Hello friends.

Following questions were out of the course:
1) Question No.1(d) Question on Section 143(2) – 2 marks.
2) Question No.5(d) Question on Section 143(1) – 4 marks.
3) Question No. 6(d) Question on Input service distributor – 2 marks.

The above mentioned three topics have not been discussed in the Study Material issued by the ICAI. Further these topics were not discussed in the revision test paper issued by the CA Institute prior to the commencement of the examination.

In Chapter No.10 – "Provisions for Filing of Return of Income" of the study material issued by ICAI to students of CA- PCC, sections discussed are upto Section 140 section 143 has not been discussed in the study material and similarly the concept of Input Service Distributor has not been discussed in the study material or revision test paper.

When some topics have not been discussed by the ICAI it is presumed that they are not in the syllabus and thus should not have been asked in the examination.

Therefore, I would request the CA Institute to look into the matter and give the benefit of these three questions to every student who has attended these Questions in the examinations.

Dhaval Desai

TAXATION PAPER – JUNE 2009

Answer all questions. Wherever required, suitable assumptions may be made by the candidate and stated clearly in the answer.
Working notes should form part of the answer.

Q1. Answer any five out of the following six sub-divisions, with reference to the provisions of the Income-tax Act, 1961 for the AY 2009-10: (5 X 2 = 10 marks)

a) Whether the income derived from saplings or seedlings grown in a nursery is taxable under the Income-tax 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 does a charitable trust require filling audit report along with return of income?

State with reason, whether 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, Katra 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.

SOLUTION to Q 1

a) Section 2(1A): Definition of Agriculture Income:
As per the latest amendment done by the Finance Act 2008 any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income and therefore shall be exempt from tax.
Earlier to this amendment income derived from saplings or seedlings grown in a nursery was treated as business income and was taxable.

(b) Section 193: TDS on interest on securities:

As per the latest amendment done by the Finance Act 2008 No TDS shall be done on any interest payable on any security issued by a company, where such security is in dematerialized form and is listed on a recognized stock exchange in India.

(c) Condition for the applicability of section 11 and section 12:
The trust has to file audit report along with the income tax return , where the total income of the trust without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to the income tax in any previous year.
In such case the accounts of the trust must be audited by the CA. The report of such audit in the prescribed form duly signed and verified by such accountant should be furnished along with the return.

(d) Section 143(2): Notice prior to scrutiny assessment: The statement is TRUE
If the assessing officer considers it necessary to ensure that

1) the assessee has not under-stated the income or
2) has not computed excessive loss or
3) has not under-paid the tax in any manner

then a notice shall be served on the assessee under section 143(2). The notice requires the assessee to produce any evidence in support of the return. Such notice shall be served on the assessee within the period of 6 months from the end of the financial year in which return is furnished.
This time limit is applicable w.e.f 1/4/2008 (upto 31/3/2008 such notice can be served before the expiry of 12 months from the end of the month in which the return was furnished.)

(e) Section 6(2) Residential status of HUF:
Mr. X is correct in claiming that HUF is a Non resident of India.
A HUF is said to be resident if full or partial control and management of its affairs is in India. It will be non-resident if no part of control and management of its affairs is situated in India.
In this case all transactions are done in UK and all policy decisions have been taken in UK so HUF is a non resident of India.

(f) Section 2(22)(e) Deemed Dividend: The statement is false.
As per section 2(22)(e) dividend includes any payment by a company in which public is not substantially interested or closely held company of any sum by way of loan or advance to a shareholder being the registered owner of shares holding at least 10% of equity shares is regarded as a deemed dividend and chargeable to tax for the shareholder receiving such advance.
These dividends are taxable for the shareholder to the extent of lower of:

a) Amount received as loan or advance or
b) Accumulated profits of the company (excluding capitalized profits)

On these deemed dividend the company shall not be liable to CDT and dividends shall be taxable for the shareholder Mr. and he can’t claim exemption under section 10(34).

Therefore dividend is not exempt under section 10(34) but it is taxable under section 2(22)(e) for the shareholder.

Q 2. Mr. X is a resident individual. His Profit and Loss account for the year ending 31st March, 2009 is given below : 20 marks

General charges	35,650	Gross Profit	5,25,860
Insurance	3,500	Commission	6,800
Safety 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)	25000
Fringe benefit tax	2,400	Agriculture income	45,000
Depreciation	1,25,656	Short-term Profit on sale on investment	29,000
Administrative expenses	42,500	Dividend from Indian Company	16,000
Advance Tax	17,000		
Net Profit	3,44,894		
total	6,85,160	total	6,85,160

(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 bough 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.

(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 presented 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.

SOLUTION to Q2

Calculation of the total income of Mr. X for the AY 2009-2010

Income under the head salary			NIL
Income under the head house property			26250
Income under the head of business and profession			278450
Income under the head of capital gains			
STCG on investments		29000	
STCG on listed Equity shares of AB CO LTD	5700		
Less: STCG on listed equity shares of PQ CO LTD	(1500)	4200	
LTCG on sale of listed equity shares	3756		
Less: Exempt u/s 10(38)	3756	NIL	33200
Income under the head of other sources			26470
Gross total income			364370
Less : Deduction u/s 80C: Post office time deposit			35000
Less : Deduction u/s 80GGC			1000
Less : Deduction u/s 80DDB	40000 - 7500		32500
Total income / taxable income			295870

Calculation of income from business and profession

Wrong net profit		344,894
Add:		
Donations given to the political party	1000	
FBT	2400	
Wrong depreciation	125656	
Advance tax	17000	
Recover of bad debts u/s 41(4)	15000	161056
Less:		
Rent received	37500	
Interest on debenture	25000	
Agriculture income	45000	
STCG	29000	
Dividends of income company	16000	
Corrected depreciation u/s 32	75000	227500
Taxable PGBP income		278450

Calculation of income from house property

Rent received	37500
Gross annual value	37500
Less: Municipal taxes paid	Nil
Net annual value	37500
Less: deduction u/s 24(a)	11250
Less: deduction u/s 24(b)	Nil
Income from house property	26250

Calculation of income from other sources

Interest on debentures (gross)		25000
Agriculture income Less: Exempt u/s 10(1)	45000 45000	NIL
Dividends of Indian company Less: Exempt u/s 10(34)	16000 16000	NIL
Maturity proceeds of insurance policy Less: Exempt u/s 10(10D)	162850 162850	NIL
Interest on the income tax refund		1470
Income from other sources		26470

Calculation of income from capital gains on sale of shares

	AB CO. LTD	PQ CO LTD.	AB CO. LTD
	POH of 200 shares 5/12/2007-15/12/2008 Nature: LTCA	POH of 150 shares 3/8/2008-10/3/2009 Nature: STCA	POH of 150 shares 5/9/2008-15/12/2008 Nature: STCA
Sale consideration	19600 (200 X 98)	15300 (150 X 102)	14700 (150 X 98)
Less: selling expenses	NIL	NIL	NIL
Net sale consideration	19600	15300	14700
Less: Indexed cost of acquisition	$\frac{15000 \times 582}{551}$ 15844	NA	NA
Less: Cost of acquisition	NA	16800 (150 X 112)	9000 (150 X 60)
LTCG	3756	NA	NA
STCG	NA	(1500)	5700

Calculation of net capital gains

STCG on the sale of investments STCG on the sale of listed equity shares of AB CO LTD STCG on the sale of listed equity shares of PQ CO LTD	29000 5700 (1500)	33200
LTCG on sale of listed equity shares Less: Exempt u/s 10(38)	3756 3756	NIL
Total capital gains		33200

Calculation of income tax for the AY 2009-2010

Total income calculated	2,95,870
Net agriculture income given	45,000
Step 1: tax on non agriculture income plus net agriculture income Income-tax on Rs.340870 (Rs.295870 + Rs.45000) Tax on short-term capital against covered by section 111A [15% of Rs. 4200] Tax on other income of Rs. 336670 Total Tax	 630 22334 22964
Step 2: tax on net agriculture income plus basic exemption limit Income-tax on Rs.1,95,000 (i.e., agricultural income Rs.45,000 + exempted slab of income Rs.1,50,000)	 4500
Step 3: tax of step 1 less tax of step 2 22964 - 4500 Add : Education cess of 2% for primary education Add: Education cess of 1% for higher and secondary education Tax liability Less: TDS done on interest on debenture u/s 193 Less: Advance tax paid u/s 211 Income tax payable / (refundable) Income tax refundable rounded off u/s 288B	 18464 369.28 184.64 19017.92 2550 17000 (532.08) (530)

Assumptions:

1) We assume that for the transaction of shares of AB CO LTD and PQ CO Ltd Security Transaction tax has been paid.
2) We assume that STCG on investment given in the question is the gain on the investment other than of securities.

Q3.(a) Mr. Ashok Kumar, an employee of a PSU furnishes the following particulars for the previous year ending 31.3.2009 : 7 marks

(i)	Salary Income for the year	5,25,000
(ii)	Salary for Financial Year 2006-07 received during the year	40,000
(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%

Q3 (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. 25,00,000. Valuation as per stamp valuation authority of the said plot of land was Rs. 35,00,000. He invested Rs. 8,00,000 in NHAI 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 : 8 marks

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.

SOLUTION to Q3(a) Calculation of relief under section 89

	Taxable income and tax Liability on "receipt" basis		Taxable income and tax Liability on "accrual" basis	
	2008-2009	2006-2007	2008-2009	2006-2007
Salary computed	525,000	140000	525000	140000
Arrears of salary	40,000	Nil	Nil	40000
Total income	565,000	140000	525000	180000
Tax on total income	74500	4000	62500	11000
Add : Surcharge	NIL	Nil	Nil	Nil
Tax and surcharge	74500	4000	62500	11000
Add : Education cess 2%	1490	80	1250	220
Add : Education cess 1%	745	Nil	625	Nil
Tax liability	76735	4080	64375	11220

Aggregate of tax liability of the two years on receipt basis	80815
Aggregate of tax liability of the two years on accrual basis	75595
Tax relief under section 89 for the AY 2009-2010 (i.e., Rs.80815 – 75595)	5220
Tax payable for the AY 2009-2010 (i.e., Rs.76735 – 5220)	71515
Tax payable rounded off under section 288B	71520

SOLUTION to Q3(b) Calculation of income from capital gains

Sale consideration u/s 50C Higher of: a) sale price Rs.2400000 b) stamp duty valuation Rs.3500000	3500000
Less: selling expenses	Nil
Net sale consideration	3500000
Less: Indexed cost of acquisition 5000000 / 223 X 582	13049327
LTCG	(9549327)

NOTE: In the event of loss of capital gains, the investment in the bonds of NHAI under section 54EC and investment in new residential house under section 54 looses its significance

Calculation of total income / taxable income

Income under the head salary	NIL
Income under the head house property	NIL
Income under the head of business and profession	NIL
Income under the head of capital gains	(9549327)
Income under the head of other sources	32000
Gross total income	32000
Less : Deduction u/s 80C: PPF	12000
Total income / taxable income	20000

NOTE: The loss of capital gains will be carry forwarded if the income tax return is filed on or before the due date u/s 139(1).

Calculation of tax liability

Tax will be NIL since his taxable income is less than the basic exempt limit of Rs. 150000

Q4.(a) (i) Mr. Abhik, and individual made payment of health insurance premium to GIC in an approved scheme. Premium paid on his health Rs. 10,000 and his spouse 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 total income for the assessment year 2009-10. 3 marks

Q4.(a) (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 instalments. Mr. Abhik's father did not repay the loan on maturity and given 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

Q4.(b) Ms. Geeta is a resident individual, provides the following details of her income/losses for the year ended 31.3.2009 : 8 marks

(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.

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

The return for assessment year 2008- 09 was filed in time.Compute gross total income of Ms. Geeta for the assessment year 2009-10 and ascertains the amount of loss that can be carried forward.

SOLUTION to Q4(a)(i)   Calculation of deduction under section 80D

Description	Mediclaim premium paid in respect of		Total deduction u/s 80D
	Self , spouse and dependent children	Parents, whether dependent or not	
Mr. Abhik is less than 65 years of age but parent is a senior citizen	15000	20000	35000

As per the latest amended made by Finance Act 2008 to section 80D , limit for deduction under section 80D for Self , spouse and dependent children (no one has age more than 65 years) shall be Rs. 15000. So payment of Rs. 10000 for self and Rs. 15000 for spouse shall be restricted to Rs. 15000.
Similarly limit for deduction for parents, who are senior citizens (whether dependent or not) shall be Rs. 20000. So payment of Rs. 25000 for father shall be restricted to Rs. 20000.

Q4(a)(ii) Reverse Mortgage
As per the new section 10(43) as introduced by the Finance Act 2008 Any amount received by an individual as a loan, either in lump sum or in installment, in a transaction of reverse mortgage referred to Section 47(xvi) shall be exempt from Income Tax.
As per amendment made to section 47 by the Finance Act 2008 transfer of a capital asset in a transaction of reverse mortgage shall not be regarded as transfer for the purposes of capital gains.
Therefore capital gains arising from reverse mortgage shall be exempt from tax for Mr. Abhik’s father.

SOLUTION to Q4(b)
Calculation of gross total income of Mrs. Geeta for the AY 2009-2010

Income under the head salary		NIL
Income under the head house property		NIL
Income under the head of business and profession Salary received from partnership firm Less: BF loss of business for the AY 2007-2008	 750000 750000	 NIL
Income under the head of capital gains (a) Loss of LTCG u/s 111A [if the income is exempt from tax then loss is also to be ignored] (b) LTCG on the sale of land		 NIL 500000
Income under the head of other sources (a)cash gift from friends in the party is regarded as income under section 56 (b)dividends from domestic company Less: exempt under section 10(34)	 55000 55000	 51000 NIL

Gross total income		551000

The loss of business for the AY 2007-2008 to the extent of Rs. 500000 shall be carried forward to the AY 2010-2011.

Q5. Answer any four of the following five sub-divisions with regard to the provisions of the Income-tax Act, 1961 : 4×4=16 marks

(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 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.

SOLUTION TO Q5

Q 5 (a) "Previous year" for undisclosed sources of Income

SECTION 68: CASH CREDITS

If any amount is credited in the books of the assessee and he offers no explanation or offers unsatisfactory explanation about the nature and source of such amount, then the sum so credited may be charged to tax as the income of the previous year in which such sum is found credited in the books of accounts.

SECTION 69: UNEXPLAINED INVESTMENTS

If an assessee has made investments, which are not recorded in the books of account, and the assessee offers no explanation or offers unsatisfactory explanation about the nature and source of the investments, then the value of investments may be deemed to be the income of such previous year in which investments are made.

SECTION 69A: UNEXPLAINED MONEY

If an assessee is found to be the owner of any money, bullion, jewellery or other valuable article which are not recorded in the books of account, and the assessee offers no explanation or offers unsatisfactory explanation about the nature and source of acquisition of such assets, then the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee of such previous year in which he is found the owner.

SECTION 69B: AMOUNT OF INVESTMENTS ETC., NOT FULLY DISCLOSED IN THE BOOKS OF ACCOUNT

If an assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article which are not fully disclosed in the books of account maintained by him and the assessee offers no explanation or offers unsatisfactory explanation then the excess amount may be deemed to be the income of the assessee for the previous year when he is found to be owner.

SECTION 69C: UNEXPLAINED EXPENDITURE

If an assessee has incurred any expenditure (e.g., marriage/party) and he offers no explanation or offers unsatisfactory explanation about the source of such expenditure then the amount of such expenditure may be deemed to be the income of the assessee of previous year in which such expenditure has been incurred.

SECTION 69D: AMOUNT BORROWED OR REPAID ON HUNDI

Where any amount is borrowed or repaid to any person, otherwise than through an account payee cheque the amount so borrowed or repaid shall be deemed to be the income of the person borrowing or repaying the amount. Such income shall be charged to tax in the previous year in which the amount was borrowed or repaid, as the case may be.

Q 5(b) Section 2(26B): Infrastructure Capital Fund:

Means a fund operating under a trust deed established to raise money by the trustees for the investment by the way of acquiring or providing long tern finance to the organization as referred in section 2(26A). i.e:

(1) any undertaking wholly engaged in the business as referred in section 80IA(4) or section 80IAB(1)
(2) undertaking developing and building a housing project referred in section 80IB(10)
(3) a project of constructing a hotel of not less than 3 star category as classified by the central government
(4) a project of constructing a hospital with at least 100 beds for patients

Q 5(c) Section 2(15): Advancement of any object of general public utility

As per the latest amendment to section 2(15) Advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity.

Q 5(d) Section 143(1) Incorrect claim

The term an incorrect claim apparent from any information in the return has been defined. It means such claim on the basis of any entry, in the return:

(1) of an item, which is inconsistent with another entry of the same or some other item in such return
(2) in respect of which, information required to be furnished to substantiate such entry, has not been furnished under the act
(3) in respect of the deduction, where such deduction exceeds specified statutory limit which may has been expressed as monetary amount.

Q5(e) Section 211: Installments Of Advance Tax

Due date of installment In case of Companies	Amount payable

On or before 15/06/PY	15% of ATP*
On or before 15/09/PY	45% of ATP* as reduced by any amount already paid.
On or before 15/12/PY	75% of ATP* as reduced by any amount already paid.
On or before 15/03/PY	100% of ATP* as reduced by the amount already paid.

*ATP refers to advance tax payable

Q6. Answer any five of the following: $5 \times 2 = 10$ marks

(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 Service Tax Act, but not liable to collect and pay Service Tax?

SOLUTION to Q6

Q6(a) Valuation of taxable services: section 67 read with service tax (determination of value) rules 2006

As per section 66 service tax of 12% plus education cess has to be charged on the services provided or to be provided. As per Section 67 value of services is the gross amount charged by the service provider for the services provided or to be provided in the future. Further, the service provider is required to charge and show the service tax separately in the invoice/bill. If it is not charged and shown separately then the value of the services received shall be taken as an inclusive of service tax and then tax payable will be calculated which shall be done as per back calculation. For this very purpose the simple mathematical formula shall be:

Assessable Value = (billed amount) / (1+ rate of tax)

Q6(b) Belated Return: Rule 7C of the service tax rules:

If the service tax provider has not been able to file return till the due date then filling of belated submission of return has been allowed and government has been empowered to fix fees up to Rs. 2000 for that purposes. The details of fee for delayed return are as follows:

1. If delay is up to 15 days from the due date of return: Fees of Rs. 500 is to be paid by the service provider
2. If delay is beyond 15 days but up to 30 days from due date: Fees of Rs. 1000 is to be paid by the service provider
3. If delay is beyond 30 days from the due date: Fees of Rs. 1000 is to be paid + Rs. 100 for every day from the 31^{st} day till the date of furnishing of return but subject to the maximum of Rs. 2000 shall be paid by the service provider

Q 6(c) Excessive payment of service tax: In most of the cases service tax is paid against the defined service tax liability so there can be no cases where service tax paid is more than what has been ascertained. However rule 6(3) has provided a situation where there is excessive payment of service tax. The following points shall be kept in mind in this regard

(a) According to service tax rule 6(3) where an assessee has paid service tax to the Central Government on service, which is not so provided by him the assessee may adjust the excess service tax so paid by him against his service tax liability if the assessee has refunded the service tax to the person from whom it was received.

(b) The assessee will have to submit documentary evidence of such adjustment at the time of filing of service tax return in form ST-3. This adjustment shall be done on the pro-rata basis over the future period.

(c) It has been provided that assessee making quarterly payment can adjust excess service tax in 2 installments at the time of each relevant quarterly payment or 6 installments at the time of each relevant monthly payment as the case may be.

(d) If assessee is having centralized registration and has paid any excessive service tax due to non receipt of details of receipts from other premises then assessee can adjust such excess amount against his service tax liability for the subsequent period.

(e) There is no monetary limit for the adjustment where excessive service tax was paid due to delay in receipt of details of payments received towards taxable services.

(f) Apart from case referred in (f) above adjustment against future payments can be made subject to monetary limit of Rs. 1 Lakhs.

(g) Details and reasons for such adjustment should be intimated within 15 days from the date of such adjustment, to Superintendent of Central Excise.

(h) Where excess payment could not be fully adjusted due to any reason then assessee has to apply for refund under section 11B of Central Excise Act.

Q 6(d) Input service distributor (ISD):

An ISD is an office of the service provider which receives invoices from the input service provider and then distributes that credit to the premise of service provider. An ISD performs the function of distributing the credit of services of which invoices are received in the officer and not in the premise of service provider. Since it distributes the credit, it has been provided in Service Tax (Registration of Special Category of Person) Rules, 2005 that it also need to take service tax registration.

Q6 (e) Transparency under VAT: Under a VAT system, the buyer knows, out of the total consideration paid for purchases of material, what is tax component. This leads to transparency is the VAT system. 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 regard to rate of tax etc.

Q6(f) Small Service Provider (SSP)

For any SSP no registration is required till the turnover of Rs. 9 lakhs. But if a SSP is providing taxable service in excess of Rs. 9 lakhs per annum he will have to get registered with superintendent of Central Excise though SSP will be eligible for exemption if turnover is up to Rs. 10 lakhs per annum.

Q7(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 earn 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 : 3 marks

Date	Particulars	Amount
30.6.2008	Advance received from a customer	1,00,000
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 service provided 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 months January and March, 2009. Compute the service tax liability of service provider for the year 2008-09 considering the rate of service tax @ 12.36%.

Q7(a) Calculation of invoice value

Purchased price of goods excluding VAT (225000 / 112.5 X 100)	200000
Add: Profit margin	20000
Amount of bill	220000
Add: VAT @ 12.5%	27500
Total invoice value	247500

VAT to be paid by Mr. A

VAT charged in the invoice	27500
Less: Input credit (12.5% of Rs. 200000)	25000
Net VAT payable	2500

Q 7(b) Calculation of the service tax liability

The service provider is unregistered service provider at the start of the FY 2008-2009. This means his turnover for the year preceeding to the FY 2008-2009 was less that the prescribed limit of Rs. 9 lakhs. This will mean that he is a small service provider during the year 2008-2009 and therefore he is entitled to claim exemption of Rs. 10 lakhs from the turnover of the FY 2008-2009

Calculation of total amount received for the services provided and to be provided

Date	Particulars	Amount	Amount
30.6.2008	Advance received from a customer	1,00,000	
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 service provided during March, 09	2,00,000	12,00,000

Calculation of service tax liability

Total amount received for the services provided/ to be provided	12,00,000
Less: exemption available to SSP	10,00,000
Taxable value	2,00,000
Service tax @ 12%	24,000
Add: primary education cess @ 2%	480
Add: secondary and higer education cess @ 1%	240
Total service tax liability	24,720

Q8. Answer any three of the following : $3 \times 3 = 9$ marks

(a) How the value of taxable services determined when the consideration against taxable services is received in other than monetary terms?

(b) What are the sources of Service Tax Law?

(c) How can an auditor play role to ensure that the tax payers discharge their tax liability properly8 under the VAT system?

(d) Discuss the 'Subtraction method' for computation of VAT.

Q8 (a) Service for Which Consideration Was Received In Kind: Rule 3 Of Service Tax Valuation Rules, 2006:

If consideration of services has been received in kind then the service tax shall be imposed and for this the value of the identical services provided to some other service receiver shall be deemed to be the value of such services which have been provided and for which consideration has been received in kind.

Q 8(b) Source of service tax: Law of service tax is governed by the following:

1) *CHAPTER V AND VA OF THE FINANCE ACT 1994:* The law relating to service tax is not governed by any service tax act, but by chapter V of Finance Act 1994. Further chapter VA was introduced by Finance Act 2003. Finance Act 2004 has imposed education cess on service tax by introducing chapter VI of finance act 2004. Law of service tax is applicable to whole of India except the state of Jammu and Kashmir. (Article 370 of Constitution of India)
2) *RULES ON SERVICE TAX:* Central government has formulated the following rules:
   a) Service tax rules 1994
   b) Service tax (advance ruling) rules 2003
   c) CENVAT credit rules 2004

d) Export of service rules 2005
e) Service tax (registration of special category of persons) rules 2005
f) Service tax (determination of value) rules 2006
g) Taxation of service (provided from outside India and received in India) rules 2006.

3) *NOTIFICATIONS, CIRCULARS AND CLARIFICATIONS:* Tax on the services does not become effective from the date of passing finance bill by the President of India but becomes effective from the date which is notified by CBEC. In addition to notifications, CBEC issues circulars and clarifications for the effective implementation of service tax.
4) *JUDICIAL DECISIONS:* The Rulings of courts becomes law and have to be followed by all. The ruling of Supreme Court is binding on all courts and service tax authorities.

Q 8(c) 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 utilization 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) 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.

Q8(d) Subtraction method: features

1) Under this method, the tax is charged only on the value added at each stage of the sale of goods.
2) 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.
3) This method is normally applied where the tax is not charged separately.
4) Under this method for imposing tax, ‘value added’ is simply taken as the difference between sales and purchases.

The following illustration will make the working of this system clear:

Particulars	Turnover for tax under VAT	Tax @ 12.50%
First seller sells the goods to a distributor at say, Rs. 1125 inclusive of tax	1,125	125 (1125 x12.50)

		100+12.50
Distributor sells the goods to a whole-seller at say, Rs. 1,350. Here taxable turnover will be Rs. 1,350 – Rs. 1,125	225	25 (225x12.50) 100+12.50
Wholesaler sells the goods to a retailer at say, Rs. 1,687.50. Here taxable turnover will be Rs. 1,687.50-Rs. 1,350	337.50	37.50 (337.50x12.50) 100+12.50
Retailer selling the goods at say, Rs. 2250. Taxable turnover will be Rs. 2250-Rs. 1687.50	562.50 2,250	62.50 (562.50x12.50) 100+12.50 250

Tax is calculated by the formula $\frac{T \times R}{100+R}$

T= Taxable turnover, R = Rate of Tax

Thus, under this system also, the incidence of tax is at each stage and the incidence of tax on the final sale price to the consumer will remain the same as in the earlier method. However, this holds good till the time the same rate of tax is attracted on all inputs, including consumables and services, added at all the stage of production / distribution.