

PAPER – 4 : TAXATION

QUESTIONS

Residential Status and Scope of total income

1. (a) Only individuals and HUFs can be resident, but not ordinarily resident in India; firms and companies can be either a resident or non-resident. Discuss the correctness of this statement.
- (b) Ms Diana, a French national, got married to Mr. Ravi of India in Paris on 01.04.2009 and came to India for the first time on 01.12.2009. She remained in India up till 31.07.2010 and left for Paris on 01.08.2010. She returned to India again on 01.03.2011. While in India, she had purchased a commercial complex in Kolkata on 15.03.2010, which was leased out to a company on a rent of ₹ 30,000 p.m. from 01.04.2010. She had taken loan from a bank for purchase of this commercial complex on which the bank had charged interest of ₹ 1,12,000 upto 31.03.11. She had received the following gifts from her relatives and friends during 1.4.10 to 31.07.2010:

	₹
From father-in-law	47,000
From brother-in-law	9,000
From two very close friends of her in-laws, ₹ 1,67,000 and ₹ 25,000	1,92,000

Determine her residential status and compute the total income chargeable to tax along with the amount of tax payable on such income for the Assessment Year 2011-12.

Salaries

2. Mr. Sinha, Finance Manager of DRF Ltd., Chennai, furnishes the following particulars for the financial year 2010-11.
- (i) Salary ₹ 51,000 per month
 - (ii) Value of medical facility in a hospital maintained by the company ₹ 8,000
 - (iii) Rent free accommodation owned by the company
 - (iv) Housing loan of ₹ 5,50,000 at the interest rate of 4% p.a. (No repayment made during the year). The rate of interest charged by State Bank of India (SBI) as on 01.04.2010 in respect of housing loan is 10%.
 - (v) Gifts in kind made by company on the occasion of marriage of daughter of Mr. Sinha ₹ 7,250.

- (vi) A Cupboard was provided to Mr. Sinha at his residence for his use. This was purchased on 01.08.2007 for ₹ 75,000 and sold to Mr. Sinha on 01.05.2010 for ₹ 35,000.
- (vii) Personal purchases through credit card provided by the company amounting to ₹ 12,000 was paid by the company. No part of the amount was recovered from Mr. Sinha.
- (viii) An maruti car which was purchased by the company on 21.06.2007 for ₹ 4,50,000 was sold to the assessee on 19.08.2010 for ₹ 1,80,000.

Compute the income chargeable under the head "Salaries" of Mr. Sinha for the Assessment year 2011-12.

Income from house property

3. Mr. X and Y constructed their houses on a piece of land purchased by them at Mumbai. The built up area of each house was 1,200 sq.ft. ground floor and an equal area in the first floor. X started construction on 01.05.2008 and completed construction on 01.04.2010. Y started the construction on 01.04.2008 and completed the construction on 31.05.2010. X occupied the entire house on 01.04.2010. Y occupied the ground floor on 01.06.2010 and let out the first floor for a rent of ₹ 20,000 per month on 01.07.2010. However, the tenant vacated the house on 28.02.2011 and Y occupied the entire house during the period 01.03.2011 to 31.03.2011.

Following are the other information

	Particulars	₹ (per annum)
(i)	Fair rental value of each unit (ground floor /first floor)	1,20,000
(ii)	Municipal value of each unit (ground floor / first floor)	90,000
(iii)	Municipal taxes paid by	X – 12,000 Y – 12,000
(iv)	Repair and maintenance charges paid by	X – 31,000 Y – 35,000

X has availed a housing loan of ₹ 30 lakhs @ 12% p.a. on 01.06.2008. Y has availed a housing loan of ₹ 20 lakhs @ 12% p.a. on 01.07.2008. No repayment was made by either of them till 31-03-11. Compute income from house property for X and Y for the previous year 2010-11 (A.Y. 2011-12).

Profits and gains of business or profession

4. Mr Mahesh, a retail trader of Panaji gives the following Trading and Profit and Loss Account for the year ended 31st March, 2011:

Trading and Profit and Loss Account for the year ended 31.03.2011

Particulars	₹	Particulars	₹
To Opening stock	1,10,000	By Sales	19,26,900
To Purchases	17,25,700	By Income from UTI	5,400
To Gross Profit	3,55,800	By Other business receipts	9,200
		By Closing stock	<u>2,50,000</u>
	<u>21,91,500</u>		<u>21,91,500</u>
To Salary	78,000	By Gross profit b/d	3,55,800
To Rent and rates	38,400		
To Interest on loan	18,000		
To Depreciation	1,47,500		
To Printing & stationery	20,000		
To Postage & telegram	1,720		
To Loss on sale of shares (Short term)	9,700		
To Other general expenses	6,180		
To Net Profit	<u>36,300</u>		
	<u>3,55,800</u>		<u>3,55,800</u>

Additional Information:

- (i) Salary includes ₹ 12,000 paid to his brother-in-law, which is unreasonable to the extent of ₹ 5,000.
- (ii) The whole amount of printing and stationery was paid in cash by way of one time payment.
- (iii) The depreciation provided in the Profit and Loss Account ₹ 1,47,500 was based on the following information :
The written down value of plant and machinery is ₹ 5,90,000. A new plant falling under the same block of depreciation of 15% was bought on 01.09.2010 for ₹ 90,000. Two old plants were sold on 21.05.2010 for ₹ 1,00,000.
- (iv) Rent and rates includes sales tax liability of ₹ 5,600 paid on 3.10.2011.
- (v) Other business receipts include ₹ 4,600 received as refund of sales tax relating to 2009-10.
- (vi) Other general expenses include ₹ 6,000 paid as donation to an Electoral Trust.

You are required to advise Mr. Mahesh whether or not he should offer his business income under section 44AD i.e. presumptive taxation.

Capital Gains and Income from Other Sources

5. Mr. Ganesh submits the following information pertaining to the year ended 31st March, 2011.

- (i) On 29.12.2010, when he attained the age of 70, his friends in India gave a flat at Pune as a gift, each contributing a sum of ₹ 25,000 in cash. The cost of the flat purchased using the various gifts was ₹ 3.75 lacs.
- (ii) Mr. Ganesh sold the above flat on 30.1.2011 for ₹ 4.9 lacs. The Registrar's valuation for stamp duty purposes was ₹ 5.2 lacs. Neither Mr. Ganesh nor the buyer questioned the value fixed by the Registrar.
- (iii) His niece abroad sent him a cash gift of ₹ 55,000 through his brother for the above occasion.
- (iv) He had purchased some equity shares in Z Pvt. Ltd., on 8.4.2005 for ₹ 4.7 lacs. These shares were sold privately on 20.8.2010 for ₹ 3.5 lacs.
- (v) He also purchased a house from a friend in ₹ 2.5 lacs on 21.01.2011. (Stamp Duty Valuation – ₹ 4 lacs).
- (vi) Mr. Ganesh sold the above house on 23.3.2011 for ₹ 6 lacs.
- (vii) He had purchased some equity shares in N Pvt. Ltd., on 8.6.2010 from his friend for ₹ 3.9 lacs (Fair Market Value ₹ 5.7 lacs). These shares were sold privately on 30.1.2011 for ₹ 6.3 lacs.

You are requested to calculate the total income of Mr. Ganesh for the assessment year 2011-12.

[Cost Inflation Index for F.Y. 2005-06 – 497, F.Y. 2009-10 – 632, 2010-11 – 711]

Set-off and Carry Forward of Losses

6. Mr. Nandit, a resident individual, furnishes the following particulars of his income and other details for the previous year 2010-11:

	Particulars	₹
(i)	Income from salary	29,000
(ii)	Net annual value of house property	77,000
(iii)	Income from business	95,000
(iv)	Income from speculative business	9,000
(v)	Long term capital gain on sale of land	17,300
(vi)	Loss on maintenance of race horse	11,000
(vii)	Loss on gambling	5,000

Depreciation allowable under the Income-tax Act, 1961, comes to ₹ 17,000 for which no treatment is given above.

The other details of unabsorbed depreciation and brought forward losses are:

	Particulars	₹
(i)	Unabsorbed depreciation (relating to A/Y 2000-01)	12,000
(ii)	Loss from speculative business (relating to A/Y 2009-10)	18,000
(iii)	Short term capital loss (relating to A/Y 2009-10)	9,200

Compute the gross total income of Mr. Nandit, for the Assessment year 2011-12, and the amount of loss that can be carried forward.

Deductions from Gross Total Income

7. For the Assessment year 2011-12, the Gross Total Income of Mr. Tiwari, a resident in India, was ₹ 4,12,690 which includes long-term capital gain of ₹ 55,000 and Short-term capital gain of ₹ 13,000. The Gross Total Income also includes interest income from banks of ₹ 18,000. Mr. Tiwari has invested in PPF ₹ 50,000, contribution to fixed deposits for a period of 5 years amounted to ₹ 75,000 this year and also paid a medical insurance premium ₹ 16,000. Mr. Tiwari also contributed ₹ 20,000 to Public Charitable Trust eligible for deduction under section 80G. Compute the total income and tax there on of Mr. Tiwari, who is 72 years old as on 31.3.2011.

Computation of Total Income and Tax liability of an individual

8. Praveen is a Chartered Accountant in practice. He maintains his accounts on cash basis. He is a resident and ordinarily resident in India. His Income and Expenditure account for the year ended March 31, 2011 reads as follows:

Expenditure	₹	Income		₹
Salary to staff	5,35,000	Fees earned:		
Stipend to articled assistants	27,000	Audit	7,68,200	
Incentive to articled assistants	3,000	Taxation services	5,47,400	
Office rent	36,000	Consultancy	<u>2,71,000</u>	15,86,600
Printing and stationery	6,200	Dividend on shares of Indian companies (gross)		10,524
Meeting, seminar and conference	31,600	Income from Unit Trust of India		7,600
Repairs, maintenance and petrol of car	25,300	Profit on sale of shares		17,590

Subscription and periodicals	12,000	Honorarium received from various institutions for valuation of answer papers	14,510
Postage, telegram and fax	28,800	Rent received from residential flat let out	96,000
Travelling expenses	45,000		
Municipal tax paid in respect of house property	1,000		
Net profit	<u>9,81,924</u>		
	<u>17,32,824</u>		<u>17,32,824</u>

Other information:

- (i) The total travelling expenses incurred on foreign tour was ₹ 15,000 which was within the RBI norms.
- (ii) Incentive to articled assistants represent amount paid to two articled assistants for passing IPCC Examination at first attempt.
- (iii) Repairs and maintenance of car includes ₹ 2,000 for the period from 1.10.2010 to 30.09.2011.
- (iv) Salary include ₹ 35,000 to a computer specialist in cash for assisting Mr. Praveen in one professional assignment.
- (v) ₹ 3,500, interest on loan paid to LIC on the security of his Life Insurance Policy and utilised for repair of computer, has been debited to the drawing account of Mr. Praveen.
- (vi) Medical Insurance Premium on the health of:

Particulars	Amount ₹	Mode of payment
Self	9,000	By Cheque
Dependent brother	6,000	By Cheque
Major son dependent on him	8,000	By Cash
Minor married daughter	5,000	By Cheque
Wife not dependant on assessee	5,000	By Cheque

- (vii) Shares sold were held for 11 months before sale.

Compute the total income and tax payable of Praveen for the Assessment year 2011-12.

Provisions concerning Advance Tax and Tax Deducted at Source

9. (a) Discuss the provisions relating to payment of interest in case of failure to deduct or pay tax at source.
- (b) An amount of ₹ 50,000 was paid to Mr. Sudhir on 15.06.2010 towards fees for professional services without deduction of tax at source. Subsequently, another payment of ₹ 65,000 was due to Mr. Sudhir on 10.02.2011 from which tax @ 10% (amounting to ₹ 11,500) on the entire amount of ₹ 1,15,000 was deducted. However, this tax of ₹ 11,500 was deposited only on 25.07.2011. Compute the interest chargeable under section 201(1A).

Provisions for filing of Return of Income

10. (a) The total income of a university without giving effect to exemption under section 10(23C) is ₹ 39 lacs. Its total income after providing the exemption is, however, nil. Should the University file its return of income?
- (b) Explain with brief reasons whether the return of income can be revised under section 139(5) of the Income-tax Act, 1961 in the following cases:
- (i) Defective or incomplete return filed under section 139(9).
 - (ii) Belated return filed under section 139(4).
 - (iii) Return already revised once under section 139(5).
 - (iv) Return of loss filed under section 139(3).

Computation of interest on delayed payment of service tax

11. Vibha Ltd. is engaged in providing management consultancy services. It was liable to pay the service tax amounting to ₹ 10,000, electronically, for the month of August 2011. However, due to some unavoidable circumstances, it could not pay the said amount on due date and paid the service tax on 30th November, 2011. You are required to compute the interest payable by Vibha Ltd. on delayed payment of service tax.

Taxability of transactions

12. State, with reasons, whether service tax is payable in the following cases:-
- (a) Donations and grants-in-aid received by a Charitable Foundation imparting free livelihood training to the youth.
 - (b) Representation of the client before any statutory authority in the course of proceedings initiated under any law by a practicing Chartered Accountant.

Value of taxable services

13. Briefly provide the manner of determination of the value of taxable service for the banking and other financial services relating to purchase or sale of foreign currency, including money changing.

Special rate of service tax

14. Discuss the special rate of service tax leviable in case of an insurer carrying on life insurance business.

Computation of value of taxable service

15. Rishabh Professionals Ltd. is engaged in providing services which became taxable with effect from July 01, 2010. Compute the service tax payable by Rishabh Professionals Ltd. on the following amounts (exclusive of service tax) received for the month of March, 2011:-

Particulars	Amount (₹)
Services performed before such service became taxable	5,00,000
Services provided to an International Organisation	1,50,000
Free services rendered to the friends	20,000
Advance received in March for services to be rendered in July, 2011 (The agreement got terminated in April, 2011. Hence, no services were rendered in July. However, a sum of ₹ 3,50,000 was refunded in June, 2011)	5,00,000
Other receipts	12,00,000

Demerits of VAT

16. Can VAT be said to be non-beneficial as compared to single stage-last point system?

Composition Scheme for small dealers

17. What is the threshold exemption limit fixed for dealers to obtain VAT registration, as per the White Paper?

Computation of VAT

18. Mr. Ram, a dealer in Tamil Nadu dealing in consumer goods, submits the following information pertaining to the month of October, 2011:

Details of purchases of goods:-

Particulars (raw material purchased from within the State)	Amount (₹)	Rate of VAT
Goods 'A'	10,00,000	Exempt
Goods 'B'	20,00,000	1%
Goods 'C'	30,00,000	12.5%

Details of sales of goods:-

Particulars (Sale of finished goods)	State in which goods are sold	Amount (₹)	Rate of VAT
Produced from Goods 'A'	Tamil Nadu	5,00,000	12.5%
	Gujarat	7,00,000	1%
Produced from Goods 'B'	Tamil Nadu	24,00,000	Exempt
Produced from Goods 'C'	Tamil Nadu	35,00,000	4%

Compute the amount of Value Added Tax (VAT) payable by Mr. Ram for the relevant month. There was no opening or closing inventory.

Inter-State stock transfer

19. Discuss the tax consequences of inter-state stock transfer under the VAT scheme.

Filing of returns

20. Discuss filing of return under VAT.

SUGGESTED ANSWERS/HINTS

1. (a) This statement is correct.

A person is said to be "not-ordinarily resident" in India if he satisfies either of the conditions given in sub-section (6) of section 6. This sub-section relates to only individuals and Hindu Undivided Families. Therefore, only individuals and Hindu Undivided Families can be resident, but not ordinarily resident in India. All other classes of assesseees can be either a resident or non-resident for the purpose of income-tax. Firms and companies can, therefore, either be a resident or non-resident.

- (b) Under section 6(1), an individual is said to be resident in India in any previous year, if she satisfies any one of the following conditions:

- She has been in India during the previous year for a total period of 182 days or more, or
- She has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 60 days in the previous year.

If an individual satisfies any one of the conditions mentioned above, she is a resident. If both the above conditions are not satisfied, the individual is a non-resident.

Therefore, the residential status of Ms Diana, a French National, for A.Y.2011-12 has to be determined on the basis of her stay in India during the previous year relevant to A.Y. 2011-12 i.e. P.Y.2010-11 and in the preceding four assessment year.

Her stay in India during the previous year 2010-11 and in the preceding four years are as under :

P.Y.2010-11

01.04.2010 to 31.07.2010	-	122 days
01.03.2011 to 31.03.2011	-	<u>31 days</u>
Total		<u>153 days</u>

Four preceding previous years

P.Y.2009-10 [1.4.09 to 31.3.10]	-	121 days
P.Y.2008-09 [1.4.08 to 31.3.09]	-	Nil
P.Y.2007-08 [1.4.07 to 31.3.08]	-	Nil
P.Y.2006-07 [1.4.06 to 31.3.07]	-	<u>Nil</u>
Total		<u>121 days</u>

The total stay of the assessee during the previous year in India was less than 182 days and during the four years preceding this year was for 121 days. Therefore, due to non-fulfillment of any of the two conditions for a resident, she would be treated as a non-resident for the Assessment Year 2011-12.

Computation of total income of Ms Diana for the A.Y. 2011-12

Particulars	₹	₹
Income from house property		
Commercial Complex located in Kolkata remained on rent from 01.04.10 to 31.03.11 @ ₹ 30000/- p.m.		
Gross Annual Value [30,000 x 12] (See Note 1 below)	3,60,000	
Less: Municipal taxes	-	
Net Annual Value (NAV)	3,60,000	
Less: Deduction under section 24		
30% of NAV	1,08,000	
Interest on loan	<u>1,12,000</u>	<u>2,20,000</u>
Income from other sources		1,40,000

Gifts received from non-relatives are chargeable to tax as per section 56(2)(vii) if the aggregate value of such gifts exceed ₹ 50,000.		
- ₹ 47,000 received from her father-in-law would be exempt, since father-in-law falls within the definition of "relative", and gifts from a relative are not chargeable to tax.	Nil	
- ₹ 9,000 received from brother-in-law is exempt, since brother-in-law falls within the definition of "relative" and gifts from a relative are not chargeable to tax.	Nil	
- Gift received from two friends of her in-laws ₹1,67,000 and ₹ 25,000 aggregating to ₹ 1,92,000 is taxable under section 56(2)(vii) since the aggregate of ₹ 1,92,000 exceeds ₹ 50,000. (see Note 2 below)	<u>1,92,000</u>	<u>1,92,000</u>
Total income		<u>3,32,000</u>

Computation of tax payable by Ms Diana for the A.Y. 2011-12.

Particulars		₹
Tax on total income of ₹ 3,32,000 (See Note 3 below)		17,200
Add: Education cess@2%		344
Add : Secondary and higher education cess @1%		<u>172</u>
Total tax liability		<u>17,716</u>
Total tax liability (rounded off)		17,720

Notes :

- Actual rent received has been taken as the gross annual value in the absence of other information (i.e. Municipal value, fair rental value and standard rent) in the question.
 - If the aggregate value of taxable gifts received from non-relatives exceeds ₹ 50,000 during the year, the entire amount received (i.e. the aggregate value of taxable gifts received) is taxable. Therefore, the entire amount of ₹ 1,92,000 is taxable under section 56(2)(vii).
 - The increased basic exemption limit of ₹ 1,90,000 is available only for resident women. In this case, since the assessee is a non-resident, she cannot avail the benefit of higher basic exemption limit of ₹ 1,90,000.
2. Computation of taxable salary of Mr. Sinha for the Assessment Year 2011-12

Particulars		
Income under the head "salaries"		
Salary [₹ 51,000 x 12]		6,12,000
Medical facility in the hospital maintained by the company is exempt		—
Rent free accommodation		
[Rule 3(1)] – 15% of salary is taxable		91,800
Valuation of perquisite of interest on loan (₹ 5,50,000 x 6%)		
[Rule 3(7)(i)] – 10% is taxable which is to be reduced by actual rate of interest charged i.e. [10% - 4% = 6%] [See Note- (i)]		33,000
Gift received on occasion of marriage of daughter of Mr. Sinha		7,250
₹ 7,250 is taxable since its value is more than ₹ 5,000		
[See Note – (iii)]		
Use of Cupboard for 1 month		
[₹ 75,000 x 10 /100 x 1 /12]		625
Perquisite on sale of cupboard		
Cost	75,000	
Less: Depreciation on straight line method @ 10% for 2 years	<u>15,000</u>	
W.D.V	60,000	
Less: Amount paid by the assessee	<u>35,000</u>	25,000
Personal purchase through credit card provided by Company – Amount paid by Company is a taxable perquisite		12,000
Perquisite on sale of Motor Car to Mr. Sinha		
Original cost of car	4,50,000	
Less: Depreciation from 21.6.2007 to 20.6.2008 @ 20%	<u>90,000</u>	
	3,60,000	
Less: Depreciation from 21.6.2008 to 20.6.2009 @ 20% on WDV	<u>72,000</u>	
	2,88,000	
Less: Depreciation from 21.6.2009 to 20.6.2010 @ 20% on WDV	<u>57,600</u>	
	2,30,400	
Value as on 19.08.2010- being the date of sale to employee	2,30,400	
Less : Amount received from the assessee on 19.08.2010	<u>1,80,000</u>	<u>50,400</u>
Gross salary		<u>8,32,075</u>

Note :

- (i) It is presumed that the housing loan was availed on 1.4.2010.
- (ii) Under Rule 3(7)(viii), while calculating the perquisite value of benefit to the employee arising from the transfer of any movable asset, the normal wear and tear is to be calculated in respect of each completed year during which the asset was put to use by the employer. In the given case, the third year of use of maruti car is completed on 20.06.2010 and the car was sold to the employee on 19.08.2010. The solution worked out above therefore provides for wear and tear for three years.
- (iii) The value of any gift or voucher or token in lieu of gift received by the employee or by member of his household from the employer not exceeding ₹ 5,000 in aggregate during the previous year is exempt. In this case, the amount was received on the occasion of daughter's marriage and the sum exceeds the limit of ₹ 5,000.

Therefore, the entire amount of ₹ 7,250 is liable to be taxed as perquisite.

An alternative view possible is that only the sum in excess of ₹ 5,000 is taxable in view of language of Circular No. 15/2001 dated 12.12.2001 that such gifts upto ₹ 5,000 in aggregate per annum would be exempt, beyond which it would be taxed as a perquisite. As per this view, the value of the perquisite would be only ₹ 2,250. In that case the gross salary would be ₹ 8,27,075.

3. **Computation of income from house property of Mr. X for A.Y. 2011-12**

Particulars	₹	₹
Annual value is nil (since house is self occupied)		Nil
Less : Deduction u/s.24(b)		
Interest paid on borrowed capital ₹ 30,00,000 @ 12%	3,60,000	
Pre-construction interest	<u>1,32,000</u>	
30,00,000 x 12% x 22/12 = ₹ 6,60,000	4,92,000	
₹ 6,60,000 allowed in 5 equal installments		
6,60,000 / 5 = ₹ 1,32,000 per annum		
As per second proviso to section 24(b), interest deduction restricted to		<u>1,50,000</u>
Loss under the head "Income from house property" of Mr. X		<u>(1,50,000)</u>

Computation of income from house property of Mr. Y for A.Y. 2011-12

Particulars	Ground floor (Self occupied)	First floor
	₹	₹
Gross annual value (See note below)	Nil	1,60,000

Less :Municipal taxes (for first floor)(12,000/2)		<u>6,000</u>
Net annual value (A)	<u>Nil</u>	<u>1,54,000</u>
Less : Deduction u/s.24		
(a) 30% of net annual value		46,200
(b) Interest on borrowed capital		
Current year interest		
20,00,000 x 12% = 2,40,000	1,20,000	1,20,000
Pre-construction interest		
20,00,000 x 12% x 21/12 = ₹ 4,20,000		
₹ 4,20,000 allowed in 5 equal instalments		
4,20,000 / 5 = ₹ 84,000 per annum	42,000	42,000
	<u>1,62,000</u>	<u>2,08,200</u>
Total deduction u/s.24 (interest deduction restricted to ₹1,50,000, in case of self occupied property) (B)	<u>1,50,000</u>	<u>2,08,200</u>
Income from house property (A)-(B)	(1,50,000)	(54,200)
Loss under the head "Income from house property" of Mr.Y (both ground floor and first floor)	(2,04,200)	

Note : Computation of Gross Annual Value (GAV) of first floor of Y's house – If a single unit of property (in this case the first floor of Y's house) is let out for some months and self-occupied for the other months, then the annual letting value (ALV) of the property shall be taken into account for determining the annual value. The ALV shall be compared with the actual rent and whichever is higher shall be adopted as the annual value. In this case, the actual rent shall be the rent for the period for which the property was let out during the previous year.

The Annual Letting Value (ALV) is the higher of fair rent and municipal value. This should be considered for 10 months since the construction of property was completed only on 31.05.2010.

Annual letting value = ₹ 1,00,000 being higher of -

Fair rent = $1,20,000 \times 10 / 12 = ₹ 1,00,000$

Municipal value = $90,000 \times 10 / 12 = ₹ 75,000$

Actual rent = ₹ 1,60,000 (₹ 20,000 p.m. for 8 months from July, 2010 to February, 2011)

Gross annual value = ₹ 1,60,000 (being higher of ALV of ₹ 1,00,000 and actual rent of ₹ 1,60,000)

4. Computation of business income of Mr. Mahesh for the A.Y. 2011-12.

Particulars	₹	₹
Net Profit as per profit and loss account		36,300
<i>Add</i> Inadmissible expenses / losses		
Salary paid to brother-in-law to the extent unreasonable [Section 40A(2)]	5,000	
Printing and stationery paid in cash [See Note-3]	Nil	
Depreciation (considered separately)	1,47,500	
Short term capital loss on shares	9,700	
Donation to electoral trust	6,000	
Sales Tax Liability (According to section 43B)[Note 2]	<u>5,600</u>	<u>1,73,800</u>
		2,10,100
<i>Less:</i> Income from UTI [Exempt u/s 10(35)]	5,400	
Refund of sales tax [Taxable u/s.41(1) – No adjustment necessary]	<u>Nil</u>	<u>5,400</u>
Business income before depreciation		2,04,700
<i>Less:</i> Depreciation (See Note 1)		<u>87,000</u>
		<u>1,17,700</u>
Computation of business income as per section 44AD		
As per section 44AD, the business income would be 8% of turnover i.e., $19,26,900 \times 8 / 100 = ₹ 1,54,152$.		
The business income under section 44AD is ₹ 1,54,152.		
Since, the business income under section 44AD is higher than the business income as per the normal provisions of the Act, Mr. Mahesh can offer his income under the normal provisions of the Act, provided he maintains books of accounts under section 44AA and get his accounts audited under section 44AB.		

Note 1

Calculation of depreciation	₹
WDV of the block of plant & machinery as on 1.4.2010	5,90,000
<i>Add</i> :Cost of new plant & machinery	<u>90,000</u>
	6,80,000
<i>Less</i> : Sale proceeds of assets sold	<u>1,00,000</u>
WDV of the block of plant & machinery as on 31.3.2011	<u>5,80,000</u>

Depreciation @ 15%	87,000
No additional depreciation is allowable as the assessee is not engaged in manufacture or production of any article.	

Note 2

Since sales-tax liability has been paid after the due date of filing return of income under section 139(1), the same is not deductible.

Note 3

As per section 40A(3), any payment for an expenditure exceeding ₹ 20,000 made otherwise than by way of an account payee cheque shall not be allowed as deduction. In the aforesaid case, the payment for printing and stationery amounts to ₹ 20,000, hence, the same shall be allowed.

5. **Computation of total income of Mr. Ganesh for A.Y. 2011-12**

Particulars	₹	₹	₹
Capital Gains			
Short term capital gains (on sale of flat at pune)			
(i) Sale consideration	4,90,000		
(ii) Stamp duty valuation	5,20,000		
Consideration for the purpose of capital gains as per section 50C (stamp duty value, since it is higher than sale consideration)	5,20,000		
Less: Cost of acquisition [As per section 49(4), value taken into consideration for 56(2)(vii) will be the cost of acquisition]	<u>3,75,000</u>		
Short term capital gains on sale of flat		1,45,000	
Short term capital gains (on sale of house)			
Sale consideration	6,00,000		
Less: Cost of acquisition[See Note 3 below]	<u>2,50,000</u>		
Short term capital gains on sale of house		3,50,000	
Long term capital loss on sale of equity shares of Z Pvt. Ltd			

Sale consideration	3,50,000		
Less: Indexed cost of acquisition (4,70,000 × 711/497)	<u>6,72,374</u>		
Long term capital loss to be carried forward (See Note 1 below)	<u>3,22,374</u>		
Short term capital gain on sale of equity shares of N Pvt. Ltd			
Sale consideration	6,30,000		
Less: Cost of acquisition [As per section 49(4), value taken into consideration for 56(2)(vii) will be the cost of acquisition]	<u>5,70,000</u>		
Short term capital gains on sale of shares		<u>60,000</u>	5,55,000
Income from other sources:			
Gift from friends by way of immovable property on 29.12.2010 [See Note 2 below].		3,75,000	
Gift received from niece [See Note 5 below]		55,000	
Excess of fair market value of shares of N Pvt. Ltd over its purchase cost [See Note 4 below] [5,70,000 – 3,90,000]		<u>1,80,000</u>	<u>6,10,000</u>
Total income			<u>11,65,000</u>

Notes:

1. In the given problem, shares in Z Private Ltd. have been held for more than 12 month and hence, constitute a long term capital asset. The loss arising from sale of such shares, is therefore a long-term capital loss. As per section 70(3), long term capital loss can be set-off only against long-term capital gains. Therefore, long-term capital loss cannot be set-off against short-term capital gains. However, such long-term capital loss can be carried forward to the next year for set-off against long-term capital gains arising in that year.
2. As per Section 56(2)(vii), where any immovable property is obtained without consideration and if the stamp duty value of the property exceeds ₹ 50,000, the stamp duty value of such property is chargeable to tax as income under the head 'Income from other sources'.
3. If any immovable property is received for a consideration less than the stamp duty value, then the provisions of Section 56(2)(vii) and Section 49(4) shall not be attracted and the cost of acquisition shall be the actual amount paid for it.

4. Receipt of property other than immovable property received for a consideration which is less than the aggregate fair market value of the property by an amount exceeding ₹ 50,000 would attract the provisions of Section 56(2)(vii).
5. Any sum/gift received from a relative will not be deemed as income from other sources [Section 56(2)(vii)]. Niece is not covered in the definition of relative as per the Explanation to section 56(2)(vii). So, the cash gift received of ₹ 55,000 received from the niece is taxable as 'Income from Other Sources'.
6. Computation of Gross Total Income of Mr. Nandit for the A.Y. 2011-12.

Particulars	₹	₹
(i) Income from salary		29,000
(ii) Income from House Property		
Net annual value	77,000	
Less : Deduction under section 24 (30% of ` 77,000)	<u>23,100</u>	53,900
(iii) Profits and Gains of business and profession		
(a) Income from business	95,000	
Less : Current year depreciation	<u>17,000</u>	
	78,000	
Less : Unabsorbed depreciation	<u>12,000</u>	66,000
(b) Income from speculative business	9,000	
Less : Brought forward loss from speculative business	<u>9,000</u>	Nil
(Balance loss of ₹ 9,000 (i.e. ₹ 18,000 – ₹ 9,000) can be carried forward to the next year)		
(iv) Income from capital gain		
Long term capital gain on sale of land	17,300	
Less : Brought forward short term capital loss	<u>9,200</u>	<u>8,100</u>
Gross total income		<u>1,57,000</u>

Amount of loss to be carried forward to the next year

Particulars	`
Loss from speculative business (to be carried forward as per section 73)	9,000
Loss on maintenance of race horses [to be carried forward as per section 74A(3)]	11,000

Notes :

- (i) Loss on gambling can neither be set-off nor be carried forward.
- (ii) As per section 74A(3), the loss incurred on maintenance of race horses cannot be set-off against income from any other source other than the activity of owning and maintaining race horses. Such loss can be carried forward for a maximum period of 4 assessment years.
- (iii) Speculative business loss can set off only against income from speculative business of the current year and the balance loss can be carried forward to A.Y. 2012-13. It may be noted that speculative business loss can be carried forward for a maximum of four years as per section 73(4).

7. Computation of total income and tax payable by Mr. Tiwari

Particulars	₹	₹
Gross total income including long term capital gain		4,12,690
Less : Long term capital gain		<u>55,000</u>
		3,57,690
Less : Deductions under chapter VI-A:		
u/s. 80C in respect of		
- PPF deposit	50,000	
- Contribution to Fixed deposits	<u>75,000</u>	
	<u>1,25,000</u>	
Maximum deduction restricted to ₹ 1,00,000 [Section 80CCE]	1,00,000	
u/s. 80D (it is assumed that premium is paid otherwise than by way of cash. Since, Mr. Tiwari is a senior citizen, the maximum limit for deduction is ₹ 20,000)	16,000	
u/s. 80G (See Working note below)	<u>10,000</u>	<u>1,26,000</u>
Total income (excluding long term capital gains)		<u>2,31,690</u>
Total income (including long term capital gains)		2,86,690
Tax on total income (including long-term capital gains of ₹ 55,000) [(2,86,690-2,40,000) x 20%]		9,338
Add : Education cess @ 2%		187
Add : Secondary and Higher Education cess @ 1%		<u>93</u>
Total tax liability		<u>9,618</u>
Total tax liability (rounded off)		9,620
Working Note:		

Computation of deduction u/s.80G		
Gross total income (excluding long term capital gains)	3,57,690	
Less : Deduction u/s.80C and 80D	<u>1,16,000</u>	
	<u>2,41,690</u>	
10% of the above	24,169	
Contribution made	20,000	
Lower of the two eligible for 80G deduction	20,000	
Deduction u/s.80G – 50% of ₹ 20,000	10,000	

Note: As per section 112, the unexhausted basic exemption limit can be exhausted against long-term capital gains. Therefore, since the total income of ₹ 2,86,690 (inclusive of long-term capital gains of ₹ 55,000) is more than the basic exemption limit of ₹ 2,40,000 by ₹ 46,690, there would be tax liability on the excess amount being the long term capital gain taxable @ 20%.

8. **Computation of Total Income of Mr. Praveen for Assessment Year 2011-12.**

Particulars	Working Note Nos.	Amount in ₹
Income from House Property	1	66,500
Profit and gains of Business or Profession	2	8,68,200
Short-term capital gains	3	17,590
Income from other sources	4	<u>14,510</u>
Gross Total Income		9,66,800
Less: Deduction under Chapter VI-A	5	<u>14,000</u>
Total Income		<u>9,52,800</u>
Tax on total income		
Total Income		9,52,800
Less: Short-term capital gains (See Note 9 below)		<u>17,590</u>
Normal Income		<u>9,35,210</u>
Tax on normal income		1,34,563
Tax on short-term capital gains @15%		<u>2,639</u>
		1,37,202
Add: Education cess @ 2% and SHEC @ 1%		<u>4,116</u>
Total tax liability		<u>1,41,318</u>
Total tax liability (rounded off)		1,41,320

Notes :

	Particulars	₹	₹
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(1)	Income from House Property Gross annual value <i>Less:</i> Municipal taxes paid by owner Net Annual Value (NAV) <i>Less:</i> Deduction under section 24 @ 30% of NAV Rent received has been taken as the Gross Annual Value in the absence of other information relating to Municipal Value, Fair Rent and Standard Rent.	96,000 <u>1,000</u> 95,000 <u>28,500</u>	66,500
(2)	Income under the head “Profits & Gains of Business or Profession” Net profit as per Profit & Loss Account <i>Add:</i> Expenses debited to the Profit & Loss Account but not allowable (i) Salary paid to computer specialist in cash disallowed under section 40A(3), since such cash payment exceeds ₹ 20,000 (ii) Municipal Taxes paid in respect of residential flat let out <i>Less:</i> Expenses allowable but not debited to profit and loss account Interest paid on loan taken from LIC used for repair of computer <i>Less:</i> Income credited to Profit & Loss Account but not taxable under this head: (i) Dividend on shares of Indian companies (ii) Income from UTI (iii) Profit on sale of shares (iv) Honorarium for valuation of answer papers (v) Rent received from letting out of residential flat	 35,000 <u>1,000</u> 10,524 7,600 17,590 14,510 <u>96,000</u>	9,81,924 <u>36,000</u> 10,17,924 <u>3,500</u> 10,14,424 <u>1,46,224</u> <u>8,68,200</u>
(3)	Capital gains: Short term capital gain on sale of shares		17,590
(4)	Income from other sources: Dividend on shares of Indian companies <i>Less:</i> Exempt under section 10(34)	10,524 <u>10,524</u>	Nil

Income from UTI	7,600		
Less: Exempt under section 10(35)	<u>7,600</u>	Nil	
Honorarium for valuation of answer papers		<u>14,510</u>	14,510

(5)	Deduction under Chapter VI-A : Deduction under section 80D (Medical Insurance Premium)			
	Policy holder	Amount of Premium (₹)	Amount eligible for deduction (₹)	
	Self	9,000	9,000	
	Dependent brother	6,000	Nil	
	Major son dependent on him	8,000	Nil	
	Minor married daughter	5,000	Nil	
	Wife dependent on assessee	<u>5,000</u>	<u>5,000</u>	
			<u>14,000</u>	
	Amount of deduction (amount payable or ₹ 15,000 whichever is lower)			14,000
	Total deduction under Chapter VI-A			<u>14,000</u>

Note –

- (i) Premium paid to insure the health of brother is not eligible for deduction under section 80D.
 - (ii) Premium paid to insure the health of son is not eligible for deduction since payment is made in cash.
 - (iii) Premium paid to insure the health of minor married daughter is not eligible for deduction as she is not dependent on Mr. Praveen.
 - (iv) Premium paid to ensure health of wife is eligible for deduction whether or not she is dependent on the assessee.
- (6) ₹ 15,000 expended on foreign tour is allowable as deduction assuming that it was incurred in connection with his professional work. Therefore, it requires no further treatment.
 - (7) Incentive to articled assistants passing IPCC examination in their first attempt is deductible under section 37(1).

- (8) Repairs and maintenance paid in advance for the period 1.4.2011 to 30.9.2011 i.e. for 6 months amounting to ₹ 1,000 will be allowed since Mr. Praveen is following the cash system of accounting.
- (9) It is assumed that the transaction of sale of shares has been entered into in a recognized stock exchange and that securities transaction tax has been paid on such sale. Since the period of holding of these shares is less than 12 months, the profit arising therefrom is a short-term capital gain chargeable to tax at 15% under section 111A.
9. (a) Provisions of section 201(1A) are attracted in case of failure to deduct or pay tax at source.

According to provisions of section 201(1A) any person, including the principal officer of a company,—

(i) who is required to deduct any sum in accordance with the provisions of this Act; or

(ii) referred to in sub-section (1A) of section 192, being an employer,

does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest,—

(i) at one per cent for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and

(ii) at one and one-half per cent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid,

and such interest shall be paid before furnishing the statement in accordance with the provisions of sub-section (3) of section 200.

- (b) Tax deductible but not deducted 10% on ₹ 50,000 = 5000

Period of Default :-

15.06.2010 to 14.07.2010	1 Month
15.07.2010 to 14.08.2010	1 Month
15.08.2010 to 14.09.2010	1 Month
15.09.2010 to 14.10.2010	1 Month
15.10.2010 to 14.11.2010	1 Month
15.11.2010 to 14.12.2010	1 Month
15.12.2010 to 14.01.2011	1 Month

15.01.2011 to 09.02.2011 26 Days (1 Month as part of month)

8 Months

Tax deducted but not deposited 10% on ₹ 1,15,000 = 11,500

Period of Default :-

10.02.2011 to 9.03.2011 1 Month

10.03.2011 to 9.04.2011 1 Month

10.04.2011 to 9.05.2011 1 Month

10.05.2011 to 9.06.2011 1 Month

10.06.2011 to 9.07.2011 1 Month

10.07.2011 to 25.07.2011 16 Days (1 Month as part of month)

6 Months

Interest under section 201(1A) shall be as follows :-

1% on tax deductible but not deducted i.e., 1% on

₹ 5,000 for 8 Months 400

1.50% on tax deducted but not deposited i.e., 1.50%

on ₹ 11,500 for 6 Months 1,035

1,435

10. (a) Section 139(4C) enjoins that, a university referred to in section 10(23C), should file the return of income if its total income without giving effect to the exemption under section 10, exceeds the basic exemption limit. The provisions of the Act will apply as if it were a return required to be furnished under section 139(1). In the given case, since the total income of the University before giving effect to the exemption exceeds the basic exemption limit, it has to file its return of income.
- (b) Any person who has furnished a return under section 139(1) or in pursuance of a notice issued under section 142(1) can file a revised return if he discovers any omission or any wrong statement in the return filed earlier. Accordingly,
- A defective or incomplete return filed under section 139(9) cannot be revised. However, the defect can be removed.
 - A belated return filed under section 139(4) cannot be revised. Only a return furnished under section 139(1) or in pursuance of a notice issued under section 142(1) can be revised.
 - A return revised earlier can be revised again as the first revised return replaces the original return. Therefore, if the assessee discovers any omission

or wrong statement in such a revised return, he can furnish a second revised return within the prescribed time i.e. within one year from the end of the relevant assessment year or before the completion of assessment, whichever is earlier.

- (iv) A return of loss filed under section 139(3) is deemed to be return filed under section 139(1), and therefore, can be revised under section 139(5)

11. Computation of interest payable on delayed payment of service tax by Vibha Ltd.:-

Due date of payment of service tax	06.09.2011
Actual date of payment	30.11.2011
No. of days of delay (24+31+30)	85
Amount of service tax	₹ 10,000/-
Calculation of interest under section 75 @ 18% per annum*	$10,000 \times \frac{85}{366} \times \frac{18}{100}$
Amount of interest payable	₹ 418/-

*Note: With effect from 01.04.2011, the rate of interest under section 75 has been increased to 18% per annum.

12. (a) No, service tax is not payable on donations and grants-in-aid received by a Charitable Foundation imparting free livelihood training to the youth. *Circular No.127/09/2010 ST dated 16.08.2010* has clarified that donations and grants-in-aid received from different sources by a Charitable Foundation imparting free livelihood training to the poor and marginalized youth, will not be treated as 'consideration' received for such training and thus not subjected to service tax under 'commercial training or coaching service' as donation or grant-in-aid is not specifically meant for a person receiving such training or to the specific activity, but is in general meant for the charitable cause championed by the registered Foundation. There is no relationship other than universal humanitarian interest between the provider of donation/grant and the trainee. In such a situation, service tax is not leviable, since the donation or grant-in-aid is not linked to specific trainee or training.
- (b) Yes, service tax is payable on the representation of the client before any statutory authority in the course of proceedings initiated under any law by a practicing Chartered Accountant.

Earlier, the taxable services provided or to be provided by a practicing Chartered Accountant in his professional capacity, to a client, relating to representing the client before any statutory authority in the course of proceedings initiated under any law for the time being in force, by way of issue of notice, were exempt from the

whole of service tax leviable thereon vide *Notification No. 25/2006 ST dated 13.07.2006*. With effect from 01.05.2011, the said exemption stands withdrawn.

13. With effect from 01.04.2011, rule 2B inserted after rule 2A provides the manner of determination of the value of taxable service for the banking and other financial services so far as it pertains to purchase or sale of foreign currency, including money changing. The value of service shall be determined as follows:-

- (a) For a currency, when exchanged from, or to, Indian Rupees (INR)

For a currency, when exchanged from, or to, Indian Rupees (INR), the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) reference rate for that currency at that time, multiplied by the total units of currency.

- (b) Where the RBI reference rate for a currency is not available

Where the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received, by the person changing the money.

- (c) Where neither of the currencies exchanged is Indian Rupee

Where neither of the currencies exchanged is Indian Rupee, the value shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by RBI.

14. With effect from 01.05.2011, the insurer carrying on life insurance business would have the option to pay service tax on the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of policy holder, if such amount is intimated to the policy holder at the time of providing of service. In all other cases, the insurer may pay service tax @ 1.5% of the gross amount of premium charged from a policy holder.

However, such option would not be available if the entire premium is only towards risk cover in life insurance.

15. Computation of service tax payable by Rishabh Professionals Ltd.:-

Particulars	Amount (₹)
Services performed before such service became taxable (Note-1)	Nil
Services provided to an International Organisation (Note-2)	Nil
Free services rendered to the friends (Note-3)	Nil
Advance received for the services to be rendered in July, 2011 (Note-4)	5,00,000
Other receipts	<u>12,00,000</u>

Total	17,00,000
Less: Exemption available to small service providers (Note-5)	<u>10,00,000</u>
Value of taxable services	<u>7,00,000</u>
Service tax @10%	70,000
Add: Education cess @ 2%	1,400
Add: Secondary and higher education cess @ 1%	<u>700</u>
Service tax payable	<u>72,100</u>

Notes:-

- No service tax is payable for the value of services, which is attributable to services provided during the period when such services were not taxable even if the amount is realized after such services have become taxable.
- Services provided to an International Organisation are exempt from the service tax *vide Notification No. 16/2002 ST dated 02.08.2002.*
- No service tax is payable when value of service is zero as the charging section 66 provides that service tax is chargeable on the value of taxable service. Hence, service tax on free services provided is nil.
- Advance received for the services to be rendered in July, 2011 is liable for service tax. The amount of service tax included in the amount refunded in the next financial year i.e. June 2011 would be adjusted against service tax liability of subsequent periods. [It is assumed that ₹ 3,50,000 refunded in June, 2011 after the termination of agreement includes the amount of service tax payable thereon].
- Since, services provided by Rishabh Professional Ltd. became taxable on July 01, 2010, aggregate value of taxable services rendered in preceding financial year 2009-10 is Nil. Hence, Rishabh Professional Ltd. is eligible for exemption under *Notification No. 6/2005 ST dated 01.03.2005.*
- VAT system has many advantages like no tax evasion, transparency, certainty, reduction in cascading effect of taxes etc. However, since the VAT is imposed or paid at various stages and not at last stage, it increases the working capital requirements and the interest burden on the same. In this way, it may be considered to be non-beneficial as compared to the single stage-last point taxation system though to a certain extent, this rigour can be brought down through input credits on purchases.
- The threshold limit for small traders, as per the White Paper is ₹ 5 lakh. The same was subsequently increased to ₹ 10 lakh.
- Computation of VAT payable by Mr. Ram for the month of October, 2011:-

Particulars	₹
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(A)	Output tax payable	
(i)	On sale of finished goods produced from Goods 'A' within the State ($\text{₹ } 5,00,000 \times 12.5\%$)	62,500
(ii)	On taxable sale of finished goods produced from Goods 'C' within the State ($\text{₹ } 35,00,000 \times 4\%$)	<u>1,40,000</u>
	Total (A)	<u>2,02,500</u>
(B)	Input tax credit available	
(i)	Goods 'A' (Exempt)	Nil
(ii)	Goods 'B' (Note-1)	Nil
(iii)	Goods 'C' ($\text{₹ } 30,00,000 \times 12.5\%$)	<u>3,75,000</u>
	Total (B)	<u>3,75,000</u>
	Net VAT payable = (A)-(B)	(1,72,500)
	CST payable on inter-state sale of goods produced from Goods 'A' ($\text{₹ } 7,00,000 \times 1\%$) shall be paid from the balance of credit of ₹ 1,72,500.	<u>7,000</u>
	Balance of input credit carried forward to next month	<u>1,65,500</u>

Notes:

1. Since, there is no opening and closing inventory, it implies that entire purchase of the Goods 'B' is used to manufacture the finished goods (which are exempt from tax). Further, purchases of goods, which are being utilized in the manufacture of exempted goods, are not eligible for input tax credit. Hence, no input tax credit is available in respect of VAT paid on purchase of Goods 'B'.
 2. If finished goods are sold in the course of inter-state trade and commerce, credit is allowed.
19. Inter-State stock transfers do not involve sale and, therefore they are not subjected to sales tax. The same position is continued under VAT.
- However, the tax paid on:
- (i) inputs used in the manufacture of finished goods which are stock transferred; or
 - (ii) purchases of goods which are stock transferred
- is available as input tax credit after retention of 2% of such tax by the State Governments.
20. VAT returns are to be filed monthly/quarterly/annually along with tax paid challans according to the provisions of the State Acts. They should contain details of output tax liability, value of input tax credit and payment of VAT and should be filed within the prescribed time schedule. In case of any mistakes, revised returns may be filed. The returns will be checked and any deficiency in payment of tax may have to be made good.

Filing of returns is designed with a view:

- (i) to reduce cost of compliance
- (ii) to encourage businesses to comply with their obligations; and
- (iii) to ensure efficient processing of data.

SIGNIFICANT CIRCULARS & NOTIFICATIONS ISSUED BETWEEN 1.5.2010 AND 30.4.2011

Students may note that the Study Material for IPCC Group I Paper 4: Taxation A.Y. 2011-12 has been updated with the law as amended by the Finance Act, 2010 and notifications and circulars issued upto 30.04.2010. This study material is relevant for the students of IPCC appearing for November 2011 examination. The following are the amendments which have been made between 01.05.2010 and 30.04.2011. It may carefully be noted that for the students appearing in November 2011 examination, the amendments made by Notifications, Circulars etc. up to 30.04.2011 are relevant.

I INCOME TAX**CIRCULARS****1. Circular No. 4/2010 dated 18.5.2010**

Clarification regarding definition of new infrastructure facility for the purpose of section 80-IA(4)

The CBDT has, vide this Circular, clarified that widening of an existing road by constructing additional lanes as a part of a highway project by an undertaking would be regarded as a new infrastructure facility for the purpose of section 80-IA(4)(i). However, simply relaying of an existing road would not be classifiable as a new infrastructure facility for this purpose.

2. Circular No. 6/2010 dated 20.9.2010

Regional Rural Banks not eligible for deduction under section 80P

The CBDT has, through this circular, reiterated that Regional Rural Banks are not eligible for deduction under section 80P of the Income-tax Act, 1961 from the assessment year 2007-08 onwards. It has also been clarified that the Circular No. 319 dated 11-1-1982 deeming any Regional Rural Bank to be cooperative society stands withdrawn for application with effect from A.Y.2007-08.

This is consequent to the amendment in section 80P by the Finance Act, 2006, providing specifically that w.e.f. 1-4-2007, the provisions of section 80P will not apply to any co-operative bank other than a Primary Agricultural Credit Society or a Primary Cooperative Agricultural and Rural Development Bank. The same has been further clarified by this circular.

3. Circular No. 7/2010 dated 27.10.2010

Clarification regarding period of validity of approvals issued under section 10(23C)(iv), (v), (vi) or (via) and section 80G(5)

For the removal of doubts about the period of validity of various approvals granted by the Chief Commissioners of Income-tax or Directors General of Income-tax under sub-clauses (iv), (v), (vi) and (via) of section 10(23C) and by the Commissioners of Income-

tax or Directors of Income-tax under section 80G(5) of the Income-tax Act, 1961, the CBDT has, through, this circular clarified the following:-

- (1) For the purposes of sub-clauses (iv) and (v) of section 10(23C), any notification issued by the Central Government under the said sub-clauses, on or after 13-7-2006 will be valid until withdrawn and there will be no requirement on the part of the assessee to seek renewal of the same after three years.
- (2) For the purposes of sub-clauses (vi) and (via) of section 10(23C), any approval issued on or after 1-12-2006 under the said sub-clauses would be a one time approval and would be valid till it is withdrawn.
- (3) For the purposes of section 80G(5), existing approvals expiring on or after 1st October, 2009 shall be deemed to have been extended in perpetuity unless specifically withdrawn. Further, any approval under section 80G(5) on or after 1-10-2009 would be a one time approval which would be valid till it is withdrawn.

NOTIFICATIONS

1. Ceiling for gratuity exemption raised to ₹ 10 lakhs

Section 10(10)(ii) exempts any gratuity received under the Payment of Gratuity Act, 1972, to the extent it does not exceed an amount calculated in accordance with the provisions of sub-sections (2) and (3) of section 4 of that Act. The limit specified under sub-section (3) of section 4 has been increased from ₹ 3,50,000 to ₹ 10,00,000 by the Payment of Gratuity (Amendment) Act, 2010 dated 17th May, 2010.

Thereafter, the Central Government has enhanced the notified limit under section 10(10)(iii) from ₹ 3,50,000 to ₹ 10,00,000 in relation to employees who retire or become incapacitated prior to such retirement or die on or after 24th May, 2010 or whose employment is terminated on or after the said date. In effect, the ceiling for gratuity exemption under section 10(10)(iii), which is relevant for employees not covered under the Payment of Gratuity Act, 1972, has also been increased to ₹ 10 lakh vide Central Government Notification No.43/2010 dated 11th June, 2010.

2. Notification No.41/2010 dated 31.05.2010

Substitution of Rules 30, 31, 31A, in the Income-Tax Rules, 1962.

Rule 30 – Time and mode of payment to Government account of TDS or tax paid under section 192(1A)

- (a) All sums deducted in accordance with Chapter XVII-B by an office of the Government shall be paid to the credit of the Central Government on the same day where the tax is paid without production of an income-tax challan and on or before seven days from the end of the month in which the deduction is made or income-tax is due under section 192(1A), where tax is paid accompanied by an income-tax challan.

- (b) All sums deducted in accordance with Chapter XVII-B by deductors other than a Government office shall be paid to the credit of the Central Government on or before 30th April, where the income or amount is credited or paid in the month of March. In any other case, the tax deducted should be paid on or before seven days from the end of the month in which the deduction is made or income-tax is due under section 192(1A).
- (c) In special cases, the Assessing Officer may, with the prior approval of the Joint Commissioner, permit quarterly payment of the tax deducted under section 192/194A/194D/194H on or before 7th of the month following the quarter, in respect of first three quarters in the financial year and 30th April in respect of the quarter ending on 31st March. The dates for quarterly payment would, therefore, be 7th July, 7th October, 7th January and 30th April, for the quarters ended 30th June, 30th September, 31st December and 31st March, respectively.

Rule 31 – Certificate of TDS to be furnished under section 203

- (a) The certificate of deduction of tax at source to be furnished under section 203 shall be in Form No.16 in respect of tax deducted or paid under section 192 and in any other case, Form No.16A.
- (b) Form No.16 shall be issued to the employee annually by 31st May of the financial year immediately following the financial year in which the income was paid and tax deducted. Form No.16A shall be issued quarterly within 15 days from the due date for furnishing the statement of TDS under Rule 31A.

Rule 31A – Statement of deduction of tax under section 200(3)

- (a) Every person responsible for deduction of tax under Chapter XVII-B shall deliver, or cause to be delivered, the following quarterly statements to the DGIT (Systems) or any person authorized by him, in accordance with section 200(3):
 - (1) Statement of TDS under section 192 in Form No.24Q;
 - (2) Statement of TDS under sections 193 to 196D in Form No.26Q in respect of all deductees other than a deductee being a non-resident not being a company or a foreign company or resident but not ordinarily resident in which case the relevant form would be Form No.27Q.
 - (b) The time limit for furnishing such quarterly statements shall be 15th of the month following each quarter in respect of the first three quarters and 15th May for the last quarter ending on 31st March. The due dates would therefore be 15th July, 15th October, 15th January and 15th May for the quarters ending 30th June, 30th September, 31st December and 31st March, respectively.
3. Notification Nos. 48/2010 dated 9.7.2010 & 77/2010 dated 11.10.2010
- Notification of long-term infrastructure bonds by the Central Government, subscription to which would qualify for deduction under section 80CCF

Section 80CCF provides that an assessee, being an individual or a Hindu Undivided Family, shall get a deduction of up to rupees twenty thousand in computing his total income if he subscribes to long-term infrastructure bonds as may be notified by the Central Government for this purpose.

Consequently, the Central Government has, vide these notifications, specified the long-term infrastructure bonds, subscription to which would qualify for deduction under section 80CCF. Accordingly, subscription to long-term infrastructure bonds of Industrial Finance Corporation of India, Life Insurance Corporation of India, Infrastructure Development Finance Company Limited and a non-banking Finance Company classified as an Infrastructure Finance Company by the Reserve Bank of India would qualify for deduction under section 80CCF. Further, subscription to long-term infrastructure bonds of India Infrastructure Finance Company Ltd. would also qualify for deduction under section 80CCF.

4. Notification No. 59/2010 dated 21.07.2010

Cost Inflation Index of financial year 2010-11 notified

Clause (v) of Explanation to section 48 defines "Cost Inflation Index", in relation to a previous year, to mean such Index as the Central Government may, by notification in the Official Gazette, specify in this behalf, having regard to 75% of average rise in the Consumer Price Index for urban non-manual employees.

Accordingly, the Central Government has, in exercise of the powers conferred by clause (v) of Explanation to section 48, specified the Cost Inflation Index for the financial year 2010-11 as 711.

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
29.	2009-10	632
30.	2010-11	711

5. Notification No. 80/2010 dated 19.10.2010 (as amended by Notification No.20/2011 dated 21.4.2011)

Notification of annuity plan for deduction under section 80C

Deduction under section 80C is available in respect of any sum paid or deposited to effect or to keep in force a contract for such annuity plan of the Life Insurance Corporation or any other insurer as the Central Government may, by notification in the Official Gazette specify in this behalf.

Accordingly, the Central Government, has, through this notification specified the Tata AIG Easy Retire Annuity plan of the Tata AIG Life Insurance Company Limited as the annuity plan of the Tata AIG Life Insurance Company Limited for the purposes deduction under section 80C.

6. Notification No.84/2010 dated 22.11.2010

Salaried persons entitled to act as Tax Return Preparers

In exercise of the powers conferred under section 139B(1), the CBDT had framed the Tax Return Preparer Scheme, 2006 for the purpose of enabling any specified class or classes of persons in preparing and furnishing their return of income. "Specified class or classes of persons" means any person, other than a company or a person, whose accounts are required to be audited under section 44AB or under any other law for the time being in force, who is required to furnish a return of income under the Act.

Paragraph 2(f) of the Tax Return Preparer Scheme, 2006 defining a Tax Return Preparer, specifically provided that a person who is in employment and income from which is chargeable under the head “Salaries” shall not be entitled to act as a Tax Return Preparer. This disqualification has now been removed by amending paragraph 2(f). Consequently, a salaried person is now eligible to act as a Tax Return Preparer.

Consequential amendment has been made in Paragraph 11(1)(xii), which provided for withdrawal of certificate given to the Tax Return Preparer in case he, after issue of Tax Return Preparer Certificate to him, takes up an employment, income from which is chargeable under the head “Salaries”. Henceforth, taking up a salaried employment would not result in withdrawal of certificate given to the Tax Return Preparer.

However, it may be noted that as per section 139B(3) of the Income-tax Act, 1961, an employee of the “specified class or classes of persons” is not authorized to act as a Tax Return Preparer. A combined reading of section 139B(3) with the amended Tax Return Preparer Scheme, 2006 reveals that employees of companies and persons whose accounts are required to be audited under section 44AB or any other law for the time being in force, are eligible to act as Tax Return Preparers.

7. Notification No.85/2010 dated 22.11.2010

Increase in exemption limit for allowance granted to employees working in a transport system to meet their personal expenditure during the course of duty

Section 10(14)(ii) exempts any such allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at the place where he ordinarily resides, or to compensate him for the increased cost of living as may be prescribed and to the extent as may be prescribed.

Rule 2BB(2) prescribes the allowances for the purposes of exemption under section 10(14)(ii). As per this rule, the exemption allowable in respect of any allowance granted to an employee working in any transport system to meet his personal expenditure during his duty performed in the course of running of such transport from one place to another place (provided he is not in receipt of daily allowance) is 70% of such allowance, subject to a maximum of ₹ 6,000 per month.

The monthly limit of ₹ 6,000 has been increased to ₹ 10,000 with retrospective effect from 1st September, 2008. Therefore, with effect from 1st September, 2008, the exemption would be 70% of such allowance, subject to a maximum of ₹ 10,000 per month.

8. Notification No. 12/2011 dated 25.02.11

United Stock Exchange of India Ltd. notified as a recognized stock exchange

Clause (d) of the proviso to section 43(5) provides that an eligible transaction in respect of trading in derivatives referred to in section 2(ac) of the Securities Contracts

(Regulation) Act, 1956 carried out in a recognised stock exchange, which is notified by the Central Government for this purpose, shall not be deemed to be a speculative transaction.

Accordingly, in exercise of the powers conferred under section 43(5) read with Rule 6DDB, the Central Government has notified the United Stock Exchange of India Limited as a recognised stock exchange for the purpose of the said clause. The notification also lays down certain conditions to be fulfilled by the stock exchange.

It may be noted that at present, there are three other stock exchanges notified as recognised stock exchanges for the purposes of section 43(5), namely, the National Stock Exchange, Bombay Stock Exchange and MCX Stock Exchange.

9. Notification No. 14/2011 dated 9.3.2011

Conditions to be fulfilled for a stock exchange to qualify as a recognised stock exchange for the purposes of section 43(5) - Modification of cash and derivative market transactions registered in the system permitted in case of genuine error

Clause (d) of proviso to section 43(5) provides that an eligible transaction in respect of trading in derivatives referred to in section 2(ac) of the Securities Contracts (Regulation) Act, 1956 carried out in a recognised stock exchange shall not be deemed to be a speculative transaction. Rule 6DDB provides for notification of recognised stock exchange for the purposes of said clause.

Further, Rule 6DDA provides the conditions that a stock exchange is required to fulfil to be notified as a recognised stock exchange for the purpose of abovementioned clause. One of the conditions, specified in clause (iv) of Rule 6DDA, is that the stock exchange shall ensure that transactions once registered in the system cannot be erased or modified. This clause has been substituted to provide that the stock exchange shall ensure that transactions (in respect of cash and derivative market) once registered in the system are not erased.

Another condition has been stipulated by insertion of clause (v), which provides that the stock exchange shall ensure that the transactions (in respect of cash and derivative market) once registered in the system are modified only in cases of genuine error. The stock exchange should maintain data regarding all transactions (in respect of cash and derivative market) registered in the system which have been modified and submit a monthly statement in Form No. 3BB to the Director General of Income-tax (Intelligence), New Delhi within fifteen days from the last day of each month to which such statement relates.

Corresponding amendment has been made in Rule 6DDB requiring that the application for notification of a recognised stock exchange should be accompanied by inter alia, confirmation regarding fulfilling the conditions referred to in clauses (ii) to (v) of Rule 6DDA.

10. Notification No. 18/2011 dated 5.4.2011**Notification of return forms for A.Y.2011-12**

The CBDT has notified the new income-tax return forms for the Assessment year 2011-12. Rule 12 of the Income-tax Rules, 1962 has been amended in respect of the following :-

- (1) Reference to return of fringe benefits has been removed.
- (2) Form Saral-II (ITR-1) has been substituted by the Form "SAHAJ" (ITR-1), which would be applicable for individuals, whose total income includes income chargeable under the head –
 - (i) "Salaries" or income in the nature of family pension under section 57(ia); or
 - (ii) "Income from house property", where the assessee does not own more than one house property and does not have any brought forward loss under the head; or
 - (iii) "Income from other sources", except winnings from lottery or income from race horses.
- (3) The return of income in case of a person being an individual and HUF deriving business income and such income is computed on presumptive basis under section 44AD and section 44AE to be in Form SUGAM (ITR-4S) and be verified in the manner indicated therein.

SAHAJ and SUGAM Forms notified by CBDT are the simplest, technology enabled and taxpayer friendly return forms. These have been designed to facilitate error free and faster digitization. This is expected to curtail processing cycle and expedite issue of refunds.

11. Notification No. 24/2011 issued in supersession of Notification No. 69/2010 dated 26.8.2010

9.5% notified as the interest rate on RPF, the interest in excess of which would be taxable as salary

Rule 6 of Part A of the Fourth Schedule to the Income-tax Act, 1961, provides, *inter alia*, that interest credited on the balance to the credit of an employee participating in a recognized provident fund in so far as it is allowed at a rate exceeding such rate notified by the Central Government, shall be deemed to have been received by the employee in the relevant previous year and shall be included in his total income.

Accordingly, the Central Government has, vide this notification, notified w.e.f. 1st September, 2010, in exercise of the powers conferred by Rule 6, 9.5% as the rate of interest on employer's annual contributions in a recognized provident fund. In effect, the Notification No. 69/2010 dated 26.8.2010, notifying the rate of interest as 8.5% w.e.f. 1st September, 2010, has been superseded by this notification.

This implies that interest credited on the balance to the credit of the employee in excess of 9.5% (and not 8.5% as earlier notified to be effective from 1.9.2010) shall be deemed to have been received by the employee in the previous year and shall be included in the

total income of the employee. Prior to 1.9.2010, in any case, the interest credited in excess of 9.5% was deemed to be the income of the employee.

Therefore, the position of law as it stands now after issue of this notification is that irrespective of the date of credit of interest, whether before or on or after 1.9.2010, only the interest credited on the balance to the credit of the employee in excess of 9.5% shall be included in the total income of the employee. For example, if an employer credits interest @10% for the P.Y.2010-11 on the balance standing to the credit of each employee, then the excess interest of 0.5% (10% - 9.5%) would be included in the total income of the employee for that year.

II SERVICE TAX

A. EXEMPTIONS/AMENDMENTS IN/WITHDRAWALS OF EXISTING EXEMPTIONS

1. Service tax paid on service provided by airports authority to an exporter for export of goods eligible for refund

Service tax paid on certain taxable services that are used in relation to or for export of goods are eligible for refund under *Notification No. 17/09 ST dated 07.07.2009*. The said Notification covers port service within its ambit but does not include 'airport service'. Such anomaly has been corrected by amending the said Notification so as to include 'airport service' in the list of eligible services under the said refund scheme.

[Notification No. 37/2010 ST dated 28.06.2010]

2. Exemption to packaged or canned software from service tax on specified taxable service when excise/customs duty paid

Prior to amendment

The taxable service of providing the right to use the packaged/canned software, pre-packed in retail packages intended for single use has been exempted from the service tax under 'information technology software services' subject to the following conditions:-

1. the document providing the right to use such software is packed along with the software.
2. (a) In case of import: The importer has paid the custom duty on the entire amount received from the buyer.
(b) In case of domestic production: The manufacturer/duplicator/the person holding the copyright to software has paid the excise duty on the entire amount received from the buyer.
3. the benefit under the following notifications has not been availed:-
 - *Notification No. 17/2010 CE dated 27.02.2010*
 - *Notification No. 31/2010 Cus dated 27.02.2010*

[Notification No. 02/2010 ST dated 27.02.2010 and Notification No. 17/2010 ST dated 27.02.2010]

Amendment made by Notification No. 51-53/2010-S.T. dated 21-12-2010

Notification No. 02/2010 and 17/2010 have been rescinded by *Notification No. 51/2010 and 52/2010* respectively. Further, *Notification No. 53/2010-S.T.* has been issued to exempt the service of providing the right to use the packaged or canned software (hereinafter referred to as 'said goods') under 'information technology software services' from the whole of service tax, subject to the condition that-

- (i) the value of the said goods domestically produced/imported, for the purposes of excise duty or countervailing duty (if imported) has been determined on the basis of MRP valuation (i.e. under section 4A of the Central Excise Act, 1944) and
- (ii) (a) In case of domestic production: the appropriate duties of excise on such value have been paid by the manufacturer, duplicator or the person holding the copyright to such software, as the case may be, in respect of software manufactured in India; or
 - (b) In case of import: the appropriate duties of customs including the additional duty of customs on such value, have been paid by the importer in respect of software which has been imported into India.
- (iii) a declaration made by the service provider on the invoice relating to such service that no amount in excess of the retail sale price declared on the said goods has been recovered from the customer.

Meaning of important terms**(i) Appropriate duties of excise**

It means the duties of excise leviable under section 3 of the Central Excise Act, 1944 and a notification, for the time being in force, issued in accordance with the provision of sub-section (1) of section 5A of the said Central Excise Act; and

(ii) Appropriate duties of customs

It means the duties of customs leviable under section 12 of the Customs Act, 1962 and any of the provisions of the Customs Tariff Act, 1975 and a notification, for the time being in force, issued in accordance with the provision of section 25(1) of the said Customs Act.

3. Exemption to services received by a developer or units of a special economic zone, (refund of service tax paid) - *Notification No. 9/2009-ST dated 03.03.2009* superseded

(A) Eligibility for exemption

The taxable services received by any of the following are eligible for exemption under this notification:-

- a unit located in a Special Economic Zone (hereinafter referred to as SEZ)

- developer of SEZ for the authorized operations

(B) Conditions to be fulfilled

(a) List of taxable services required to be approved by the Approval Committee

For the purpose of claiming exemption, the Developer or Unit of SEZ shall obtain a list of taxable services as are required for the authorised operations approved by the Approval Committee (hereinafter referred to as the specified services) of the concerned SEZ.

(b) Declaration by the developer/unit of SEZ not owning/carrying out any business other than SEZ operations

The Developer or Unit of SEZ who does not own or carry out any business other than SEZ operations, shall furnish a declaration to that effect in Form A-1, verified by the Specified Officer of the SEZ, in addition to obtaining list under condition (a) above, for the purpose of claiming exemption.

(c) Option not to pay service tax *ab-intio* in case the specified services wholly consumed within the SEZ

(i) Where the specified services are wholly consumed within the SEZ

Service provider/service receiver (reverse charge basis) has the option not to pay the service tax. Hence, under this option, instead of the Unit or Developer claiming exemption by way of refund, service tax may not be paid *ab intio*.

(ii) Where the specified services are not wholly consumed within the SEZ

Where the specified services received and used for authorised operations are partially consumed within the SEZ and partially outside SEZ, the exemption shall be provided only by way of refund of service tax paid on the specified services received for the authorised operations in a SEZ. Hence, the option of not paying the service tax *ab-intio* is not available here.

Meaning of wholly consumed

For the purposes of this notification, the expression –

Wholly consumed refer to following taxable services, received by a developer or unit of a SEZ, for the authorised operations, namely:-

- (i) services listed in clause (i) of sub-rule (1) of rule 3 of the Export of Services Rules, 2005 in relation to an immovable property situated within the SEZ; or
- (ii) services listed in clause (ii) of sub-rule (1) of rule 3 of the Export of Services Rules, 2005, as are wholly performed within the SEZ; or

(iii) services other than those falling under (i) and (ii) above, provided to a Developer or Unit of SEZ, who does not own or carry on any business other than the operations in the SEZ.

- (d) Restricted amount of refund in case the specified services are not wholly consumed within the SEZ

Where the specified services received by Unit or Developer, are not wholly consumed within SEZ, i.e., shared between authorised operations in SEZ Unit and Domestic Tariff Area(DTA) Unit, refund shall be restricted to the extent of the ratio of export turnover to the total turnover for the given period to which the claim relates.

$$\text{Maximum refund} = \frac{\text{ST} \times \text{ET}}{\text{TT}}$$

where

ST stands for service tax paid on specified services used for SEZ authorised operations shared with DTA Unit for the period

ET stands for Export turnover of SEZ Unit for the period

TT stands for Total turnover for the period

Meaning of important terms

For the purposes of condition (d),-

- (a) Total turnover means the sum total of the value of:-

- (i) all output services and exempted services provided, including the value of services exported;
 - (ii) all excisable and non-excisable goods cleared, including the value of the goods exported;
 - (iii) bought out goods sold,
- during the period to which the invoices pertain and the exporter claims the facility of refund under this notification.

- (b) Turnover of SEZ Unit means the sum total of the value of:-

- (i) final products exported,
 - (ii) output services exported
- during the period of which the invoices pertain and the exporter claims the facility of refund under this notification.

- (e) Declaration that the specified services have been actually used for the authorized operations

Any Developer or Unit of SEZ claiming the exemption shall declare that the specified services on which exemption and/ or refund is claimed to have been actually used for the authorized operations.

- (f) Developer/unit of SEZ claiming refund must actually pay the amount indicated in invoice

The Developer or unit of SEZ claiming the exemption, by way of refund has actually paid the amount indicated in the invoice, bill or as the case may be, challan, including the service tax payable, to the person liable to pay the said tax or the amount of service tax payable under reverse charge, as the case may be, under the provisions of the Finance Act.

- (g) No CENVAT credit of service tax paid on the specified services availed

No CENVAT credit of service tax paid on the specified services used for the authorized operations in a SEZ has been taken under the CENVAT Credit Rules, 2004.

- (h) No exemption/refund of service tax paid on specified services claimed under any other notification

Exemption of service tax paid on the specified services (refund, in case of other than wholly consumed services) used for the authorised operations in a SEZ shall not be claimed except under this notification.

- (i) Maintenance of proper account of receipt and use of the specified services

The developer or unit of a SEZ, who intends to avail exemption and or refund under this notification, shall maintain proper account of receipt and use of the specified services on which exemption is claimed, for authorised operations in the SEZ.

(C) Procedure for claiming the benefit of the exemption

- (a) Refund claim to be filed by Developer or Unit of a SEZ

The Developer or Unit of a SEZ, who has paid the service tax under sections 66 of the Finance Act, shall avail the exemption by filling a claim for refund of service tax paid on specified services used for the authorised operations.

- (b) Registered Developer or Unit of a SEZ to file the claim to jurisdictional Assistant/Deputy Commissioner of Central Excise

The Developer or Unit of a SEZ who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made there under, or the Finance Act, 1994 or the rules made there under, shall file the claim for refund to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as

the case may be, having jurisdiction over the SEZ or registered office or the head office of the Developer or Unit, as the case may be, in Form A-2.

- (c) **Unregistered Developer or Unit of a SEZ to file a declaration in Form A-3 with the jurisdictional Assistant/Deputy Commissioner of Central Excise before filing claim**

The Developer or Unit of a SEZ who is not so registered under the provisions referred to in clause (b), shall, before filing a claim for refund under this notification, file a declaration with the Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the SEZ or registered office or the head office of the Developer or Unit, as the case may be, in Form A-3.

- (d) **Allotment of service tax code number within 7 days in Form A-3**

The Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, allot a service tax code number to the Developer or Unit of SEZ, referred to in clause (c), within seven days from the date of receipt of the said declaration, in Form A-3.

- (e) **Time-limit of one year for filing the refund claim**

The claim for refund shall be filed, within one year from the end of the month in which actual payment of service tax was made by such developer or unit to the registered service provider.

Extension of time-limit of one year

The aforesaid period of one year can be extended if the Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, so permit.

- (f) **Documents to accompany the refund claim**

The refund claim shall be accompanied by the following documents, namely:-

- (i) a copy of the list of specified services as are required for the authorized operations in the SEZ, as approved by the Approval Committee; wherever applicable, document specified in 2(c), i.e. , declaration in Form A-1;
- (ii) invoice or a bill or as the case may be, a challan, issued in accordance with the provisions of Finance Act or rules made thereunder, in the name of the Developer or Unit of a SEZ, by the registered service provider, along with proof of payment for such specified services used for the authorised operations and service tax paid, in original;
- (iii) a declaration by the Developer or Unit of SEZ, claiming such exemption, to the effect that—
 - (A) the specified services on which refund of service tax claimed, has been actually used for the authorized operations in the SEZ ;

- (B) proper account of the specified services received and used for the authorised operations are maintained by the developer or unit of the SEZ and the same shall be produced to the officer sanctioning refund, on demand;
- (C) accounts or documents furnished by the Developer or Unit as proof of payment of service tax claimed as refund, based on the invoice, or bill, or as the case may be challan issued by the registered service provider indicating the service tax paid on such specified services, are true and correct in all respects.

(g) Grant of refund after due verification

The Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, after verifying that,-

- (i) the refund claim is complete in all respects;
- (ii) the information furnished in Form A-2 and in supporting documents correctly indicate the service tax involved in the specified services used for the authorised operations in the SEZ, which is claimed as refund, and has been actually paid to the service provider,

shall refund the service tax paid on the specified services.

(h) Service provider to provide the specified services falling under wholly consumed category under exemption provided Developer or Unit of SEZ produce the specified documents

A service provider, shall provide the specified services falling under wholly consumed category, under exemption granted by this notification, to a Developer or Unit of SEZ, for authorized operations, subject to the production of documents specified in sub-para (b) of para (B). and in addition wherever applicable, documents specified in sub-para (c) para (B), i.e., declaration in Form A-1.

(i) Recovery of erroneous refund

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 recovery of service tax erroneously refunded;

Points to be noted

1. Words and expressions used in this notification and defined in the Special Economic Zones Act, 2005 or the rules made thereunder, shall apply, so far as may be, in relation to refund of service tax under this notification as they apply in relation to a SEZ.

2. Meaning of statutory auditor

Statutory auditor refers to a Chartered Accountant who audits the annual accounts of the Developer or Unit of a SEZ for the purposes of the Companies Act, 1956 or the Income Tax Act, 1961.

[Notification No. 17/2011 dated 01.03.2011]

4. Withdrawal of exemption to the practicing Chartered Accountant, practicing Company Secretary and practicing Cost Accountant representing the client before any statutory authority in the course of proceedings initiated under any law

Prior to amendment

Earlier, the taxable services provided or to be provided by a practicing Chartered Accountant/ practicing Company Secretary/ practicing Cost Accountant in his professional capacity, to a client, relating to representing the client before any statutory authority in the course of proceedings initiated under any law for the time being in force, by way of issue of notice, were exempt from the whole of service tax leviable thereon vide *Notification No. 25/2006 ST dated 13.07.2006*.

Amendment made by Notification No.32/2011—ST dated 25.04.2011

With effect from 01.05.2011, the said exemption stands withdrawn. It implies that the representational services provided by practicing Chartered Accountants, practicing Cost Accountants and practicing Companies Secretaries are liable to service tax.

5. Exemption to preschool coaching and training and coaching leading to grant of a certificate/diploma/degree/educational qualification recognised by any law

With effect from 01.05.2011, the following services provided by any commercial coaching or training centre have been exempted from service tax:-

- (i) any preschool coaching and training;
- (ii) any coaching or training leading to grant of a certificate or diploma or degree or any educational qualification which is recognised by any law for the time being in force.

[Notification No. 33/2011 ST dated 25.04.2011]

B. AMENDMENTS IN THE SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006

1. Determination of value of service in relation to money changing [Rule 2A]

Rule 2B inserted after rule 2A provides the manner of determination of the value of taxable service for the banking and other financial services so far as it pertains to purchase or sale of foreign currency, including money changing. The value of service shall be determined as follows:-

(a) For a currency, when exchanged from, or to, Indian Rupees (INR)

For a currency, when exchanged from, or to, Indian Rupees (INR), the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) reference rate for that currency at that time, multiplied by the total units of currency.

Example I: US\$ 1,000 are sold by a customer at the rate of ₹ 45 per US\$.

RBI reference rate for US\$ is ₹ 45.50 for that day.

Value of taxable service = (RBI reference rate for \$ – Selling rate for \$) × Total units

= ₹ (45.50 - 45) × 1,000

= ₹ 0.50 × 1,000

The taxable value shall be ₹ 500.

Example II: INR 70,000 is changed into Great Britain Pound (GBP) and the exchange rate offered is ₹ 70, thereby giving GBP 1000.

RBI reference rate for that day for GBP is ₹ 69.

The taxable value shall be ₹ 1,000.

(b) Where the RBI reference rate for a currency is not available

Where the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received, by the person changing the money.

(c) Where neither of the currencies exchanged is Indian Rupee

Where neither of the currencies exchanged is Indian Rupee, the value shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by RBI.

The aforementioned amendment shall come into force on 01.04.2011.

[Notification No. 02/2011-ST dated 01.03.2011 as amended by Notification No. 24/2011 dated 31.03.2011]

2. Value of taxable service for the telecommunication service [Explanation to rule 5(1)]

Following explanation to rule 5(1) has been inserted vide *Notification No. 02/2011-ST dated 01.03.2011* to provide clarification regarding the value of taxable service under telecommunication service:-

For the removal of doubts, it is hereby clarified that for the telecommunication service [Section 65(105)(zzzx)], the value of the taxable service shall be the gross

amount paid by the person to whom telecom service is provided by the telegraph authority.

Clarification

In this regard, *DOF No. 334/3/2011-TRU dated 28.02.2011* clarifies that in case of service provided by way of recharge coupons or prepaid cards or the like, the value shall be the gross amount charged from the subscriber or the ultimate user of the service and not the amount paid by the distributor or any such intermediary to the telegraph authority.

C. AMENDEMENTS IN THE SERVICE TAX RULES, 1994

1. Amendments in rule 6 - Payment of service tax

(a) Excess payment of service tax [Sub-rule (4B)]

Prior to amendment

In case the service provider has made excess payment, the same may be utilized for the payment of service tax for the subsequent month liability subject to certain conditions as prescribed under various clauses of sub-rule (4B) of rule 6.

Clause (iii) of the said sub-rule stipulates that the adjustment of excess amount paid shall be subject to maximum of Rs. 1,00,000/- for a relevant month or quarter, as the case may be, in cases where the excess payment is not due to delayed receipt of details of payments towards taxable services.

Amendment made by *Notification No. 03/2011-ST dated 01.03.2011*

With effect from 01.04.2011, the aforesaid limit of Rs. 1,00,000 has been increased to Rs. 2,00,000.

(b) Recovery of the amount of service tax short paid/not paid under self-assessment [Sub-rule (6A)]

With effect from 01.04.2011, sub-rule (6A) has been inserted vide *Notification No. 03/2011-ST dated 01.03.2011* which provides as follows:-

Where an amount of service tax payable has been self-assessed under sub-section (1) of section 70 of the Act, but not paid, either in full or part, the same, shall be recoverable alongwith interest in the manner prescribed under section 87 of the Act.

(c) Special rate of service tax in case of sale/purchase of foreign currency including money changing amended [Sub-rule (7B)]

Prior to amendment

Sub-rule (7B) to rule 6 provided that 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 section 65(105)(zm) and section

65(105)(zzk) as amended had 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 @ 10%.

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 [Proviso to sub-rule (7B)].

Amendment made by Notification No. 26/2011-ST dated 31.03.2011

With effect from 01.04.2011, sub-rule (7B) to rule 6 has been amended to provide as follows:-

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 section 65(105)(zm) and section 65(105)(zzk) as amended had the option to pay an amount at the following rates instead of paying service tax @ 10%:-

S.No.	For an amount	Service tax shall be calculated at the rate of
1.	Upto Rs. 100,000	0.1 % of the gross amount of currency exchanged or ₹ 25 whichever is higher
2.	Exceeding ₹ 1,00,000 and upto ₹ 10,00,000	₹ 100 + 0.05 % of the gross amount of currency exchanged
3.	Exceeding ₹ 10,00,000	₹ 550 + 0.01 % of the gross amount of currency exchanged or ₹ 5,000 whichever is lower

However, the person providing the service shall exercise such option for a financial year and such option shall not be withdrawn during the remaining part of that financial year [Proviso to sub-rule (7B)].

- (d) Special rate of service tax leviable on life insurance increased from 1% to 1.5% [Sub-rule (7A)]

Prior to amendment

An insurer carrying on life insurance business liable for paying the service tax has the option to pay an amount calculated @ 1% of the gross amount of premium charged by such insurer towards the discharge of his service tax liability instead of paying service tax @ 10%.

Such option was not available in cases where:-

- the entire premium paid by the policy holder is only towards risk cover in life insurance; or
- the part of the premium payable towards risk cover in life insurance is shown separately in any of the documents issued by the insurer to the policy holder.

Amendment made by Notification No. 35/2011 ST dated 25.04.2011

With effect from 01.05.2011, the insurer carrying on life insurance business would have the option to pay service tax on the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of policy holder, if such amount is intimated to the policy holder at the time of providing of service. In all other cases, the insurer may pay service tax @ 1.5% of the gross amount of premium charged from a policy holder.

However, such option would not be available if the entire premium is only towards risk cover in life insurance.

(e) Optional Composition Scheme for Distributor or Selling Agents of Lotteries

An optional mode of payment of service tax has been provided to a distributor or selling agent of lotteries by inserting sub-rule (7C) in rule 6 of the Service Tax Rules, 1994. The distributor or selling agents rendering the taxable service of promotion, marketing or organising/assisting in organising lottery can discharge their service tax liability in the following manner instead of paying service tax @10%:

Where the guaranteed lottery prize payout is > 80%	₹ 6000/- on every ₹ 10 Lakh (or part of ₹ 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw.
Where the guaranteed lottery prize payout is < 80%	₹ 9000/- on every ₹ 10 Lakh (or part of ₹ 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw.

Points to be noted:-

1. In case of online lottery, the aggregate face value of lottery tickets will be the aggregate value of tickets sold.
2. The distributor/selling agent will have to exercise such option within a period of one month of the beginning of each financial year. The new service provider can exercise such option within one month of providing the service.
3. The option once exercised cannot be withdrawn during the remaining part of the financial year.
4. For the financial year 2010-11, the distributor or selling agent will have to exercise such option by 07.11.2010.

Meaning of important terms

- (a) **Distributor or selling agent:** means an individual or firm or body corporate or other legal entity under law so appointed by the Organising State through an agreement to market and sell lotteries on behalf of the Organising State [Rule 2(c) of the Lottery (Regulation) Rules, 2010]
and shall include the distributor/selling agent authorized by lottery organizing State.
- (b) **Draw:** means a method by which the prize winning numbers are drawn for each lottery/lottery scheme by operating the draw machine or any other mechanical method based on random technology which is visibly transparent to the viewers [Rule 2(d) of the Lottery (Regulation) Rules, 2010].
- (c) **Online lottery:** means a system created to permit players to purchase lottery tickets generated by the computer or online machine at the lottery terminals where the information about the sale of a ticket and the player's choice of any particular number or combination of numbers is simultaneously registered with the central computer server [Rule 2(e) of the Lottery (Regulation) Rules, 2010].
- (d) **Organising State:** means the State Government which conducts the lottery either in its own territory or sells its tickets in the territory of any other State [Rule 2(f) of the Lottery (Regulation) Rules, 2010].

[Notification No. 49/2010 ST dated 08.10.2010]

D. CLARIFICATIONS

1. Donations and grants-in-aid received by a Charitable Foundation imparting free livelihood training to the youth not liable to service tax

It has been clarified that donations and grants-in-aid received from different sources by a Charitable Foundation imparting free livelihood training to the poor and marginalized youth, will not be treated as 'consideration' received for such training and thus not subjected to service tax under 'commercial training or coaching service as donation or grant-in-aid is not specifically meant for a person receiving such training or to the specific activity, but is in general meant for the charitable cause championed by the registered Foundation. There is no relationship other than universal humanitarian interest between the provider of donation/grant and the trainee. In such a situation, service tax is not leviable, since the donation or grant-in-aid is not linked to specific trainee or training.

[Circular No.127/09/2010 ST dated 16.08.2010]

2. Service tax exemption applies to Education Cess and Secondary and Higher Education Cess as well

It has been clarified that since Education Cess and Secondary and Higher Education Cess are levied and collected as percentage of service tax, when and wherever service

tax is NIL by virtue of exemption, Education Cess and Secondary and Higher Education Cess would also be NIL.

According to section 95(1) of the Finance (No.2) Act, 2004 and section 140(1) of the Finance Act, 2007, Education Cess and Secondary and Higher Education Cess are leviable and collected as service tax, and when whole of service tax is exempt, the same applies to education cess and secondary and higher education cess as well.

[Circular No. 134/3/2011 ST dated 08.04.2011]

E. OTHER AMENDMENTS

1. Rate of interest for amount collected of service tax in excess increased by 5% per annum [Section 73B]

Earlier, the rate of interest notified by the Central Government under section 73B was 13% per annum vide *Notification No. 8/2006 dated 19.04.2006*.

Amendment made by *Notification No. 15/2011 dated 01.03.2011*

With effect from 01.04.2011, the said notification has been amended to increase the rate of interest to 18% per annum.

2. Rate of interest for delayed payment of service tax increased by 5% per annum [Section 75]

Earlier, the rate of interest notified by the Central Government under section 75 was 13% per annum vide *Notification No. 26/2004 dated 10.09.2004*.

Amendment made by *Notification No. 14/2011 dated 01.03.2011*

With effect from 01.04.2011, the said notification has been amended to increase the rate of interest to 18% per annum.