

PAPER – 4 : TAXATION
QUESTIONS

Income Tax

Residential Status and Scope of total income

1. Mr. Raja, citizen of India, who resides in Jaipur, went to Canada for employment purposes on 15-8-2008 and came back to India on 10-11-2009. He has never been out of India in the past.
 - (a) Determine residential status of Mr. Raja for the assessment year 2009 -10.
 - (b) Will your answer be different if he had gone on a leisure trip?

Basic Concepts

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

Incomes which do not form part of total income

3. Discuss the incomes which are exempt in the case of a political party. Are there any conditions for claiming such exemptions?

Salaries

4. Mr. Yogesh is employed with a transport firm. He is member of an unrecognised provident fund. He has been drawing salary @ Rs. 10,000 p.m. since 1-1-2008. Dearness allowance, forming part of pay for superannuation benefits, is paid @ 10% of his salary. He gets house rent allowance Rs. 1,500 per month. He pays rent of Rs. 2,500 pm. He contributes @ 11% of his salary to the fund and the employer contributes @ 25%. The employer also reimburses his personal club bills amounting to Rs. 15,000. Besides, he is paid Rs. 1,400 p.m. as transport allowance.
He retires 1-1-2009 after 28 years and 9 months of service. He gets Rs. 85,000 as accumulated balance from the provident fund. It consists of Rs. 20,000 as his contribution and Rs. 15,000 interest thereon. The employer's contribution is Rs. 35,000 and interest thereon is Rs. 25,000. He also gets gratuity of Rs. 2,50,000.
After retirement, he gets pension @ Rs. 5,000 p.m. On 1-3-2009 he surrenders one half pension for a consolidated amount of Rs. 1,50,000.
He has made the following payments/investments during the previous year 2008-09:
 - (i) Life Insurance Premium amounting Rs. 5,000 on the policy taken on the life of his married son.
 - (ii) Public provident fund deposit Rs. 7,000.

- (iii) Refund of Rs. 15,000 to the Life Insurance Corporation of India on account of loan taken for the purchases of a flat, allotted in March, 1994.
- (iv) Purchase of National Savings Certificates, VIII issue, amounting to Rs. 5,000
- (v) Contribution of Rs. 8,000 under the Jeevan Dhara Scheme of Life Insurance Corporation of India.

Compute his total income and tax liability for the assessment year 2009-10.

Income from House Property

5. Rajan is a Sales-tax Officer at Jaipur. He owns two residential houses. The first is in Delhi and was constructed on 31-12-1991. This has been let out on a rent of Rs. 5,000 p.m. to a company for its office. The second house is in Jaipur which was constructed on 1-3-2008 and has been occupied by him for his own residence since then. He took a loan of Rs. 95,000 on 1-8-2006 @ 9% per annum interest for the purpose of construction of this house. The entire loan is still outstanding.

Other relevant particulars in respect of these houses are given below:

	1st house	2 nd house
	Rs.	Rs.
Municipal valuation	30,000	20,000
Municipal tax	10% of Municipal Value	8% of Municipal value
Expenses on repairs	5,000	8,000
Fire insurance premium	500	--
Ground rent	225	230
Land revenue	1,500	850
Interest on loan	--	8,550

The ground rent of the Delhi house and the municipal tax and land revenue of the Jaipur house are unpaid.

Rajan was transferred to Mumbai on 1-12-2008 where he resides in a house at a monthly rent of Rs. 6,000 and his house at Jaipur was let out on the same day on a rent of Rs. 4,000 per month.

Compute the "Income from house-property" in respect of Rajan for the assessment year 2009-10.

Profits and gains of business or profession

6. Compute the gross total income of Sohan on the basis of the following particulars:

Profit and Loss Account for the year ended 31-3-2009

Particulars	Amount (Rs.)	Particulars	Amount (Rs.)
Interest	19,000	Gross profit b/d	3,35,000
Repairs and Renewals	25,000	Interest on debenture of an institution (Gross)	25,000
Insurance	4,500	Rent from House property	55,000
Depreciation	5,600		
Compensation	15,000		
Law charges	8,000		
Labour Welfare expenses	5,500		
Subscriptions	7,500		
Net profit	3,24,900		
	<u>4,15,000</u>		<u>4,15,000</u>

- (a) (i) Interest includes Rs. 2,000 on loan taken for purchasing debentures of a company and Rs. 3,000 on loan taken for reconstruction of house property let out.
- (ii) The expenses relating to house property let out are 45% of the repairs and renewal expenses.
- (iii) Depreciation includes Rs. 1,500 on house property let out.

- (iv) Compensation was paid to an employee whose dismissal was in business interest.
- (v) Insurance includes 30% for fire insurance of the house property let out, 30% for workers accident insurance and the balance for life insurance.
- (vi) Law charges include Rs. 3,000 relating to a petition filed against breach of contract and the balance regarding sales tax appeal.
- (vii) Subscriptions include Rs. 3,500 given for election purpose to political parties.
- (b) The amount not debited to profit and loss account are as follows-
 - (i) Expenses incurred on the occasion of Diwali Rs. 1,500
 - (ii) Theft of cash from iron safe Rs. 2,000
 - (iii) Expenses for new telephone connection in the business Rs. 2,500.

Capital gains

7. The details regarding opening WDV, additions during the year and deletions during the year of 5 block of assets are given below -

Block	Category of asset	Rate	WDV as on 1.4.2008	Assets put to use for less than 180 days	Assets put to use for 180 days or more	Sold during the year
A	Building	5%	6,00,000	---	1,50,000	---
B	Building	10%	15,00,000	4,50,000	---	---
C	Furniture	10%	5,00,000	---	95,000	---
D	Motor car	15%	4,00,000	1,00,000	---	6,00,000
E	Machinery	15%	6,00,000	---	2,50,000	9,50,000

In respect of Block D above, the entire assets are sold during the year and expenses on transfer are Rs. 45,000. In respect of Block E above, there are still some assets remaining in that block and expenses incurred for transfer is Rs. 25,000. Compute depreciation or capital gain / loss for the purpose of income tax.

Income from Other Sources

8. Mr. Mukesh desires to transfer his painting collections held as personal assets, during the financial year 2008 - 09. He has the following alternatives to do the same. Advise the tax implications in respect of the various alternatives:

- (a) Sell the paintings to Mr. Amar, friend;
- (b) Gift the painting to Mr. Vijay, father-in-law;
- (c) Sell the painting to National Art Gallery, Mumbai;
- (d) Gift the painting to Public Museum, New Delhi.

Set- Off and Carry forward of Losses

9. Mr. Bhushan submits the following information for the A.Y. 2009-10.

	Amount (Rs.)
Salary income	50,000
House property:	
House 1 Income	40,000
House 2 loss	30,000
Textile Business (discontinued on 10.10.2008)	(25,000)
Brought forward loss of textile business - A.Y 2007-08	85,000
Chemical Business (discontinued on 15.3.2008)	
- b/f loss of previous year 2007-08	30,000
- unabsorbed depreciation of previous year 2007-08	20,000
- Bad debts earlier deducted recovered in July 2008	45,000
Leather Business	70,000
Interest on securities held as stock in trade	18,000

Determine the gross total income for the assessment year 2009-10 and also compute the amount of loss that can be carried forward to the subsequent years.

Deductions from Gross Total Income

10. Shree, a tax practitioner, derives Rs. 1,85,000 as taxable professional income. Income of Shree from other sources is Rs. 9,000. He pays Mediciam insurance premium of Rs. 5,000 for insuring the health of his non - dependant parents; Rs. 5,000 for self and spouse and Rs. 8,000 for his brother. He incurs Rs. 15,000 expenditure on medical treatment of his dependant mentally retarded (severe disability) sister in approved

hospital duly certified. He pays rent of Rs. 3,000 per month. Calculate his total income for assessment year 2009-10 after claiming deductions under Chapter VI-A.

Computation of Total Income

11. Mahesh is a Chartered Accountant in practice. He is a resident and ordinarily resident in India. His Profit and Loss Account for the year ended March 31, 2009 reads as follows:-

Expenditure	Amount (Rs.)	Income	Amount (Rs.)
Salaries to paid staff	5,00,000	Fees Earned	18,00,000
Stipend to Articles Clerks	12,000	Dividend on Share of India Companies (Gross)	15,000
Incentives to Articled Clerks	5,500	Income from Unit Trust of India	7,000
Rent	25,000	Profit on Sale of Shares	16,000
Printing & Stationery	6,000	Rent received from residential flat let-out	85,000
Interest on Loan	60,000	Honorarium received from various institutions for valuation of answer papers	7,000
Subscription and Periodicals	18,000		
Postage, Telephone and Fax	1,80,000		
Repairs, Maintenance and Petrol for Car	19,000		
Depreciation:			
Car	7,500		
Office equipment	15,000		
Typewriter	4,500		

Furniture	2,500	29,500	
Traveling expenses		65,000	
Municipal Tax paid in respect of House property		2,000	
Net Profit	10,08,000		
Total	19,30,000	Total	19,30,000

Other Information:

- (a) Fees from consultancy services include Rs. 1,50,000 received in US Dollar from one company in Singapore for rendering professional service there. (Assume that the entire convertible foreign exchange was received within permitted period).
- (b) Traveling expenses include Rs. 25,000 incurred in connection with his visit to Singapore for rendering service as indicated in (a) above.
- (c) Incentives to articled clerks represents amount paid to two articled clerks for passing PE-II Examination at first attempt.
- (d) 1/4th of use of Car is attributable to personal purposes.
- (e) 50% of loan was used for the purpose of construction of the house property and 50% of loan was used for purchasing office equipment.
- (f) The written down values of various assets as on 31.3.2008 are as follows:

Car - acquired on 1.4.2001	82,000
Office equipment - acquired on 15.12.2008 - Cost Rs. 1,60,000	Nil
Typewriter – acquired on 1.4.2003	20,000
Furniture - acquired on 1.4.2003	30,000
- (h) Salaries include Rs. 30,000 paid to a computer specialist in cash for assisting Mahesh in one professional assignment.
- (i) Mahesh paid life membership subscription of Rs. 1,000 to Chartered Accountant's Benevolent Fund (recognised under section 80G). The amount was debited to his drawings account.
- (j) Shares sold were held for 8 months before sale.

Compute the total income of Mahesh for A.Y. 2009 -10.

Return of Income

12. Discuss the provisions of section 139B relating to the scheme for submission of returns through Tax Return Preparers.

Service tax & VAT

Variants of VAT

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

Computation of VAT liability

14. Calculate the total VAT liability under the State VAT law for the month of October 2009 from the following particulars:

Particulars	Rs.
Inputs purchased within the state	1,70,000
Capital goods used in the manufacture of the taxable goods	50,000
Finished goods sold within the state	2,00,000

Applicable tax rates are as follows:-

VAT rate on capital goods	12.5%
Input tax rate within the state	12.5%
Output tax rate within the state	4%

Merits of VAT

15. Explain briefly, how a VAT system discourages the tax evasion.

Computation of purchases eligible for input tax credit

16. Compute the total value of purchases eligible for input tax credit from the following particulars:-

Particulars	Rs.
Inputs purchased from a registered dealer who opts for composition scheme under the provisions of the VAT Act	10,000
Inputs purchased for being used in the execution of a works contract	1,00,000
Raw material purchased from unregistered dealers	70,000
High seas purchases of inputs	1,00,000
Goods purchased for sale to other parts of India in the course of inter-State trade or commerce	20,000

Composition Scheme

17. Who are not eligible for composition scheme?

Tax rates under VAT

18. Enumerate the tax rates under VAT.

Filing of service tax returns

19. Suyogya Consultancy Services (SCS) is engaged in providing management consultancy services during the financial year 2009-10. Examine, whether SCS shall be liable to pay the late fee for delay in furnishing the return for the half-yearly period ending September 30, 2009 in the following cases:-

- (a) It files its return of service tax on October 26, 2009.
- (b) It files its return on November 15, 2009.

Due date for payment of service tax

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

Commercial training or coaching services

21. JB Institute of Management is engaged in providing vocational training to the students. The services provided are taxable under the category of

“commercial training or coaching services”. Explain the validity of the statement.

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

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

Tour operator's services

23. MOTC is a tour operator engaged in arranging a tour from Delhi to Shimla wherein MOTC provides the transportation, accommodation for stay, food, tourist guides, entry to monuments and other similar services in relation to tour. The gross amount charged for the aforesaid services in the financial year 2008-09 are Rs. 32,00,000. Compute the amount of service tax payable by MOTC.

Note – The gross receipts in the financial year 2007-08 were Rs. 24,00,000.

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

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

Levy of service tax

25. State briefly whether the services provided by a person having a place of business in the State of Jammu and Kashmir providing services in any other place in India are taxable under the Finance Act, 1994 as amended?

SUGGESTED ANSWERS/HINTS

1. (a) The previous year for the assessment year 2009-10 is 2008 - 09. During this period Mr. Raja was in India for 137 days (30 + 31 + 30 + 31 + 15). As he is not in India for 182 days, he does not satisfy the first condition of category A. The second condition of category A is also not satisfied because he is a citizen of India and leaves India during the previous year for employment outside India. Therefore, covered under exception No.1 where 60 days will be substituted by 182 days. Hence, he is a non-resident.
- (b) In this case, although he does not satisfy the first condition of category A, he satisfies the second condition as he was in India for more than 60 days in the relevant previous year and was also here for more than 365 days during four preceding previous years. He is therefore, resident in India. The exception will not be applicable to him because he did not leave India for the purpose of employment. He satisfies both the conditions of category B because he has always been in India before 15-8-2008.

The status of the assessee for the previous year 2008-09 will in this case be resident and ordinarily resident in India.

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. Tax exemption to political parties

Section 13A of the Income-tax Act grants exemption from tax to political parties in respect of their income specified below:

- (i) Income from house property;
- (ii) Income from other sources;
- (iii) Capital gains; and
- (iv) Income by way of voluntary contributions received by the political parties from any person.

The aforesaid categories of income would qualify for exemption without any monetary or other limit and the income so exempted would not even be includible in the total income of the political party for the purpose of assessment. The income if any, derived by the political party by way of capital gains and profits and gains of business and profession would not, however, qualify for tax exemption. The tax exemption will be applicable only if the following conditions are fulfilled:

- (i) The political party must keep and maintain such books and other documents as would enable the Income-tax officer to properly deduce the income of the political party from those accounts.
- (ii) The political party must keep and maintain records in respect of each such voluntary contribution which is in excess of Rs.20,000 giving details of the amounts received, the name and address of the person who has made the contribution, the date of receipts and such other details as may be relevant or appropriate. But this does not mean that the political party need not disclose smaller contribution in its accounts

which are maintained by it. The obligation to maintain proper record of voluntary contribution in excess of Rs.20,000 is over and above the obligation to maintain proper records and books of accounts in respect of all the income and expenses of the party.

- (iii) The accounts of the political party must be audited by a Chartered Accountant who is authorised, under section 228 of the Act, to appear as an authorised representative in income-tax proceedings before any income-tax authority. In other words, a practising Chartered Accountant should audit the accounts of the political party regardless of the amount of the income and volume of transaction of the political party.

Further, a report under section 29C(3) of the Representation of People Act, 1951 has to be submitted by the treasurer of such political party or any other person authorized by the political party in this behalf for every financial year. If there is a failure to submit the above report, no exemption under this section shall be available for the political party for that financial year.

For the purposes of this section, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951.

4. Computation of Total Income and tax liability of Mr. Yogesh for the Assessment year 2009-10

Particulars	Amount (Rs.)
Income from Salary	
Salary (Rs 10,000 x 9)	90,000
D.A. (10% of salary)	9,000
Club Bills reimbursed by employer	15,000
House Rent Allowance (Rs. 13,500 –Rs. 12,600) (Note 1)	900
Transport allowance (Rs. 1,400 x 9) i.e. (Rs.12,600 – exempt 70%)	3,780
Pension (Rs. 5,000 x 2 + Rs. 2,500 x 1)	12,500
Commuted pension (Rs.1,50,000 – Rs.1,00,000) (Note 2)	50,000
Gratuity (Rs.2,50,000 – Rs.1,54,000) (Note 3)	96,000
Employers contribution of U.R.P.F.	35,000
Interest on employers contribution to U.R.P.F	25,000
Gross salary	3,37,180
Less : Deduction	Nil
Income from Salary	3,37,180

Income from other sources

Interest received on own contribution U.R.P.F

15,000

Gross total income

3,52,180

Less : Deduction under section 80C (Note 4)

40,000

Total income

3,12,180

Tax on Rs. 3,12,180

Income tax

17,436

Add : Education cess @ 2%

349

Add : Secondary and higher education cess @ 1%

174

Tax liability

17,959

Tax liability rounded off

17,960

Note:

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

Rs.

(i) HRA received (Rs. 1,500 X 9)

13,500

(ii) Rent paid -10% of salary of Rs. 99,000 i.e. (Rs.22,500 – Rs. 9,900)

12,600

(iii) 40% of salary

39,600

Therefore, Rs. 12,600 will be exempt.

2. Commuted pension will be exempt to the extent of commuted value of 1/3rd of the pension as the assessee is also entitled to gratuity. The exemption amount will be (Rs. 1,50,000 x 2 x 1/3) = Rs. 1,00,000.

3. Assuming that he is not covered under the Payment of Gratuity Act. Gratuity is exempt to the extent of the minimum of the following :

Rs.

(i) Half month's average salary for every completed year of service
i.e. (28 x 1/2 x Rs.11,000)

1,54,000

(ii) Actual gratuity received

2,50,000

(iii)	Specified amount	3,50,000
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Therefore, Rs. 1,54,000 will be exempt.

4. The following payments qualify for deduction under section 80C:

	Rs.
(i) LIC premium	5,000
(ii) PPF	7,000
(iii) Jeevan Dhara Scheme	8,000
(iv) Repayment of housing loan	15,000
(v) Purchase of NSC VII issue	5,000
	40,000

5. Computation of Income from House property of Rajan for Assessment year 2009-10

Particulars	Rs.	Rs.	Rs.
Ist house (let out)			
Gross Annual Value (GAV) (Rs. 5,000 X 12)		60,000	
Less : Municipal taxes		3,000	
Net Annual Value (NAV)		57,000	
Less : Deductions under section 24			
Standard deduction @ 30% of NAV		17,100	39,900
IIInd House (Part of the year let and part of the year self occupied)			
Gross Annual Value higher of the following two:			
(a) Municipal value or Fair rent whichever is more i.e. (Rs. 20,000 or Rs. 48,000)	48,000		
(b) Actual rent received or receivable (Rs. 4,000 x 4)	16,000	48,000	
Less : Municipal taxes		--	

Net Annual Value (NAV)		<u>48,000</u>	
Less : Deductions under section 24			
(a) Standard deduction @ 30% of NAV	14,400		
(b) Interest on loan (Rs. 8,550 + Rs. 1,140)	9,690	24,090	23,910
Income from House Property		<u>63,810</u>	

Note:

1. The second house has been let out @ Rs. 4,000 p.m.; therefore in the absence of other information, the expected rent or fair rent shall be (Rs. 4,000 x 12) = Rs. 48,000.
2. Interest for pre-construction period i.e. from 1-8-2006 to 31.3.2007 amounting to Rs. 5,700 is allowable in five installments i.e. Rs. 1,140 for five years.

6. Computation of Gross Total Income of Sohan for Assessment year 2009-10

Income from house property	Rs.	Rs.
Rent from house property		55,000
Less: Municipal taxes		Nil
		<u>55,000</u>
Less: (i) Standard deduction @ 30%	16,500	
(ii) Interest	3,000	19,500
Income from house property		<u>35,500</u>
Profits and Gains of Business or Profession		
Net Profit as per P & L A/c		3,24,900
Add : Inadmissible expenses		
Interest on loan for securities and house property (Rs. 2,000 + Rs. 3,000)	5,000	
Repairs and renewals of property (Rs. 25,000 x 45%)	11,250	
Depreciation on House Property	1,500	

Fire insurance premium on house property (Rs. 4,500 x 30%)	1,350	
Life insurance premium (Rs. 4,500 x 40%)	1,800	
Subscription to political parties	3,500	24,400
		3,49,300
Less: Income not taxable under this head		
Interest on Debentures	25,000	
Rent from house property	55,000	80,000
		2,69,300
Less: Expenses allowable but not debited to P & L A/c		
(i) Diwali expenses	1,500	
(ii) New telephone expenses	2,500	
(iii) Loss of cash due to theft	2,000	6,000
		2,63,300
Profits and Gains of Business or Profession		
Income from other sources		
Interest on debentures (Rs. 25,000 – Rs. 2,000)		23,000
Computation of Gross Total Income		
(i) Income from house property	35,500	
(ii) Profits and gains of business or profession	2,63,300	
(iii) Income from other sources	23,000	
Gross Total Income	3,21,800	

Note: Subscription of Rs. 3,500 paid to political party shall be allowed as deduction under section 80GGC.

7. Computation of depreciation and capital gains/loss for the A.Y. 2009 - 10.

Particulars	Building		Furniture	Motor Car	Machinery
	Block A	Block B	Block C	Block D	Block E
	5 %	10%	10%	15%	15%
	Rs.	Rs.	Rs.	Rs.	Rs.
Opening WDV	6,00,000	15,00,000	5,00,000	4,00,000	6,00,000
Add: Additions made during the year	1,50,000	4,50,000	95,000	1,00,000	2,50,000
	7,50,000	19,50,000	5,95,000	5,00,000	8,50,000
Less: Sales net of expenses	----	-----	----	5,55,000	9,25,000
WDV for Depreciation	7,50,000	19,50,000	5,95,000	Nil	Nil
Depreciation for the year	37,500	1,72,500	59,500	Nil	Nil

1. Block B 10% on Rs.15,00,000 + 1/ 2 of 10% on Rs.4,50,000 = Rs. 1,72,500.

2. Total depreciation Rs.2,69,500 (Block A+B+C).

3. In respect of block D & E, depreciation can not be claimed since provisions of section 50 become applicable. Consequently, the short term capital gain or losses in respect of these 2 blocks are computed here under:

Particulars	Block D	Block E
Full value of consideration (I)	6,00,000	9,50,000
Less: i) Expenses for transfer	45,000	25,000
ii) W.D.V. of the block	4,00,000	6,00,000
iii) Assets acquired during the year	1,00,000	2,50,000
Total (II)	5,45,000	8,75,000

Short term capital gain(loss) (I) - (II)

55,000

75,000

8. Painting, though held for personal purpose and are movable in nature shall be considered to be capital assets under section 2(14). Accordingly, any transfer thereof is subject to tax under the head "Capital gains." Therefore, in the given case, tax implications for various alternatives are as follows:

Situation	Tax Implications
(a) Sell paintings to Mr. Amar friend	Capital gains on sale of such paintings are chargeable to tax under the head capital gains.
(b) Gift the painting to Mr. Vijay, father-in-law.	As per the provisions on Section 47(iii), gift of capital asset under a Will is not a transfer and therefore, not chargeable to capital gains tax. (ii) In the case of recipient, Section 56 is not applicable since the gift received is of non-monetary in nature.
(c) Sell the painting to National Art Gallery, Mumbai	The gain arising on sale of paintings is not chargeable to tax since, sale of such assets are not to be considered as transfer by virtue of section 47 (ix).
(d) Gift the painting to Public Museum, New Delhi	Gift is not a transfer as per section 47(iii). Therefore, the transaction is not subject to any tax implications in the hands of the seller.

9. Computation of Gross Total Income for Assessment year 2009-10

	Amount (Rs.)	Amount (Rs.)
I. Income from Salary		

	Salary		50,000
II	Income from House property		
	House 1 Income	40,000	
	House 2 loss	(30,000)	10,000
III	Profits and Gains of Business or Profession		
	(i) Textile business loss	(25,000)	
	(ii) Chemical business -		
	Bad debts recovered taxable under section 41	45,000	
	(4)		
	Less: Set off of brought forward loss of P.Y.		
	2007-08 under section 72	(30,000)	15,000
			(10,000)
	(iii) Leather Business Income	70,000	
	(iv) Interest on securities held as stock-in-trade	18,000	52,000
			42,000
	Less: B/f loss of textile business Rs. 85,000		
	restricted to	42,000	Nil
	Total		60,000
	Less: Unabsorbed depreciation of Rs.20,000		
	restricted to Rs.10,000 (Note 2)		10,000
	Gross Total Income		50,000

Note:

1. The unabsorbed loss of Rs.43,000 (Rs. 85,000- Rs. 42,000) of Textile business can be carried forward to A.Y. 2010-11 for set-off under section 72, even though the business is discontinued.
2. The unabsorbed depreciation of Rs.20,000 is eligible for set off against any income other than salary income. Accordingly, a sum of Rs.10,000 is adjusted against income from house property. The balance Rs.10,000 is eligible for carry forward and set off to A.Y.2010-11.

10. Computation of Total Income of Shree for Assessment Year 2009-10

	Rs.	Rs.
Professional income		1,85,000
Income from other sources		9,000
Gross total income		1,94,000
Less: Deductions under Chapter VI-A		
1. Mediciclaim Insurance - 80D - (Rs. 5,000 + Rs. 5,000)	10,000	
2. Expenditure for dependant mentally retarded sister- 80DD	75,000	
3. Rent paid - 80GG - least of the following is eligible for deduction		
(i) Excess of rent paid over 10% of total income (Rs. 36,000 – Rs. 10,900) = Rs. 25,100		
(ii) 25% of total income = Rs. 27,250		
(iii) Ceiling limit Rs.2,000 p.m. = Rs. 24,000	24,000	1,09,000
Total income		85,000

Note:

1. Mediciclaim insurance for insuring health of X's brother does not qualify for deduction under section 80D.
2. Mediciclaim insurance for non - dependant parents shall qualify for deduction under section 80D.
3. Deduction under section 80DD is a flat amount of Rs.75,000, irrespective of the actual expenditure incurred (for persons with severe disability).
4. Total income for the purpose of section 80GG

	Rs.
Gross total income	1,94,000
Less: Deduction under section 80D & 80DD	85,000
Total Income	1,09,000

11. Computation of Total Income of Mr. Mahesh for the A.Y. 2009-10

Particulars	Amount (Rs.)
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(i)	Income from House Property (Note 1)	28,100
(ii)	Profits and Gains of Business or Profession (Note 2)	9,47,025
(iii)	Capital Gains	
	Short term Capital Gain – Since the shares were held for less than 12 months before the date of transfer	16,000
(iv)	Income from Other Sources (Note 3)	7,000
	Gross Total Income	9,98,125
	Less : Deduction under chapter VI-A Under section 80G	
	Donation to Chartered Accountant's Benevolent fund (Rs. 1,000 X 50%)	500
	Total Income	9,97,625

Notes -

1. Computation of Income from House Property:

	Amount (Rs.)	Amount (Rs.)
Gross annual value		85,000
Less : Municipal tax paid		2,000
Net annual value		83,000
Less : Deduction under section 24		
(a) 30% of net annual value	24,900	
(b) Interest on loan (50% of Rs.60,000)	30,000	54,900
Income from House Property		28,100

2. Profit and Gains of Business or Profession

	Amount (Rs.)	Amount (Rs.)
Net Profit as per Profit and Loss Account		10,08,000

Add :

(i)	Depreciation	29,500	
(ii)	Interest on loan borrowed for the construction of house property	30,000	
(iii)	Repairs , Maintenance and Petrol for Car (1/4 th attributable to personal purposes)	4,750	
(iv)	Cash payment to computer specialist for a sum exceeding Rs. 20,000 disallowable under section 40A (3)	30,000	
(v)	Municipal Tax paid to be considered under income from house property	2,000	96,250
			11,04,250

Less :

(i)	Depreciation under section 32	27,225	
(ii)	Items to be considered under income from other sources:		
(a)	Dividend on Shares of India Companies	15,000	
(b)	Income from Unit Trust of India	7,000	
(iii)	Rental income considered under the head income from House property	85,000	
(iv)	Sale of Shares considered under the head Capital Gains	16,000	
(v)	Honorarium received from various institution	7,000	1,57,225
	Profits and Gains of Business or Profession		9,47,025

3. Depreciation under Income tax Rules

Amount (Rs.)	Amount (Rs.)
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(I)	Block A - Motor Car		
	15% on Rs. 82,000	12,300	
	Less : 1/4 th attributable to personal use	3,075	9,225
(II)	Block B – Plant and Machinery		
(i)	Typewriter – 15% on Rs.20,000	3,000	
(ii)	Office equipment 15% on Rs.1,60,000 = Rs. 24,000 (amount of depreciation restricted to 50% since the asset has been put to use for less than 180 days)	12,000	15,000
(III)	Block C – Furniture		
	10% on Rs.30,000		3,000
	Total Depreciation		27,225

4. Incentive to articled clerks for passing PE- II Examination at first attempt is allowable as expenses under section 37(1) as such payment would boost up the morale of the students and increase their loyalty to the employers. Thus, it is an expenditure wholly and exclusively for the purpose of profession.

5. Income from other sources

	Rs.	Rs.
(i) Dividend on shares of Indian companies	15,000	
Less : Exempt under section 10(34)	15,000	Nil
(ii) Income from Unit Trust of India	7,000	
Less : Exempt under section 10(35)	7,000	Nil
(iii) Honorarium received from various institutions		7,000
Income from Other Sources		7,000

6. Since he is an ordinary resident, income earned in Singapore is also taxable and the traveling expenses met for that purpose is also deductible.

12. Scheme for submission of returns through Tax Return Preparers [Section 139B]

- (1) Section provides that, for the purpose of enabling any specified class or classes of persons to prepare and furnish their returns of income, the CBDT may notify a Scheme to provide that such persons may furnish their returns of income through a Tax Return Preparer authorised to act as such under the Scheme.
- (2) The Tax Return Preparer shall assist the persons furnishing the return in a manner that will be specified in the Scheme, and shall also affix his signature on such return.
- (3) A Tax Return Preparer can be an individual, other than
 - (i) any officer of a scheduled bank with which the assessee maintains a current account or has other regular dealings.
 - (ii) any legal practitioner who is entitled to practice in any civil court in India.
 - (iii) a chartered accountant.
 - (iv) an employee of the 'specified class or classes of persons'.
- (4) The "specified class or classes of persons" for this purpose means any person other than a company or a person whose accounts are required to be audited under section 44AB (tax audit) or under any other existing law, who is required to furnish a return of income under the Act.
- (5) The Scheme notified under the said section may provide for the following -
 - (i) the manner in which and the period for which the Tax Return Preparers shall be authorised,
 - (ii) 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 Tax Return Preparer,
 - (iii) the code of conduct for the Tax Return Preparers,
 - (iv) the duties and obligations of the Tax Return Preparers,
 - (v) the circumstances under which the authorisation given to a Tax Return Preparer may be withdrawn, and
 - (vi) any other relevant matter as may be specified by the Scheme.
- (6) Every Scheme framed by the CBDT under this section shall be laid before each House of Parliament while it is in session to make the same

effective.

- (7) If both the houses decide in making any modification of Scheme, then the Scheme will have effect only in such modified form.
- (8) Similarly, if both the Houses decide that any Scheme should not be framed, then such Scheme will thereafter be of no effect.
- (9) However, such modification or annulment should be without prejudice to the validity of anything previously done under that scheme.
- (10) Accordingly, the CBDT has, in exercise of the powers conferred by this section, framed the Tax Return Preparer Scheme, 2006, which came into force from 1.12.2006.

As per this scheme, Tax Return Preparer means any individual who has been issued a Tax Return Preparer Certificate and a unique identification number by the Partner Organisation to carry on the profession of preparing the returns of income in accordance with the provisions of this Scheme. However, the following persons are not eligible to act as a Tax Return Preparer -

- (i) any person referred to in clause (ii) or clause (iii) or clause (iv) of sub-section (2) of section 288, namely, any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings, any legal practitioner who is entitled to practice in any civil court in India and an accountant.
- (ii) any person who is in employment and income from which is chargeable to income-tax under the head salaries

Educational qualification for Tax Return Preparers

Any individual who holds a graduation degree from a recognized Indian University in the fields of Business Administration or Management or Commerce or Economics or Law or Mathematics or Statistics shall be eligible to act as Tax Return Preparer.

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

Different variants of VAT

Gross product variant

Income variant

Consumption variant

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

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

Reasons for preference of consumption variant:

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

14. Computation of the VAT liability for the month of October 2009:-

	Rs
Inputs purchased within the state	1,70,000
Capital goods used in the manufacture of the taxable goods	50,000
Input tax credit (including capital goods) (Rs. 21,250 + Rs. 6,250)	27,500
Output sold in the month (within the State)	2,00,000
Output tax @ 4%	8,000
VAT liability = Output tax – Input tax credit (Rs.8,000 – Rs.27,500)	Nil
Excess credit carried forward to subsequent period	19,500

15. Under VAT, credit of duty paid is allowed against the liability on the final product manufactured or sold. Therefore, unless proper records are kept in respect of various inputs, it is not possible to claim credit. Hence, suppression of purchases or production will be difficult because it will lead to loss of revenue. A perfect system of VAT will be a perfect chain where tax evasion is difficult.

16. Computation of purchases eligible for input tax credit:-

Particulars	Rupees
Inputs purchased for being used in the execution of a works contract	1,00,000
Goods purchased for sale to other parts of India in the course of inter-State trade or commerce	<u>20,000</u>
Purchases eligible for input tax credit	<u>1,20,000</u>

Note: For the purpose of computation of value of purchases eligible for input tax credit, following have not been included:-

- (1) Inputs purchased from a registered dealer who opts for composition scheme under the provisions of the Act of worth Rs. 10,000.

- (2) Raw material purchased from unregistered dealers of worth Rs. 70,000.
 - (3) The inputs imported from outside the territory of India commonly known as high seas purchases of worth Rs.1,00,000.
17. Following are not eligible for composition scheme:-
- (i) a manufacturer or a dealer who sells goods in the course of inter-state trade or commerce; or
 - (ii) a dealer who sells goods in the course of import into or export out of the territory of India.
 - (iii) a dealer transferring goods outside the State otherwise than by way of sale or for execution of works contract.
18. Tax rates under VAT:
1. Exempted category:- There are about 50 commodities which are legally barred from taxation and items which have social implications.
 2. 4% VAT category:- Under 4% VAT rate category, there are largest number of goods comprising of items of basic necessities, all agricultural and industrial inputs, capital goods and declared goods.
 3. 12.5% category:-The remaining commodities, common for all the States, fall under the general VAT rate of 12.5%.
 4. 1% Category:-The special rate of 1% is meant for precious stones, bullion, gold and silver ornaments etc.
 5. Non-VAT goods:- Petrol, diesel, ATF, other motor spirit, liquor and lottery tickets are kept outside VAT. The States may or may not bring these commodities under VAT laws.
19. (a) For the half-yearly period ending September 30, 2009, the due date for filing the return is October 25, 2009. However, since October 25 is Sunday, the assessee can file the return on the next immediately succeeding working day i.e. October 26, 2009. Hence, if Suyogya Consultancy Services files its return of service tax on October 26, 2009, it shall not be liable to pay the late fee for delay in furnishing the return.
- (b) For the half-yearly period ending September, 2009, the assessee can file the return up to October 26, 2009 (as discussed above). However, Suyogya Consultancy Services files its return of service tax on November 15, 2009. Hence, it shall be liable to pay the late fee of Rs. 1,000 for delay in furnishing the return.
20. Rule 6(1) of the Service Tax Rules, 1994, inter alia, provides that service tax on the value of taxable services received by an individual during any quarter is payable by the 5th day of the month immediately following the said quarter. Therefore, in the given case, the due date for payment of service tax is July 5, 2009.
- Further, in case the amount of service tax is paid by cheque, the date of presentation of cheque to the designated bank, subject to realization is the date of payment. Thus, in this case, the date of payment will be 5th July, 2009 as the cheque has been realized on 7th July, 2009.
- Since, the service tax has been paid on the due date, no interest and penalty is chargeable as there is no delay in payment of service tax.
21. The statement is invalid. Notification No. 24/2004 dated 10.09.2004 provides that the taxable services provided to any person in relation to

commercial training or coaching, by a vocational training institute are wholly exempt from the service tax. Therefore, in the given case, services provided by JB Institute of Management are not taxable under the category of “commercial training or coaching services”.

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

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

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

- (b) the exemption shall be claimed by filing a claim for refund of service tax paid to the jurisdictional Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, within six months from the date of actual payment of service tax by such developer or unit to service provider or, such extended period as may be permitted;
- (c) the unregistered developer or units of SEZ, shall, prior to filing a claim for refund of service tax under this notification, file a declaration in the prescribed form with the respective jurisdictional Assistant Commissioner/ Deputy Commissioner of Central Excise, as the case may be;
- (d) the refund claim shall be accompanied by the following documents, namely:-
 - (i) a copy of the list of specified services required in relation to the authorised operations in the SEZ, as approved by the Approval Committee;
 - (ii) documents for having paid service tax;
 - (iii) a declaration by the SEZ developer or unit, claiming such exemption, to the effect that such service is received by him in relation to authorised operation in SEZ;
- (e) the jurisdictional Assistant Commissioner/ Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, allot a service tax code (STC) number to the developer or units of SEZ within seven days from the date of receipt of the said form;
- (f) the Assistant Commissioner/ Deputy Commissioner of Central Excise, as the case may be, shall, after satisfying himself that the said services have been actually used in relation to the authorised operations in the SEZ, refund the service tax paid on the specified services used in relation to the authorised operations in the SEZ;
- (g) where any refund of service tax paid on specified services is erroneously refunded for any reasons whatsoever, such service tax refunded shall be recoverable under the provisions of the Finance Act, 1994 and the rules made there under, as if it is a recovery of service tax erroneously refunded.

23. Notification No. 1/2006 ST dated 01.03.2006 provides that in case of services provided in relation to a tour by a tour operator where the tour

operator provides a package tour, an abatement of 75% of the gross amount charged is granted if the bill issued for this purpose indicates that it is inclusive of charges for such a tour.

The said notification defines package tour as a tour wherein transportation, accommodation for stay, food, tourist guide, entry to monuments and other similar services in relation to tour are provided by the tour operator as part of the package tour to the person undertaking the tour. Therefore, the tour arranged by MOTC is a packaged tour.

Accordingly, in the given case, service tax is payable on 25% of the gross amount charged for the above services.

Therefore, the amount of service tax payable is as follows:-

Particulars	Rs.
Gross receipts	32,00,000
Less : Exemption under Notification No. 1/2006 ST dated 01.03.2006 (Rs. 32,00,000 × 75%)	24,00,000
Value of taxable service	8,00,000
Service tax payable (8,00,000 × 10.30%)	82,400

Notes:

- (1) The exemption under Notification No. 1/2006 ST dated 01.03.2006 is available only if:
 - (i) the CENVAT credit of duty paid on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has not been taken under the provisions of Cenvat Credit Rules, 2004; and
 - (ii) the service provider has not availed the benefit under the Notification No. 12/2003 ST, dated 20.06.2003.
- (2) The exemption available for small service provider under Notification No. 6/2005-ST dated 01.03.2005 as amended shall not be available in financial year 2008-09 because the gross receipts in preceeding financial year 2007-08 exceeds Rs. 10 lakh.
24. Special provision for payment of service tax in case of air travel agent: Rule 6(7) of the Service Tax Rules, 1994 provides that the person liable for paying the service tax in relation to the services provided by an air travel agent, shall have the option:
 - (i) to pay an amount calculated at the rate of 0.6% of the basic fare in the case of domestic bookings, and
 - (ii) at the rate of 1.2% of the basic fare in the case of international bookings, of passage for travel by air, during any calendar month or quarter, as the case may be, towards the discharge of his service tax liability instead of paying service tax at the rate of specified service tax. The option once exercised, shall apply uniformly in respect of all the bookings of passage for travel by air made by him and shall not be changed during a financial year under any circumstances.

For the purposes of this sub-rule, the expression "basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airline.
25. As per section 64(1) of the Finance Act, 1994 as amended, service tax provisions do not extend to the State of Jammu and Kashmir. Therefore, service tax will not be payable if service is provided in Jammu & Kashmir. However, since service tax is a destination based consumption tax, if a person from Jammu & Kashmir provides the taxable service outside Jammu & Kashmir in any other part of India, the service will be liable to service tax, as the location where service is provided is relevant. Hence, the services provided by a person having a place of business in the State of Jammu and Kashmir providing services in any other place in India are taxable under the Finance Act, 1994 as amended.

IMPORTANT CIRCULARS / NOTIFICATIONS ISSUED BETWEEN 1.5.08 and 30.4.09

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

A. INCOME TAX

I. CIRCULARS

1. Circular No. 5/2008 dated 14.7.2008

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

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

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

2. Circular No.7/2008 dated 1.8.2008

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

The CBDT has, in exercise of the powers conferred under section 119(1) of the Income-tax Act, 1961, directed that corporations which are

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

3. Circular No.10/2008 dated 5.12.2008

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

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

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

- (i) The expression 'fish or fish products' used in rule 6DD(e)(iii) would include 'other marine products such as shrimp, prawn, cuttlefish, squid, crab, lobster etc.'
- (ii) The 'producers' of fish or fish products for the purpose of rule 6DD(e) would include, besides the fishermen, any headman of fishermen, who sorts the catch of fish brought by fishermen from the sea, at the sea shore itself and then sells the fish or fish products to traders, exporters etc.

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

4. Circular No.11/2008 dated 19.12.2008

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

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

- (i) Relief of the poor
- (ii) Education

- (iii) Medical relief, and
- (iv) the advancement of any other object of general public utility.

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

- (a) any activity in the nature of trade, commerce or business; or
- (b) any activity of rendering any service in relation to any trade, commerce or business;

for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention of the income from such activity.

The following implications arise from this amendment -

- (1) The newly inserted proviso to section 2(15) will not apply in respect of the first three limbs of section 2(15), i.e., relief of the poor, education or medical relief. Consequently, where the purpose of a trust or institution is relief of the poor, education or medical relief, it will constitute charitable purpose even if it incidentally involves the carrying on of commercial activities.
- (2) Relief of the poor encompasses a wide range of objects for the welfare of the economically and socially disadvantaged or needy. It will, therefore, include within its ambit purposes such as relief to destitute, orphans or the handicapped, disadvantaged women or children, small and marginal farmers, indigent artisans or senior citizens in need of aid. Entities who have these objects will continue to be eligible for exemption even if they incidentally carry on a commercial activity, subject, however, to the conditions stipulated under section 11(4A) or the seventh proviso to section 10(23C) which are that -
 - (i) the business should be incidental to the attainment of the objectives of the entity, and
 - (ii) separate books of account should be maintained in respect of such business.

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

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

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

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

In the final analysis, however, whether the assessee has for its object the advancement of any other object of general public utility is a question of fact. If such assessee is engaged in any activity in the nature of trade, commerce or business or renders any service in relation to trade, commerce or business, it would not be entitled to claim that its object is charitable purpose. In such a case, the object of general public utility will be only a mask or a device to hide the true purpose which is trade, commerce or business or the rendering of any service in relation to trade, commerce or business. Each case would, therefore, be decided on its own facts and no generalization is possible.

II NOTIFICATIONS

1. Notification No. 86/2008 dated 13.8.2008

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

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

22.	2002-03	447
23.	2003-04	463
24.	2004-05	480
25.	2005-06	497
26.	2006-07	519
27.	2007-08	551
28.	2008-09	582

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

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

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

3. Notification No.97/2008 dated 10.10.2008

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

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

- (a) where the payment is made to -
 - (i) the Reserve Bank of India or any banking company;
 - (ii) the State Bank of India or any subsidiary bank;
 - (iii) any co-operative bank or land mortgage bank;
 - (iv) any primary agricultural credit society or any primary credit society;
 - (v) the Life Insurance Corporation of India;
- (b) where the payment is made to the Government and, under the rules framed by it, such payment is required to be made in legal tender;
- (c) where the payment is made by -
 - (i) any letter of credit arrangements through a bank;
 - (ii) a mail or telegraphic transfer through a bank;
 - (iii) a book adjustment from any account in a bank to any other account in that or any other bank;
 - (iv) a bill of exchange made payable only to a bank;
 - (v) the use of electronic clearing system through a bank account;
 - (vi) a credit card;
 - (vii) a debit card.
- (d) where the payment is made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services rendered by the assessee to such payee;
- (e) where the payment is made for the purchase of -
 - (i) agricultural or forest produce; or
 - (ii) the produce of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming; or
 - (iii) fish or fish products; or
 - (iv) the products of horticulture or apiculture,to the cultivator, grower or producer of such articles, produce or products;
- (f) where the payment is made for the purchase of the products manufactured or processed without the aid of power in a cottage industry, to the producer of such products;

- (g) where the payment is made in a village or town, which on the date of such payment is not served by any bank, to any person who ordinarily resides, or is carrying on any business, profession or vocation, in any such village or town;
- (h) where any payment is made to an employee of the assessee or the heir of any such employee, on or in connection with the retirement, retrenchment, resignation, discharge or death of such employee, on account of gratuity, retrenchment compensation or similar terminal benefit and the aggregate of such sums payable to the employee or his heir does not exceed fifty thousand rupees;
- (i) where the payment is made by an assessee by way of salary to his employee after deducting the income-tax from salary in accordance with the provisions of section 192 of the Act, and when such employee -
 - (i) is temporarily posted for a continuous period of fifteen days or more in a place other than his normal place of duty or on a ship; and
 - (ii) does not maintain any account in any bank at such place or ship;
- (j) where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike;
- (k) where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person;
- (l) where the payment is made by an authorised dealer or a money changer against purchase of foreign currency or travellers cheques in the normal course of his business.

4. Notification No. 3/2009 dated 5.1.2009

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

5. Notification No. 9/2009 dated 7.1.2009

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

6. Notification No. 28/2009, dated 16.3.2009

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

Sub-rule (1) provides that credit for tax deducted at source and paid to the Central Government in accordance with the provisions of Chapter XVII, shall be given to the person to whom payment has been made or credit has been given (i.e., the deductee) on the basis of information relating to

deduction of tax furnished by the deductor to the income-tax authority or the person authorised by such authority.

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

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

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

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

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

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

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

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

7. Notification No. 37/2009 dated 21.4.2009

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

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

B. SERVICE TAX

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

Exemptions:

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

(a) Insertion of four more services

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

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

3	Section 65(105) (zzzzj)	services of supply of tangible goods for use, without transferring right of possession and effective control of tangible goods, provided to an exporter in relation to goods exported by the exporter.	exporter shall produce evidence to prove that the services specified in column (3) are used in relation to export of goods.
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4.	Section 65(105)(j)	services provided by a clearing and forwarding agent in relation to export goods exported by the exporter.	exporter shall produce,- (i) invoice issued by clearing and forwarding agent for providing services specified in column (3) specifying: (a) number and date of shipping bill, (b) description of export goods, (c) number and date of the invoice issued by the exporter relating to export goods, (d) details of all the charges, whether or not reimbursable, collected by the clearing and forwarding agent from the exporter in relation to export goods, (ii) details of other taxable services provided by the said clearing and forwarding agent and received by the exporter, whether or not relatable to export goods.
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(b) Condition of not availing the drawback of service tax paid relaxed

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

However, now the condition of not availing the drawback of service tax paid has been relaxed. Consequently, now the exporter, who is availing

drawback of service tax paid, can also claim the refund of the service tax paid during the course of export of goods.

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

[Notification No. 33/2008 ST dated 07.12.2008]

(c) Time Limit for filing the refund claim extended

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

[Notification No. 32/2008 ST dated 18.11.2008]

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

S.No.	Sub-clause of clause (105) of section 65	Description of taxable service	Conditions
1.	Section 65 (105)(zzh)	Services provided by a technical testing and analysis agency in relation to technical testing and analysis of said goods where such technical testing and analysis is required to be undertaken as per the written agreement between the exporter and the buyer of the said goods	(i) the exporter furnishes a copy of the written agreement entered into with the buyer of the said goods requiring testing and analysis of the said goods; In this regard, Notification No. 32/2008 ST dated 18.11.2008 has clarified that where the buyer of the said goods does not require testing and analysis of the said goods, but testing is statutorily stipulated by domestic rules and regulations, the exporter shall furnish copy of such rules or regulations stipulating testing and analysis of the said goods.

2.	Section 65 (105)(zzb)	Services provided by a commission agent, located outside India, and engaged under a contract or agreement or any other document by the exporter in India, to act on behalf of the exporter, to cause sale of goods exported by him.	(vi) <u>Earlier condition:-</u> the refund of service tax shall be restricted to:- (i) actual amount of service tax paid or (ii) service tax calculated on two per cent of FOB value of export goods, whichever is less. <u>Amended condition:-</u> Notification No. 33/2008 ST dated 07.12.2008 has modified the above condition as follows:- The refund of service tax shall be restricted to:- (i) actual amount of service tax paid Or (ii) service tax calculated on ten per cent of FOB value of export goods, whichever is less.
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2. Abatement of 30% from the gross amount charged in case of services in relation to chit

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

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

Others:

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

(i) Amendments in rule 6

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

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

[Notification No. 19/2008 ST dated 10.05.2008]

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

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

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

Illustration

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

(i) Person exchanged \$100 for equivalent rupees

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

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

(ii) Person exchanged equivalent rupees for \$100

Transaction value = Rs.4000 (40 x 100)

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

[Notification No. 19/2008 ST dated 10.05.2008]

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

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

(ii) Amendment in rule 4A

With effect from 16.05.2008, in rule 4A, the words "to a customer" have been substituted by the words "to any person" [Notification No. 19/2008 ST dated 10.05.2008].

(iii) Amendment in rule 4B

With effect from 16.05.2008, in rule 4B, the words "to the customer" have been substituted by the words "to the recipient of service" [Notification No. 19/2008 ST dated 10.05.2008].

4. 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/ installation service	customer	recipient of service

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

S.No.	In Notification No.	for the words	the words that have been substituted are
1	18/2002 ST dated 16.12.2002: It exempts the taxable services provided by a consulting engineer to a client on transfer of technology from so much of the service tax leviable thereon as is equivalent to the amount of cess paid on the said transfer of technology under the provisions of section 3 of the Research and Development Cess Act, 1986.	to a client	to any person
2	33/2004 ST dated 03.12.2004: It exempts the taxable service provided by a goods transport agency to a customer, in relation to transport of fruits, vegetables, eggs or milk by road in a goods carriage, from the whole of service tax leviable thereon.	to a customer	to any person

3	34/2004 ST dated 03.12.2004: It exempts the taxable service provided by a goods transport agency to a customer, in relation to transport of goods by road in a goods carriage, from the whole of service tax where- (i) the gross amount charged on consignments transported in a goods carriage does not exceed rupees one thousand five hundred; or (ii) the gross amount charged on an individual consignment transported in a goods carriage does not exceed rupees seven hundred fifty.	to a customer	to any person
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6. Form No. ST-3 amended for the returns prepared by SRTPs

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

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

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

Provided that

(a) Approval of list of services

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

(b) Actual use of specified services

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

(c) Exemption in the form of refund

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

(d) Actual payment of service tax

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

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

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

(f) Exemption under no other notification claimed

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

Conditions to be satisfied:-

- (a) the person liable to pay service tax under sub-section (1) or sub-section (2) of section 68 of the said Finance Act shall pay service tax as applicable on the specified services provided to the developer or units of Special Economic Zone and used in relation to the authorised operations in the Special Economic Zone, and such person shall not be eligible to claim exemption for the specified services:

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

- (b) the developer or units of Special Economic Zone shall claim the exemption by filing a claim for refund of service tax paid on specified services;
- (c) the developer or units of Special Economic Zone shall file the claim for refund to the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be;
- (d) the developer or units of Special Economic Zone who is not registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, or the said Finance Act or the rules made thereunder, shall, prior to filing a claim for refund of service tax under this notification, file a declaration in the Form annexed hereto with the respective jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be;
- (e) the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after

due verification, allot a service tax code (STC) number to the developer or units of Special Economic Zone within seven days from the date of receipt of the said Form;

- (f) the claim for refund shall be filed, within six months or such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall permit, from the date of actual payment of service tax by such developer or unit to service provider;
- (g) the refund claim shall be accompanied by the following documents, namely:-
 - (i) a copy of the list of specified services required in relation to the authorised operations in the Special Economic Zone, as approved by the Approval Committee;
 - (ii) documents for having paid service tax;
 - (iii) a declaration by the Special Economic Zone developer or unit, claiming such exemption, to the effect that such service is received by him in relation to authorised operation in Special Economic Zone.
- (h) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after satisfying himself that the said services have been actually used in relation to the authorised operations in the Special Economic Zone, refund the service tax paid on the specified services used in relation to the authorised operations in the Special Economic Zone;
- (i) where any refund of service tax paid on specified services is erroneously refunded for any reasons whatsoever, such service tax refunded shall be recoverable under the provisions of the said Finance Act and the rules made thereunder, as if it is a recovery of service tax erroneously refunded.

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

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

Rule 3 - Procedure for provisional attachment of property

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

Rule 4 - The property that can be attached

- (1) Value of property attached shall be of value as nearly as may be equivalent to that of the amount of pending revenue against such person.

- (2) The movable property of such person shall be attached only if the immovable property available for attachment is not sufficient to protect the interest of revenue.

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

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

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

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

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

9. Guidelines in respect of provisional attachment of property

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

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

It should also be ensured that such attachment does not hamper the normal business of the assesseees. This would mean that inputs required for provision of a service should not be attached by the department.

4. Provisional attachment of the property shall not be excessive, that is to say, the property provisionally attached shall be of value as nearly as may be equivalent to that of the amount demanded in the proceedings under section 73 or section 73A of the Act.
 5. The provisional attachment of the property of the concerned person shall be made after sunrise and before sunset and not otherwise.
 6. After provisional attachment of the property, the Central Excise Officer shall prepare an inventory of the property attached and specify in it the place where it is lodged or kept and shall hand over a copy of the same to defaulter or the person from whose charge the property is distrained.
 7. All such property as is by the Code of Civil Procedure, 1908 exempted from attachment and sale for execution of a decree of a Civil Court shall be exempt from provisional attachment. The decision of the Commissioner of Central Excise in this regard shall be final.
10. Clarification of issues relating to service tax levy on goods transport road services

Circular No. 104/07/2008-ST dated 06.08.2008 has clarified the following issues relating to service tax levy on goods transport by road services:

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

Clarification: GTA provides a service in relation to transportation of goods by road which is a single composite service. GTA also issues consignment note. The composite service may include various intermediate and ancillary services provided in relation to the principal service of the road transport of goods. Such intermediate and ancillary services may include services like loading/unloading, packing/unpacking, transshipment, temporary warehousing etc., which are provided in the course of transportation by road. These services are not provided as independent activities but are the means for successful provision of the principal service, namely, the transportation of goods by road. The contention that a single composite service should not be broken into its components and classified as separate services is a well-accepted principle of classification. As clarified earlier vide F.No. 334/4/2006-TRU dated 28.2.2006 (para 3.2 and 3.3) and F. No. 334.1/2008-TRU dated 29.2.2008 (para 3.2 and 3.3), a composite service, even if it consists of more than one service, should be treated as a single service based on the main or principal service and accordingly classified. While taking a view, both the form and substance of the transaction are to be taken into account. The guiding principle is to identify the essential features of the transaction. The method of invoicing does not alter the single composite nature of the service and classification in such cases is based on essential character by applying the principle of classification enumerated in section 65A. Thus, if any ancillary/intermediate service is provided in relation to transportation of goods, and the charges, if any, for such services are included in the invoice issued by the GTA, and not by any other person, such service would form part of GTA service and, therefore, the abatement of 75% would be available on it.

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

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

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

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

11. Clarifications of service tax issues relating to units in SEZ

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

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

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

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

Refund of service tax paid on certain taxable services used in export of goods is permitted under notification 41/2007-ST. This notification

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