

The Suggested Answers for Part I of Paper – 5: Taxation are based on the provisions applicable for A.Y.2009-10, which is the assessment year relevant for June 2009 examination.

PAPER – 5: TAXATION

Answer all questions

Question 1

Answer any five out of the following six sub-divisions, with reference to the provisions of the Income-tax Act, 1961 for the assessment year 2009-2010:

- (a) Whether the income derived from saplings or seedlings grown in a nursery is taxable under the Income- Act, 1961?
- (b) When will tax not required to be deducted at source on interest payable to a resident on any bond or security issued by a company though the aggregate amount of interest exceeds Rs.2,500, the basic exemption limit under section 193 of the Act?
- (c) When is a charitable trust required to file its audit report alongwith return of income?
State with reason, whether the following statements are True or False:
- (d) A notice under section 143(2) of the Act for scrutiny/regular assessment shall not be issued on an assessee after the expiry of six months from the end of the financial year in which the return is furnished.
- (e) Mr. X, Karta of HUF, claims that the HUF is non-resident as the business of HUF is transacted from UK and all the policy decisions are taken there.
- (f) Mr. P, a shareholder of a closely held company, holding 16% shares, received advances from that company which is to be deemed as dividend from an Indian Company, hence exempted under section 10(34) of the Income-tax Act, 1961. (5 x 2 =10 Marks)

Answer

- (a) As per Explanation 3 to section 2(1A) of the Act, income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income and exempt from tax, whether or not the basic operations were carried out on land.
- (b) As per section 193 of the Act, no tax is required to be deducted at source on any interest payable to a resident on any bond or security issued by a company, where the following conditions are satisfied -
 - (i) where such security is in dematerialised form and
 - (ii) is listed on a recognised stock exchange in India.
- (c) A charitable trust is required to get its accounts audited by a Chartered Accountant and file the audit report in the prescribed form, duly signed and verified by such accountant, along with its return of income when the total income of the trust before giving effect to section 11 and 12 exceeds the maximum amount not chargeable to tax i.e. Rs.1,50,000.

PROFESSIONAL COMPETENCE EXAMINATION: JUNE, 2009

- (d) True, the time limit for issuance of notice under section 143(2) has been revised w.e.f. 1.4.2008. Accordingly, notice under section 143(2) cannot be issued after the expiry of six months from the end of the financial year in which the return of income is furnished.
- (e) True, A HUF is considered to be a non-resident where the control and management of its affairs are situated wholly outside India. In the given case, since all the policy decisions of HUF are taken from UK, the HUF is a non-resident.
- (f) False, as per section 10(34) of the Act, only income by way of dividend referred to in section 115-O shall be exempt in the hands of shareholders. Corporate dividend tax is not leviable on deemed dividend under section 2(22)(e) and hence, such deemed dividend is not exempt under section 10(34).

Question 2

Mr. X is a resident individual. His Profit and Loss account for the year ending 31st March, 2009 is given below:

To	Amount	By	Amount
General charges	35,650	Gross Profit	5,25,860
Insurance	3,550	Commission	6,800
Staff Salary	1,12,560	Rent received	37,500
Donation to political party	1,000	Interest on debentures (Net amount Rs.22,450 plus TDS Rs. 2,550)	25,000
Fringe benefit tax	2,400	Agricultural income	45,000
Depreciation	1,25,656	Short term capital gain on sale of investment	29,000
Administrative expenses	42,500	Dividend from Indian Company	16,000
Advance tax	17,000		
Net Profit	3,44,894		
	<u>6,85,160</u>		<u>6,85,160</u>

- (i) Depreciation has been calculated as per the Income Tax Rules at Rs. 75,000
- (ii) He has deposited Rs. 35,000 in a notified scheme under Post Office Time Deposit Rules, 1981 for five year time.
- (iii) He had bought 200 shares of AB Co. Ltd. on 5.12.2007 @ Rs. 75 each, 150 shares of PQ Co. Ltd. on 3.8.2008 @ Rs. 112 each and 150 shares of AB Co. Ltd. on 05.09.2008 @ Rs. 60 each. He sold all the shares of AB Co. Ltd. on 15.12.2008 @ Rs. 98 each and sold the shares of PQ CO. Ltd. on 10.3.2009 @ Rs. 102 each. All shares were sold in National Stock Exchange through a registered broker.

PAPER – 5: TAXATION

- (iv) One of his life insurance policies was matured on 14.6.2008. The sum assured was Rs. 1,00,000 and amount received on maturity was Rs. 1,62,850.
- (v) Donation to the political party represented the contribution made to a political party registered under section 29A of the Representation of the People Act, 1951.
- (vi) Income tax department refunds Rs. 42,580 (including interest of Rs. 1,470) which was directly credited in his personal savings account.
- (vii) He incurred expenditure of Rs. 40,000 on treatment of his dependent father who was suffering from specified disease as defined in rule 11DD of Income Tax Rules, 1962. The payment of medical expenses was made by cheque and an amount of Rs. 7,500 was reimbursed to him by an insurance company.
- (viii) Bad debt of a business which was discontinued in earlier years, recovered during the year Rs. 15,000.

Compute total income and tax payable thereon by Mr. X for the assessment year 2009 - 2010.
(20 Marks)

Answer

Computation of taxable income and tax payable by Mr. X for the Assessment year 2009-10

Particulars	Rs.	Rs.	Rs.
1. Income from House Property (Note 1)			26,250
2. Profits and gain of business or profession (Note 2)			2,78,450
3. Capital gains (Note 3)			33,200
4. Income from other sources (Note 4)			26,470
Gross Total income			3,64,370
Less : Deductions under Chapter VIA			
(i) Deduction under section 80C (Note 5)		35,000	
(ii) Deduction under section 80DDB in respect of expenditure on medical treatment incurred on treatment of his father	40,000		
Less: Expenditure reimbursed by insurance company	7,500	32,500	
(iii) Deduction under section 80GGC in respect of contribution to the Political Party (Note 11)		1,000	68,500
Total income			2,95,870

PROFESSIONAL COMPETENCE EXAMINATION: JUNE, 2009

Components of total income

Special Income

Short-term capital gains from sale of shares (chargeable at a special rate of 15% u/s 111A)	4,200
---	-------

Normal income	<u>2,91,670</u>
	<u>2,95,870</u>

Computation of tax

Tax on short-term capital gains from sale of shares @ 15% of Rs.4,200	630
---	-----

Tax on agricultural income plus non-agricultural income aggregating to Rs.3,36,670

First	1,50,000	NIL	0	
Next	1,50,000	10%	15,000	
Balance	<u>36,670</u>	20%	<u>7,334</u>	
	3,36,670		22,334	<u>22,334</u>
				22,964

Less: Tax on agricultural income plus basic exemption limit aggregating to Rs.1,95,000

First	1,50,000	Nil	0	
Next	<u>45,000</u>	10%	<u>4,500</u>	
	1,95,000		4,500	<u>4,500</u>

Income tax payable	18,464
--------------------	--------

Add : Education cess @ 2%	369
---------------------------	-----

Secondary and higher education cess @ 1%	185
--	-----

Total tax	<u>19,018</u>
-----------	---------------

Less : Tax deducted at source	<u>2,550</u>
-------------------------------	--------------

	16,468
--	--------

Less: Advance tax paid	<u>17,000</u>
------------------------	---------------

Tax refundable	<u>532</u>
----------------	------------

PAPER – 5: TAXATION

Notes:

1.	Computation of Income from House Property		
	Gross Annual Value (GAV)		37,500
	Rent received is taken as the GAV in the absence of other information		
	Less: Municipal taxes paid		Nil
	Net Annual Value (NAV)		37,500
	Less: Deduction under section 24 @ 30% of NAV		11,250
	Income from House Property		26,250
2.	Computation of Profits and gains of business or profession		
	Net profit as per Profit & Loss account		3,44,894
	Add : Inadmissible expenses		
	Depreciation charges	1,25,656	
	Advance tax (Note 9)	17,000	
	Fringe Benefit tax (Note 9)	2,400	
	Donation to political party	1,000	
			1,46,056
	Add: Recovery of bad debt (Note 8)		15,000
			5,05,950
	Less : Income chargeable under any other head / exempt income		
	Rent received	37,500	
	Interest on debentures (gross)	25,000	
	Agricultural income (Note 10)	45,000	
	Short term capital gain on sale of investment	29,000	
	Dividend from Indian Company (Note 10)	16,000	1,52,500
			3,53,450
	Less: Depreciation as per Income-tax Act		75,000
	Profits and gains of business or profession		2,78,450
3.	Computation of Capital Gains		
	Short term capital gains on sale of investment		29,000
	Short term capital gains on sale of shares		
	Shares of AB Co. Ltd.		
	Sale consideration 150 shares @ Rs.98 each	14,700	
	Less: Cost of 150 shares @ Rs.60 each	9,000	5,700

PROFESSIONAL COMPETENCE EXAMINATION: JUNE, 2009

Shares of PQ Co. Ltd.			
Sale consideration 150 shares @ Rs.102 each	15,300		
Less: Cost of 150 shares @ Rs.112 each	16,800	(1500)	4,200
			<u>33,200</u>
Long term capital gains on sale of shares			
Long-term capital gains on sale of 200 shares of AB Co. Ltd. is exempt under section 10(38).			Nil
Since the holding period of 200 shares of AB Ltd. is more than twelve months, the capital gain on sale of such shares is a long-term capital gain and hence, exempt from income-tax.			
Capital Gains			<u>33,200</u>

- | | | |
|----|---|---------------|
| 4. | Computation of Income from other sources | |
| | Interest on debentures | 25,000 |
| | Interest on refund from IT authority (Note 7) | 1,470 |
| | Income from other sources | <u>26,470</u> |
5. The Finance Act, 2008 has amended section 80C to include within its fold, five year time deposit in an account under Post Office Time Deposit Rules, 1981.
 6. The maturity proceeds of the life insurance policy are exempt under section 10(10D) assuming that the policy does not fall under the exceptions stated under that section.
 7. Refund of income tax is not taxable. However, interest on refund is chargeable to tax under the head "Income from other sources".
 8. Recovery of bad debts, assumed to be allowed in full in an earlier year, is taxable under section 41(4), whether or not the business or profession in respect of which the deduction has been allowed is in existence at the time when it is recovered.
 9. Advance tax and Fringe Benefit Tax are not allowable as deduction.
 10. Agricultural income is exempt under section 10(1) and dividend from an Indian company is exempt from tax under section 10(34).
 11. Contribution to a Political Party registered under section 29A of the Representation of the People Act, 1951 is deductible under section 80GGC.

Question 3

- (a) Mr. Ashok Kumar, an employee of a PSU, furnishes the following particulars for the previous year ending 31.3.2009:

	Rs.
i. Salary income for the year	5,25,000
ii. Salary for Financial Year 2006-07 received during the year	40,000

PAPER – 5: TAXATION

iii. Assessed Income for the Financial Year 2006-07 1,40,000

You are requested by the assessee to compute relief under section 89 of the Income-tax Act, 1961, in terms of tax payable for assessment year 2009-10.

The rates of Income-tax for the assessment year 2007-08 are:

	Tax Rate (%)
On first Rs. 1,00,000	Nil
On Rs. 1,00,000 - Rs. 1,50,000	10
On Rs. 1,50,000 - Rs. 2,50,000	20
Above Rs. 2,50,000	30
Education cess	2

(7 Marks)

- (b) Mr. Kumar is the owner of a residential house which was purchased in September, 1992 for Rs. 50,00,000. He sold the said house on 5th August, 2008 for Rs. 24,00,000. Valuation as per stamp valuation authority of the said plot of land was Rs. 35,00,000. He invested Rs. 8,00,000 in NHA Bonds on 12th January, 2009. He purchased a residential house on 8th September, 2008 for Rs. 12,00,000. He gives other particulars as follows:

Interest on Bank Deposit	Rs. 32,000
Investment in public provident fund	Rs. 12,000

You are requested to calculate the taxable income for the assessment year 2009-2010 and the tax liability, if any.

Cost inflation index for F.Y. 1992-93 and 2008-09 are 223 and 582 respectively. (8 Marks)

Answer

- (a) Computation of Relief under section 89 for the Assessment Year 2009-10

Particulars	Rs.	Rs.
Salary Income for the year excluding the arrears		5,25,000
Add: Arrears relating to Financial Year 2006-07		<u>40,000</u>
Total Income		<u>5,65,000</u>

Tax on Rs.5,65,000

First Rs.1,50,000	Nil	0
Next Rs.1,50,000	10%	15,000
Next Rs.2,00,000	20%	40,000
Balance <u>65,000</u>	30%	<u>19,500</u>
<u>5,65,000</u>		<u>74,500</u>
Add: Education cess @ 2%		1,490

PROFESSIONAL COMPETENCE EXAMINATION: JUNE, 2009

Secondary and higher education cess @1%		<u>745</u>	
Total	(A)	<u>76,735</u>	
Total Income excluding arrears			5,25,000
Tax on Rs.5,25,000			
First Rs.1,50,000	Nil	0	
Next Rs.1,50,000	10%	15,000	
Next Rs.2,00,000	20%	40,000	
Balance <u>25,000</u>	30%	<u>7,500</u>	
		62,500	
<u>5,25,000</u>		<u>62,500</u>	
Add : Education cess @ 2%		1,250	
Secondary and higher education cess @ 1%		<u>625</u>	
Total	(B)	<u>64,375</u>	
Difference between A & B	I		12,360
Assessment Year 2007-08			
Total Income assessed			1,40,000
Add: Arrears relating to Financial year 2006-07			<u>40,000</u>
Total income (including arrears)			1,80,000
Tax on Rs.1,80,000		11,000	
Add: Education Cess @ 2%		<u>220</u>	
Total	(C)	<u>11,220</u>	
Total Income excluding arrears			1,40,000
Tax on Rs.1,40,000		4,000	
Add: Education Cess @ 2%		<u>80</u>	
Total	(D)	<u>4,080</u>	
Difference between C & D	II		7,140
Relief under section 89	(I – II)		5,220

(b) Computation of total income and tax liability of Mr. Kumar for the A.Y.2009-10

Particulars	Rs.	Rs.
Capital Gains:		
Sale price of the residential house	24,00,000	
Valuation as per Stamp Valuation authority	35,00,000	
(Value to be taken is the higher of actual sale price or valuation adopted for stamp duty purpose as per section 50C)		

PAPER – 5: TAXATION

Therefore, Consideration for the purpose of Capital Gains	35,00,000
Less: Indexed Cost of Acquisition = $50,00,000 \times 582 / 223$	<u>1,30,49,327</u>
Long-term Capital Loss (to be carried forward to the succeeding year for set-off against only long-term capital gains - can be carried forward for a maximum of 8 years)	(95,49,327)
Income from other sources:	
Interest on bank deposits	<u>32,000</u>
Gross Total Income	32,000
Less: Deduction under Chapter VI-A	
Section 80C – Investment in PPF	<u>12,000</u>
Total Income	<u>20,000</u>
Tax liability (There is no tax liability since the total income is less than the basic exemption limit)	Nil

Question 4

- (a) (i) Mr. Abhik, an individual, made payment of health insurance premium to GIC in an approved scheme. Premium paid on his health is Rs. 10,000 and his spouse's health is Rs. 15,000 during the year 2008-09. He also paid health insurance premium of Rs. 25,000 on his father's health who is a senior citizen and not dependent on him. The payments have not been made by cash. Compute the amount of deduction under Chapter VI - A of the Act, available to Mr. Abhik from his gross total income for the assessment year 2009-10. (3 Marks)
- (ii) Mr. Abhik's father, who is a senior citizen had pledged his residential house to a bank under a notified reverse mortgage scheme. He was getting loan from bank in monthly installments. Mr. Abhik's father did not repay the loan on maturity and gave possession of the house to the bank to discharge his loan. How will the treatment of long-term capital gain be made on such reverse mortgage transaction? (3 Marks)
- (b) Ms. Geeta, a resident individual, provides the following details of her income / losses for the year ended 31.3.2009:
- (i) Salary received as a partner from a partnership firm Rs. 7,50,000.
 - (ii) Loss on sale of shares listed in BSE Rs. 3,00,000. Shares were held for 15 months and STT paid on sale.
 - (iii) Long-term capital gain on sale of land Rs. 5,00,000.
 - (iv) Rs. 51,000 received in cash from friends in party.
 - (v) Rs. 55,000, received towards dividend on listed equity shares of domestic companies.

PROFESSIONAL COMPETENCE EXAMINATION: JUNE, 2009

- (vi) Brought forward business loss of assessment year 2007- 08 Rs. 12,50,000.

The return for assessment year 2007-08 was filed in time.

Compute gross total income of Ms. Geeta for the assessment year 2009 -10 and ascertain the amount of loss that can be carried forward. (8 Marks)

Answer

- (a) (i) Mr. Abhik will be eligible to claim deduction under section 80D on payment of health insurance premium to GIC in a medical insurance scheme approved by the Central Government. The premium is paid otherwise than by way of cash and hence qualifies for deduction under section 80D. Therefore, the amount of deduction under section 80D would be –

Particulars	Amount (Rs.)
On health insurance premium paid on the health of himself and his spouse (Rs.10,000 + Rs.15,000 = Rs.25,000, but restricted to Rs.15,000)	15,000
On health insurance premium paid on the health of his father, Rs.25,000 but restricted to Rs.20,000 in the case of a parent, who is a senior citizen (whether dependent or not)	20,000
Total deduction under section 80D	<u>35,000</u>

- (ii) The Finance Act, 2008 has inserted clause (xvi) in section 47 to provide that any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government shall not be considered as a transfer for the purpose of capital gain.

Accordingly, the transaction made by Mr. Abhik's father will not be regarded as a transfer. Therefore, no capital gain will be charged on such transaction.

Further, section 10(43) provides that the amount received by the senior citizen as a loan, either in lump sum or in installment, in a transaction of reverse mortgage would be exempt from income-tax.

However, capital gains tax liability would be attracted at the stage of alienation of the mortgaged property by the bank for the purposes of recovering the loan.

- (b) Computation of Gross Total Income of Ms. Geeta for the Assessment Year 2009-10

Particulars	Rs.
Profits and gains of business and profession	
Salary received as a partner from a partnership firm is taxable under the head "Profits and gains of business and profession"	7,50,000
Less: brought forward business loss of assessment year 2007-08 to be	<u>7,50,000</u>

PAPER – 5: TAXATION

set-off against business income		_____
		Nil
Capital Gains		
Long term capital gain on sale of land – (See Note 2)		5,00,000
Income from other sources		
Cash gift received from friends - since the value of cash gift exceeds Rs.50,000, the entire sum is taxable	51,000	
Dividend received from a domestic company is exempt under section 10(34)	Nil	
	_____	51,000
Gross Total Income		_____
		5,51,000

Notes –

1. Balance brought forward business loss of assessment year 2007-08 of Rs.5,00,000 has to be carried forward to the next year.
2. Long-term capital loss on sale of shares cannot be set-off against long-term capital gain on sale of land since loss from an exempt source cannot be set-off against profit from a taxable source. Further, long-term capital gain on sale of listed shares on which STT is paid is exempt under section 10(38), loss on sale of listed shares is a loss from an exempt source. So it cannot be set-off against long-term capital gain on sale of land, which is a profit from a taxable source.

Question 5

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

- (a) Explain "Previous year" for undisclosed sources of income.
- (b) Define the meaning of "Infrastructure Capital Fund" as per section 2(26B) of the Income-tax Act, 1961.
- (c) Explain the meaning of expression "advancement of any other object of general public utility" in the context of "Charitable Purpose" defined under section 2(15) of the Act.
- (d) What is the meaning of 'Incorrect claim' apparent from any information in the return of income which needs prima face adjustment under section 143(1) of the Act?
- (e) Enlist the installments of advance tax and due dates thereon in case of companies.

(4 x 4 = 16 Marks)

PROFESSIONAL COMPETENCE EXAMINATION: JUNE, 2009

Answer

(a) Previous Year

There are many occasions when the Assessing Officer detects cash credits, unexplained investments, unexplained expenditure etc., the source for which is not satisfactorily explained by the assessee to the Assessing Officer. The income from these undisclosed sources of income would be deemed to be the income of that financial year for which assessee failed to explain the nature or source of income.

- (i) Cash credit - previous year is that previous year for which Assessing Officer finds any credit in the books of the assessee.
- (ii) Unexplained Investments - previous year is that financial year in which the assessee has made investments which are not recorded in the books of account.
- (iii) Unexplained money etc. - previous year is that financial year in which the assessee is found to be owner of any money, bullion, jewellery or other valuable article which are not recorded in the books of account.
- (iv) Amount of investments etc. not fully disclosed in the books of account - previous year is that financial year in which the assessee is found to be the owner of any money, bullion, jewellery or other valuable article the value of which exceeds the amount recorded in the books of account.
- (v) Unexplained expenditure – previous year is that financial year in which the assessee incurs unexplained expenditure.
- (vi) Amount borrowed or repaid on hundi – previous year is that financial year in which the assessee has borrowed any amount on a hundi or repaid any amount due thereon other than through account-payee cheque drawn on a bank.

Note - Students may mention any two out of six examples given above.

(b) Infrastructure Capital Fund

As per section 2(26B) of the Act, "Infrastructure Capital Fund" means such fund operating under a trust deed registered under the provisions of the Registration Act, 1908 established to raise monies by the trustees for investment by way of acquiring shares or providing long term finance to -

- (i) any enterprise or undertaking wholly engaged in the business referred to in section 80-IA(4) or section 80-IAB(1) or
- (ii) an undertaking developing and building a housing project referred to in section 80-IB(10) or

PAPER – 5: TAXATION

- (iii) a project for constructing a hotel of not less than three-star category as classified by the Central Government or
 - (iv) a project for constructing a hospital with atleast 100 beds for patients.
- (c) Advancement of any other object of general public utility

The proviso to section 2(15) of the Act provides that "advancement of any other object of general public utility" shall not be a charitable purpose, if it involves carrying on of:

- (i) any activity in the nature of trade, commerce or business, or
- (ii) any activity of rendering of 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 of the income from such activity or the retention of such income, by the concerned entity.

The expression "advancement of any other object of general public utility" includes any object which will be beneficial even to a segment of society and not necessarily to the whole mankind. However, the object should not be for the benefit of specified individuals.

- (d) "An incorrect claim apparent from any information in the return of income" shall mean the following claims, on the basis of an entry, in the return, -
- (i) claim of an item, which is inconsistent with another entry of the same or some other item in the return of income;
 - (ii) claim in respect of which the information required to be furnished under the Act to substantiate the entry has not been so furnished; or
 - (iii) claim in respect of deduction, where such deduction exceeds the specified statutory limit expressed as monetary amount or percentage or ratio or fraction.
- (e) Advance tax shall be payable by companies as per the following schedule of installments:

Companies - four installments

Due date of installment	Amount payable
On or before the 15 th June	Not less than 15% of advance tax liability
On or before the 15 th September	Not less than 45% of advance tax liability, as reduced by the amount, if any, paid in the earlier installment
On before the 15 th December	Not less than 75% of advance tax liability, as reduced by the amount or amounts, if any, paid in the earlier installment or installments

PROFESSIONAL COMPETENCE EXAMINATION: JUNE, 2009

On before the 15th March

The whole amount of advance tax liability, as reduced by the amount or amounts, if any, paid in the earlier installment or installments

Question 6

Answer any five of the following:

- (a) Mr. X, a service provider who pays service tax regularly, was of the opinion that a particular service was not liable for service tax. He, therefore, did not charge service tax in his bill. He received the bill amount without service tax. How will service tax liability of Mr. X be determined in such case?
- (b) Whether service tax return can be furnished after the due date?
- (c) How can the excess payment of service tax be adjusted?
- (d) Discuss the accountability of an "input service distributor" who may not be liable to pay service tax.
- (e) Discuss the word "transparency" in the context of VAT system.
- (f) When does a small service provider require to register under the Finance Act, 1994, but not liable to collect and pay service tax? (5 x 2 = 10 Marks)

Answer

- (a) The liability of a service provider or person liable to pay service tax under rule 2(1)(d) of the Service Tax Rules, 1994, to pay service tax is not contingent upon the service provider realizing or charging the service tax at the prevailing rate. The statutory liability does not get extinguished if the service provider fails to charge or realize the service tax from the service receiver. In this case, the amount received from the service receiver will be taken to be inclusive of service tax. Accordingly, service tax payable by the service provider shall be ascertained by making back calculations in the following manner:-

$$\text{Service tax payable} = \frac{\text{Amount received} \times \text{Service tax rate}}{(100 + \text{Service tax rate})}$$

- (b) A delayed return can be furnished by paying the prescribed late fee. Section 70(1) of the Finance Act, 1994 as amended inter alia provides for filing of periodical return after the due date with the prescribed late fee of not more than Rs. 2,000/-.
- (c) Where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter, as the case may be. However, such an adjustment would be subject to the following conditions mentioned below:

PAPER – 5: TAXATION

- (i) Self-adjustment of excess credit would not be allowed in case of reasons involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification.
 - (ii) Excess amount paid and proposed to be adjusted should not exceed Rs.1,00,000 for the relevant month or quarter except in case of assessee's opting for centralized registration.
 - (iii) Adjustment can be made only in the succeeding month or quarter.
 - (iv) The details of self-adjustment should be intimated to the Superintendent of Central Excise within a period of 15 days from the date of such adjustment.
- (d) As per Notification No. 27/2005 dated 07.06.2005, Central Government has notified that an input service distributor is required to make an application for registration even though he may not be liable to pay service tax.
- (e) Out of total consideration paid for purchase of material, the buyer knows the tax component under a VAT system. Thus, the system ensures transparency. This transparency enables the State Government to know as to what is the exact amount of tax coming at each stage. Thus, it is a great aid to the Government while taking decisions with regards to rate of tax etc.
- (f) When the gross receipts of a small service provider do not exceed Rs. 10 lakh in the preceding financial year, he is not liable to pay service tax in the current financial year till the 'aggregate value of taxable service' does not exceed Rs. 10 lakh during the period. However, he is liable to get registered when the gross receipts in any financial year exceeds Rs. 9 lakh within a period of 30 days from the date of exceeding the threshold limit of Rs. 9 lakh.

Therefore, when in preceding financial year the aggregate value of taxable services exceeds Rs. 9 lakh, but does not exceed Rs. 10 lakh, the small service provider shall be required to get registered, but he shall not be liable to collect and pay service tax till the aggregate value of taxable services is less than Rs. 10 lakh in current financial year.

Question 7

- (a) Compute the VAT amount payable by Mr. A who purchases goods from a manufacturer on payment of Rs. 2,25,000 (including VAT) and earns 10% profit on sale to retailers. VAT rate on purchase and sale is 12.5%. (3 Marks)
- (b) An unregistered "service provider" provides following details in respect of taxable services provided during the financial year 2008-09:

Date	Particulars	Amount (Rs.)
30.6.2008	Advance received from a customer	1,00,000

PROFESSIONAL COMPETENCE EXAMINATION: JUNE, 2009

30.9.2008	Part payment received against a bill of Rs. 9,50,000 raised on a customer	5,00,000
31.12.2008	Money received against taxable services provided during December, 08	3,00,000
31.1.2009	Taxable services rendered during January, 09	1,00,000
31.3.2009	Taxable services rendered during March, 09	2,00,000

The service tax provider complies with the provisions of registration and collection of service tax as per service tax laws. He gets registered during the year. He received the money against the bills raised during the month of January and March 2009. Compute the service tax liability of service provider for the year 2008-09 considering service tax @ 12.36%. (3 Marks)

Answer

(a) Computation of VAT payable by Mr. A:-

	Amount (Rs.)
Payment made to manufacturer	2,25,000
Less: VAT paid $(2,25,000 \times 12.5)/112.5$	25,000
Purchase price	2,00,000
Add: Profit margin (10% of Cost Price)	20,000
Sale price before VAT	2,20,000
Add: VAT @ 12.5% on Rs. 2,20,000	27,500
Invoice value after 10% profit margin	2,47,500
VAT charged in invoice	27,500
Less: VAT input credit $(2,25,000 \times 12.5)/112.5$	25,000
VAT payable by Mr. A	2,500

(b) As per Notification No. 27/2005 dated 07.06.2005, Central Government has notified that any service provider whose aggregate value of taxable service in a financial year exceeds Rs. 9 lakh is required to make an application for registration within a period of 30 days from the date of exceeding the threshold limit of Rs. 9 lakh.

Further, Notification No. 6/2005-ST dated 01.03.2005 as amended provides that a small service provider is eligible to avail exemption from service tax on aggregate value of taxable services not exceeding Rs. 10 lakh in any financial year subject to the condition that during the preceding financial year, the aggregate value of all taxable services provided by him did not exceed Rs. 10 lakh.

PAPER – 5: TAXATION

In given question, since the service provider is not registered in preceding financial year 2007-08, it implies that his aggregate value of taxable services during 2007-08 was less than Rs. 9 lakh. Consequently, he is eligible for exemption under Notification No. 6/2005 dated 01.03.2005 available to small service providers in financial year 2008-09. However, the service provider will no more remain an unregistered dealer as his gross receipts exceed Rs. 9 lakh during the financial year 2008-09.

Computation of service tax liability of service provider for the service provided during the financial year 2008-09:-

Date	Particulars	Receipt Amount (Rs.)
30/06/08	Advance received	1,00,000
30/09/08	Part payment received	5,00,000
31/12/08	Receipts against taxable services	3,00,000
31/01/09	Receipts against taxable services	1,00,000
31/03/09	Receipt against taxable services	2,00,000
	Total Receipts against taxable services	12,00,000
	Less: Exemption for small service providers	10,00,000
	Receipts liable to service tax	2,00,000
	Service tax payable @12.36%	24,720

Question 8

- How is the value of taxable services is determined when the consideration against taxable services is received in other than monetary terms?
- What are the sources of Service Tax Law?
- How can an auditor play role to ensure that the tax payers discharge their tax liability properly under the VAT system?
- Discuss the 'subtraction method' for computation of VAT. (3 x 3 = 9 Marks)

Answer

- Section 67 of the Finance Act, 1994 as amended provides that

If the consideration for a taxable service is not wholly or partly in terms of money, then the value of such service shall be such amount in money, with the addition of service tax charged, is equivalent to the consideration.

In other words, where the service rendered is for a consideration not wholly or partly consisting of money, the value of the taxable service is equivalent to the total value of the

PROFESSIONAL COMPETENCE EXAMINATION: JUNE, 2009

consideration. However, the total of such money and non-money value of the consideration has to be treated as inclusive of the service tax payable thereon.

For instance, Mr. A, a Chartered Accountant provided taxable professional service to one of his clients. For rendering services, Mr. A charges Rs. 20,000 from his client and also asks his client to give him a law book worth Rs. 2,472. The total consideration in this case will be Rs. 22,472 and the value of the taxable service shall be Rs. 20,000 (Rs. $22,472 \times 100/100+12.36$) and Rs. 2,472 shall be the service tax payable.

(b) There is no independent statute on service tax as yet. However, the sources of service tax law are:-

- i. Finance Act, 1994
- ii. Rules on service tax
- iii. Notifications on service tax
- iv. Circulars or Office Letters (Instructions) on service tax
- v. Orders on service tax and
- vi. Trade notices on service tax

(c) Under the VAT system, trust has been reposed on tax payers, as there will be no regular assessment of all VAT returns, but only a few VAT returns will be taken up for scrutiny assessment. In other cases, the return filed by the trader will be accepted. It will not be also seen whether proper records have been maintained by the trader.

As a consequence, a check on compliance becomes essential. Chartered Accountants can ensure tax compliance by:-

- (i) helping the client in systematic record keeping;
- (ii) helping the client in interpretation of the provisions of VAT law, and
- (iii) performing audit of VAT accounts.
- (iv) reporting the under-assessment, if any, made by the dealer requiring additional payment or
- (v) reporting any excess payment of tax warranting refund to the tax payers.

(d) Under the subtraction method, the tax is charged only on the value added at each stage of the sale of the goods. Since, the total value of goods sold is not taken into account, the question of grant of claim for set-off or tax credit does not arise.

This method is normally applied where the tax is not charged separately. Under this method for imposing tax, 'value added' is simply taken as the difference between sales and purchases.