<u>6,37,913</u>

12. (a) Computation of Total Income of Mr. Shiv for the A.Y.2009-10

	Particulars	Rs.	Rs.
(i)	Business income	1,80,000	
	Less : Current year depreciation	90,000	
		<u>90,000</u>	
	Less : Brought forward business loss	50,000	
			40,000
(ii)	Income from house property	80,000	
	Less : Brought forward loss from house property	45,000	
		<u>45,000</u>	35,000
(iii)	Income from other sources		6,000
	Total Income		<u>81,000</u>

(b) Computation of Gross Total Income of Mr. Manas for the A.Y.2009-10

	Particulars	Rs.	Rs.
(i)	Income from salary		95,000
(ii)	Income from house property		
	Income from House A	1,50,000	
	Loss from House B	<u>(1,65,000)</u>	
			(15,000)
(iii)	Capital gains: Short-term capital gain		50,000
(iv)	Income from other sources: Interest on securities (Gross)		10,000
	Gross Total Income		<u>1,40,000</u>

Note -

Long term capital loss cannot be set off against short-term capital gain or income under any other head. Therefore, long-term capital loss of Rs.15,000 cannot be set-off against any other income in the A.Y. 2009-10. The loss has to be carried forward to the subsequent assessment years for set-off against long-term capital gains arising in that year. It can be carried forward upto 8 years.

13. Computation of Gross Total Income of Ms. Roshni for the A.Y.2009-10

	Particulars	Rs.	Rs.
	Salary		
	Salary (Rs.18,000 x 12)		2,16,000

Income from other sources		
(i)	Gift from best friend is includible	3,00,000
(ii)	Gift of gold jewellery is exempt as it is in kind	-
(iii)	Gifts received from her 3 friends are exempt as they have been received on the occasion of her marriage	-
(iv)	Gift from her mother's brother is exempt as the donor is covered in the definition of relative	-
(v)	Gift from her father's sister is exempt as the donor is covered in the definition of relative	-
(vi)	Gift from her husband's friend on 1-11-2008 is taxable	50,000
(vii)	Gift from her father's friend is taxable	15,000
(viii)	Gift from her sister's mother-in-law is taxable the donor is not covered in the definition of relative	25,000
(ix)	Gift from her husband's sister is exempt as the donor is covered in the definition of relative	-- 3,90,000
Gross Total Income		<u>6,06,000</u>

14. Section 80-IA(5) provides that for the purpose of determining the quantum of deduction under section 80-IA the profits and gains from the eligible business shall be computed as if such eligible business were the only source of income of the assessee during the previous year relevant to the initial assessment year and to subsequent assessment year upto and including the assessment year for which the deduction is to be made.

In this case the unit eligible for deduction under section 80-IA has to be treated as a separate source of income and the loss is to be set off against any profit arising from such unit on a stand alone basis. For this purpose, even if such loss was set off against other income in the earlier year, it is immaterial. Only when the unit derives profit after setting off all its losses, deduction under section 80-IA is available to such unit.

15. Computation of total income and tax liability of Mr. Pandey for the A.Y. 2009-10

Particulars	Rs.	Rs.
1. Income from Salary		
Salary (Rs.25,000 x 12)	3,00,000	
Less : Deduction under section 16	<u>Nil</u>	3,00,000
2. Income from House Property		
(a) Self-occupied flat (Annual value of self-occupied property is Nil)	Nil	

(b) Gross Annual Value (See Note below)	60,000	
Less: Municipal taxes paid	800	
Net Annual Value (NAV)	59,200	
Less: 30% of NAV	17,760	41,440

Note – Actual rent @ Rs.5,000 per month has been taken as the gross annual value in the absence of other information

3. Income from Other Sources		
Interest on Government Securities	7,000	
Dividend from Indian Company [Exempt under section 10(34)]	Nil	7,000
Gross Total Income		3,48,440
Less : Deductions u/s 80C [ in respect of provident fund of Rs.30,000 + 35,000 (Life insurance premium)]		75,000
Total Income		2,73,440
Tax payable on Rs.2,73,440		12,344
Add : Education cess @ 2%		247
Add : Secondary and higher education cess @ 1%		123
Total tax payable		12,714
Tax payable (rounded off)		12,710

16. Computation of Total Income and Tax Liability of HUF for the A.Y. 2009-10

	Rs.	Rs.
I Income from house property		
Rent received	30,000	
Less: Standard deduction (30% of Rs. 30,000)	9,000	21,000
II Profit and gains of business or profession		
Profit from business	2,00,000	
Share of profit from firm	Exempt	2,00,000
III Capital gains		
Long-term capital gains	50,000	
Short-term capital gains	30,000	85,000

IV	Income from Other Sources		
	Dividend from units		Exempt
	Gross Total Income		<u>3,06,000</u>
	Less: Deductions under section 80C to 80U		
	(i) under section 80C	50,000	
	(ii) under section 80G - 100% of Rs. 20,000 (qualifying limit not applicable)	20,000	70,000
	Total Income		<u>2,36,000</u>
	Tax on Total income of Rs. 2,36,000		
	Tax on long-term capital gains of Rs. 50,000 @ 20%		10,000
	Tax on short-term capital gain covered under section 111A @ 15% on Rs. 30,000		4,500
	Tax on balance income of Rs.1,56,000		600
			<u>15,100</u>
	Add: Surcharge		Nil
			<u>15,100</u>
	Add: Education cess @ 2%		302
	Add : Secondary and Higher education cess @ 1%		151
	Tax Liability		<u>15,553</u>
	Tax Liability (rounded off)		<u>15,550</u>

Computation of total income and tax liability of members

(i)	Total Income of Rajan		
	Capital gains		
	Short term capital gain on units		1,75,000
	Income from other sources		
	Dividend from units		Exempt
	Gross total income		<u>1,75,000</u>
	Less : Deductions under section 80C to 80U		<u>Nil</u>

Total income	1,75,000
Tax on Rs. 25,000 (Rs. 1,75,000 – Rs. 1,50,000)	3,750
Add : Education Cess	75
Add : Secondary and Higher education cess @ 1%	37
Tax Liability	<u>3,862</u>
Tax Liability (rounded off)	<u>3,860</u>

(ii) Total income of Siya	
Income from salaries	
Gross Salary	1,78,000
Less : Deductions under section 16	Nil
Gross Total income	<u>1,78,000</u>
Less : Deductions under section 80C to 80U	Nil
Total income	<u>1,78,000</u>
Tax on Rs. 1,78,000	2,800
Add : Education cess @ 2%	56
Add : Secondary and Higher education cess @ 1%	28
Tax Liability	<u>2,884</u>
Tax Liability (rounded off)	<u>2,880</u>

(iii) Total income of Tina	
Income from salaries	
Gross salary	1,95,000
Less : Deductions under section 16	Nil
Gross Total Income	<u>1,95,000</u>
Less : Deductions under section 80C to 80U	Nil
Total Income	<u>1,95,000</u>
Tax on Rs.1,95,000	4,500

Add : Education cess @ 2%	90
Add : Secondary and Higher education cess @ 1%	45
Tax Liability	<u>4,635</u>
Tax Liability (rounded off)	<u>4,630</u>

- (iv) Total income of Uday Nil  
Share out of HUF income received by the members is exempt under section 10(2).
17. (i) Interest for non-payment or short-payment of advance tax [Section 234B]
- (1) Interest under section 234B is attracted for non-payment of advance tax or payment of advance tax of an amount less than 90% of assessed tax.
  - (2) The interest liability would be 1% per month or part of the month from 1<sup>st</sup> April following the financial year upto the date of determination of income under section 143(1).
  - (3) Such interest is calculated on the amount of difference between the assessed tax and the advance tax paid.
  - (4) Assessed tax is the tax calculated on total income less tax deducted at source.
- (ii) Interest payable for deferment of advance tax [Section 234C]
- (1) Interest under section 234C is attracted for deferment of advance tax beyond the due dates.
  - (2) The interest liability would be 1% per month, for a period of 3 months, for every deferment.
  - (3) However, for the last installment of 15<sup>th</sup> March, the interest liability under this section would be 1% for one month.
  - (4) The interest is to be calculated on the difference between the amount arrived at by applying the specified percentage of tax on returned income and the actual amount paid by the due date.
18. (i) Advertising contract, shall be deducted @ 1% of Rs.50,000;
- (ii) Liable for tax deduction @ 2% plus surcharge and Education cess as the payment exceeds Rs.1 crore;
- (iii) Freight Payment to ABT not subject to TDS as the value of contract does not exceed Rs.20,000. Again, payment to Railways is exempt from TDS;
- (iv) Supply of goods and materials shall not be considered to be "work" and therefore not subject to work.

19. Revised Return [section 139(5)]
- (1) If any person having furnished a return under section 139(1) or in pursuance of a notice issued under section 142(1), discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before completion of assessment, whichever is earlier.
  - (2) It may be noted that a belated return cannot be revised. It has been held in *Kumar Jagdish Chandra Sinha v. CIT* [1996] 86 Taxman 122 (SC) that only a return furnished under section 139(1) or in pursuance of a notice under section 142(1) can be revised. A belated return furnished under section 139(4), therefore, cannot be revised.
20. (i) As per section 64(1) of the Finance Act, 1994 as amended, service tax provisions do not extend to the State of Jammu and Kashmir. Therefore, service tax will not be payable if service is provided in Jammu & Kashmir. However, since service tax is a destination based consumption tax, if a person from Jammu & Kashmir provides the taxable service outside Jammu & Kashmir in any other part of India, the service will be liable to service tax, as the location where service is provided is relevant. Hence, the service provided in Rajasthan from Jammu and Kashmir would be liable to service tax.
- (ii) Notification No. 22/2006 ST dated 31.05.2006 exempts the services provided by the Reserve Bank of India to any person.
21. Special provision for payment of service tax in case of air travel agent: Rule 6(7) of the Service Tax Rules, 1994 provides that the person liable for paying the service tax in relation to the services provided by an air travel agent, shall have the option:
- (i) to pay an amount calculated at the rate of 0.6% of the basic fare in the case of domestic bookings, and
  - (ii) at the rate of 1.2% of the basic fare in the case of international bookings, of passage for travel by air, during any calendar month or quarter, as the case may be, towards the discharge of his service tax liability instead of paying service tax at the rate of specified service tax. The option once exercised, shall apply uniformly in respect of all the bookings of passage for travel by air made by him and shall not be changed during a financial year under any circumstances.
- For the purposes of this sub-rule, the expression "basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airline.
22. Rule 6(1) of the Service Tax Rules, 1994, inter alia, provides that service tax on the value of taxable services received by an individual during any quarter is payable by the 5th day of the month immediately following the said quarter. Therefore, in the given case, the due date for payment of service tax is July 5, 2009.

Further, in case the amount of service tax is paid by cheque, the date of presentation of cheque to the designated bank, subject to realization is the date of payment. Thus, in this case, the date of payment will be 5<sup>th</sup> July, 2009 as the cheque has been realized on 7<sup>th</sup> July, 2009.

Since, the service tax has been paid on the due date, no interest and penalty is chargeable as there is no delay in payment of service tax.

23. Procedure for claiming the exemption of service tax paid on the services provided in relation to the authorized operations in a Special Economic Zone (SEZ), and received by a developer or units of a SEZ:-

(a) the developer or units of SEZ shall be eligible to claim exemption for the services provided to the developer or units of SEZ and used in relation to the authorised operations in the SEZ, and not the person liable to pay service tax.

However, where the developer or units of SEZ and the person liable to pay service tax under sub-section (2) of section 68 for the said services are the same person, then in such cases, exemption for the specified services shall be claimed by such person;

(b) the exemption shall be claimed by filing a claim for refund of service tax paid to the jurisdictional Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, within six months from the date of actual payment of service tax by such developer or unit to service provider or, such extended period as may be permitted;

(c) the unregistered developer or units of SEZ, shall, prior to filing a claim for refund of service tax under this notification, file a declaration in the prescribed form with the respective jurisdictional Assistant Commissioner/ Deputy Commissioner of Central Excise, as the case may be;

(d) the refund claim shall be accompanied by the following documents, namely:-

(i) a copy of the list of specified services required in relation to the authorised operations in the SEZ, as approved by the Approval Committee;

(ii) documents for having paid service tax;

(iii) a declaration by the SEZ developer or unit, claiming such exemption, to the effect that such service is received by him in relation to authorised operation in SEZ;

(e) the jurisdictional Assistant Commissioner/ Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, allot a service tax code (STC) number to the developer or units of SEZ within seven days from the date of receipt of the said form;

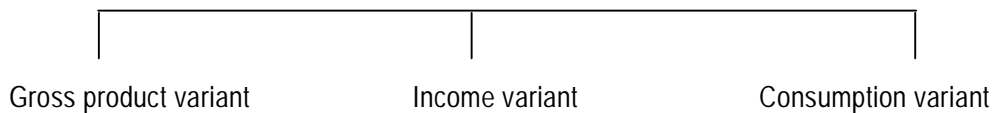
(f) the Assistant Commissioner/ Deputy Commissioner of Central Excise, as the case may be, shall, after satisfying himself that the said services have been actually used

in relation to the authorised operations in the SEZ, refund the service tax paid on the specified services used in relation to the authorised operations in the SEZ;

- (g) where any refund of service tax paid on specified services is erroneously refunded for any reasons whatsoever, such service tax refunded shall be recoverable under the provisions of the Finance Act, 1994 and the rules made there under, as if it is a recovery of service tax erroneously refunded.

24. VAT has three variants, viz., (a) gross product variant, (b) income variant, and (c) consumption variant. These variants are presented in a schematic diagram given below:

Different variants of VAT



1. Gross product variant: Tax is levied on all sales and deduction for tax paid on inputs excluding capital inputs is allowed.
2. Income variant: Tax is levied on all sales with set-off for tax paid on inputs and only depreciation on capital goods.
3. Consumption variant: Tax is levied on all sales with deduction for tax paid on all business inputs (including capital goods).

Among the three variants of VAT, the consumption variant is most widely used.

Reasons for preference of consumption variant:

- (1) It does not affect decisions regarding investment because the tax on capital goods is also set-off against the VAT liability. Hence, the system is tax neutral in respect of techniques of production (labour or capital-intensive).
- (2) The consumption variant is convenient from the point of administrative expediency as it simplifies tax administration by obviating the need to distinguish between purchases of intermediate and capital goods on the one hand and consumption goods on the other hand.

25. Computation of VAT liability of Mr. S. Banerjee for the month of January, 2009 using 'invoice method' of computation of VAT:-

Particulars	Amount (Rs.)
Purchase price of the inputs (inclusive of VAT)	26,000.00
Less :VAT paid on purchases @ 4% = $\frac{\text{Rs.}26,000 \times 4}{100}$	<u>1,000.00</u>
Purchase price of the inputs (excluding VAT)	25,000.00
Add: Storage cost	250.00

Add: Transportation cost	<u>950.00</u>
Cost price of the goods	26,200.00
Add: Profit @ 5% of Cost Price (Rs. 26,200 × 5%)	<u>1,310.00</u>
Sale price before VAT	27,510.00
VAT @ 12.5% (Rs. 27,510 × 12.5%)	3,438.75
Less: VAT paid on purchases	<u>1,000.00</u>
VAT liability of Mr. S. Banerjee	<u>2,438.75</u>

#### IMPORTANT CIRCULARS / NOTIFICATIONS ISSUED BETWEEN 1.5.08 and 30.4.09

Students may note that the Study Material for Taxation contains all the relevant amendments made by the Finance Act, 2008 and significant notifications, circulars and legislative amendments made upto 30.4.2008. It may carefully be noted that for the students appearing in November 2009 examination, the amendments made by Notifications, Circulars etc. up to 30.04.2009 are relevant. The following are the amendments which have been made between 1.05.2008 and 30.04.2009 -

#### A. INCOME TAX

##### I. CIRCULARS

##### 1. Circular No. 5/2008 dated 14.7.2008

The CBDT has, vide notification S.O. No. 493(E), dated 13.3.2008 notified the categories of taxpayers who are mandatorily required to electronically pay taxes on or after 1st April, 2008. The taxpayers who are required to pay taxes by the prescribed mode are - (i) a company; and (ii) a person (other than a company), to whom the provisions of section 44AB of the Income-tax Act, 1961 are applicable. Further, payment of tax electronically has been defined to mean payment of tax by way of - (i) internet banking facility of the authorised bank or (ii) credit or debit cards.

Consequent to issue of the notification, foreign assesseees have been facing difficulties in complying with the provisions with regard to mandatory e-payment of taxes. Since they do not have a presence in India, they are not able to meet the 'know your customer norms' of the banks. This has resulted in their inability to open bank accounts and make payment of taxes through the electronic mode. Also, the resident taxpayers have been facing difficulties in availing internet banking facilities of the authorized banks. A clarification has also been sought as to whether payment of tax deducted at source by a deductor will fall within the meaning of 'tax' for the purpose of the impugned notification.

Therefore, with a view to facilitating electronic payment of taxes by different categories of taxpayers, CBDT has issued Circular No.5/2008 dated 14.7.2008 to clarify that an assessee can make electronic payment of taxes also from the account of any other person. However, the challan for making such payment must clearly indicate the Permanent Account Number (PAN) of the assessee on whose behalf the payment is made. It is not necessary for the assessee to make payment of taxes from his own account in an authorized bank. Further, it is also clarified that payment of any amount by a deductor by way of Tax Deducted at Source (TDS) or Tax Collected at Source (TCS) shall fall within the meaning of 'tax' for the purpose of Rule 125 of the Income-tax Rules, 1962.

2. Circular No.7/2008 dated 1.8.2008

Order under section 119(1) of the Income-tax Act, 1961 regarding exemption from the TDS provisions under section 197 read in conjunction with section 10(26BBB) of the Income-tax Act, 1961

The CBDT has, in exercise of the powers conferred under section 119(1) of the Income-tax Act, 1961, directed that corporations which are established by a Central, State or Provincial Act for the welfare and economic upliftment of ex-servicemen and whose income qualifies for exemption from income-tax under section 10(26BBB) would also be exempt from tax deduction/collection at source on their receipts. This exemption shall be valid for 3 years from the date of issue of this order. However, this exemption shall not absolve such organisation from their statutory obligation of deducting TDS on all contractual payments made by them to other parties including sub-contractors etc.

3. Circular No.10/2008 dated 5.12.2008

Clarification regarding the meaning of the expression 'fish or fish products' used in Rule 6DD(e)(iii) of the Income-tax Rules, 1962

Under section 40A(3), disallowance is attracted in the computation of income in a case where a payment or aggregate of payments exceeding twenty thousand rupees is made to a person in a day, otherwise than by an account payee cheque drawn on a bank or an account payee bank draft. However, payment otherwise than by an account payee cheque drawn on a bank or by an account payee bank draft exceeding twenty thousand rupees does not attract the aforesaid disallowance in certain circumstances as prescribed under Rule 6DD of the Income-tax Rules, 1962. Such exceptions, inter-alia, refer to payment made to the producer for the purchase of fish or fish products under sub-clause (iii) of clause (e) of rule 6DD.

In regard to this sub-clause, the following clarifications have been issued for proper implementation of Rule 6DD -

- (i) The expression 'fish or fish products' used in rule 6DD(e)(iii) would include 'other marine products such as shrimp, prawn, cuttlefish, squid, crab, lobster etc.'

- (ii) The 'producers' of fish or fish products for the purpose of rule 6DD(e) would include, besides the fishermen, any headman of fishermen, who sorts the catch of fish brought by fishermen from the sea, at the sea shore itself and then sells the fish or fish products to traders, exporters etc.

However, the above exception will not be available on the payment for the purchase of fish or fish products from a person who is not proved to be a 'producer' of these goods and is only a trader, broker or any other middleman, by whatever name called.

4. Circular No.11/2008 dated 19.12.2008

Exemption under section 11 in case of an assessee claiming both to be a charitable institution as well as a mutual organisation

Section 2(15) defines charitable purpose to include the following:-

- (i) Relief of the poor
- (ii) Education
- (iii) Medical relief, and
- (iv) the advancement of any other object of general public utility.

An entity with a charitable object of the above nature was eligible for exemption from tax under section 11 or alternatively under section 10(23C) of the Act. However, it was seen that a number of entities who were engaged in commercial activities were also claiming exemption on the ground that such activities were for the advancement of objects of general public utility in terms of the fourth limb of the definition of charitable purpose. Therefore, section 2(15) was amended vide Finance Act, 2008 by adding a proviso which states that the advancement of any other object of general public utility shall not be a charitable purpose if it involves the carrying on of -

- (a) any activity in the nature of trade, commerce or business; or
- (b) any activity of rendering any service in relation to any trade, commerce or business; for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention of the income from such activity.

The following implications arise from this amendment -

- (1) The newly inserted proviso to section 2(15) will not apply in respect of the first three limbs of section 2(15), i.e., relief of the poor, education or medical relief. Consequently, where the purpose of a trust or institution is relief of the poor, education or medical relief, it will constitute charitable purpose even if it incidentally involves the carrying on of commercial activities.
- (2) Relief of the poor encompasses a wide range of objects for the welfare of the economically and socially disadvantaged or needy. It will, therefore, include within its ambit purposes such as relief to destitute, orphans or the handicapped,

disadvantaged women or children, small and marginal farmers, indigent artisans or senior citizens in need of aid. Entities who have these objects will continue to be eligible for exemption even if they incidentally carry on a commercial activity, subject, however, to the conditions stipulated under section 11(4A) or the seventh proviso to section 10(23C) which are that -

- (i) the business should be incidental to the attainment of the objectives of the entity, and
- (ii) separate books of account should be maintained in respect of such business.

Similarly, entities whose object is education or medical relief would also continue to be eligible for exemption as charitable institutions even if they incidentally carry on a commercial activity subject to the conditions mentioned above.

The newly inserted proviso to section 2(15) will apply only to entities whose purpose is advancement of any other object of general public utility i.e. the fourth limb of the definition of charitable purpose contained in section 2(15). Hence, such entities will not be eligible for exemption under section 11 or under section 10(23C) of the Act if they carry on commercial activities. Whether such an entity is carrying on an activity in the nature of trade, commerce or business is a question of fact which will be decided based on the nature, scope, extent and frequency of the activity.

There are industry and trade associations who claim exemption from tax u/s 11 on the ground that their objects are for charitable purpose as these are covered under any other object of general public utility. Under the principle of mutuality, if trading takes place between persons who are associated together and contribute to a common fund for the financing of some venture or object and in this respect have no dealings or relations with any outside body, then any surplus returned to the persons forming such association is not chargeable to tax. In such cases, there must be complete identity between the contributors and the participants.

Therefore, where industry or trade associations claim both to be charitable institutions as well as mutual organizations and their activities are restricted to contributions from and participation of only their members, these would not fall under the purview of the proviso to section 2(15) owing to the principle of mutuality. However, if such organizations have dealings with non-members, their claim to be charitable organizations would now be governed by the additional conditions stipulated in the proviso to section 2(15).

In the final analysis, however, whether the assessee has for its object the advancement of any other object of general public utility is a question of fact. If such assessee is engaged in any activity in the nature of trade, commerce or business or renders any service in relation to trade, commerce or business, it would not be entitled to claim that its object is charitable purpose. In such a case, the object of general public utility will be only a mask or a device to hide the true purpose which is trade, commerce or business or

the rendering of any service in relation to trade, commerce or business. Each case would, therefore, be decided on its own facts and no generalization is possible.

## II NOTIFICATIONS

### 1. Notification No. 86/2008 dated 13.8.2008

The Central Government has, vide notification no.86/2008 dated 13.8.2008 specified the cost inflation index for the financial year 2008-09. The CII for F.Y. 2008-09 is 582.

S. No.	Financial Year	Cost Inflation Index
1.	1981-82	100
2.	1982-83	109
3.	1983-84	116
4.	1984-85	125
5.	1985-86	133
6.	1986-87	140
7.	1987-88	150
8.	1988-89	161
9.	1989-90	172
10.	1990-91	182
11.	1991-92	199
12.	1992-93	223
13.	1993-94	244
14.	1994-95	259
15.	1995-96	281
16.	1996-97	305
17.	1997-98	331
18.	1998-99	351
19.	1999-2000	389
20.	2000-01	406
21.	2001-02	426
22.	2002-03	447

23.	2003-04	463
24.	2004-05	480
25.	2005-06	497
26.	2006-07	519
27.	2007-08	551
28.	2008-09	582

2. Notification No. 88/2008/F.NO. 275/43/2008-IT(B), dated 21.8.2008

The CBDT has, in exercise of the powers conferred by clause (a) of the Explanation to section 194J, notified the services rendered by following persons in relation to the sports activities as Professional Services for the purpose of the section 194J:

- a. Sports Persons,
- b. Umpires and Referees,
- c. Coaches and Trainers,
- d. Team Physicians and Physiotherapists,
- e. Event Managers,
- f. Commentators,
- g. Anchors and
- h. Sports Columnists.

3. Notification No.97/2008 dated 10.10.2008

Rule 6DD of the Income-tax Rules has been substituted. This Rule now provides for cases and circumstances in which a payment or aggregate of payments exceeding twenty thousand rupees may be made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft.

As per this rule, no disallowance under sub-section (3) of section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3A) of section 40A where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees in the cases and circumstances specified hereunder, namely:

- (a) where the payment is made to -
  - (i) the Reserve Bank of India or any banking company;
  - (ii) the State Bank of India or any subsidiary bank;

- (iii) any co-operative bank or land mortgage bank;
  - (iv) any primary agricultural credit society or any primary credit society;
  - (v) the Life Insurance Corporation of India;
- (b) where the payment is made to the Government and, under the rules framed by it, such payment is required to be made in legal tender;
- (c) where the payment is made by -
- (i) any letter of credit arrangements through a bank;
  - (ii) a mail or telegraphic transfer through a bank;
  - (iii) a book adjustment from any account in a bank to any other account in that or any other bank;
  - (iv) a bill of exchange made payable only to a bank;
  - (v) the use of electronic clearing system through a bank account;
  - (vi) a credit card;
  - (vii) a debit card.
- (d) where the payment is made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services rendered by the assessee to such payee;
- (e) where the payment is made for the purchase of -
- (i) agricultural or forest produce; or
  - (ii) the produce of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming; or
  - (iii) fish or fish products; or
  - (iv) the products of horticulture or apiculture,
- to the cultivator, grower or producer of such articles, produce or products;
- (f) where the payment is made for the purchase of the products manufactured or processed without the aid of power in a cottage industry, to the producer of such products;
- (g) where the payment is made in a village or town, which on the date of such payment is not served by any bank, to any person who ordinarily resides, or is carrying on any business, profession or vocation, in any such village or town;
- (h) where any payment is made to an employee of the assessee or the heir of any such employee, on or in connection with the retirement, retrenchment, resignation, discharge or death of such employee, on account of gratuity, retrenchment compensation or similar terminal benefit and the aggregate of such sums payable to

the employee or his heir does not exceed fifty thousand rupees;

- (i) where the payment is made by an assessee by way of salary to his employee after deducting the income-tax from salary in accordance with the provisions of section 192 of the Act, and when such employee -
  - (i) is temporarily posted for a continuous period of fifteen days or more in a place other than his normal place of duty or on a ship; and
  - (ii) does not maintain any account in any bank at such place or ship;
- (j) where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike;
- (k) where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person;
- (l) where the payment is made by an authorised dealer or a money changer against purchase of foreign currency or travellers cheques in the normal course of his business.

4. Notification No. 3/2009 dated 5.1.2009

Clause (xv) of section 80C(2) provides that the subscription to any such deposit scheme of the National Housing Bank as the Central Government may notify in this behalf would qualify for deduction under section 80C. Accordingly, in exercise of the powers conferred in section 80C(2)(xv), the Central Government has specified the National Housing Bank (Tax Saving) Term Deposit Scheme, 2008, the subscription to which would qualify for deduction under section 80C.

5. Notification No. 9/2009 dated 7.1.2009

Section 10(15)(iv)(h) exempts interest payable by any public sector company in respect of such bonds or debentures specified by the Central Government by notification in the Official Gazette. The notification would also specify the conditions subject to which the exemption would be available. Accordingly, in exercise of the powers conferred in section 10(15)(iv)(h), the Central Government has specified the issue of tax free bonds by India Infrastructure Finance Company Limited during the financial year 2008-09, the interest on which would be exempt under the said section. Further, it has been provided that such benefit shall be admissible only if the holder of such bonds registers his or her name and the holding with the said Corporation.

6. Notification No. 28/2009, dated 16.3.2009

Rule 37BA providing for credit for tax deducted at source for the purposes of section 199 has been inserted with effect from 1.4.2009.

Sub-rule (1) provides that credit for tax deducted at source and paid to the Central Government in accordance with the provisions of Chapter XVII, shall be given to the

person to whom payment has been made or credit has been given (i.e., the deductee) on the basis of information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorised by such authority.

Sub-rule (2) provides that if the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for tax deducted at source shall be given to the other person in cases where-

- (a) the income of the deductee is included in the total income of another person under the provisions of section 60, section 61, section 64, section 93 or section 94;
- (b) the income of a deductee being an association of persons or a trust is assessable in the hands of members of the association of persons, or in the hands of trustees, as the case may be;
- (c) the income from an asset held in the name of a deductee, being a partner of a firm or a karta of a Hindu undivided family, is assessable as the income of the firm, or Hindu undivided family, as the case may be;
- (d) the income from a property, deposit, security, unit or share held in the name of a deductee is owned jointly by the deductee and other persons and the income is assessable in their hands in the same proportion as their ownership of the asset:

However, in such cases, the deductee should file a declaration with the deductor. Such declaration filed by the deductee should contain the name, address, permanent account number of the person to whom credit is to be given, payment or credit in relation to which credit is to be given and reasons for giving credit to such person.

Also, the deductor should report the tax deduction in the name of the other person in the information relating to deduction of tax referred to in sub-rule (1). The deductor should issue the certificate for deduction of tax at source in the name of the person in whose name credit is shown in the information relating to deduction of tax referred to in sub-rule (1) and should keep the declaration in his safe custody.

Sub-rule (3) provides that the credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable. Where tax has been deducted at source and paid to the Central Government and the income is assessable over a number of years, credit for tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax.

Sub-rule (4) provides that credit for tax deducted at source and paid to the account of the Central Government shall be granted on the basis of -

- (i) the information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorized by such authority; and
- (ii) the information in the return of income in respect of the claim for the credit,

subject to verification in accordance with the risk management strategy formulated by the Board from time to time.

7. Notification No. 37/2009 dated 21.4.2009

The CBDT has, through Notification No.10/2009 dated 19.1.09, notified the Income-tax (Third Amendment) Rules, 2009 which came into force from 1.4.2009. This notification had inserted "new commercial vehicles acquired on or after 1.1.2009 but before 1.4.2009 and put to use before 1.4.2009 for the purposes of business or profession" under the head MACHINERY AND PLANT, which would be eligible for depreciation at the rate of 50%.

Subsequently, the CBDT has, through this notification notified that the benefit of increased depreciation of 50% on commercial vehicles be extended to such vehicles acquired and put to use before 1<sup>st</sup> October 2009. Therefore, the commercial vehicles acquired on or after 1.1.2009 but before 1.10.2009 and put to use before 1.10.2009 will be eligible for depreciation at the rate of 50%.

B. SERVICE TAX

Notification No. 18/2008 ST dated 10.05.2008 has notified 16.05.2008 as the date on which the services introduced by the Finance Act, 2008 have become effective. Further, the amendments made in the existing service vide the Finance Act, 2008 have also become effective from 16.05.2008.

Exemptions:

1. Amendments in Notification No.41/2007 ST dated 06.10.2007 which exempts certain specified taxable services received by an exporter and used for export of goods

(a) Insertion of four more services

Notification No. 24/2008 ST dated 10.05.2008 (with effect from 16.05.2008) and Notification No. 33/2008 ST dated 07.12.2008 (with effect from 18.11.2008) have amended Notification No.41/2007 ST dated 06.10.2007 which exempts certain specified taxable services received by an exporter and used for export of goods. The following services received by an exporter and used for export of goods have also been exempted vide these notifications subject to fulfillment of conditions specified therein:-

S.No.	Sub-clause of clause (105) of section 65	Description of taxable service	Conditions
1	Section 65(105)(zm)	services of purchase or sale of foreign currency, including money changing provided to an exporter in relation to export goods.	exporter shall produce evidence to prove that the services specified in column (3) are in relation to goods exported.

S.No.	Sub-clause of clause (105) of section 65	Description of taxable service	Conditions
2	Section 65(105)(zzk)	services of purchase or sale of foreign currency, including money changing provided to an exporter in relation to export goods.	exporter shall produce evidence to prove that the services specified in column (3) are in relation to goods exported.
3	Section 65(105)(zzzzj)	services of supply of tangible goods for use, without transferring right of possession and effective control of tangible goods, provided to an exporter in relation to goods exported by the exporter.	exporter shall produce evidence to prove that the services specified in column (3) are used in relation to export of goods.
4.	Section 65(105)(j)	services provided by a clearing and forwarding agent in relation to export goods exported by the exporter.	exporter shall produce,- (i) invoice issued by clearing and forwarding agent for providing services specified in column (3) specifying: (a) number and date of shipping bill, (b) description of export goods, (c) number and date of the invoice issued by the exporter relating to export goods, (d) details of all the charges, whether or not reimbursable, collected by the clearing and forwarding agent from the exporter in relation to export goods,  (ii) details of other taxable services provided by the said clearing and

S.No.	Sub-clause of clause (105) of section 65	Description of taxable service	Conditions
			forwarding agent and received by the exporter, whether or not relatable to export goods.

(b) Condition of not availing the drawback of service tax paid relaxed

As per Notification No.41/2007 ST dated 06.10.2007, the exporter can claim the refund of the service tax paid during the course of export of goods provided that the said goods have been exported without availing drawback of service tax paid under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995.

However, now the condition of not availing the drawback of service tax paid has been relaxed. Consequently, now the exporter, who is availing drawback of service tax paid, can also claim the refund of the service tax paid during the course of export of goods.

Moreover, the form prescribed for claiming the refund has also been suitably amended to give effect to the above amendment.

[Notification No. 33/2008 ST dated 07.12.2008]

(c) Time Limit for filing the refund claim extended

The time-limit for filing the refund claim has been extended from sixty days to six months from the end of the relevant quarter during which the said goods have been exported.

[Notification No. 32/2008 ST dated 18.11.2008]

(d) Clarification/amendment in the conditions for two services

S.No	Sub-clause of clause (105) of section 65	Description of taxable service	Conditions
1.	Section 65(105)(zzh)	Services provided by a technical testing and analysis agency in relation to technical testing and analysis of said goods where such technical testing and analysis is required to be undertaken as per the written agreement between the exporter and the buyer	(i) the exporter furnishes a copy of the written agreement entered into with the buyer of the said goods requiring testing and analysis of the said goods; In this regard, Notification No. 32/2008 ST dated 18.11.2008 has clarified that where the buyer of the said

		of the said goods	goods does not require testing and analysis of the said goods, but testing is statutorily stipulated by domestic rules and regulations, the exporter shall furnish copy of such rules or regulations stipulating testing and analysis of the said goods.
2.	Section 65(105)(zzb)	Services provided by a commission agent, located outside India, and engaged under a contract or agreement or any other document by the exporter in India, to act on behalf of the exporter, to cause sale of goods exported by him.	<p>(vi) earlier condition:- the refund of service tax shall be restricted to:-</p> <p>(i) actual amount of service tax paid</p> <p style="text-align: center;">or</p> <p>(ii) service tax calculated on two per cent of FOB value of export goods, whichever is less.</p> <p>Notification No. 33/2008 ST dated 07.12.2008 has modified the above condition as follows:- The refund of service tax shall be restricted to:-</p> <p>(i) actual amount of service tax paid</p> <p style="text-align: center;">Or</p> <p>(ii) service tax calculated on ten per cent of FOB value of export goods, whichever is less.</p>

2. Abatement of 30% from the gross amount charged in case of services in relation to chit

Notification No. 27/2008 ST dated 27.05.2008 has amended Notification No. 1/2006 ST dated 01.03.2006 so as to provide an abatement of 30% in case of services provided in relation to chit from the gross amount charged for such service.

“Chit” has been defined to mean a transaction whether called chit, chit fund, chitty, kuri, or by any other name by or under which a person enters into an agreement with a specified number of persons that every one of them shall subscribe a certain sum of money (or a certain quantity of grain instead) by way of periodical installments over a definite period and that each subscriber shall, in his turn, as determined by lot or by auction or by tender or in such other manner as may be specified in the chit agreement, be entitled to the prize amount.

3. Exemption from service tax leviable on services taxable provided to GTA for use in transportation of goods by road

Notification No. 29/2008 ST dated 26.06.2008 has exempted from the whole of the service tax, the service of supply of a goods carriage [taxable under section 65(105)(zzzzj)], (without transferring right of possession and effective control of such goods carriage), provided by any person to a goods transport agency for transportation of goods by road in the said goods carriage.

Notification No. 1/2009 ST dated 05.01.2009 has exempted from the whole of the service tax, the following mentioned services, provided to a goods transport agency for transportation of goods by road in the said goods carriage,

subject to the condition

that the invoice issued by such service provider, providing services should mention the name and address of the goods transport agency and also the name and date of the consignment note, by whatever name called, issued in his behalf:-

- (a) Services provided by a clearing and forwarding agent in relation to clearing and forwarding operations,
- (b) Services provided by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise
- (c) Services provided by a cargo handling agency in relation to cargo handling services
- (d) Services provided by a storage or warehouse keeper in relation to storage and warehousing of goods
- (e) Services provided by any person in relation to business auxiliary service
- (f) Services provided by any other person, in relation to packaging activity
- (g) Services provided by any other person, in relation to support services of business or commerce, in any manner

- (h) Services provided by a processing and clearing house in relation to processing, clearing and settlement of transactions in securities, goods or forward contracts including any other matter incidental to, or connected with, such securities, goods and forward contracts

Others:

4. Following amendments have been made in the Service Tax Rules, 1994:

(i) Amendments in rule 6

(a) Explanation to third proviso to rule 6(1)

For the removal of doubts, it is hereby declared that where the transaction of taxable service is with any associated enterprise, any payment received towards the value of taxable service, in such case shall include any amount credited or debited, as the case may be, to any account, whether called 'Suspense account' or by any other name, in the books of account of a person liable to pay service tax.

[Notification No. 19/2008 ST dated 10.05.2008]

(b) Rule 6(7B) - option to pay 0.25% of the gross amount in case of services provided in relation to purchase or sale of foreign currency

The person liable to pay service tax in relation to purchase or sale of foreign currency, including money changing, provided by a foreign exchange broker, including an authorised dealer in foreign exchange or an authorized money changer, referred to in sub-clauses (zm) and (zzk) of clause (105) of section 65 of the Act, shall have the option to pay an amount calculated at the rate of 0.25% of the gross amount of currency exchanged towards discharge of his service tax liability instead of paying service tax at the rate specified in section 66 of Chapter V of the Act.

However, such option shall not be available in cases where the consideration for the service provided or to be provided is shown separately in the invoice, bill or, as the case may be, challan issued by the service provider.

Illustration

Buying rate \$US 1 = Rs.38, selling rate \$US 1 = Rs.40

(i) Person exchanged \$100 for equivalent rupees

Transaction value = Rs.3800 (Rs.38 x 100)

Service tax payable =Rs.9.5 (0.25% x 3800)

(ii) Person exchanged equivalent rupees for \$100

Transaction value = Rs.4000 (40 x 100)

Service tax payable =Rs.10 (0.25% x 4000).

[Notification No. 19/2008 ST dated 10.05.2008]

(c) Rule 6(1A) - amendment of Form ST-3

Notification No. 31/2008 ST dated 02.09.2008 has amended service tax return Form ST-3. Sub-rule (1A) empowers the assessee to pay advance service tax on his own volition and adjust the amount so paid against the service tax which he is liable to pay for the subsequent period.

(ii) Amendment in rule 4A

With effect from 16.05.2008, in rule 4A, the words "to a customer" have been substituted by the words "to any person".

[Notification No. 19/2008 ST dated 10.05.2008]

(iii) Amendment in rule 4B

With effect from 16.05.2008, in rule 4B, the words "to the customer" have been substituted by the words "to the recipient of service".

[Notification No. 19/2008 ST dated 10.05.2008]

5. Amendments to abatement notification

With effect from 16.05.2008, Notification No. 22/2008 ST dated 10.05.2008 has made the following amendments in Notification No.1/2006 ST dated 01.03.2006 which prescribes various abatements in respect of certain taxable services specified therein:

In the said notification,

S.no.	in case of	for the words	the words that have been substituted are
1	mandap keeper services	to the client	to any person
2	convention services	client	recipient of service
3	erection, commissioning or installation service	customer	recipient of service

6. With effect from 16.05.2008, Notification No. 23/2008 ST dated 10.05.2008 has amended the following notifications in the manner given below:

S.No.	In Notification No.	for the words	the words that have been substituted are
1	18/2002 ST dated 16.12.2002: It exempts the taxable services provided by a consulting engineer to a client on transfer of technology from so much of the service tax leviable thereon as is equivalent to the amount of cess paid on the said transfer of technology under the provisions of section 3 of the Research and Development Cess Act, 1986.	to a client	to any person
2	33/2004 ST dated 03.12.2004: It exempts the taxable service provided by a goods transport agency to a customer, in relation to transport of fruits, vegetables, eggs or milk by road in a goods carriage, from the whole of service tax leviable thereon.	to a customer	to any person
3	34/2004 ST dated 03.12.2004: It exempts the taxable service provided by a goods transport agency to a customer, in relation to transport of goods by road in a goods carriage, from the whole of service tax where-  (i) the gross amount charged on consignments transported in a goods carriage does not exceed rupees one thousand five hundred; or  (ii) the gross amount charged on an individual consignment transported in a goods carriage does not exceed rupees seven hundred fifty.	to a customer	to any person

7. Form No. ST-3 amended for the returns prepared by SRTPs

Notification No. 10 / 2009-ST dated 17.03.2009 has amended Form No. ST-3 in Service Tax Rules, 1994 to furnish the details of name and identification of Service Tax Return Preparers in case the return has been prepared by them.

8. Conditions specified for exemption to services provided to a developer or units of special economic zone-Notification No. 4/2004 dated 31.03.2004 superseded

Notification No.9/2009-Service Tax dated 03.03.2009 has exempted service tax paid on the services provided in relation to the authorized operations in a Special Economic Zone, and received by a developer or units of a Special Economic Zone, whether or not the said taxable services are provided inside the Special Economic Zone.

Provided that

- (a) Approval of list of services

The developer or units of Special Economic Zone shall get the services required in relation to the authorised operations in the Special Economic Zone approved from the Approval Committee (hereinafter referred to as the specified services);

- (b) Actual use of specified services

The developer or units of Special Economic Zone claiming the exemption actually uses the specified services in relation to the authorised operations in the Special Economic Zone;

- (c) Exemption in the form of refund

The exemption claimed by the developer or units of Special Economic Zone shall be provided by way of refund of service tax paid on the specified services used in relation to the authorised operations in the Special Economic Zone;

- (d) Actual payment of service tax

The developer or units of Special Economic Zone claiming the exemption has actually paid the service tax on the specified services;

- (e) No CENVAT credit of service tax paid on specified services

No CENVAT credit of service tax paid on the specified services used in relation to the authorised operations in the Special Economic Zone has been taken under the CENVAT Credit Rules, 2004;

- (f) Exemption under no other notification claimed

Exemption or refund of service tax paid on the specified services used in relation to the authorised operations in the Special Economic Zone shall not be claimed except under this notification.

Conditions to be satisfied:-

- (a) the person liable to pay service tax under sub-section (1) or sub-section (2) of section 68 of the said Finance Act shall pay service tax as applicable on the specified services provided to the developer or units of Special Economic Zone and

used in relation to the authorised operations in the Special Economic Zone, and such person shall not be eligible to claim exemption for the specified services:

Provided that where the developer or units of Special Economic Zone and the person liable to pay service tax under sub-section (2) of section 68 for the said services are the same person, then in such cases exemption for the specified services shall be claimed by that person;

- (b) the developer or units of Special Economic Zone shall claim the exemption by filing a claim for refund of service tax paid on specified services;
- (c) the developer or units of Special Economic Zone shall file the claim for refund to the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be;
- (d) the developer or units of Special Economic Zone who is not registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, or the said Finance Act or the rules made thereunder, shall, prior to filing a claim for refund of service tax under this notification, file a declaration in the Form annexed hereto with the respective jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be;
- (e) the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, allot a service tax code (STC) number to the developer or units of Special Economic Zone within seven days from the date of receipt of the said Form;
- (f) the claim for refund shall be filed, within six months or such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall permit, from the date of actual payment of service tax by such developer or unit to service provider;
- (g) the refund claim shall be accompanied by the following documents, namely:-
  - (i) a copy of the list of specified services required in relation to the authorised operations in the Special Economic Zone, as approved by the Approval Committee;
  - (ii) documents for having paid service tax;
  - (iii) a declaration by the Special Economic Zone developer or unit, claiming such exemption, to the effect that such service is received by him in relation to authorised operation in Special Economic Zone.
- (h) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after satisfying himself that the said services have been actually used in relation to the authorised operations in the Special Economic Zone, refund the service tax paid on the specified services used in relation to the authorised operations in the Special Economic Zone;

- (i) where any refund of service tax paid on specified services is erroneously refunded for any reasons whatsoever, such service tax refunded shall be recoverable under the provisions of the said Finance Act and the rules made thereunder, as if it is a recovery of service tax erroneously refunded.

9. Service Tax (Provisional Attachment of Property) Rules, 2008

These rules introduced by Notification No.30/2008 ST dated 01.07.2008 with effect from 01.07.2008 provide as follows:-

Rule 3 - Procedure for provisional attachment of property

- (a) The Assistant or the Deputy Commissioner of Central Excise, after due verification of the facts and circumstances of the case, for the purpose of protecting the interest of revenue, during the pendency of any proceeding under section 73/73A of the Finance Act, 1994, may forward a proposal for provisional attachment of property belonging to a person on whom a notice has been served under section 73(1)/73A(3) of the Act, to the Commissioner in the format prescribed in these Rules.
- (b) The Commissioner may cause service of a notice on such person who can make a submission in this regard within 15 days of service of the notice.
- (c) Upon consideration of submission, the Commissioner may pass an order to attach the property provisionally.

Rule 4 - The property that can be attached

- (1) Value of property attached shall be of value as nearly as may be equivalent to that of the amount of pending revenue against such person.
- (2) The movable property of such person shall be attached only if the immovable property available for attachment is not sufficient to protect the interest of revenue.

Rule 5 - Obligations of person whose property has been attached provisionally

The said person or his representative shall not mortgage, lease, transfer, deliver or deal with the attached property in any manner except with the previous approval of the Commissioner of Central Excise.

Rule 6 - Period for which order of provisional attachment of property remains in force

Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the service of the order passed.

However, Chief Commissioner of Central Excise may grant an extension for a maximum period of two years.

10. Guidelines in respect of provisional attachment of property

Circular No. 103/06/2008 ST dated 01.07.2008 has issued the following guidelines in respect of provisional attachment of property for the purposes of protecting the interests of revenue during the pendency of any proceedings under section 73 or section 73A of the Act:

1. The following types of offences committed by a service provider or an exporter may be considered for provisional attachment of property:-
  - (a) Provision of a taxable service without the cover of an invoice or any other document, as prescribed, and without payment of tax;
  - (b) Provision of a taxable service without declaring the correct value for payment of service tax, where a portion of value of taxable service, in excess of invoice price, is received by him or on his behalf but not accounted for in the books of account.
  - (c) Taking of CENVAT credit without the receipt of goods or services specified in the document based on which the said credit has been taken;
  - (d) Taking of CENVAT credit on invoices or other documents which a person has reasons to believe as not genuine;
  - (e) Issue of service tax invoice or any other document, without providing or to be providing a taxable service, as specified in the said invoice or other document;
  - (f) Claiming of refund or rebate in a fraudulent manner such as on invoice or other documents which a person has reason to believe as not genuine.
2. The provisional attachment of property shall be resorted only in a case where the service tax or CENVAT credit alleged to be involved is more than Rs.25 lakh.
3. Personal property of a sole proprietor or partners shall not be attached. Personal property means any movable or immovable property which is in personal use of the sole proprietor or partner. However, immovable property/ properties which is/ are used for commercial purpose may be provisionally attached. Movable property should be attached only if the immovable property available for attachment is not sufficient to protect the interests of revenue.

It should also be ensured that such attachment does not hamper the normal business of the assessee. This would mean that inputs required for provision of a service should not be attached by the department.
4. Provisional attachment of the property shall not be excessive, that is to say, the property provisionally attached shall be of value as nearly as may be equivalent to that of the amount demanded in the proceedings under section 73 or section 73A of the Act.
5. The provisional attachment of the property of the concerned person shall be made after sunrise and before sunset and not otherwise.
6. After provisional attachment of the property, the Central Excise Officer shall prepare an inventory of the property attached and specify in it the place where it is lodged or

kept and shall hand over a copy of the same to defaulter or the person from whose charge the property is distrained.

7. All such property as is by the Code of Civil Procedure, 1908 exempted from attachment and sale for execution of a decree of a Civil Court shall be exempt from provisional attachment. The decision of the Commissioner of Central Excise in this regard shall be final.
11. Clarification of issues relating to service tax levy on goods transport road services
- Circular No. 104/07/2008-ST dated 06.08.2008 has clarified the following issues relating to service tax levy on goods transport by road services:

- (i) Issue: GTA provides service to a person in relation to transportation of goods by road in a goods carriage. The service provided is a single composite service which may include various intermediary and ancillary services such as loading/unloading, packing/unpacking, transshipment, temporary warehousing. For the service provided, GTA issues a consignment note and the invoice issued by the GTA for providing the said service includes the value of intermediary and ancillary services. In such a case, whether the intermediary or ancillary activities is to be treated as part of GTA service and the abatement should be extended to the charges for such intermediary or ancillary service?

Clarification: GTA provides a service in relation to transportation of goods by road which is a single composite service. GTA also issues consignment note. The composite service may include various intermediate and ancillary services provided in relation to the principal service of the road transport of goods. Such intermediate and ancillary services may include services like loading/unloading, packing/unpacking, transshipment, temporary warehousing etc., which are provided in the course of transportation by road. These services are not provided as independent activities but are the means for successful provision of the principal service, namely, the transportation of goods by road. The contention that a single composite service should not be broken into its components and classified as separate services is a well-accepted principle of classification. As clarified earlier vide F.No. 334/4/2006-TRU dated 28.2.2006 (para 3.2 and 3.3) and F. No. 334.1/2008-TRU dated 29.2.2008 (para 3.2 and 3.3), a composite service, even if it consists of more than one service, should be treated as a single service based on the main or principal service and accordingly classified. While taking a view, both the form and substance of the transaction are to be taken into account. The guiding principle is to identify the essential features of the transaction. The method of invoicing does not alter the single composite nature of the service and classification in such cases is based on essential character by applying the principle of classification enumerated in section 65A. Thus, if any ancillary/intermediate service is provided in relation to transportation of goods, and the charges, if any, for such services are included in the invoice issued by the GTA, and not by any other

person, such service would form part of GTA service and, therefore, the abatement of 75% would be available on it.

- (ii) Issue: GTA providing service in relation to transportation of goods by road in a goods carriage also undertakes packing as an integral part of the service provided. It may be clarified whether in such cases service provided is to be classified under GTA service.

Clarification: Cargo handling service [Section 65(105)(zr)] means loading, unloading, packing or unpacking of cargo and includes the service of packing together with transportation of cargo with or without loading, unloading and unpacking. Transportation is not the essential character of cargo handling service but only incidental to the cargo handling service. Where service is provided by a person who is registered as GTA service provider and issues consignment note for transportation of goods by road in a goods carriage and the amount charged for the service provided is inclusive of packing, then the service shall be treated as GTA service and not cargo handling service.

- (iii) Issue: Whether time sensitive transportation of goods by road in a goods carriage by a GTA shall be classified under courier service and not GTA service?

Clarification: On this issue, it is clarified that so long as, (a) the entire transportation of goods is by road; and (b) the person transporting the goods issues a consignment note, it would be classified as 'GTA Service'.

## 12. Clarifications of service tax issues relating to units in SEZ

Circular No. 105/08/2008 -ST dated 16.09 2008 has clarified the service tax issues relating to units in Special Economic Zones. It has been observed that there has been lack of clarity in the field formations administering service tax as regards the applicability of service tax levy on units located in SEZ. This lack of clarity has resulted in certain problems especially with respect to service tax administration. The issues and the proposed actions are mentioned below:

- (i) Non-payment of service tax by SEZ units providing taxable service outside SEZ

There is no exclusion to SEZs in the Chapter V of the Finance Act, 1994 Taxable services received by SEZ units and SEZ developers for consumption within the SEZ are exempt for service tax under notification No. 4/2004-ST, dated 31.3.2004. However, service tax is applicable on taxable services provided by SEZ units, except such services which are exempt by notification No. 4/2004-ST. The C &AG, has pointed out instances, where SEZ units in Chennai & Cochin were providing taxable services like manpower supply service, technical testing and analysis service etc., to units / persons outside SEZ, without payment of service tax. In this regard the Ministry of Commerce (MOC) has observed that monitoring and collection of service tax does not come under the jurisdiction of the Development Commissioner and that such responsibility rests with the jurisdictional service tax (or CX & ST) authorities under the Central Board of Excise and Customs. Therefore,

field formations should ensure that SEZs units, providing taxable services to any person for consumption in DTA (or providing any taxable service which is otherwise not exempt), or is otherwise liable to pay service tax under the service tax law, take registration with the jurisdictional service tax authorities and discharge their service tax liability in terms of the Finance Act, 1994.

- (ii) Refund of Service Tax on taxable services used for the purposes of exports of goods by SEZ units

Refund of service tax paid on certain taxable services used in export of goods is permitted under notification 41/2007-ST. This notification prescribes that the refund would be allowed by the jurisdictional Deputy Commissioner/Assistant Commissioner of Central Excise. Doubts have arisen as to the authority that would process these claims when made by SEZ, i.e., the SEZ authorities or jurisdictional service tax authorities. As stated above, the Ministry of Commerce has already opined that administering the service tax law is responsibility of CBEC. Refund of service tax is to be processed by the respective jurisdictional authority administering service tax law. Accordingly, it is clarified that the SEZ units, claiming refund of service tax, should take registration with the jurisdictional ST authorities and file their claims there.

#### RECENT AMENDMENTS IN TAXATION

Students are advised to study thoroughly the Supplementary Study Paper-2008 on Taxation for the Professional Competence Course. The Supplementary Study Paper-2008 contains the amendments made by the Finance Act, 2008 as well as the important notifications and circulars issued between 1.5.07 and 30.4.08. The Supplementary Study Paper would be available at the branches and regional sales counters of the Institute.

This RTP contains the significant amendments made between 1.5.08 and 30.04.09 through notifications and circulars. It is very important to have good knowledge of the latest amendments since considerable weightage is being given to the latest amendments in the examination.