PAPER – 5 : TAXATION

QUESTIONS

1. State with reasons whether the following statements are true or false [A.Y. 2008-09] -

   (a) A charitable or religious trust or institution is required to file an application for registration under section 12A within one year from the date of creation of the trust or establishment of institution.

   (b) It is not necessary for an assessee claiming exemption under section 80-ID to file return on or before due date for the purpose of claim of such exemption.

   (c) TDS provisions under section 194C are not attracted in respect of payments made by an individual or a HUF to a contractor.

   (d) The ceiling limit of deduction under section 24(b) in respect of interest on loan taken on 1.04.07 for repairs of a self-occupied house is Rs. 30,000 p.a.

2. During the previous year 2007-08, Mohan Kumar had the following income:

	Particulars	Rs.
(a)	Profits from business in Iran received in India	50,000
(b)	Income from house property in Iran received in India	10,000
(c)	Income from house property in Pakistan deposited in a bank there	20,000
(d)	Profits of business established in Pakistan deposited in a bank there, this business is controlled in India (out of Rs. 25,000 a sum of Rs. 10,000 is remitted in India)	25,000
(e)	Income from profession in India but received in England	6,000
(f)	Profits earned from business in Kanpur	10,000
(g)	Income from agriculture in England, which is spent on the education of children in London	15,000
(h)	Past untaxed foreign income brought into India during the previous year	18,000
(i)	Gift received on the occasion of his wedding	20,000
(j)	Agricultural income from a land in Karnataka	15,000

   From the above particulars ascertain the gross total income of Mohan Kumar for the A.Y. 2008-09, if Mohan Kumar is (i) a resident and ordinarily resident, (ii) not ordinarily resident, and (iii) a non-resident.

3. Discuss the meaning of the following terms under the Income-tax Act, 1961-

   (i) Prohibited category of persons as per section 13(3);

   (ii) Capital Asset;

   (iii) Income received or deemed to be received in India.

4. Sudhir receives the following salary and perquisites from his employer during the previous year 2007-08: Basic pay: Rs. 1,20,000; profit bonus: Rs. 5,500; commission on sales @ 2 per cent of turnover (turnover of the year 2007-08 achieved by Sudhir: Rs. 6,00,000); advance salary of April, May and June 2008: Rs. 30,000; employer's contribution towards recognised provident fund: Rs. 16,220; interest credited on May 15, 2007 in provident fund account @ 15 per cent: Rs. 8,700; conveyance allowance: Rs. 300 (@ Rs. 100 per month from January 1, 2008 to March 31, 2008 which is fully utilised for official purposes); free services of a gardener (salary : Rs. 8,000); free services of personnel attendant (salary Rs. 9,000) and free services of watchman (salary Rs. 1,200). Apart from taking salary in advance Sudhir takes an interest-free loan of Rs. 95,000 on November 1, 2007 from the employer repayable after 3 years for higher education of his daughter (SBI lending rate on April 1, 2007: 10.5 per cent). He owns a house at Calcutta. During the

previous year, he earns taxable income of Rs. 1,75,000 from the house. Sudhir holds 20 per cent equity shares in the employer-company.

Sudhir contribute Rs. 19,500 towards recognised provident fund during the previous year and pays Rs. 8,000 in a bank as a fixed deposit for the purpose of section 80C. Compute the total income and tax payable by Sudhir for the assessment year 2008-09.

5. Karan has occupied two houses for his residential purposes, particulars of which are as follows:

Particulars	House I	House II
	Rs.	Rs.
Municipal valuation (a)	80,000	50,000
Fair rent (b)	95,000	52,000
Standard rent under Rent Control Act (c)	85,000	56,000
Municipal taxes paid	10 percent	10 percent
Fire insurance	800	500
Interest on capital borrowed for construction of house (Rs. 9,85,000 is borrowed @ 15 per cent per annum on April 1, 2007, construction is completed on March 10, 2008 and loan is yet to be repaid)	1,47,750	Nil

Compute Karan's income from house property for the A.Y. 2008-09. Karan could not occupy House II for two months commencing from December 1, 2007.

6. (a) Who are the "persons responsible for paying" taxes deducted at source as per section 204?

   (b) Discuss briefly on carry forward and set-off of losses by closely held companies.

7. On June 30, 2007, Suresh sells the following assets-

Particulars	Equity shares in A Ltd. (listed)	Equity shares in B Ltd. (listed)	Shares in C Ltd. (non-listed)
	Rs.	Rs.	Rs.
Sale consideration	6,00,000	5,75,000	7,90,000
Cost of acquisition	50,000	1,20,000	35,000
Date of acquisition	May 10, 1982	June 6, 1983	April 6, 1984

Income of Suresh from other sources is Rs. 9,00,000. Suresh deposits Rs. 70,000 in public provident fund. Find out the total income and tax liability for the assessment year 2008-09 if the shares in A Ltd. and B Ltd. are transferred in a recognized stock exchange.

[Cost Inflation Index (CII): F.Y. 2007-08: 551, F.Y. 1982-83: 109, F.Y. 1983-84: 116, F.Y. 1984-85: 125]

8. Write short notes on:

   (a) Schools of Hindu Law

   (b) Treatment of income from co-owned property

   (c) Clubbing of Minor's Income

9. State with reasons whether the following statements are true or false [A.Y. 2008-09] -

   (a) Cash gifts received in excess of Rs. 25,000 to be taxed under section 56(2)(vi) under the head 'Income from other sources'.

   (b) Capital gains arising in respect of compensation received on compulsory acquisition of capital asset is chargeable as income of the previous year in which it was compulsorily acquired.

(c) Where the return of income is not furnished by the assessee on or before the due date, interest is payable under section 234B.

(d) Specified universities, colleges or other institutions referred to in section 10(23C)(iv), (v), (vi) and (via) are compulsorily required to file their return of income.

10. Mohan owns two houses. He transfers the following long-term capital assets during the previous year 2007-08:

Particulars	Residential house property at Bangalore	Gold	Silver
Date of sale	May 07, 2007	May 15, 2007	May 14, 2007
	Rs.	Rs.	Rs.
Sale consideration	12,00,000	9,00,000	7,00,000
Indexed cost of acquisition	5,00,000	8,00,000	3,50,000

Mohan purchases the following assets-

	Date of purchase	Amount invested
Residential house at Bangalore	November 7, 2007	8,00,000
Bonds of National Highways Authority of India for the purpose of section 54EC	November 10, 2007	3,50,000

Ascertain the amount of capital gain chargeable to tax for the assessment year 2008-09. Can he claim exemption under sections 54, 54EC and 54F.

11. When is provision of medical facilities or assistance by an employer not treated as a perquisite in the hands of the employee? Discuss.

12. State the conditions to be fulfilled by an amalgamated company for carry forward of the accumulated loss and unabsorbed depreciation of the amalgamating company.

13. Compute the total income and tax payable of Mrs. Suman for assessment year 2008-09 from the following particulars:

Particulars	Amount (Rs.)
Income from house property	1,50,000
Business income	50,000
Short-term capital gains	20,000
Long-term capital gains	25,000
Income from owning and maintaining race horses	28,000
Income from card games	48,000
Besides, Suman has the following brought forward losses/allowances	
Brought forward business loss of the assessment year 2002-03	60,000
Unabsorbed depreciation allowance of the assessment year 2004-05	60,000
Long-term capital loss in respect of the assessment year 2005-06	27,200
Brought forward loss from the activity of owning maintaining race horses of the assessment year 2005-06	35,000
Speculation losses of the assessment year 2004-05	80,000

14. Discuss the provisions regarding deductions allowable to an assessee in respect of the following:

(i) Deduction in respect of medical insurance premium.

(ii) Payment of interest on loan for higher education.

15. When is a return of income regarded as defective? What are the consequences of filing a defective return?

16. Briefly explain the situations in which and the conditions subject to which an assessee can adjust the excess payment of service tax, against his forthcoming service tax liability.
17. PQ Ltd. gives the following particulars relating to the services provided to various clients by them for the half-year ended on 30.09.07:
    - (i) Total bills raised for Rs. 9,50,000 out of which bill for Rs. 50,000 was raised on an approved International Organisation and payments of bills for Rs. 1,50,000 were not received till 30.09.07.
    - (ii) Amount of Rs. 70,000 was received as an advance from MNO Ltd. on 25.09.07 to whom the services were to be provided in October'07.

    You are required to work out the:
    - (a) taxable value of services
    - (b) amount of service tax payable
18. Write a note on the manner of payment of service tax.
19. Discuss the provisions relating to e-filing of service tax returns.
20. Discuss the role of a Chartered Accountant in successful implementation of VAT.

SUGGESTED ANSWERS/HINTS

1. (a) False – The requirement of filing an application for registration under section 12A within one year of creation of the religious or charitable trust or institution has been removed. The application can be filed at any time.
   - (b) False – The Finance Act, 2007 has made filing of return on or before the due date mandatory for claiming exemption under section 80-ID.
   - (c) False – Payments made by individuals/ HUFs to a contractor to attract TDS if their total sales/ turnover exceeds Rs. 40 lakhs (in case of business) and gross receipts exceeds Rs. 10 lakhs (in case of profession) in the immediately preceding financial year.
   - (d) True – The ceiling limit of deduction under section 24(b) in respect of interest on loan taken on 1.04.07 for repairs of a self-occupied house is Rs. 30,000 p.a.

2. Computation of Gross Total Income of Mohan for the A.Y. 2008-09

Particulars	Resident and ordinarily resident	Resident but not ordinarily resident	Non - Resident
	Rs.	Rs.	Rs.
Income received in India wherever it accrues			
Profit from business in Iran received in India	50,000	50,000	50,000
Income from house property in Iran received in India	10,000	10,000	10,000
Income accrued in India wherever received			
Profit earned from business in Kanpur	10,000	10,000	10,000
Income from profession in India but received in England	6,000	6,000	6,000
Income accrued and received outside India			
Income from house property in Pakistan deposited in bank there	20,000	--	--

Profit of business established in Pakistan deposited there, business being controlled from India	25,000	25,000	--
Income from agriculture in England	15,000	--	--
Past untaxed foreign income brought to India during the previous year (not taxed since not the income of P.Y. 2007-08)	--	--	--
Gift received on the occasion of his wedding (not an income)	--	--	--
Agricultural income from a land in Karnataka [it is exempt under section 10(1)]	--	--	--
Gross Total Income	1,36,000	1,01,000	76,000

3. (i) Prohibited Category of persons [Section 13(3)]

Section 13(3) gives the list of persons, use or application of the income or property of a trust for whose direct or indirect benefit results in a denial of the exemption contemplated in Section 11 for a charitable or religious trust or institution. The said persons are as follows:

(i) The author of the trust or the founder of the institution.

(ii) Any person who has made a substantial contribution to the trust or institution, that is, any person whose total contribution up to the end of the relevant previous year exceeds Rs.50,000.

(iii) Where the author, founder or the person making a substantial contribution is HUF, any member of the family.

(iv) Any trustee of the trust or manager (by whatever name called) of the institution.

(v) Any relative of any such author, founder, person, member, trustee or manager as referred to in (i), (ii), (iii), (iv) above.

(vi) Any concern in which any of the persons referred to in clauses (i) to (v) above has a substantial interest.

(ii) Capital Asset

According to section 2(14), a capital asset means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include—

(i) any stock-in-trade, consumable stores or raw materials held for the purpose of the business or profession of the assessee;

(ii) personal effects, that is to say, movable property (including wearing apparel and furniture) held for personal use by the assessee or any member of his family dependent on him, but excludes

(a) jewellery;

(b) archaeological collections;

(c) drawings;

(d) paintings;

(e) sculptures; or

(f) any work of art.

Note - Jewellery includes

(a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;

(b) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel.

(iii) Rural agricultural land in India i.e. agricultural land in India which is not situated in any specified area.

(iv) 6½% Gold Bonds, 1977, or 7% Gold Bonds, 1980, or National Defence Gold Bonds, 1980, issued by the Central Government;

(v) Special Bearer Bonds, 1991 issued by the Central Government;

(vi) Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 notified by the Central Government.

(iii) Income received or deemed to be received

All assessees are liable to tax in respect of the income received or deemed to be received by them in India during the previous year irrespective of -

(i) their residential status, and

(ii) the place of its accrual.

Income is to be included in the total income of the assessee immediately on its actual or deemed receipt. The receipt of income refers to only the first occasion when the recipient gets the money under his control. Therefore, when once an amount is received as income, remittance or transmission of that amount from one place or person to another does not constitute receipt of income in the hands of the subsequent recipient or at the place of subsequent receipt.

Income deemed to be received – Under section 7, the following shall be deemed to be received by the assessee during the previous year irrespective of whether he had actually received the same or not -

(i) The annual accretion in the previous year to the balance to the credit of an employee participating in a recognised provident fund (RPF). Thus contribution of the employer in excess of 12% of salary or interest credited in excess of 9.5% p.a. is deemed to be received by the assessee.

(ii) The taxable transferred balance from unrecognized to recognized provident fund (being the employer's contribution and interest thereon).

(iii) The contribution made by the Central Government or any other employer in the previous year to the account of an employee under a pension scheme referred to under section 80CCD.

4. Computation of taxable income and tax payable by Sudhir for A.Y. 2008-09

Particulars	Rs.	Rs.
Basic pay		1,20,000
Profit bonus		5,500
Commission on sales (2% of Rs. 6,00,000)		12,000
Advance Salary		30,000
Employer's contribution in excess of 12% of salary (i.e. Rs. 16,220 – 12% of Rs. 1,32,000) (see Note 1)		380
Interest credited to PF account, being the amount in excess of 12% per annum (i.e., Rs. 8,700 X 3 ÷ 15)		1,740
Conveyance allowance	300	
Less: Exemption (as it is utilized for official purpose)	300	Nil
Free Gardner		8,000
Free personnel attendant		9,000

Free watchman	1,200
Interest-free loan (interest on Rs. 95,000 @ 10.5% p.a. from November 1, 2007 to March 31, 2008) (see Note 2)	4,156
Gross salary	1,91,976
Less: Deduction under section 16	-
Net salary	1,91,976
Income from house property	1,75,000
Gross total income	3,66,976
Less: Deduction under section 80C (see Note 3)	27,500
Total income	3,39,476
Tax on total income	
Income-tax	50,844
Add: Surcharge (surcharge is not applicable if total income does not exceed Rs. 10 lakh)	-
	50,844
Add: Education cess @2%	1,017
Add: Secondary and Higher Education cess @1%	508
Tax payable	52,369
Tax payable (rounded off)	52,370

Notes -

1. As commission is based upon fixed percentage of turnover achieved by Sudhir, it will be part of salary for the purpose of determining tax incidence on employer's contribution towards provident fund. For the aforesaid purposes salary would, therefore, be Rs. 1,32,000 (i.e., basic salary Rs.1,20,000 + Rs. 12,000).
2. Salary received in advance is taxable in the year of receipt. Loan taken from the employer is not taxable. However, interest on such loan is taxable.
3. Deduction under section 80C is computed as under:

	Rs.
Contribution towards RPF	19,500
Fixed deposit in bank	8,000
Total deduction	27,500

5. Computation of income from house property of Karan for the A.Y. 2008-09

As Karan has occupied two houses for his own residential purpose, one house (according to the choice of Karan) will be treated as self-occupied property and the other house will be treated as "deemed to be let out" property. Let us first calculate the income from each house property assuming that they are deemed to be let out.

Particulars	Amount in Rs.	
	House I	House II
Gross Annual Value (GAV)		
Annual Letting Value (ALV) is the GAV of house property		
ALV = Higher of Municipal Valuation (MV) and Fair rent (FR), but restricted to Standard rent (SR)	85,000	52,000

Less: Municipal taxes	8,000	5,000
Net Annual Value (NAV)	77,000	47,000
Less: Deductions u/s 24		
(a) 30% of NAV	23,100	14,100
(b) Interest on borrowed capital	1,47,750	-
Income from house property	(93,850)	32,900

OPTION 1 (House I – self-occupied and House II – deemed to be let out)

If House I is opted to be self-occupied, the income from house property shall be –

Particulars	Amount (Rs.)
House I (Self-occupied)	(1,47,750)
House II (Deemed to be let-out)	32,900
Income from house property	(1,14,850)

OPTION 2 (House I – deemed to be let out and House II – self-occupied)

If House II is opted to be self-occupied, the income from house property shall be –

Particulars	Amount (Rs.)
House I (Deemed to be let-out)	(93,850)
House II (Self-occupied)	-
Income from house property	(93,850)

Since Option 1 is more beneficial, Karan should opt to treat House I as self-occupied and House II as deemed to be let out. The loss from house property would therefore be Rs.1,14,850.

6. (a) Persons responsible for paying taxes deducted at source [Section 204]

For purposes of deduction of tax at source the expression "person responsible for paying tax" means:

	Nature of income/payment	Person responsible for paying tax
(1)	Salary (other than payment of salaries by the Central or State Government)	(i) the employer himself; or (ii) if the employer is a company, the company itself, including the principal officer thereof
(2)	Interest on securities (other than payments by or on behalf of the Central or State Government)	the local authority, corporation or company, including the principal officer thereof
(3)	Any sum payable to a non-resident Indian, representing consideration for the transfer by him of any foreign exchange asset, which is not a short term capital asset	the authorised dealer responsible for remitting such sum to the non-resident Indian or for crediting such sum to his Non-resident (External) Account maintained in accordance with the Foreign Exchange Regulation Act, 1973 and any rules made there under

(4)	Credit/payment of any other sum chargeable under the provisions of the Act	(i) the payer himself; or (ii) if the payer is a company, the company itself including the principal officer thereof

(b) Carry Forward and Set-off of Losses in case of Closely Held Companies [Section 79]

(i) Where in any previous year, there has been a change in the shareholding of a company in which the public are not substantially interested, any unabsorbed loss of the company shall be allowed to be carried forward and set off against the income of the previous year only if the beneficial shareholders of at least 51% of the voting power on the last day of the previous year remained the same as on the last day of the year or years in which the loss was incurred.

(ii) However, this restriction shall not apply in the following two cases:

(1) where a change in the voting power is consequent upon the death of a shareholder or on account of transfer of shares by way of gift by a shareholder to his relative; and

(2) where the change in shareholding takes place in an Indian company, being a subsidiary of a foreign company, as a result of amalgamation or demerger of the foreign company. However, this is subject to the condition that 51% of the shareholders of the amalgamating/demerged company continue to be shareholders of the amalgamated/resulting company.

(iii) The provisions of this section are applicable only in respect of carry forward of losses and not in respect of carry forward of unabsorbed depreciation, which is covered by section 32(2).

7. Computation of total income and tax liability for A.Y. 2008-09

Particulars	Rs.
Long-term capital gain [see working note] (Shares in C Ltd. are non-listed)	6,35,720
Income from other sources	9,00,000
Gross total income	15,35,720
Less: Deduction under section 80C	70,000
Total income	14,65,720
Tax on Total income	
Tax on income other than long-term capital gain (i.e. 8,30,000)	1,98,000
Add: Tax on long-term capital gain	1,27,144
	3,25,144
Add: Surcharge @ 10% (Surcharge is 10% of tax in case total income exceeds Rs. 10 Lakh)	32,514
	3,57,658
Add: Education cess @ 2%	7,153
Add: Secondary and Higher Education cess @ 1%	3,577
Tax payable	3,68,388
Tax payable (rounded off)	3,68,390

Working Note:

Computation of Long-Term Capital Gain

Particulars	Equity shares in A Ltd. (Listed)	Equity shares in B Ltd. (Listed)	Shares in C Ltd. (non-listed)
	Rs.	Rs.	Rs.
Sale consideration	6,00,000	5,75,000	7,90,000
Less: Indexed cost of acquisition (see Note 1)	2,52,752	5,70,000	1,54,280
Long-term capital gain	3,47,248	5,000	6,35,720
Tax on long term capital gain as computed (after deducting indexed cost of acquisition) @ 20%	69,450	1,000	1,27,144

Notes:

1. Indexed cost of acquisition is computed as follows:

   Equity shares in A Ltd. (Listed)= Rs. 50,000 $\times \frac{551}{109}$ = Rs.2,52,752

   Equity shares in B Ltd. (Listed)= Rs.1,20,000 $\times \frac{551}{116}$ = Rs.5,70,000

   Shares in C Ltd. (Non-Listed)= Rs.35,000 $\times \frac{551}{125}$ = Rs.1,54,280

2. When listed shares are transferred through a recognized stock exchange on which securities transaction tax is paid, the long-term capital gain is exempt from tax under section 10(38). Therefore, long term capital gain on sale of equity shares in A Ltd. and B Ltd. is exempt under section 10(38).

8. (a) Schools of Hindu Law

There are two schools of Hindu law. They are –

(1) Mithakshara school of Hindu law

(2) Dayabhaga school of Hindu law

Mithakshara law is followed by entire India except West Bengal and Assam. There is a basic difference between the two schools of thought with regard to succession. Under the Mithakshara law, the inheritance is by birth. One acquires the right to the family property by his birth and not by succession irrespective of the fact that his elders are living. Thus every child born in the family acquires a right/share in the family property.

Dayabagha law prevails in West Bengal and Assam. In Dayabagha law, nobody acquires the right, share in the property by birth as long as the head of family is living, that is, the children do not acquire any right, share in the family property, as long as his father is alive and only on death of the father, the children will acquire right/share.

(b) Treatment of income from Co-owned Property [Section 26]

(i) Where property is owned by two or more persons, whose shares are definite and ascertainable, then the income from such property cannot be taxed as income of an AOP.

(ii) The share income of each such co-owner should be determined in accordance with sections 22 to 25 and included in his individual assessment.

(iii) Where the house property owned by co-owners is self occupied by each of the co-owners, the annual value of the property of each co-owner will be Nil and each co-owner shall be entitled to a deduction of Rs.30,000 / Rs.1,50,000, as the case may be, under section 24(b) on account of interest on borrowed capital.

(iv) Where the house property owned by co-owners is let out, the income from such property shall be computed as if the property is owned by one owner and thereafter the income so computed shall be apportioned amongst each co-owner as per their specific share.

(c) Clubbing of Minor's Income [Section 64(1A)]

(i) All income of a minor is to be included in the income of his parent.

(ii) However, the income derived by the minor from manual work or from any activity involving his skill, talent or specialised knowledge or experience will not be included in the income of his parent.

(iii) The income of the minor will be included in the income of that parent, whose total income is greater.

(iv) Once clubbing of minor's income is done with that of one parent, it will continue to be clubbed with that parent only, in subsequent years. The Assessing Officer, may, however, club the minor's income with that of the other parent, if, after giving the other parent an opportunity to be heard, he is satisfied that it is necessary to do so.

(v) Where the marriage of the parents does not subsist, the income of the minor will be includible in the income of that parent who maintains the minor child in the relevant previous year.

(vi) Section 10(32) provides that where the income of an individual includes the income of his minor child, the individual shall be entitled to exemption of such income subject to a maximum of Rs.1,500 per child. This provision is to provide relief to the individuals in whose total income, the income of the minor child is included.

(vii) However, the income of a minor child from suffering from any disability of the nature specified in section 80U shall not be included in the hands of the parent but shall be assessed in the hands of the child.

(viii) It may be noted that the clubbing provisions are attracted even in respect of income of minor married daughter.

9. (a) False - Cash gifts received in excess of Rs. 50,000 to be taxed under section 56(2)(vi) under the head 'Income from other sources'.

(a) False – Capital gains arising in respect of compensation received on compulsory acquisition of capital asset is chargeable as income of the previous year in which such compensation is first received.

(c) False – Where the return of income is not furnished by the assessee on or before the due date interest is payable under section 234A.

(d) True – It will be mandatory for every university, college or other institution, which is not required to furnish its return of income or loss under any other provision of section 139, to furnish its return in respect of its income or loss in every previous year.

10. Computation of Long term Capital Gain for A.Y. 2008-09

Particulars	Residential House	Gold	Silver
	Rs.	Rs.	Rs.
Sale consideration	12,00,000	9,00,000	7,00,000
Less: Indexed cost of acquisition	5,00,000	8,00,000	3,50,000
Long term capital gain	7,00,000	1,00,000	3,50,000

% of long term capital gain / Net Consideration	58.33%	11.11%	50%
Order of preference for claiming exemption under section 54F	---	2	1
Amount of exemption			
Under section 54 [out of Rs. 8 lakh, Rs. 7 Lakh is utilised for claiming exemption under section 54]	7,00,000		
Under section 54EC		1,00,000	2,50,000
Under section 54F (1,00,000*3,50,000/ 7,00,000)			50,000
Long term capital gain	NIL	NIL	50,000

11. The proviso to section 17(2) provides that the following medical facilities will not be treated as a perquisites:

(i) The value of any medical treatment provided to an employee or any member of his family in any hospital maintained by the employer;

(ii) Any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family in any hospital maintained by the Government/local authority/any other hospital approved by the Government for the purpose of medical treatment of its employees;

(iii) Any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family in respect of the prescribed disease or ailments in any hospital approved by the Chief Commissioner having regard to the prescribed guidelines. However, in order to claim this benefit, the employee shall attach with his return of income a certificate from the hospital specifying the disease or ailment for which medical treatment was required and the receipt for the amount paid to the hospital.

Thus two types of facilities are covered:

(a) payment by the employer for treatment in a Government hospital and

(b) payment by an employer for treatment of prescribed diseases in any hospital approved by the Chief Commissioner.

(iv) Any premium paid by an employer in relation to an employee to effect an insurance on the health of such employee. However, any such scheme should be approved by the Central Government or the Insurance Regulatory Development Authority (IRDA) for the purposes of section 36(1)(ib).

(v) Any sum paid by the employer in respect of any premium paid by the employee to effect an insurance on his family under any scheme approved by the Central Government for the purposes of section 80D.

(vi) Any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family to the extent of Rs.15,000 in the previous year.

Note: It is important to note that this expenditure need not be incurred either in the government hospital or in a hospital approved by the Chief Commissioner.

(vii) Any expenditure incurred by the employer on the following:

(a) medical treatment of the employee or any member of the family of such employee outside India;

(b) travel and stay abroad of the employee or any member of the family of such employee for medical treatment;

(c) travel and stay abroad of one attendant who accompanies the patient in connection with such treatment.

Conditions:

1. The perquisite element in respect of expenditure on medical treatment and stay abroad will be exempt only to the extent permitted by the RBI.
2. The expenses in respect of traveling of the patient and the attendant will be exempt if the employee's gross total income as computed before including the said expenditure does not exceed Rs. 2 lacs.

12. Amalgamation - This section applies where there has been an amalgamation of –

(1) a company owning an industrial undertaking or a ship or a hotel with another company or an amalgamation of a banking company with a specified bank; or

(2) public sector companies engaged in the business of operation of aircrafts.

It provides that the accumulated loss and unabsorbed depreciation of the amalgamating company shall be deemed to be the loss or depreciation, as the case may be, of the amalgamated company for the previous year in which the amalgamation took place. Other provisions of the Act relating to set off and carry forward shall also apply accordingly.

Conditions to be fulfilled by an amalgamated company for availing benefit under this section

(i) The amalgamated company should hold at least $3/4^{th}$ in the book value of fixed assets of the amalgamating company acquired as a result of amalgamation for a minimum period of 5 years from the effective date of amalgamation.

(ii) The amalgamated company continues the business of the amalgamating company for at least 5 years.

(iii) The amalgamated company must also fulfill such other conditions prescribed under Rule 9C for the revival of the business of the amalgamating company or to ensure that the amalgamation is for genuine business purpose -

(1) The amalgamated company shall achieve the level of production of at least 50% of the installed capacity (capacity as on the date of amalgamation) of the said undertaking before the end of 4 years from the date of amalgamation and continue to maintain the said minimum level of production till the end of 5 years from the date of amalgamation. Central Government has the power to modify this requirement on an application made by the amalgamated company.

(2) The amalgamated company shall furnish to the Assessing Officer a certificate in Form No. 62 verified by a Chartered Accountant in this regard.

In case the above specified conditions are not fulfilled, that part of carry forward of loss and unabsorbed depreciation remaining to be utilized by the amalgamated company shall lapse and such loss or depreciation as has been set-off shall be treated as the income in the year in which there is a failure to fulfill the conditions.

13. Computation of total income and tax liability of Mrs.Suman for the A.Y. 2008-09

Particulars	Rs.	Rs.
Income from house property		1,50,000
Business income	50,000	
Less: Brought forward business loss of the assessment year 2002-03	(-) 60,000	
Business loss to be carried forward to next assessment year	(-) 10,000	Nil
Long-term capital gains	25,000	
Less: Brought forward long-term capital loss	(-) 27,200	

Long term Capital Loss to be carried forward	(-) 2,200	Nil
Short term capital gains		20,000
Income from owing and maintaining race horses	28,000	
Less: loss from owning and maintaining race horses of the assessment year 2005-06	(-) 35,000	
Loss to be carried forward	(-) 7,000	Nil
Income from card games		48,000
Total Income		2,18,000
Less: Unabsorbed depreciation allowance		60,000
Gross total income		1,58,000
Less: Deductions under sections 80C to 80U		-
Total income		1,58,000
Tax on Total income		
Tax on income from card games (i.e. Rs. 48,000 @30%)		14,400
Tax on the balance income (as the balance income		-
Rs.1,10,000 is lower than Rs. 1,45,000) (It is taxable at Nil rate)		
		14,400
Add: Education cess @ 2%		288
Add: Secondary and Higher Education cess @ 1%		144
Tax payable		14,832
Tax payable (rounded off)		14,830

Notes:

1. In the absence of speculation income, brought forward speculation loss of the assessment year 2004-05 cannot be set off. As four year time limit expires with the assessment year 2008-09, the loss cannot be carried forward to the next assessment year.
2. Long-term capital loss of Rs. 2,200 will be carried forward to the next assessment year to be set-off against long-term capital gain in that year.
3. Loss from the activity of owning and maintaining race horses of Rs. 7,000 will be carried forward to assessment year 2009-10 (however, it cannot be carried forward after the assessment year 2009-10).

14. (i) Deduction in respect of medical insurance premium [Section 80D]

(i) The following payments shall be deductible to the extent of the actual amount paid by any mode other than cash or Rs.15,000, whichever is less :

(a) Where the assessee is an individual, any sum paid to effect or to keep in force an insurance on the health of the assessee or on the health of the wife or husband, dependant parents or dependant children of the assessee;

(b) where the assessee is a Hindu undivided family, any sum paid to effect or to keep in force an insurance on the health of any member of the family.

(ii) Such insurance should be in accordance with a scheme framed in this behalf by the General Insurance Corporation of India and approved by the Central Government in this behalf or in accordance with a scheme framed by any other insurer and approved by the Insurance Regulatory and Development Authority.

(iii) Where the assessee or his wife or her husband, or dependant parents or any member of the family is a senior citizen and the medical insurance premium is paid to effect or keep in force an insurance in relation to him or her, the maximum permissible deduction is Rs.20,000.

(ii) Deduction in respect of interest loan taken for higher education [Section 80E]

(i) Section 80E provides deduction to an individual-assessee in respect of any interest on loan paid by him in the previous year out of his income chargeable to tax.

(ii) The loan must have been taken for the purpose of pursuing his higher education or for the purpose of higher education of his or her relative i.e. spouse or children.

(iii) Higher education means full-time studies for any graduate or post-graduate course in engineering, medicine, management or for post-graduate course in applied sciences or pure sciences including mathematics and statistics.

(iv) The loan must have been taken from any financial institution or approved charitable institution.

(v) The deduction is allowed in computing the total income in respect of the initial assessment year (i.e. the assessment year relevant to the previous year, in which the assessee starts paying the interest on the loan) and seven assessment years immediately succeeding the initial assessment year or until the interest is paid in full by the assessee, whichever is earlier.

(vi) "Approved charitable institution" means an institution established for charitable purposes and approved by the prescribed authority under section 10(23C) or an institution referred to in section 80G(2)(a).

(vii) "Financial institution" means –

(1) a banking company to which the Banking Regulation Act, 1949 applies (including a bank or banking institution referred to in section 51 of the Act); or

(2) any other financial institution which the Central Government may, by notification in the Official Gazette, specify in this behalf.

15. Defective Return [section 139(9)]

(1) A return of income shall be regarded as defective unless all the following conditions are fulfilled, namely:

(a) The annexures, statements and columns in the return of income relating to computation of income chargeable under each head of income, computations of gross total income and total income have been duly filled in.

(b) The return of income is accompanied by the following, namely:

(i) a statement showing the computation of the tax payable on the basis of the return.

(ii) the report of the audit obtained under section 44AB (If such report has been furnished prior to furnishing the return of income, a copy of such report and the proof of furnishing the report should be attached).

(iii) the proof regarding the tax, if any, claimed to have been deducted or collected at source before 1.4.2008 and the advance tax and tax on self-assessment, if any, claimed to have been paid. (However, the return will not be regarded as defective if (a) a certificate for tax deducted or collected was not furnished under section 203 or section 206C to the person furnishing his return of income, (b) such certificate is produced within a period of 2 years).

(iv) the proof of the amount of compulsory deposit, if any, claimed to have been paid under the Compulsory Deposit Scheme (Income-tax Payers) Act, 1974;

(c) Where regular books of account are maintained by an assessee, the return of income is accompanied by the following -

(i) copies of manufacturing account, trading account, profit and loss account or income and expenditure account, or any other similar account and balance sheet;

(ii) the personal accounts as detailed below -

(1)	Proprietary business or profession	the personal account of the proprietor
(2)	Firm, association of persons or body of individuals	personal accounts of partners or members
(3)	Partner or member of a firm, association of persons or body of individuals	partner's personal account in firm member's personal account in the association of persons or body of individuals

(d) Where the accounts of the assessee have been audited, the return should be accompanied by copies of the audited profit and loss account and balance sheet and the auditor's report.

(e) Where the cost accounts of an assessee have been audited under section 233B of Companies Act, 1956, the return should be accompanied by such report.

(f) Where regular books of account are not maintained by the assessee, the return should be accompanied by -

(i) a statement indicating -

(1) the amount of turnover or gross receipts,

(2) gross profit,

(3) expenses and

(4) net profit

of the business or profession;

(ii) the basis on which such amounts mentioned in (1) above have been computed,

(iii) the amounts of total sundry debtors, sundry creditors, stock-in-trade and cash balance as at the end of the previous year.

(2) Under this sub-section, the Assessing Officer has the power to call upon the assessee to rectify a defective return. Where the Assessing Officer considers that the return of income furnished by the assessee is defective, he may intimate the defect to the assessee and give him an opportunity to rectify the defect within a period of 15 days from the date of such intimation. The Assessing Officer has the discretion to extend the time period beyond 15 days, on an application made by the assessee.

(3) If the defect is not rectified within the period of 15 days or such further extended period, then the return would be treated as an invalid return. The consequential effect would be the same as if the assessee had failed to furnish the return.

(4) Where, however, the assessee rectifies the defect after the expiry of the period of 15 days or the further extended period, but before assessment is made, the Assessing Officer can condone the delay and treat the return as a valid return.

16. Adjustment of Excess Service Tax Paid

Where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter, as the case may be. However, such an adjustment is subject to the following conditions:

(i) Self-adjustment of excess credit would not be allowed in case of reasons involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification.

(ii) Excess amount paid and proposed to be adjusted should not exceed Rs.50,000 for the relevant month or quarter. However, in case of assessees opting for centralized registration excess amount can be adjusted without any monetary limit provided the excess amount paid is on account of delayed receipt of details of payments from branch offices. (Centralized registration can be obtained when an assessee provides taxable service from more than one premises on fulfillment of certain specified conditions).

(iii) Adjustment can be made only in the succeeding month or quarter.

(iv) The details of self-adjustment should be intimated to the Superintendent of Central Excise within a period of 15 days from the date of such adjustment.

17. Computation of taxable value of services provided by the PQ Ltd. for the half year ending on 30.09.2007:

Particulars	Rs.	Rs.
Total bills raised		9,50,000
Less: Bill raised on an approved International organisation (note 1)	50,000	
Less: Bills for which payment has not been realized (note 2)	1,50,000	2,00,000
		7,50,000
Add: Advance received for the services to be provided in October '07 (note 3)		70,000
Taxable value of services		8,20,000

Computation of service tax payable	
Taxable value of services	8,20,000
Service tax @ 12%	98,400
Add: Education cess @ 2%	1,968
Add: Secondary and Higher Education cess @ 1%	984
Total Service tax payable	1,01,352

Notes:

1. Services provided to approved International Organisation are exempt from the service tax vide Notification No. 16/2002 ST dated 02.08.2002.

2. Service tax is payable only on the value of taxable services received [Rule 6(1) of Service Tax Rules, 1994].

3. Service tax is payable on advance received for taxable services (Section 67 of the Finance Act, 1994).

18. Manner of payment of service tax

Service tax has to be paid to the credit of the Central Government in Form TR-6 challan (yellow colour) in the specified branches of the designated bank. The list of such Banks and Branches is available in every Commissionerate of Central Excise. Different heads of accounts have been specified for different taxable service by the Government under which payment has to be made. While making the payment of service tax to the credit of Central Government, head of account should be correctly and properly indicated under major and minor heads and sub-heads to avoid misclassification. In the TR-6 challan, account head of education cess should be shown separately.

TR-6 challan is to be filled in quadruplicate and tendered to the designated bank alongwith the payment of service tax. The bank returns two sets of TR-6 challans duly acknowledging payment, one for the assessee's record and the other to be submitted with the return.

A multiple service provider (a service provider rendering more than one taxable service) can use single TR-6 challan for payment of service tax on different services.

19. E-filing of returns

E-filing is a facility for the electronic filing of service tax returns by the assessee from his office, residence or any other place of choice, through the Internet, by using a computer. The assessee can go to the e-filing site 'Home Page' by typing the address http://servicetaxefiling.nic.in in the address bar of the browser.

E-filing of returns is an assessee facilitation measure of the department in continuation of its modernization and simplification program. It is an alternative to the manual filing of returns. This facility is available to all service providers.

20. Role of Chartered Accountant in VAT

Chartered Accountants have a key role to play in proper implementation of VAT.

(i) Record keeping: VAT requires proper record keeping and accounting. Systematic records of input credit and its proper utilisation is necessary for the success of VAT. Chartered Accountants are well equipped to perform such tasks.

(ii) Tax planning: In order to establish an efficient plan for purchases and sales, a careful study of VAT is required. A Chartered Accountant is competent to analyze the impact of various alternatives and choose the most optimum method of purchases and sales in order to minimize the tax impact.

(iii) Negotiations with suppliers to reduce price: VAT credit alters cost structure of goods supplied as inputs. A Chartered Accountant will ensure that the benefit of such cost reduction is passed on by the suppliers to his company. However, if the buyers of his company make the similar demand, he must be ready with full data to resist the claims.

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

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

IMPORTANT CIRCULARS / NOTIFICATIONS ISSUED BETWEEN 1.5.07 and 31.10.07

Students may note that the Study Material for Taxation contains all the relevant amendments made by the Finance Act, 2007. Further, Circulars/Notifications issued up to 30.04.2007 have also been incorporated therein. The following are the amendments which have been made till 31.10.2007. It may carefully be noted that for the students appearing in May 2008 examinations the amendments made by Notifications, Circulars etc. up to 31.10.2007, as detailed hereunder, are relevant.

A. INCOME TAX

I CIRCULARS

(1) Circular No.4/2007 dated 15.6.2007 - Distinction between shares held as stock-in-trade and shares held as investment - Tests for such a distinction

The Income Tax Act, 1961 makes a distinction between a capital asset and a trading asset. Capital asset is defined in section 2(14). Long-term capital assets and gains are dealt with under section 2(29A) and section 2(29B). Short-term capital assets and gains are dealt with under section 2(42A) and section 2(42B). Trading asset is dealt with under section 28.

The Central Board of Direct Taxes (CBDT) had, through Instruction No.1827 dated August 31, 1989, brought to the notice of the Assessing Officers that there is a distinction between shares held as investment (capital asset) and shares held as stock-in-trade (trading asset). In the light of a number of judicial decisions pronounced after the issue of the above instructions, the same have been further updated for the information of assessees as well as for guidance of the Assessing Officers.

(1) The Supreme Court, in, CIT (Central), Calcutta vs Associated Industrial Development Company (P) Ltd 82 ITR 586, observed that:

"Whether a particular holding of shares is by way of investment or forms part of the stock-in-trade is a matter which is within the knowledge of the assessee who holds the shares and it should, in normal circumstances, be in a position to produce evidence from its records as to whether it has maintained any distinction between those shares which are its stock-in-trade and those which are held by way of investment."

(2) In the case of CIT, Bombay vs H. Holck Larsen 160 ITR 67, the Supreme Court observed that:

"The High Court, in our opinion, made a mistake in observing whether transactions of sale and purchase of shares were trading transactions or whether these were in the nature of investment was a question of law. This was a mixed question of law and fact."

(3) The Authority for Advance Rulings (AAR) 288 ITR 641, referring to the decisions of the Supreme Court in several cases, has culled out the following principles :-

(i) where a company purchases and sells shares, it must be shown that they were held as stock-in-trade and that existence of the power to purchase and sell shares in the memorandum of association is not decisive of the nature of transaction;

(ii) the substantial nature of transactions, the manner of maintaining books of accounts, the magnitude of purchases and sales and the ratio between purchases and sales and the holding would furnish a good guide to determine the nature of transactions;

(iii) ordinarily the purchase and sale of shares with the motive of earning a profit, would result in the transaction being in the nature of trade/adventure in the nature of trade; but where the object of the investment in shares of a company is to derive income by way of dividend etc. then the profits accruing by change in such investment (by sale of shares) will yield capital gain and not revenue receipt.

It is possible for a tax payer to have two portfolios, i.e., an investment portfolio comprising of securities which are to be treated as capital assets and a trading portfolio comprising of stock-in-trade which are to be treated as trading assets. Where an assessee has two portfolios, the assessee may have income under both heads i.e., capital gains as well as business income.

The above principles would help in determining whether, in a given case, the shares are held by the assessee as investment (and therefore giving rise to capital gains) or as stock-in-trade (and therefore giving rise to business profits). It is to be noted that no single principle would be decisive and the total effect of all the principles should be considered to determine whether, in a given case, the shares are held by the assessee as investment or stock-in-trade.

(2) Circular No. 6/2007, dated 11-10-2007 - Allowability of harvesting and transportation expenses in the case of Co-operative sugar mills

This Circular is to clarify the issue of allowability of the claim of harvesting and transportation expenses incurred by the Co-operative sugar mills for procuring sugarcane from farmers, who are members of such Co-operative Sugar Mills and who are bound under an agreement to supply the sugarcane exclusively to the concerned sugar Mill.

The issue of allowability of such expenses in the case of Co-operative Sugar Mills has been examined by the CBDT. These expenses are incurred by the Sugar Mills for ensuring an adequate and sustained supply of freshly cut sugarcane that is an essential input for the continuous running of such Mills. These expenses are, therefore, incurred for commercial expediency and are prima facie wholly and exclusively for the purpose of business. Such expenses are, therefore, allowable in the computation of the income of the Co-operative Sugar Mills.

II NOTIFICATIONS

(1) Notification No. 208/2007, dated 27-6-2007

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

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

(a) where the payment is made to
  - (i) the Reserve Bank of India or any banking company;
  - (ii) the State Bank of India or any subsidiary bank;
  - (iii) any co-operative bank or land mortgage bank;
  - (iv) any primary agricultural credit society or any primary credit society;
  - (v) the Life Insurance Corporation of India;

(b) where the payment is made to the Government and, under the rules framed by it, such payment is required to be made in legal tender;

(c) where the payment is made by
  - (i) any letter of credit arrangements through a bank;
  - (ii) a mail or telegraphic transfer through a bank;
  - (iii) a book adjustment from any account in a bank to any other account in that or any other bank;
  - (iv) a bill of exchange made payable only to a bank;
  - (v) the use of electronic clearing system through a bank account;
  - (vi) a credit card;
  - (vii) a debit card.

(d) where the payment is made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services rendered by the assessee to such payee;

(e) where the payment is made for the purchase of -
  - (i) agricultural or forest produce; or
  - (ii) the produce of animal husbandry (including livestock, meat, hides and skins) or dairy or

poultry farming; or

(iii) fish or fish products; or

(iv) the products of horticulture or apiculture,

to the cultivator, grower or producer of such articles, produce or products;

(f) where the payment is made for the purchase of the products manufactured or processed without the aid of power in a cottage industry, to the producer of such products;

(g) where the payment is made in a village or town, which on the date of such payment is not served by any bank, to any person who ordinarily resides, or is carrying on any business, profession or vocation, in any such village or town;

(h) where any payment is made to an employee of the assessee or the heir of any such employee, on or in connection with the retirement, retrenchment, resignation, discharge or death of such employee, on account of gratuity, retrenchment compensation or similar terminal benefit and the aggregate of such sums payable to the employee or his heir does not exceed fifty thousand rupees;

(i) where the payment is made by an assessee by way of salary to his employee after deducting the income-tax from salary in accordance with the provisions of section 192 of the Act, and when such employee -

(i) is temporarily posted for a continuous period of fifteen days or more in a place other than his normal place of duty or on a ship; and

(ii) does not maintain any account in any bank at such place or ship;

(j) where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike;

(k) where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person;

(l) where the payment is made by an authorised dealer or a money changer against purchase of foreign currency or travellers cheques in the normal course of his business.

(2) Notification No. 213/2007, dated 3-8-2007

Section 2(48) defining zero coupon bonds requires that such bonds should be notified by the Central Government. Accordingly, the Central Government has, vide Notification No. 213/2007 dated 3.8.2007, specified the 15 year zero coupon bonds of Power Finance Corporation (PFC), to be issued on or before 31.3.2009, as zero coupon bonds for the purposes of section 2(48).

(3) Notification No. 214/2007, dated 3-8-2007

The Central Government has, vide notification no.214/2007 dated 3.8.2007 specified the cost inflation index for the financial year 2007-08. The CII for F.Y. 2007-08 is 551.

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

B. SERVICE TAX

Notification No. 23/2007 ST dated 22.05.2007 has notified 01.06.2007 as the date on which the services introduced by the Finance Act, 2007 would become effective. Further, the amendments made in the existing services vide the Finance Act, 2007 would also become effective from 01.06.2007.

(1) Following amendments have been made in the Service Tax Rules, 1994:

(i) With effect from 01.06.2007, in rule 2, in sub-rule (1), in clause (d), in sub-clause (i), for the words "a telephone connection or pager or a communication through telegraph or telex or a facsimile communication or a leased circuit", the words "telecommunication service" have been substituted vide Notification No. 28/2007 ST dated 22.05.2007.

(ii) Notification No. 39/2007 ST dated 12.09.2007 has substituted rule 6(1) with the following sub-rule:

The service tax shall be paid to the credit of the Central Government,-

(i) by the 6th day of the month, if the duty is deposited electronically through internet banking; and

(ii) by the 5th day of the month, in any other case,

immediately following the calendar month in which the payments are received, towards the value of taxable services.

However, where the assessee is an individual or proprietary firm or partnership firm, the service tax shall be paid to the credit of the Central Government by the 6th day of the month if the duty is deposited electronically through internet banking, or, in any other case, the 5th day of the month, as the case may be, immediately following the quarter in which the payments are received, towards the value of taxable services.

Further, notwithstanding the time of receipt of payment towards the value of services, no service tax shall be payable for the part or whole of the value of services, which is attributable to services provided during the period when such services were not taxable.

Also, the service tax on the value of taxable services received during the month of March, or the quarter ending in March, as the case may be, shall be paid to the credit of the Central Government by the 31st day of March of the calendar year.

(iii) With effect from 01.06.2007, in rule 6, after sub-rule (4B), sub-rule (4C) has been inserted. Sub-rule (4C) provides that notwithstanding anything contained in sub-rules (4), (4A) and (4B), where the person liable to pay service tax in respect of services provided or to be provided in relation to renting of immovable property has paid to the credit of Central

Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, on account of non-availment of deduction of property tax paid in terms of Notification No. 24/2007 ST dated 22.05.2007 from the gross amount charged for renting of the immovable property for the said period at the time of payment of service tax, the assessee may adjust such excess amount paid by him against his service tax liability within 1 year from the date of payment of such property tax. The details of such adjustment shall be intimated to the Superintendent of Central Excise having jurisdiction over the service provider within a period of 15 days from the date of such adjustment [Notification No. 28/2007 ST dated 22.05.2007].

(iv) Notification No. 20/2007 ST dated 12.05.2007 has inserted rule 7C after rule 7B. Rule 7C is in respect of amount to be paid for delay in furnishing the prescribed return. It provides that where the return prescribed under rule 7 is furnished after the date prescribed for submission of such return, the person liable to furnish the said return shall pay to the credit of the Central Government, for the period of delay of-

(i) 15 days from the date prescribed for submission of such return, an amount of Rs.500;

(ii) beyond 15 days but not later than 30 days from the date prescribed for submission of such return, an amount of Rs.1,000; and

(iii) beyond 30 days from the date prescribed for submission of such return an amount of Rs.1,000 plus Rs.100 for every day from the 31st day till the date of furnishing the said return.

However, the total amount payable in terms of this rule, for delayed submission of return, shall not exceed the amount specified in section 70 of the Act. Further, where the assessee has paid the amount as prescribed under this rule for delayed submission of return, the proceedings, if any, in respect of such delayed submission of return shall be deemed to be concluded.

Any pending proceedings under section 77 for delayed submission or non-submission of return that has been initiated before 11.05.2007 shall also be deemed to be concluded if the amount specified for delay in furnishing the return is paid by the assessee within 60 days from 11.05.2007.

(2) Circular No. 97/8/2007 dated 23.08.2007 has clarified that mere non-submission of evidence of payment of late fee along with the return is, however, not a ground for refusal to allow filing of the return.