

PAPER – 5 : TAXATION

QUESTIONS

1. State with reasons whether the following statements are true or false [A.Y. 2009-10] –
 - (a) The benefit of weighted deduction of 125% under section 35(2AB) would be available in respect of contribution made to Indian Companies for scientific research.
 - (b) Short-term capital gains on transfer of equity shares or units of equity oriented fund, on which securities transaction tax has been paid, would be taxed at a concessional rate of 10%.
 - (c) The due date for filing of return of income for companies is 31st October, 2009.
 - (d) All Association of persons and Body of individuals are liable to deduct tax at source under section 194C from payments made to a resident contractor.

2. Basic Concepts

What are the rates of surcharge on income-tax, education cess and secondary and higher education cess applicable for assessment year 2009-10 for different classes of persons?

3. Residence and Scope of Total Income

Mr. Raj furnishes the following particulars of his income earned during the previous year relevant to the assessment year 2009-10:

Particulars	Amount (Rs.)
Rent from a property in Delhi received in USA	95,000
Income from a business in USA controlled from Delhi	1,30,000
Income from a business in Bangalore controlled from USA	1,90,000
Rent from a property in USA received there but subsequently remitted to India	75,000
Interest from deposits with an Indian company received in USA	30,000
Profits for the year 2007-08 of a business in USA remitted to India during the previous year 2008-09 (Not taxed earlier)	85,000
Gifts received from his parents	50,000
Pension from former employer in India received in USA	40,000
Profits earned from a business in Paris which is controlled in India, half of the profits being received in India	50,000
Income from agriculture in Bhutan and remitted to India	55,000

Find out the gross total income of Mr. Raj, if he is (i) resident and ordinarily resident in India, (ii) resident but not ordinarily resident in India, or (iii) non-resident in India for the assessment year 2009-10.

4. Incomes which do not form part of Total Income

Discuss whether the scope of definition of the following terms have been restricted or expanded by the Finance Act, 2008 -

- (i) Agricultural income; and
- (ii) Charitable purpose.

5. Incomes which do not form part of Total Income

Explain the concept of reverse mortgage and discuss its tax implications.

6. Income from Salary

Ramesh an employee of a private sector transport company, based at Nagpur and covered by the Payment of Gratuity Act, retires on December 31, 2008 after a service of 33 years and 7 months. At the time of retirement his employer pays Rs.2,76,000 as gratuity and Rs.65,000 as accumulated balance of recognised provident fund. He is also entitled for a monthly pension of Rs.900. He gets 70 per cent of pension commuted for Rs.25,000 on February 1, 2009. The following information is available:

- (i) Basic salary: Rs.90,000 (Rs.10,000 x 9);
- (ii) Bonus: Rs.4,000;
- (iii) Special Allowance: Rs.25,000;
- (iv) House rent allowance: Rs.13,500 (Rs.1,500 x 9); rent paid by him: Rs.14,400 (Rs.1,200 x 12);
- (v) Employer's contribution towards recognised provident fund: Rs.13,000;
- (vi) Ramesh's contribution towards provident fund: Rs.15,000;
- (vii) Payment of insurance premium on March 31, 2009 on own life insurance policy: Rs.15,000 (sum assured: Rs.90,000);
- (viii) Professional tax paid by Ramesh: Rs.1,500.

Salary and pension fall due on last day of each month. As per the terms of employment, Ramesh and his family members can use deluxe buses operated by the employer-company but only once in a year (value of the facility enjoyed by Ramesh and his family members during October 2008 is Rs.10,000; a sum of Rs.5,000 is recovered from Ramesh). On an official tour of Ramesh to Cochin (October 10, 2008 to October 20, 2008), Mrs. Ramesh accompanies him (total expenditure incurred by employer on providing this facility to Mrs. Ramesh: Rs.20,500, amount recovered from Ramesh: Rs.2,000). Determine Ramesh's total income for the assessment year 2009-10.

7. Income from House Property

Harish owns two houses. Relevant details are given below –

	House I	House II
Let out	April 1, 2008 to June 30, 2008	July 1, 2008 to March 31, 2009
Self-occupied	July 1, 2008 to March 31, 2009	April 1, 2008 to June 30, 2008
	Rs.	Rs.
Municipal valuation p.a.	70,000	1,20,000
Fair Rent p.a.	80,000	1,00,000
Standard rent p.a.	76,000	1,15,000
Rent of let out period	20,000	1,25,000
Interest on housing loan	4,000	42,000
Municipal tax paid	12,000	20,000

Assuming that income of Harish from business is Rs.5,00,000 (he does not have any other income) and he deposits Rs.65,000 in public provident fund, find out his total income and tax liability for the A.Y.2009-10.

8. Income from House Property

Discuss the following issues relating to Income from house property –

- Is it possible for the net annual value to be negative?
- Can there be negative income under the head “Income from house property”?
- What will be tax treatment if income under the head “Income from house property” is negative?

9. Profits and gains of business or profession

Discuss briefly on:

- Deduction of Commodities Transaction Tax paid; and
- Provisions relating to disallowance of interest, commission, rent etc. payable to a resident for non-deduction of tax at source or non-payment of tax deducted.

10. Profits and gains of business or profession

Aryan furnishes the following information relevant for the A.Y. 2009-10:

Profit and Loss Account for the year ending March 31, 2009

Particulars	Amount (Rs.)	Particulars	Amount (Rs.)
Office expenses	50,000	Gross profit	3,25,000
Sundry expenses	45,000	Sundry receipts	13,000
Entertainment expenditure	7,000	Bad debts recovered (not allowed as deduction earlier)	8,000
Audit fees	14,000	Customs duties recovered from the Government (earlier allowed as deduction)	34,000
Legal charges/expenses	5,000	Gift received from father	45,000
Extension of building	8,000		
Depreciation on plant and machinery	25,000		
Salary to staff:			
Salary	45,000		
Bonus	40,000		
Contribution towards :			
Employees' recognised provident fund	17,000		
Unapproved gratuity fund	5,000		
Sales tax	40,000		
Provision for sales tax	27,000		
Payment to an approved scientific research association for carrying on scientific research	22,000		
Net profit	75,000		
	<u>4,25,000</u>		<u>4,25,000</u>

Other information:

- As shown in the Profit and Loss Account, Rs.22,000 is paid to a scientific research association for the purpose of carrying on approved scientific research in natural science, not related to the business of Aryan. Besides, Aryan purchases a plant of

Rs.35,000 for the purpose of carrying on scientific research related to his business. Neither cost of plant nor depreciation thereon is debited to profit and loss account.

2. Out of bonus of Rs.40,000, Rs.5,000 is paid during 2008-09 and Rs.28,000 is paid by July 31, 2009 (being the due date of furnishing return of income). The balance of Rs.7,000 is, however, paid on 11.11.2009. Evidence of payment is submitted along with the return of income. Return of income is submitted on November 11, 2009.
3. Depreciation on plant and machinery and extension of building as per income-tax provision is Rs.21,000.
4. Sales tax of Rs.40,000 includes (a) interest for late payment of sales tax: Rs.1,500; (b) penalty for evading sales tax: Rs.12,000.
5. Provision for sales tax represents an outstanding sales tax liability, which is, however, paid on July 10, 2009. Evidence of payment is submitted along with the return of income.

Ascertain the total income of Aryan for the assessment year 2009-10, assuming that he paid Rs.25,000 as life insurance premium during the previous year 2008-09 and his income from other sources is Rs.1,26,000.

11. State with reasons whether the following statements are true or false [A.Y. 2009-10] -
 - (a) Securities transaction tax paid is not allowable as a deduction from business income.
 - (b) HUF of Rajesh claimed deduction under section 80C in respect of tuition fees of Rs.20,000 paid for the purpose of part-time education of the minor daughter of Mr. Rajesh (who is the karta of the HUF) in an Indian college.
 - (c) In case of resident woman assessee below the age of 65 years, the basic exemption limit is Rs.1,45,000.
 - (d) The maturity proceeds of the keyman insurance policy, taken by the employer in the name of employee, received by the employee is exempt under section 10(10D).

12. Capital Gains

Arun has a residential house property situated at Kolkata. The particulars of the house property were as under-

Date of transfer	December 30, 2008
Date of purchase	June 30, 1992
Sale consideration	Rs.40,00,000
Cost of acquisition	Rs.5,00,000
Expenses on transfer	Rs.60,000
Amount deposited in capital gains deposit account scheme on July 20, 2009	Rs.25,00,000

Compute the capital gain chargeable to tax for A.Y.2009-10. What is the rate of tax applicable on such capital gain? Assuming that Arun's income from other sources is Rs.1,50,000, what is his tax liability?

[Cost Inflation Index (CII): F.Y.2008-09: 582, F.Y.1992-93: 223]

13. Clubbing of Income

Ms. Seema was born on 07.06.1991. Her engagement took place on 5.03.2008. On the said day she received cash gifts of Rs.1,50,000 each from her father, father's mother, father's father, mother, mother's mother and mother's father. All six relatives made similar gifts on the day of marriage i.e., on 1.4.2008. The amount so received is deposited in a private limited company. For the year ending 31.3.2009, the company has paid her interest @ 9% i.e., Rs.1,62,000. Discuss how these incomes would be assessed to income-tax.

14. Set-off and Carry forward of Losses

Mr. Kailash furnishes the following information for the year ending 31.3.2009

Particulars	Rs.
(a) Income from business	
- Loss from an eligible transaction in respect of trading in derivatives carried out in a recognized stock exchange	(1,00,000)
- Profit from textile business	2,50,000
(b) Capital gains	
- Long term capital loss on sale of unlisted shares	(50,000)
- Short term capital loss on sale of shares	(1,00,000)
- Short term capital gain on sale of jewellery	95,000

Compute the gross total income of Mr. Kailash for A.Y.2009-10 and the loss to be carried forward.

15. Deductions from Gross Total Income

Mr. Verma furnishes the following particulars for the year ending 31.03.2009:

- Life Insurance Premium paid - Rs.70,000, capital sum of the policy assured for Rs.3,00,000;
- Contribution to Public Provident Fund - Rs.40,000 in the name of mother;
- Tuition fee payment - Rs. 15,000 each for 3 daughters pursuing full time graduation course in Mumbai; Tuition for son pursuing MBA in Harvard Business School - Rs. 1,50,000;

- (d) Housing loan principal repayment - Rs.25,000 to HDFC bank. This property is under construction at Mumbai as on 31.03.2009;
 - (e) Principal repayment of Housing loan taken from friend - Rs.60,000, property is self occupied situated at Chennai;
 - (f) Investment in National Savings Certificate - Rs.60,000;
 - (g) Subscription to bonds issued by NABARD Rs.50,000;
- Compute the deduction eligible under section 80C for A.Y. 2009-10.

16. Deductions from Gross Total Income

Discuss the provisions regarding deductions allowable to an assessee from his gross total income in respect of the following:

- (a) Payment of medical insurance premium
- (b) Payment of rent

17. Computation of Total Income

Mr. Chandan, a Cost Accountant working with ABC Ltd., draws the following salary and allowances:

	Rs.
(i) Basic pay	11,000 p.m.
(ii) Dearness allowance	1,100 p.m.
(iii) City Compensatory allowance	200 p.m.
(iv) House Rent allowance	950 p.m.

Bonus at 20% of salary including Dearness allowance is also received. He is given a motor car (below 1.6 ltr.) and is entitled to use it for both office and private purposes. Deductions have been made from his salary towards contribution to a recognised provident fund Rs.1,500 p.m. and contribution to an approved superannuation fund Rs.500 p.m. There are matching contributions for both by the employer.

Chandan was in receipt of the following from, a partnership firm where he was sharing one-third of the profits:

- Rs.50,000 as share of profits.
- Rs.40,000 as salary from the firm.
- Rs.25,000 as commission therefrom

He donated Rs.28,000 to National Foundation for Communal Harmony.

Chandan's minor son earned Rs.40,000 by way of interest on public deposit with companies.

Chandan received Rs.800 as interest in savings bank account in a (non-nationalised) scheduled bank. He pays Rs.3,500 p.a. as life insurance premium.

Chandan is living in his own house. Annual value as fixed by Municipal Corporation is Rs.7,500. He pays Rs.200 as insurance on this property besides Rs.3,500 as interest on loan of Rs.35,000 on mortgage of this property. The borrowing was partly (Rs.25,000) for acquiring the house and the balance (Rs.10,000) for purchasing a home air conditioner for the house.

Compute Chandan's total income for the assessment year 2009-10.

18. Advance Tax and Tax deducted at source

- (a) What are the due dates and installments of payment of advance tax in case of a corporate assessee?
- (b) Discuss the applicability of TDS provisions under section 194-I to -
 - (i) Payments made by the customers on account of cooling charges to cold storage owners
 - (ii) Service tax component of rental income

19. Provisions for Filing of Return of Income

Who are the authorised signatories to the return of income?

20. Valuation of Service Tax

Adlaps Pvt. Ltd. is engaged in providing advertising services. For the month of August 2008, its gross receipts were Rs.12,50,000. The break up of these receipts is as follows:-

Month in which services are performed	Receipts (Rs.)
July	4,30,000
August	2,50,000
September	5,70,000

In the financial year 2007-08, Adlaps Pvt. Ltd had paid Rs.55,00,000 as service tax. State the amount of service tax payable by Adlaps Pvt. Ltd. for the month of August 2008 and the date by which it is required to make the payment.

21. Filing of Returns

Explain the provisions relating to the scheme for submission of returns through service tax returns preparers.

22. Implementation of VAT

Discuss the role of Chartered Accountants in implementation of VAT.

23. Advance payment of service tax

Hi-tech Ltd. is providing business auxiliary services. It has made an advance payment of service tax during the month of January, 2009 on its own and wants to adjust the same in the subsequent period. The company has appointed you as a consultant to know whether it can do so. Give your opinion.

24. Furnishing and preservation of records

Anand, a practicing chartered accountant, provides taxable audit services. He has started his practice in the mid year of 2008. He wants to file the service tax return first time. Answer the following:

- (a) Whether the records including computerised data maintained by him shall be acceptable by the department?
- (b) List out the records which are required to be furnished to the department
- (c) For how long such records shall be preserved by him?

25. Merits & Demerits of VAT

Elaborate the following statements:-

- (a) There is a minimum possibility of revenue leakage under VAT system.
- (b) Adminstrating VAT in India is a real big challenge.

SUGGESTED ANSWERS/HINTS

- 1. (a) True – The Finance Act, 2008 has extended the benefit of weighted deduction of 125% under section 35(2AB) to contribution made to Indian Companies for scientific research. However, such company should have as its main object the scientific research and development and it should be approved by the prescribed authority.
- (b) False – The Finance Act, 2008 has increased the rate of tax in respect of short-term capital gain on transfer of equity shares or units of equity oriented fund from 10% to 15%.
- (c) False – The Finance Act, 2008 has advanced the due date of filing of return of income for companies from 31st October to 30th September of the relevant assessment year. Hence, the due date for filing return of income for a company is 30th September, 2009.
- (d) False – The Finance Act, 2008 has included within the scope of section 194C(1), Association of Persons and Body of Individuals whose total sales/gross receipts/turnover from the business or profession exceed the monetary limits specified in section 44AB during the financial year immediately preceding the

financial year in which such sum is credited or paid to the account of the contractor. Thus, only Association of Persons and Body of Individuals subject to tax audit in the immediately preceding financial year are liable to deduct tax at source from payments to resident contractors.

2. Surcharge on Income-tax

- (1) In the case of every person being an individual, HUF, AOP or BOI whose income exceeds Rs.10,00,000, the amount of income-tax, is to be increased by a surcharge calculated @ 10% of such income-tax.
- (2) In the case of artificial juridical person, the rate of surcharge is 10%
- (3) In the case of firms, the rate of surcharge is 10%, where the total income exceeds Rs.1 crore.
- (4) In the case of domestic companies, the rate of surcharge is 10%, where the total income exceeds Rs.1 crore.
- (5) In the case of foreign companies, the rate of surcharge is 2.5%, where the total income exceeds Rs.1 crore.
- (6) No surcharge is payable in the case of cooperative society and local authority.

Education cess and Secondary and higher education cess on Income-tax

The amount of income-tax as increased by the union surcharge should be further increased by an additional surcharge called the "Education cess on income-tax", calculated at the rate of 2% of such income-tax and surcharge. Further, "Secondary and higher education cess on income-tax" (SHEC) @1% of income-tax plus surcharge, if applicable, is leviable to fulfill the commitment of the Government to provide and finance secondary and higher education. Education cess and SHEC are leviable in the case of all assesseees i.e. individuals, HUFs, AOP/ BOIs, firms, local authorities, co-operative societies and companies.

3. Computation of Gross Total Income of Mr. Raj for A.Y. 2009-10

Particulars	Resident and ordinarily resident	Resident but not ordinarily Resident	Non-Resident
(1) Income earned/deemed to accrue/arise in India			
Rent from a property in Delhi received in USA	95,000	95,000	95,000
Income from business in Bangalore	1,90,000	1,90,000	1,90,000

	Interest from deposits with an Indian company	30,000	30,000	30,000
	Pension from employer in India	40,000	40,000	40,000
(2)	Income received in India			
	50% of profits of business in Paris	25,000	25,000	25,000
(3)	Income earned and received outside India, from a business controlled from India			
	Income from business in USA	1,30,000	1,30,000	-
	50% of profits of business in Paris.	25,000	25,000	-
(4)	Income earned and received outside India other than (3)			
	Rent from property in USA	75,000	-	-
	Income from Agriculture in Bhutan	55,000	-	-
	Gross Total Income	6,65,000	5,35,000	3,80,000

Notes:

1. Profits for the year 2007-08 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 relatives are exempt from tax. Since parents are relatives, gift received from them is exempt from tax.
4. (a) Agricultural income

The scope of "agricultural income" as defined in section 2(1A) has been expanded.

In the past, there have been court rulings that only if a nursery is maintained by carrying out the basic operations on land and subsequent operations in continuation thereof, income from such nursery would be treated as agricultural income and would qualify for exemption under section 10(1). The Supreme Court has, in CIT v. Raja Benoy Kumar Sahas Roy (1957) 32 ITR 466, held that the basic operations must be performed before any income can be called agricultural income. The basic operations involve cultivation of the ground, in the sense of tilling of the land, sowing of the seeds, planting and other similar operations on the land. Such basic operations demand the expenditure of human labour and skill upon the land itself and further, they are directed to make the crop sprout from the land. Therefore, income derived from sale of plants grown directly in pots would not be treated as agricultural income.

However, the Madras High Court, in CIT v. Soundarya Nursery (2000) 241 ITR 530, observed that nursing activity involves carrying out of several operations on land

before the saplings were transplanted in suitable containers including pots and thereafter kept in shade or green house for further operation and growth. Therefore, income arising from nursery should be considered as agricultural income.

The Finance Act, 2008 has inserted Explanation 3 to section 2(1A) to provide that, with effect from A.Y.2009-10, the income derived from saplings or seedlings grown in a nursery would be deemed to be agricultural income, whether or not the basic operations were carried out on land. This amendment ratifies the view taken by the Madras High Court in favour of the taxpayer.

(b) Charitable purpose

Section 2(15) defines “charitable purpose” to include relief of the poor, education, medical relief, and the advancement of any other object of general public utility.

A number of entities functioning on commercial basis claim exemption of their income either under section 10(23C) or section 11 on the foundation that they are charitable institutions. This is based on the contention that they are engaged in the “advancement of an object of general public utility” as is included in the fourth part of the present definition of “charitable purpose”. There were many decisions rendered in the past supporting the view that if unconnected business is held under a trust for promoting the object of general public utility and if profits are used for promoting such objects, income thereof shall be exempt, for example, the decision of the Supreme Court in CIT v. Madras Stock Exchange Ltd. (1981) 130 ITR 184. However, such a claim in respect of an activity carried out on commercial basis, goes against the basic intention of the provision.

Therefore, in order to limit the ambit of the phrase “advancement of any other object of general public utility”, section 2(15) has been amended to provide that “the advancement of any other object of general public utility” would 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 of any service in relation to any trade, commerce or business,

for a fee or cess 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.

5. The Reverse Mortgage scheme is for the benefit of senior citizens, who own a residential house property. In order to supplement their existing income, they can mortgage their house property with a scheduled bank or housing finance company, in return for a lump-sum amount or for a regular monthly/quarterly/annual income. The senior citizens can continue to live in the house and receive regular income, without the botheration of having to pay back the loan.

The loan will be given up to, say, 60% of the value of residential house property mortgaged. Also, the bank/housing finance company would undertake a revaluation of the property once every 5 years. The borrower can use the loan amount for renovation and extension of residential property, family's medical and emergency expenditure etc., amongst others. However, he cannot use the amount for speculative or trading purposes.

The bank will recover the loan along with the accumulated interest by selling the house after the death of the borrower. The excess amount will be given to the legal heirs. However, before resorting to sale of the house, preference will be given to the legal heirs to repay the loan and interest and get the mortgaged property released.

The Finance Act 2008 has inserted clause (xvi) in section 47 to clarify that any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government would not amount to a transfer for the purpose of capital gains.

Further, clause (43) has been inserted in section 10 to provide that the amount received by the senior citizen as a loan, either in lump sum or in installments, in a transaction of reverse mortgage would be exempt from income-tax.

6. Computation of Total Income of Ramesh for the Assessment Year 2009-10

	Amount (Rs.)	Amount (Rs.)
Basic salary		90,000
Bonus		4,000
Special allowance		25,000
House rent allowance	13,500	
Less: Exempt (See Note 1)	1,800	11,700
Employer's contribution towards recognised provident fund in excess of 12% of salary (i.e., Rs.13,000 -12% of Rs.90,000)		2,200
Gratuity	2,76,000	
Less: Exempt (See Note 2)	1,96,154	79,846
Uncommuted pension [Rs.900 + (30% of Rs.900 x 2)]		1,440
Commuted pension	25,000	
Less: Exempt (See Note 3)	11,905	13,095
Free use of deluxe bus by Ramesh and family members (See Note 5)		Nil
Tour expenses of Mrs. X (See Note 5)		Nil
Gross salary		2,27,281

Less: Deduction under section 16(iii) - Professional tax	1,500
Income from salary	2,25,781
Gross total income	2,25,781
Less: Deduction under section 80C (See Note 6)	30,000
Total income	1,95,781
Total income (rounded off)	1,95,780

Notes:

1. HRA is exempt to the extent of least of the following:

	Particulars	Amount (Rs.)
(i)	Actual HRA received	1,500
(ii)	Rent paid – 10% of salary (Rs.1,200 – 10% x Rs.10,000)	200
(iii)	40% of salary (40% of Rs.10,000)	4,000

Therefore, Rs.1,800 (Rs.200 x 9), being the least amount, is exempt under section 10(13A).

2. Ramesh is a private sector employee, covered by the Payment of Gratuity Act. Number of completed years of service is 34 years. Gratuity is exempt to the extent of minimum of the following:

	Particulars	Amount (Rs.)
(i)	Statutory limit	3,50,000
(ii)	15 days' salary for every completed year of service (Rs.10,000 x 34 x 15/26)	1,96,154
(iii)	Actual gratuity received	2,76,000

Therefore, Rs.1,96,154 is exempt under section 10(10).

3. Commuted pension is exempt from tax as under:

Commuted value of 70% of usual pension: Rs.25,000

Commuted value of full pension: Rs.35,714 (i.e., Rs.25,000 / 0.7)

Amount exempt from tax is one-third of commuted value of full pension, i.e., 1/3 of Rs.35,714 = Rs.11,905, as Ramesh is in receipt of gratuity at the time of retirement.

4. Accumulated balance of recognised provident fund is exempt from tax as Ramesh has rendered continuous service of more than 5 years with his employer.

5. Free use of deluxe bus and tour expenses of Mrs. Ramesh are chargeable to tax in the hands of employer as fringe benefit-tax.

6. Deduction under section 80C:

Particulars	Amount (Rs.)
Contribution towards recognised provident fund	15,000
Insurance premium	<u>15,000</u>
Total deduction	<u>30,000</u>

7. Computation of Total Income and tax liability of Harish for A.Y. 2009-10

Particulars	House I Rs.	House II Rs.
Municipal valuation per annum	70,000	1,20,000
Fair rent per annum	80,000	1,00,000
Standard rent per annum	76,000	1,15,000
Annual Letting value (ALV)		
Higher of Municipal Valuation and Fair Rent but restricted to Standard Rent	76,000	1,15,000
Actual rent for let out period	20,000	1,25,000
Gross annual value (Higher of Annual letting value(ALV) and Actual rent)	76,000	1,25,000
Less : Municipal tax	12,000	20,000
Net Annual Value (NAV)	64,000	1,05,000
Less : Deductions under section 24		
30% of NAV	19,200	31,500
Interest on borrowed capital	4,000	42,000
Income from house property	40,800	31,500
Income from house property (House I & II)		72,300
Business income		5,00,000
Gross total income		5,72,300
Less : Deduction under section 80C - Contribution to public provident fund		65,000
Total Income		<u>5,07,300</u>

Computation of tax liability

Income-tax	57,190
Add: Surcharge (not applicable as total income does not exceed Rs.10,00,000)	Nil
	57,190
Add: Education cess @ 2%	1,144
Add: Secondary and higher education cess @ 1%	572
Tax liability	58,906
Tax liability (rounded off)	58,910

Note - In this case, since neither House I nor House II is self-occupied by Harish throughout the previous year 2008-09, the benefit of adopting the annual value as Nil would not be available in respect of either of the houses.

8. (i) If the municipal tax paid by the landlord is more than the gross annual value, then the net annual value can be negative. This situation can arise where municipal taxes of earlier years are paid during the year. For instance, Manoj lets out a property on annual rent of Rs. 80,000 (which is also the fair rent). During the previous year 2008-09, he paid Municipal taxes of 2008-09: Rs.20,000; municipal tax of earlier years: Rs.65,000. He also pays Rs.28,000 towards interest on loan taken for repairs of house property.

The property income shall be determined as under –

Particulars	Rs.
Gross annual value	80,000
Less: Municipal tax (Rs.20,000 + Rs.65,000)	85,000
Net annual value (NAV)	(-) 5,000
Less: Deductions under section 24	
30% of NAV	Nil
Interest on borrowed capital	28,000
Income from property	(-) 33,000

- (ii) Negative income from property - As can be seen in the example given above, it is possible to have negative income under the head "Income from house property".

- (a) If a property is let out or deemed to be let out, it can have negative income, if
- (1) the municipal tax paid is higher than the gross annual value (as explained in (i) above).

- (2) Interest on loan (coupled with 30% of NAV) is higher than the net annual value.
- (b) In the case of a residential property self-occupied by the owner throughout the year, the income would be negative if interest deduction is claimed.
- (iii) Tax treatment of loss under the head "Income from house property" - If there is a loss under the head "Income from house property", it can be set-off against income under any other head during the current year (no loss can be set-off against winnings from lotteries, races, etc.). If it is not possible to set-off the loss (fully or partly), it can be carried forward to the next year for being set off against the income under the head "Income from house property". Loss from house property can be carried forward for a maximum period of 8 years for set-off against income from house property.
9. (a) Deduction of commodities transaction tax paid [Section 36(1)(xvi)]
- (i) Commodities Transaction Tax (CTT) would be levied on taxable commodities transactions entered in a recognised association. This tax has to be levied from the date on which Chapter VII of the Finance Bill, 2008 comes into force by way of notification in the Official Gazette by the Central Government.
- 'Taxable commodities transaction' means a transaction of purchase or sale in a recognised association of –
- (i) option in goods; or
- (ii) option in commodity derivative; or
- (iii) any other commodity derivative.
- (ii) This tax would be levied at the rates specified below, on taxable commodities transactions undertaken by the seller or the purchaser, as the case may be, as shown hereunder:-
- | S. No. | Taxable commodities transaction | Rate | Payable by |
|--------|---|---|------------|
| 1. | Sale of an option in goods or an option in commodity derivative. | 0.017% on option premium | Seller |
| 2. | Sale of an option in goods or an option in commodity derivative, where option is exercised. | 0.125% on the settlement price of the option | Purchaser |
| 3. | Sale of any other commodity derivative | 0.017% of the price at which the commodity derivative is sold | Seller |
- (iii) Section 36(xvi) provides that any amount of commodities transaction tax paid by the assessee during the year in respect of taxable commodities transactions

entered into in the course of business shall be allowed as deduction subject to the condition that such income from taxable commodities transactions has been included under the head 'Profits and gains of business or profession'.

- (b) Provisions relating to disallowance of interest, commission, rent etc. payable to a resident for non-deduction of tax at source or non-payment of tax deducted

According to section 40(a)(ia), interest, commission, brokerage, rent, royalty, fees for technical/professional services payable to a resident or amounts payable (for carrying out any work contract) to a resident contractor/sub-contractor, on which tax is deductible at source shall be disallowed if –

- (1) such tax has not been deducted; or
- (2) such tax, after deduction, has not been paid –
 - (a) on or before the due date specified in section 139(1), in a case where the tax was deductible and was so deducted during the last month (i.e., March) of the previous year;
 - (b) on or before the last day of the previous year, in any other case.

In case the tax is deducted in any subsequent year or has been deducted

- (a) during the last month (i.e., March) of the previous year but paid after the due date specified in section 139(1); or
- (b) during any other month (i.e., April to February) of the previous year but paid after the end of the previous year,

such sum shall be allowed as deduction in computing the income of the previous year in which such tax has been paid.

If, for instance, tax on royalty paid to Mr. A, a resident, has been deducted during the period between April, 2008 to February, 2009, the same has to be paid by 31st March, 2009. If the deduction has been made in March 2009, the same has to be paid by 31st July/30th September 2009, as the case may be. Otherwise, the expenditure would be disallowed in computing the income for A.Y.2009-10.

If such tax deducted between April 2008 and February 2009 is paid after 31st March 2009, the same would be allowed as deduction in the year of payment. If the tax deducted in March 2009 has been paid after 31st July/30th September, 2009, the same would be allowed as deduction in the year of payment.

10. Computation of Total Income of Aryan for the A.Y. 2009-10

Particulars	Amount (Rs.)	Amount (Rs.)
Net profit as per Profit and Loss Account		75,000
Add : Inadmissible expenditure:		
Extension of building (capital expenditure not allowed)	8,000	
Excess depreciation debited to profit and loss account (i.e., Rs. 25,000-Rs. 21,000)	4,000	
Bonus not paid till the due date of furnishing of return of income (i.e., Rs. 40,000 - Rs. 33,000)	7,000	
Contribution to unapproved gratuity fund	5,000	
Sales tax penalty	12,000	
Payment to an approved scientific research association (considered separately)	22,000	58,000
		1,33,000
Less: Expenses allowable as deduction u/s 35		
Capital expenditure on scientific research related to the business of the assessee (i.e., 100% of Rs. 35,000)	35,000	
Payment to an approved scientific research association for carrying on scientific research qualifies for weighted deduction@125% (i.e., Rs. 22,000 x 125%)	27,500	62,500
		70,500
Less: Sums credited but not taxable		
Recovery of bad debts (not taxable as it was not deducted earlier)	8,000	
Gift received from father (not an income since gift is received from a relative)	45,000	53,000
		17,500
Business income		17,500
Income from other sources		1,26,000
Gross total income		1,43,500
Less: Deduction under section 80C		
Life Insurance Premium		25,000
Total Income		1,18,500

Notes:

1. Outstanding bonus and sales tax paid upto July 31, 2009 (i.e. the due date of submission of return of income) are deductible. Amount paid after this date is deductible only in the year of payment.
 2. Interest for non-payment of sales tax is deductible. However, penalty for evading sales tax is not allowable as deduction.
11. (a) False – The amount of securities transaction tax paid by the assessee during the year in respect of taxable securities transactions entered into in the course of business shall be allowed as deduction under section 36 subject to the condition that such income from taxable securities transactions is included under the head 'Profits and gains of business or profession'. Section 40(a)(ib) providing for disallowance of securities transaction tax has been omitted w.e.f. A.Y. 2009-10.
- (b) False – As per section 80C, tuition fee paid for full-time education is allowable only in the case of an individual assessee. Hindu Undivided Families (HUFs) are not eligible for deduction in respect of payment of tuition fees, whether for full time or part time education. Hence, the HUF of Rajesh cannot claim deduction under section 80C in respect of tuition fees paid for the purpose of part-time education of the minor daughter of Mr. Rajesh, who is the karta of the HUF.
- (c) False – The Finance Act, 2008 has increased the basic exemption limit for resident women assessee below the age of 65 years from Rs.1,45,000 to Rs.1,80,000.
- (d) False – The exemption under section 10(10D) in respect of maturity proceeds of life insurance policy is not available in respect of keyman insurance policy. The maturity proceeds received by the employee will be treated as profits in lieu of salary under section 17(3) and is chargeable to tax under the head "Salaries".

12. Computation of Capital Gains of Mr. Arun for the A.Y. 2009-10

Particulars	Rs.
Gross Sale Consideration	40,00,000
Less: Expenses on transfer	60,000
Net Sale Consideration	39,40,000
Less: Indexed cost of acquisition $\text{Rs.} 5,00,000 \times \frac{582}{223}$	13,04,933
	26,35,067
Less: Exemption under section 54 [amount deposited in capital gain deposit account scheme, i.e. Rs. 25,00,000 or amount of capital gain, i.e., Rs. 26,35,067, whichever is lower]	25,00,000
Long-term capital gains	1,35,067

The rate of tax applicable on long-term capital gains is 20%. This is provided for in section 112. However, the unexhausted basic exemption limit can be adjusted against long-term capital gains. In this case, Arun's income from other sources is Rs.1,50,000. Therefore, he can adjust his entire basic exemption limit of Rs.1,50,000 against income from other sources. So, his entire long-term capital gains of Rs.1,35,067 would be subject to tax @ 20% plus education cess@2% and secondary and higher education cess@1%. His tax liability would, therefore, be Rs.27,824.

13. (i) Gifts received from relatives on the occasion of her engagement - Seema would not be subject to tax in respect of amount of gift received from her relatives on the occasion of her engagement, as section 56 exempts any money received from relatives. Therefore, Rs.1,50,000 received by Seema from each of her relatives on her engagement day is not taxable.
- (ii) Gifts received from relatives on the occasion of marriage – Any amount of gift received on the occasion of the marriage of an individual is again exempt from the purview of taxability irrespective of whom it is received from. Accordingly, the gifts received by Seema on the occasion of her marriage would not be subject to tax.
- (iii) Interest accrued on deposits made out of above gifts - Since Seema is a minor child even as on 31.3.2009, Rs.1,62,000 being income accrued for the year ending 31.3.2009, relevant to the assessment year 2009-10, shall be included in the income of her father or mother, whose total income, excluding this income, is higher.

14. Computation of taxable income of Mr. Kailash for the A.Y. 2009-10

Particulars	Amount (Rs.)	Amount (Rs.)
I Income from business :		
(a) Profit from textile business	2,50,000	
(b) Loss from derivative trading (Note 1)	(1,00,000)	1,50,000
II Capital gains :		
(a) Long term capital loss (Note 2)	(50,000)	
(b) Short term capital gain	95,000	
Less : Short term capital loss (Note 3)	(1,00,000)	
	(5,000)	NIL
Gross total income		1,50,000

Notes:

1. As per clause (d) of the proviso to section 43(5), an eligible transaction in respect of trading in derivatives shall not be a speculative transaction. Therefore, loss from trading in derivatives is not a speculative loss and such loss is eligible for set off against profit from textile business.

2. Long term capital loss can be set off only against long term capital gain. Unabsorbed long term capital loss of Rs.50,000 for the assessment year 2009-10 can be carried forward for a maximum 8 assessment years for set off against long-term capital gains in accordance with section 74.
3. Short term capital loss of Rs.1,00,000 on sale of shares can be set-off against short-term capital gains on sale of jewellery.
4. According to section 71, loss under the head "Capital Gains" cannot be setoff against any other income. Therefore, in this case the net loss of Rs.5,000 shall be carried forward to subsequent assessment years for set off against income under the head 'Capital Gains'.
5. The following is the summary of losses eligible for carried forward to A.Y. 2010-11

Description	Section	No. of years	Amount (Rs.)	Set Off against
Long term capital loss	74	8	50,000	Long term capital gains
Short term capital loss	74	8	5,000	Income under the head 'Capital gains' i.e. either long term capital gain or short term capital gain

15. Computation of deduction eligible under section 80C for the A.Y. 2009-10

Particulars	Note	Amount eligible Rs.
(a) Life Insurance Premium	1	60,000
(b) Contribution to Public Provident fund	2	Nil
(c) Tuition fee	3	30,000
(d) Housing Loan Principal repayment	4 & 5	Nil
(e) Investment in National Savings Certificate		60,000
(f) Subscription to Bonds issued by NABARD		50,000
Gross amount		<u>2,00,000</u>
Deduction under section 80C restricted to		<u>1,00,000</u>

Notes:

1. Any amount of Life Insurance Premium paid in excess of 20% of capital sum assured shall be ignored for deduction under section 80C. In the given case, 20% of capital sum

assured is Rs.60,000. Whereas, the premium paid during the year is Rs.70,000. Therefore, the excess premium of Rs.10,000 does not qualify for deduction.

2. In the case of an individual, contribution to PPF should be made in his name, spouse or children to qualify for deduction under section 80C. As the contribution was made in the name of mother, deduction is not allowable.
 3. Tuition fee paid is eligible for deduction under section 80C for maximum of two children. Therefore, Rs.30,000 shall be allowed. Tuition fee paid for educational institution situated outside India is not eligible for deduction.
 4. In order to claim the principal repayment on loan borrowed for house property as deduction, the construction of such property should have been completed and should be chargeable to tax under the head "Income from house property". In the given case, since the property is under construction, principal repayment does not qualify for deduction.
 5. Repayment of principal on housing loan is not allowed as deduction in case the loan is borrowed from friends, relatives etc. In order to qualify for deduction, the loan should have been obtained from specified employer / institution.
16. (a) Deduction in respect of medical insurance premium [Section 80D]
- (i) Deduction is allowed under section 80D up to a maximum of Rs.15,000 to an individual in respect of medical insurance premium paid for self, spouse and dependent children. In case the premium is paid in respect of a senior citizen, then, the maximum deduction would be Rs.20,000 instead of Rs.15,000.
 - (ii) In the case of a HUF, such deduction is allowed in respect of premium paid to insure the health of any member of the family.
 - (iii) An additional deduction of up to Rs.15,000 would be allowed in respect of medical insurance premium paid for insuring the health of a parent or parents. This would be in addition to the deduction of Rs.15,000 in respect of medical insurance premium paid for self, spouse and dependent children. Such additional deduction would be available even if the parents are not dependent on the individual.
 - (iv) The maximum deduction would, therefore, be Rs.30,000 [i.e. Rs.15,000 + Rs.15,000] and in case any of the persons insured is a senior citizen, Rs.35,000 [i.e. Rs.15,000 + Rs.20,000].
 - (v) For example, if Mr. Ganesh pays medical insurance premium of Rs.16,000 for insuring the health of himself, his spouse and his children and Rs.21,000 for insuring the health of his parents, then he would be eligible for a deduction of Rs.30,000 [Rs.15,000 + Rs.15,000] under section 80D, whether or not his parents are dependent on him. If either or both of his parents are senior citizens, then he would be entitled to a higher deduction of Rs.35,000 [Rs.15,000 + Rs.20,000].

- (vi) The maximum deduction available to a HUF would be Rs.15,000 and in case any member is a senior citizen, Rs.20,000.
- (vii) The other conditions to be fulfilled are that such premium should be paid by any mode, other than cash, in the previous year out of his income chargeable to tax. Further, the medical insurance should be in accordance with a scheme made in this behalf by -
 - (a) the General Insurance Corporation of India and approved by the Central Government in this behalf; or
 - (b) any other insurer and approved by the Insurance Regulatory and Development Authority.
- (b) Deduction in respect of rent paid [Section 80GG]
 - (i) This section provides for deduction in respect of rent paid.
 - (ii) The following conditions have to be satisfied by an individual for claiming deduction under section 80GG -
 - (1) The assessee should not be receiving any house rent allowance exempt under section 10(13A).
 - (2) The accommodation should be occupied by the assessee for the purposes of his own residence and the assessee should pay rent for the accommodation.
 - (3) The assessee should fulfill such other conditions or limitations as may be prescribed, having regard to the area or place in which such accommodation is situated and other relevant considerations.
 - (4) The assessee or his spouse or his minor child or an HUF of which he is a member should not own any accommodation at the place where he ordinarily resides or perform duties of his office or employment or carries on his business or profession; or
 - (5) The assessee should file a declaration in Form 10BA, confirming the details of rent paid and fulfillment of other conditions, with the return of income.
 - (iii) The deduction admissible will be the least of the following:
 - (1) Actual rent paid minus 10% of the total income of the assessee before allowing the deduction, or
 - (2) 25% of such total income (arrived at after making all deductions under Chapter VI A but before making any deduction under this section), or
 - (3) Amount calculated at Rs.2,000 p.m.

Total income for the above purpose will not include long term capital gains, short term capital gains chargeable to tax under section 111A and any income referred to in sections 115A, 115AB, 115AC and 115AD.

17. Computation of Total Income of Chandan for the A.Y. 2009-10

Particulars	Amount (Rs.)	Amount (Rs.)
Income from Salary		
Basic Salary (Rs.11,000 x 12)	1,32,000	
Dearness allowance (Rs.1,100 x 12)	13,200	
City Compensatory Allowance (Rs.200 x 12)	2,400	
Bonus [20% of 1,45,200 (Rs.1,32,000 + Rs.13,200)]	29,040	
Employer's contribution to RPF in excess of 12% of salary (Rs.1,500 – Rs.1,320) x 12	2,160	
House rent allowance (Rs.950 x 12) (See Note 1)	11,400	
Motor car facility (See Note 2)	--	
		1,90,200
Income from House Property		
Annual value of self-occupied house	Nil	
Less: Deduction under section 24		
Interest on borrowings in respect of house property	2,500	
		(-) 2,500
Profit and gains from business or profession		
Share of profit (See Note 3)	Nil	
Salary and commission (Rs.40,000 + Rs.25,000)	65,000	
		65,000
Income from other sources		
Bank Interest	800	
Interest on public deposit earned by minor son [Rs.40,000 – Rs.1,500 exempt under section 10(32)]	38,500	
		39,300
Gross Total Income		2,92,000
Less: Deduction under section 80C (See Note 4)	27,500	
Deduction under section 80G : Donation for National Foundation for Communal Harmony – 100% deduction without qualifying limit	28,000	55,500
Total Income		2,36,500

Notes:

1. Since the assessee lives in his own house, house rent allowance is taxable.
2. ABC Ltd. is liable to fringe benefit tax in respect of motor car facility provided to Mr. Chandan and contribution to superannuation fund. Therefore, no income-tax liability is attracted in respect of the same in the hands of Mr. Chandan.
3. Share income of a partner from the firm is exempt in the hands of the partner as per section 10(2A).
4. Deduction under section 80C:

Particulars	Amount (Rs.)
Employee's contribution to Provident Fund	18,000
Employee's contribution to superannuation fund	6,000
Life Insurance Premium	3,500
	27,500

18. (a) Advance tax shall be payable by a corporate assessee as per the following schedule of installments:

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

- (b) (i) Applicability of TDS provisions under section 194-I to payments made by the customers on account of cooling charges to the cold storage owners.

CBDT Circular No.1/2008 dated 10.1.2008 provides clarification regarding applicability of provisions of section 194-I to payments made by the customers on account of cooling charges to the cold storage owners.

The main function of the cold storage is to preserve perishable goods by means of a mechanical process, and storage of such goods is only incidental in nature. The customer is also not given any right to use any demarcated

space/place or the machinery of the cold store and thus does not become a tenant. Therefore, the provisions of 194-I are not applicable to the cooling charges paid by the customers of the cold storage.

However, since the arrangement between the customers and cold storage owners are basically contractual in nature, the provision of section 194-C will be applicable to the amounts paid as cooling charges by the customers of the cold storage.

(ii) Applicability of TDS provisions under section 194-I to service tax component of rental income

CBDT Circular No.4/2008 dated 28.4.2008 provides clarification on deduction of tax at source (TDS) on service tax component of rental income under section 194-I.

As per the provisions of 194-I, tax is deductible at source on income by way of rent paid to any resident. Further, rent has been defined in 194-I to mean any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any,-

- (a) land; or
- (b) building (including factory building); or
- (c) land appurtenant to a building (including factory building); or
- (d) machinery; or
- (e) plant; or
- (f) equipment; or
- (g) furniture; or
- (h) fittings,

whether or not any or all of the above are owned by the payee.

Service tax paid by the tenant doesn't partake the nature of income of the landlord. The landlord only acts as a collecting agency for Government for collection of service tax. Therefore, tax deduction at source under section 194-I would be required to be made on the amount of rent paid/payable without including the service tax.

19. Authorised signatories to the return of income [Section 140]

Section 140 specifies the persons who are authorized to sign and verify a return of income under section 139 of the Act.

Assessee	Circumstance	Authorised signatory
1. Individual	(i) In circumstances not	- the individual himself

covered under (ii), (iii) & (iv)
below

(ii) where he is absent from India - the individual himself; or
- any person duly authorised by him in this behalf holding a valid power of attorney from the individual (Such power of attorney should be attached to the return of income)

(iii) where he is mentally incapacitated from attending to his affairs - his guardian; or
- any other person competent to act on his behalf

(iv) where, for any other reason, it is not possible for the individual to sign the return - any person duly authorised by him in this behalf holding a valid power of attorney from the individual (Such power of attorney should be attached to the return of income)

2. Hindu Undivided Family

(i) in circumstances not covered under (ii) and (iii) below - the karta

(ii) where the karta is absent from India - any other adult member of the HUF

(iii) where the karta is mentally incapacitated from attending to his affairs - any other adult member of the HUF

3. Company

(i) in circumstances not covered under (ii) to (v) below - the managing director of the company

(ii)

(a) where for any unavoidable reason such managing director is not able to sign and verify the return; or - any director of the company

(b) where there is no managing director - any director of the company

(iii) where the company is not resident in India - a person who holds a valid power of attorney from such

company to do so (such power of attorney should be attached to the return).

- | | | |
|---|---|--|
| | (iv) | |
| | (a) Where the company is being wound up (whether under the orders of a court or otherwise); or | - Liquidator |
| | (b) where any person has been appointed as the receiver of any assets of the company | - Liquidator |
| | (v) Where the management of the company has been taken over by the Central Government or any State Government under any law | - the principal officer of the company |
| 4. Firm | (i) in circumstances not covered under (ii) below | - the managing partner of the firm |
| | (ii) | |
| | (a) where for any unavoidable reason such managing partner is not able to sign and verify the return; or | - any partner of the firm, not being a minor |
| | (b) where there is no managing partner. | - any partner of the firm, not being a minor |
| 5. Local authority | - | - the principal officer |
| 6. Political party [referred to in section 139(4B)] | - | - the chief executive officer of such party (whether he is known as secretary or by any other designation) |
| 7. Any other association | - | - any member of the association or the principal officer of such association |
| 8. Any other person | - | - that person or some other person competent to act on his behalf. |

20. Computation of net service tax payable by Adlaps Pvt. Ltd. for August 2008:-

Gross amount charged for the taxable service = Rs.12,50,000 [see Note (1) below]

(Rs.4,30,000 + Rs.2,50,000 + Rs.5,70,000)

Service tax payable @ 12.36% = Rs.2,50,000 × 12.36% = Rs.1,54,500

Note:-Section 67(3) of the Finance Act, 1994 stipulates that the gross amount charged for the taxable service shall include any amount received towards the taxable service received before, during or after provision of such service.

Due date for payment of service tax:-

With effect from 01.10.2006, the assessee who has paid service tax of Rs. 50,00,000 or above in the preceding financial year has to compulsorily deposit the service tax liable to be paid by him electronically, through internet banking. Since, Adlaps Pvt. Ltd. has paid Rs.55,00,000 as service tax in the previous financial year 2007-08, it has to compulsorily make the payment of service tax electronically through internet banking in the financial year 2008-09.

Rule 6(1) of Service Tax Rules, 1994 provides that if the duty is deposited electronically by an assessee other than an individual, proprietary firm or partnership firm, service tax shall be paid to the credit of Central Government by the 6th day of the month immediately following the calendar month in which the payments are received towards the value of taxable services. Accordingly, Adlaps Pvt. Ltd. is required to pay the service tax of Rs.1,54,500 by 6th September, 2008.

21. The Finance Act, 2008 has inserted a new section 71 to provide for the scheme for submission of returns through Service Tax Returns Preparers. The provisions of section 71 are as follows:

- (1) Without prejudice to the provisions of section 70, the Board may notify a scheme for enabling any person or class of persons to prepare and furnish a return under section 70, and authorise a Service Tax Return Preparer (STRP) to act as such under the scheme.
- (2) A STRP shall assist the person or class of persons to prepare and furnish the return in such manner as may be specified in the scheme framed under this section.
- (3) For the purposes of this section,—
 - (a) “Service Tax Return Preparer” means any individual, who has been authorised to act as a Service Tax Return Preparer under the scheme framed under this section;
 - (b) “person or class of persons” means such person, as may be specified in the scheme, who is required to furnish a return required to be filed under section 70.
- (4) The scheme framed by the Board under this section may provide for the following, namely:—

- (a) the manner in which and the period for which the STRP shall be authorised under sub-section (1);
 - (b) the educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a STRP;
 - (c) the code of conduct for the STRP;
 - (d) the duties and obligations of the STRP;
 - (e) the circumstances under which the authorization given to a STRP may be withdrawn;
 - (f) any other matter which is required to be, or may be, specified by the Scheme for the purposes of this section.
22. (a) Role of ICAI in VAT : While the various State Government have issued detailed clarifications on practical issues arising in accomplishment of VAT, the ICAI is rendering pioneering service in evolving the necessary accounting guidelines both for CENVAT as well as State Level VAT. The ICAI has brought out the following:
- (1) Guidance Notes for accounting for CENVAT as well as State-Level VAT. These Guidance Notes address all the accounting issues in regard to CENVAT and State-Level VAT.
 - (2) A comprehensive study on State-Level VAT in India. It contains an elaborate discussion of the various general principles of VAT and State Level VAT. These general principles have been incorporated in the various State-Level VAT legislations.
- (b) Role of Chartered Accountants in VAT: Chartered Accountants have a significant role to play in proper implementation of VAT.
- (i) Record keeping: VAT requires proper record keeping and accounting. Systematic records of input credit and its proper utilisation is necessary for the success of VAT. Chartered Accountants are well equipped to perform such tasks.
 - (ii) Tax planning: In order to establish an efficient plan for purchases and sales, a careful study of VAT is required. A Chartered Accountant is competent to analyze the impact of various alternatives and choose the most optimum method of purchases and sales in order to minimize the tax impact.
 - (iii) Negotiations with suppliers to reduce price: VAT credit alters cost structure of goods supplied as inputs. A Chartered Accountant will ensure that the benefit of such cost reduction is passed on by the suppliers to his company. However, if the buyers of his company make the similar demand, he must be ready with full data to resist the claims.

(iv) Handling the audit by departmental officers : There will be audit wing in department and certain percentage of dealers will be taken up for audit every year on scientific basis. Chartered Accountant can ensure proper record keeping so as to satisfy the departmental auditors. The professional expertise of a Chartered Accountant will help him in effectively replying audit queries and sorting out audit objections.

(v) External audit of VAT records: Under VAT system, trust has been reposed on tax payers as there will be no regular assessment of all VAT returns but only few returns will be scrutinized. In other cases, return filed by dealer will be accepted. Thus, a check on compliance becomes necessary. Chartered Accountants can play a very vital role in ensuring tax compliance by audit of VAT accounts.

VAT laws of some States provide for audit by outside agencies. In Karnataka, audit report is required if turnover exceeds Rs.25 lakhs. Andhra Pradesh VAT Act provides for audit by Chartered Accountant, if audit is ordered by Commissioner. Maharashtra VAT laws provide for audit by Chartered Accountant if turnover exceeds Rs.40 lakhs. Other States may also prescribe external audit, once they see the utility of audit reports furnished by Chartered Accountant in ensuring tax compliance.

23. With effect from 01.03.2008, sub-(1A) has been inserted in rule 6 of the Service Tax Rules, 1994 to facilitate an assessee to make advance payment of 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. Such facility shall be available when the assessee shall:

- (i) intimate the details of the amount of service tax paid in advance, to the Jurisdictional Superintendent of Central Excise within a period of 15 days from the date of such payment, and
- (ii) indicate the details of the advance payment made, and its adjustment, if any in the subsequent return to be filed under section 70.

Therefore, Hi-tech Ltd. can adjust the advance service tax paid by it in the subsequent period if it fulfills the above two conditions.

24. (a) The records including computerised data, as maintained by Anand shall be acceptable [Rule 5(1) of Service Tax Rules, 1994].

(b) With effect from 28.12.2007, rule 5(2) Service Tax Rules, 1994 has been substituted with a new sub-rule. The new sub-rule lays down that every assessee shall furnish to the Superintendent of Central Excise at the time of filing of return for the first time or the 31st day of January, 2008, whichever is later, a list in duplicate, of-

- (i) all the records prepared or maintained by the assessee for accounting of transactions in regard to,-

- (a) providing of any service, whether taxable or exempted;
 - (b) receipt or procurement of input services and payment for such input services;
 - (c) receipt, purchase, manufacture, storage, sale, or delivery, as the case may be, in regard of inputs and capital goods;
 - (d) other activities, such as manufacture and sale of goods, if any.
 - (ii) all other financial records maintained by him in the normal course of business
 - (c) Anand should preserve such records at least for a period of 5 years immediately after the financial year to which such records pertain [Rule 5(3) of Service Tax Rules, 1994].
25. (a) There is a minimum possibility of revenue leakage under VAT system. The reason is that under VAT system, the tax credit will be given only if the proof of tax paid at an earlier stage is produced. This means that if the tax is evaded at one stage, full tax will be recoverable from the person at the subsequent stage or from a person unable to produce proof of such tax payment. Hence, the probability of the tax evasion is reduced.
- (b) Administering VAT in India is a real big challenge. The major reasons can be outlined as below:-
- (i) Many small dealers maintain only primitive accounts and it is very difficult for such dealers to maintain proper and detailed accounts needed for VAT purposes. As a result, it is difficult to administer the tax system at retail and wholesale stage.
 - (ii) Retailer and wholesalers usually deal in numerous commodities and products. Consequently, matching of input and output taxes will be very difficult.
 - (iii) Administrative costs may be higher at the initial stage of operation.

IMPORTANT CIRCULARS / NOTIFICATIONS ISSUED BETWEEN 1.5.08 and 31.10.08

Students may note that the Study Material for Taxation contains all the relevant amendments made by the Finance Act, 2008 and significant circulars and notifications issued upto 30.4.2008. The following are the amendments which have been made between 1.5.2008 and 31.10.2008. It may carefully be noted that for the students appearing in June 2009 examination, the amendments made by Notifications, Circulars etc. up to 31.10.2008 are relevant.

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 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 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.

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 21.8.08

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.

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. Exemption from service tax on specified taxable services received by an exporter and used for export of goods – three more services notified

With effect from 16.05.2008, Notification No. 24/2008 ST dated 10.05.2008 has 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 this notification 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.
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	exporter shall produce evidence to prove that the services specified in

S.No.	Sub-clause of clause (105) of section 65	Description of taxable service	Conditions
		possession and effective control of tangible goods, provided to an exporter in relation to goods exported by the exporter.	column (3) are used in relation to export of goods.

2. Abatement of 30% from the gross amount charged in case of services provided 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 under section 65(105)(zzzzj) 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.

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

It provides that 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

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 31.10.08 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.