

PAPER – 4 : TAXATION

QUESTIONS

Income Tax

Residential Status and Scope of total income

1. During the previous year 2009-10, Abhinav had the following income:

	Rs.
(a) Salary income received in India for services rendered in Nepal	18,000
(b) Income from profession in India, but received in France.	15,000
(c) Property income in Belgium (out of which Rs.6,000 was remitted to India)	10,000
(d) Profits earned from business in Hyderabad.	9,000
(e) Profits from a business carried on at Nepal but controlled from India.	28,000
(f) Past untaxed profits remitted to India during the previous year 2009-10	80,000

Compute total income of Abhinav for the assessment year 2010-11 if he is (i) Resident, (ii) Resident but not ordinarily resident, and (iii) Non-resident in India.

Basic Concepts

2. Write short notes on:

- (a) Assessee
- (b) Person
- (c) Marginal Relief

Incomes which do not form part of total income

3. Is there any exemption for voluntary contributions received by electoral trusts? Discuss.

Salaries

4. Manas has been in service of Xansa Ltd., since November 1985, in Delhi. During the financial year ending 31-3-2010 he received from the company, salary @ Rs.12,000 p.m., dearness allowance @ Rs.3,000 p.m., city compensatory allowance @ Rs.300 p.m., entertainment allowance @ Rs.500 per month and house rent allowance @ Rs.4,000 p.m. Manas resides in the house property owned by his HUF for which he pays a rent of Rs.5,000 p.m. He has been in receipt of entertainment allowance from company since November 1985.

Manas contributes Rs.2,000 p.m. to the recognised provident fund. The company is also contributing an equal amount. He retired from the service of the company on 31-12-2009 and received gratuity of Rs.1,20,000 and pension of Rs.5,000 p.m. He is not covered under the Payment of Gratuity Act. On 1-2-2010 he got one half of the pension

commuted and received Rs.1,60,000 as commuted pension. He also received Rs.3,00,000 as the accumulated balance of the recognized provident fund.

Compute his income under the head salary for the assessment year 2010-11.

Income from House Property

5. For the Assessment year 2010-11, Suresh submits the following information:

Income from business		Rs. 3,00,000
	House I	House II
	Rs.	Rs.
Fair rent (FR)	3,60,000	3,50,000
Municipal valuation (MV)	3,70,000	3,70,000
Standard rent (SR)	3,10,000	5,20,000
Annual rent	6,10,000	4,50,000
Unrealised rent of the previous year 2009-10	12,000	90,000
Unrealised rent of the previous year 2008-09	-	3,10,000
Vacant period (number of months)	(2)	(4)
Loss on account of vacancy	1,20,000	1,50,000
Municipal taxes paid	45,000	60,000
Repairs	6,000	8,000
Insurance	22,000	40,000
Land revenue	26,000	50,000
Ground rent	70,000	90,000
Interest on capital borrowed by mortgaging House I (funds are used for construction of House II)	1,50,000	---
Nature of occupation	Let out for residence	Let out for business

Determine the taxable income and tax liability of Suresh for the assessment year 2010-11 assuming that Suresh pays Rs.60,000 in the public provident fund account.

Profits and gains of business or profession

6. Mr. Rajesh carries on his own business. For the year ending 31-3-2010 his Trading/Profit and Loss Account was as follows:-

	Rs.		Rs.
Opening stock	20,000	Sales	2,89,000
Purchases	1,09,000	Closing stock	52,000
Salaries	6,000	Interest on Debentures	2,000

Rent	11,000	Dividend from UTI	2,000
Bonus	3,000	Discount received	12,000
Printing: Postage and stationery	4,000	Race winning (Gross)	12,000
Miscellaneous expenses	4,000		
Advertisement expenses	22,000		
Drawings	12,000		
LIC premium	5,000		
Car expenses:			
Driver's salary	6,000		
Petrol & repairs	12,000		
Property tax	4,000		
Medical expenses of son with disability at Apollo Hospital	3,000		
Cost of NSC (VIII series)	3,000		
Net profit	1,45,000		
	<u>3,69,000</u>		<u>3,69,000</u>

Additional information:

- Advertisement expenses included cost of 20 gift packs of Rs. 1,100 each presented to leading esteemed customers on occasion of Diwali.
- Assume Taxes deducted at source on debentures is Nil.
- The car was used both for business and personal purposes 2/3rd is for business purposes.
- The property tax of Rs. 4,000 was in respect of his self occupied house whose rental value is Rs. 18,000.

Compute the Gross Total Income and Total Income of Mr. Rajesh for assessment year 2010-11 showing the incomes under various heads.

Capital gains

- Mr. Adhishesha sells his house property, acquired in 1975 for Rs.2,50,000, for a consideration of Rs.75,00,000 in September, 2009. The cost of improvement incurred for this property in June 1980 was Rs.3,00,000 and in July, 1996 Rs.2,80,000. Expenses incurred for effecting sale is Rs.1,00,000. He acquired a new house property during January, 2010 for a consideration of Rs.9,00,000. Compute the taxable capital gains by assuming that the fair market value as on 1.4.81 at Rs.10,00,000.

Capital Gains

8. Discuss the conditions to be satisfied for claiming exemption of tax in respect of -
- (a) Capital gains on compulsory acquisition of agricultural land situated within specified urban limits
 - (b) Capital gains on sale of equity shares/units of an equity oriented fund.

Set- Off and Carry forward of Losses

9. Mr. Kailash furnishes the following information for the year ending 31.3.2010

Particulars	Rs.
(a) Income from business	
- Loss from trading in securities in the nature of derivatives	(1,00,000)
- Profit from non-speculative business	2,50,000
(b) Capital gains	
- Long term capital loss on sale of unlisted shares	(50,000)
- Short term capital loss on sale of shares	(1,00,000)
- Short term capital gain on sale of jewellery	95,000

Compute the gross total income of Mr. Kailash and the loss to be carried forward.

Deductions from Gross Total Income

10. Explain the amendment made by The Finance Act (No.2), 2009 in case of deduction for a person with severe disability and for maintenance including medical treatment of a dependent with severe disability?

Computation of Total Income

11. Prem has computed his income under various heads for the previous year 2009-10 as under:

Income under the head "salary"	1,50,000
Income under the head "house property"	(-) 30,000
Profits and Gains of business or profession	50,000
Capital Gains – short-term	25,000
– Long-term	40,000
Income from other sources	
–Winnings from lotteries	10,000

–Interest on Government Securities	15,000	25,000
Prem also submits the following information:		
Payment made by cheque for mediclaim policy	10,000	
Expenses on medical treatment of dependant son being a person with disability	40,000	

Re-payment of loan, with interest to Canara Bank, (taken on 1.4.2000 for pursuing approved higher education) 20,000

Donations to:

Prime Minister's Drought Relief Fund	2,000
National Foundation for Communal Harmony	3,000
Jawaharlal Nehru Memorial Fund	4,000
Prime Minister's National Relief Fund	1,000

Compute Prem's total income for A.Y. 2010-11. Compute his tax liability if he deposits Rs.60,000 in his PPF Account, Rs.10,000 in NSC(VIII Issue) and Rs.30,000 in infrastructure bonds of ICICI during the previous year.

Tax deducted at source

12. Discuss the applicability of TDS provisions under section 194-I to payments made by the customers on account of cooling charges to cold storage owners.

Advance Tax

13. What are the due dates of payment of advance tax in case of a corporate assessee?

Legal consultancy services

14. With reference to legal consultancy services, state whether service tax is applicable in the following cases:
 - (i) Mr. Ramesh, an advocate, providing consultancy services to Omega Ltd. in relation to company law matters.
 - (ii) Mehta and Sons, a law firm, providing legal assistance to Omega Ltd. in relation to civil cases filed against the company.
 - (iii) Mehta and Sons providing advisory services to Mr. Kamlesh in respect of his property matters.
 - (iv) Mehta and Sons providing service of appearance before Sessions Court to Omega Ltd. in relation to criminal cases filed against the company.

Commercial training or coaching services

15. With reference to commercial training or coaching services, state whether service tax is applicable in the following cases:
- (i) Pinnacle Institute offering courses on personality development and grooming.
 - (ii) BTL Engineering College offering B.Tech to students. However, the college has been derecognized by the All India Council for Technical Education.

Charge of service tax and payment of service tax

16. Aarush, a software consultant, has developed a software for Beta Ltd. He has raised a bill of Rs.2,50,000 on Beta Ltd. on 02.03.2009. A sum of Rs.1,50,000 was received from Beta Ltd. on 15.03.2009 and the balance on 23.06.2009. The questions are:
- (a) Is the service provided by Aarush liable to service tax? If yes, then whether Aarush will be liable to pay service tax, even though the same has not been charged by him?
 - (b) In case Aarush is liable to service tax, what is the value of taxable service and the service tax payable by him for the financial year 2008-09?

Services in respect of membership of clubs or associations

17. A club exempt from payment of income-tax under the Income-tax Act, 1961 on the ground of being a public charitable institution will be compulsorily exempt from payment of service tax also. Examine the validity of the statement.

Special provision for payment of service tax

18. Discuss the special provision for payment of service tax in case of services provided in relation to purchase or sale of foreign currency including money changing.

Service tax return

19. List the documents to be submitted along with a service tax return.

Method for computation of VAT

20. Explain the addition method for computation of VAT.

Role of a Chartered Accountant in implementation of VAT

21. Explain the role of a Chartered Accountant in proper implementation of VAT.

Computation of VAT liability

22. A dealer purchases goods for Rs.2,50,000 (exclusive of VAT). He incurs Rs.35,000 on the goods and sells them at a profit of Rs.15,000. Compute the invoice value to be charged and amount of tax payable under VAT. The rate of VAT on purchases and sales is 4%.

Computation of VAT liability

23. Compute the net VAT liability from the following information:-

Particulars	Rs.
Raw material purchased from foreign market (including duty paid on imports @ 20%)	12,000.00
Raw material purchased from local market (including VAT charged on the material @ 4%)	20,800.00
Raw material purchased from neighbouring state (including CST paid on purchases @ 2%)	7,140.00
Storage, transportation cost and interest	2,500.00
Other manufacturing expenses incurred	600.00
The goods are sold at 10% profit on cost of production. VAT rate on sale of such goods is 12.5%.	

Merits of VAT

24. How is transparency ensured under VAT system?

Input tax credit on capital goods

25. Do VAT laws allow input tax credit on capital goods? Explain the policy as envisaged in the White Paper.

SUGGESTED ANSWERS/HINTS

1. **Computation of Total Income of Abhinav for the assessment year 2010-11**

	Resident	Resident but not ordinary resident	Non-Resident
	(Rs.)	(Rs.)	(Rs.)
Income received in India wherever it accrues			
Salary received in India for services rendered in Nepal	18,000	18,000	18,000
Income accrued in India wherever received			
Profit earned from business in Hyderabad	9,000	9,000	9,000
Income from profession in India but received in France	15,000	15,000	15,000

Income accrued and received outside India

Property income in Belgium	10,000	-	-
Profits from a business carried on at Nepal but controlled from India	28,000	28,000	-
Past untaxed profits remitted to India	-	-	-
Total Income	80,000	70,000	42,000

2. (a) **Assessee [Section 2(7)]** - Assessee means a person by whom any tax or any other sum of money is payable under this Act. It includes every person in respect of whom any proceeding has been taken for the assessment of his income or assessment of fringe benefits. Sometimes, a person becomes assessable in respect of the income of some other persons. In such a case also, he may be considered as an assessee. This term also includes every person who is deemed to be an assessee or an assessee in default under any provision of this Act.

- (b) **Person [Section 2(31)]** - The definition of 'assessee' leads us to the definition of 'person' as the former is closely connected with the latter. The term 'person' is important from another point of view also viz., the charge of income-tax is on every 'person'.

The definition is inclusive i.e. a person includes,

- (i) an individual,
- (ii) a Hindu Undivided Family (HUF),
- (iii) a company,
- (iv) a firm,
- (v) an AOP or a BOI, whether incorporated or not,
- (vi) a local authority, and
- (vii) every artificial juridical person e.g., an idol or deity.

(c) Marginal Relief

This concept of marginal relief is applicable only in the case of companies w.e.f. A.Y.2010-11. Marginal relief is available in case of companies having a total income exceeding Rs.1 crore i.e. the additional amount of income-tax payable (together with surcharge) on the excess of income over Rs.1 crore should not be more than the amount of income exceeding Rs.1 crore.

3. Exemption for voluntary contributions received by electoral trusts [Section 13B]

- (i) In the year 2003, by an amendment carried out by the Election and Other Related Laws (Amendment) Act, 2003, sections 80GGB & 80GGC were introduced allowing 100 per cent deduction in respect of the contribution made to registered political parties.

- (ii) The Finance (No.2) Act, 2009 has widened the scope of deductions under these sections by allowing deduction to also the contribution/donation made to the electoral trusts as may be approved by the CBDT in accordance with the scheme to be made by the Central Government.
- (iii) The deduction shall be 100% of the amount donated.
- (iv) Further, voluntary contribution received by such electoral trust shall be treated as its income under section 2(24), but shall be exempt under new section 13B, if the trust distributes to a registered political party during the year, 95% of the aggregate donations received by it during the year along with the surplus if any, brought forward from any earlier previous year.
- (v) Another condition for availing the benefit under this section is that the electoral trust should function in accordance with the rules made by the Central Government.

4. Computation of Income from Salary of Manas for Assessment year 2010-11

Particulars	Rs.
Salary (Rs.12,000 x 9)	1,08,000
Dearness allowance (Rs.3,000 x 9)	27,000
City compensatory allowance (Rs.300 x 9)	2,700
Entertainment allowance (Rs.500 x 9)	4,500
House rent allowance	36,000
Less: Exempt (Note 1)	34,200
Gratuity (Note 2)	Nil
Pension for January 2010	5,000
Pension for February & March 2010 (Rs.2,500 x 2)	5,000
Commuted pension (Note 3)	53,333
Income from salary	2,07,333

Working note –

1. As per section 10(13A), house rent allowance will be exempt to the extent of minimum of the following three:
 - (i) 50% of salary i.e. Rs.54,000.
 - (ii) Rent paid minus 10% of salary i.e. $5,000 - 1,200 = 3,800 \times 9 = \text{Rs.}34,200$.
 - (iii) HRA received $\text{Rs.}4,000 \times 9 = \text{Rs.}36,000$.

Therefore, Rs.34,200 will be exempt.
2. Gratuity of Rs.1,20,000 is fully exempt under section 10(10) being the minimum of the following amounts:

(i) Rs.1,20,000.

$$(ii) \left(\frac{\text{Average monthly salary}}{2} \times 24 \right) \text{ i.e. } \left(\frac{12,000}{2} \times 24 \right) = \text{Rs.1,44,000}$$

(iii) Rs.3,50,000.

3. As Manas is receiving gratuity, commuted value of one-third of pension which he is normally entitled to receive will be exempt and the balance is taxable. 50% of the pension commuted is Rs.1,60,000. Therefore, 100% would be Rs.3,20,000 and 1/3rd would be Rs.1,06,667. The balance of Rs.53,333 is taxable.

5. Computation of Taxable income and tax liability of Suresh for the A.Y. 2010-11

HOUSE I

	Rs.	Rs.
Gross annual value		
Step I - Reasonable expected rent of the property (MV or FR, whichever is higher, but subject to maximum of SR)		3,10,000
Step II - Rent received/receivable after deducting unrealized rent but before adjusting loss due to vacancy (Rs. 6,10,000 – Rs.12,000)		5,98,000
Step III - Amount computed in Step I or Step II, whichever is higher		5,98,000
Step IV - Loss due to vacancy		1,20,000
Step V - Gross annual value is Step III minus Step IV		4,78,000
Less: Municipal taxes		45,000
Net annual value		4,33,000
Less: Deductions under section 24	Rs.	
Standard deduction (30% of Rs. 4,33,000)	1,29,900	
Interest (as the funds are utilised for the construction of House II, it is not deductible from the income of House I)	Nil	
		1,29,900
Income from House I		3,03,100

HOUSE II

Gross annual value	
Step I - Reasonable expected rent of the property [MV or FR, whichever is higher, but subject to maximum of SRI]	3,70,000

Step II - Rent received/receivable after deducting unrealized rent but before adjusting loss due to vacancy	3,60,000
Step III - Amount computed in Step I or Step II, whichever is higher	3,70,000
Step IV - Loss due to vacancy	1,50,000
Step V - Gross annual value is Step III minus Step IV	2,20,000
Less: Municipal taxes	60,000
Net annual value	1,60,000

Less: Deductions under section 24

Standard deduction (30% of Rs. 1,60,000)	48,000	
Interest on capital (as the capital is borrowed for construction of House II, it is deductible, even if House I is mortgaged by Suresh for this purpose)	1,50,000	1,98,000
Income from House II		(-) 38,000

Computation of Net Income of Suresh

House I	3,03,100	
House II	(-) 38,000	2,65,100
Business income		3,00,000
Gross Total Income		5,65,100

Less : Deduction under section 80C [contribution to public provident fund account] 60,000

Net income **5,05,100**

Tax 55,530

Add: Surcharge (surcharge is not applicable for the A.Y. 2010-11) Nil

Tax and surcharge 55,530

Add : Education cess (2% of tax and surcharge) 1,111

Add : Secondary and Higher Education cess (1% of tax and surcharge) 555

Tax payable **57,196**

Tax payable (rounded off) **57,200**

Note: Deduction on account of unrealised rent of earlier years is not available. Moreover, insurance, land revenue and ground rent are not deductible.

6. **Computation of Total Income of Mr. Rajesh for the assessment year 2010-11**

Profit and Gains from Business or Profession

	Rs.	Rs.
Net Profit as per P & L A/c		1,45,000
Add: Expenses / Payments not admissible		
Drawings	12,000	
LIC Premium	5,000	
Car expenses		
Driver salary (1/3)	2,000	
Petrol (1/3)	4,000	
Property Tax	4,000	
Medical expenses	3,000	
Cost of NSC	3,000	33,000
		1,78,000

Less: Incomes which are not taxable under this head

Interest on debentures	2,000	
Dividend from UTI.	2,000	
Horse race income	12,000	16,000
Profit and Gains from Business or Profession		1,62,000

Income from other sources

Interest	2,000	
Dividend from UTI	Exempt	
Horse race income	12,000	14,000
Gross Total Income		1,76,000

Less : Deductions under Chapter VIA

u/s. 80C (LIC – Rs. 5,000 + NSC – Rs. 3,000)	8,000	
u/s 80DD	50,000	58,000
Taxable income		1,18,000

7. **Computation of taxable capital gains for the A.Y 2010 – 11**

Particulars	Rs.	Rs.
Sale consideration		75,00,000
Less : Expenses incurred		1,00,000
Net consideration		74,00,000
Less : Indexed cost acquisition (10,00,000 x 632/100)	63,20,000	
Indexed cost improvement (2,80,000 x 632/305)	5,80,197	69,00,197
Gross capital gains		4,99,803
Less : Exempt u/s. 54 Cost of the new house –Rs. 9,00,000 or		
Capital gain- 4,99,803, whichever is less		4,99,803
Net capital gains		Nil

8. (a) **Exemption of capital gains on compulsory acquisition of agricultural land situated within specified urban limits - Section 10(37)**

Clause (37) has been inserted in section 10 to exempt the capital gains arising to an individual or a Hindu undivided family from transfer of agricultural land situated within specified urban limits by way of compulsory acquisition.

Such agricultural land should be situated in any area –

- (i) which is comprised within the jurisdiction of a municipality or cantonment board and which has a population of not less than ten thousand according to the last preceding census or
- (ii) within such distance, not being more than 8 kms, from the local limits of such municipality or cantonment board referred to in (i) above, as the Central Government may notify in the Official Gazette.

Such exemption is available where the compensation or the enhanced compensation or consideration, as the case may be, is received on or after 1st April, 2004. However, the exemption is available only when such land has been used for agricultural purposes during the preceding two years by such individual or a parent of his or by such Hindu undivided family.

(b) **Exemption of long term capital gains on sale of equity shares/ units of an equity oriented fund – Section 10(38)**

Clause (38) has been inserted in section 10 to exempt long term capital gains on sale of equity shares of a company or units of an equity oriented fund on or after

1.10.2004, being the date on which Chapter VII of the Finance (No.2) Act, 2004 came into force. However, this exemption is available only if such transaction is chargeable to securities transaction tax.

For the purpose of this clause “Equity oriented fund” means a fund –

- (1) where the investible funds are invested by way of equity shares in domestic companies to the extent of more than 50% of the total proceeds of such fund; and
- (2) which has been set up under a scheme of a Mutual Fund specified under clause (23D)

The percentage of equity share holding of the fund should be computed with reference to the annual average of the monthly averages of the opening and closing figures.

9. Computation of taxable income of Mr. Kailash for the A.Y. 2010-11

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

Notes:

1. As per clause (d) of the proviso to section 43(5), an eligible transaction in respect of trading in derivatives shall not be a speculative transaction. Therefore, loss from trading in derivatives is not a speculative loss and such loss is eligible for set off against profit from the non speculative business income.
2. Long term capital loss can be set off only against long term capital gain. Unabsorbed long term capital loss of Rs.50,000 for the assessment year 2009-10 can be carried forward for a maximum 8 assessment years for set off against in accordance with Section 74.
3. Short term capital loss of Rs.1,00,000 is entitled for inter source adjustment.

4. According to Section 71, loss under the head "Capital Gains" cannot be set off against any other income. Therefore, in this case the net loss of Rs.5,000 shall be carried forward to subsequent assessment years for set off against income under the head 'Capital Gains'.
5. The following is the summary of losses eligible for carried toward to A.Y. 2011-12

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

10. Increase in deduction for a person with severe disability [Section 80U] and for maintenance including medical treatment of a dependent with severe disability [Section 80DD]

- (i) Under section 80-DD, deduction is allowable to an individual or HUF, who is a resident in India, in respect of the following:—
 - (a) Expenditure for the medical treatment (including nursing), training and rehabilitation of a dependant, being a person with disability; and
 - (b) Amount paid to LIC or other insurance in respect of a scheme for the maintenance of a disabled dependant.
- (ii) The present limit for deduction is Rs.50,000 if the dependant is suffering from disability and Rs.75,000 if the dependant is suffering from severe disability.
- (iii) The deduction in respect of maintenance or medical treatment of a dependent with severe disability has been increased from Rs.75,000 to Rs.1 lakh. However, the deduction in respect of maintenance or medical treatment of a dependent with disability will continue to be Rs.50,000.
- (iv) Under section 80U, deduction of Rs.75,000 is available in computing the total income of a resident individual, who is certified by the medical authority to be a person with severe disability. This deduction has also been increased to Rs.1,00,000. The deduction under section 80U for a person with disability will, however, continue to be Rs.50,000.

11. Computation of total income and tax liability of Mr. Prem for A.Y.2010-11

	Rs.	Rs.
Income from salary		2,00,000
Loss from house property		(-) 50,000

Business income		80,000
Capital Gains - short-term	50,000	
Long-term	60,000	1,10,000
Income from other sources (20,000 +25,000)		45,000
Gross Total Income		3,85,000
Less: Deductions under Chapter VI-A		
U/s. 80D (Medical insurance)	15,000	
U/s. 80DD (Maintenance of dependent disabled)	50,000	
U/s. 80E (Repayment of education loan)	25,000	
U/s. 80G (Donations – See working note below)	7,000	97,000
Total Income		2,88,000

Calculation of tax liability for A.Y.2010-11

Tax on Rs.2,88,000 is calculated hereunder:

(a) On lottery income of Rs.20,000 @ 30%	6,000
(b) On long-term capital gain of Rs.60,000 @ 20%	12,000
(c) On total Income (other than long-term capital gains and lottery Income)	20,800
Tax payable	38,800
Add: Surcharge	Nil
	38,800
Add: Education cess @ 2%	776
Add : Secondary and Higher Education cess (1% of tax and surcharge]	388
Tax liability	39,964
Tax liability (rounded off)	39,960

Working Note –

1. Calculation of deduction under section 80G

(a) Donations allowed @ 100% without qualifying limit

National Fund for Communal Harmony	3,000	
Prime Minister's National Relief Fund	1,000	4,000

(b) Donations allowed @ 50% without qualifying limit

Prime Minister's Drought Relief Fund	1,000	
Jawaharlal Nehru Memorial Fund	2,000	3,000
Total deduction u/s 80G		7,000

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

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

The main function of the cold storage is to preserve perishable goods by means of a mechanical process, and storage of such goods is only incidental in nature. The customer is also not given any right to use any demarcated space/place or the machinery of the cold store and thus does not become a tenant. Therefore, the provisions of 194-I are not applicable to the cooling charges paid by the customers of the cold storage.

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

13. Advance tax shall be payable by a corporate assesses as per the following schedule of installments:

Due date of installment	Amount payable
On or before the 15th June	Not less than 15% of advance tax liability.
On or before the 15th September	Not less than 45% of advance tax liability, as reduced by the amount, if any, paid in the earlier installment.
On or before the 15th December	Not less than 75% of advance tax liability, as reduced by the amount or amounts, if any, paid in the earlier installment or installments.
On or before the 15th March	The whole amount of advance tax liability as reduced by the amount or amounts, if any, paid in the earlier installment or installments.

14. With effect from 01.09.2009, legal consultancy services have been brought under the service tax levy vide the Finance (No. 2) Act, 2009. Section 65(105)(zzzzm) provides that scope of legal consultancy service shall include any service provided or to be

provided to a business entity, by any other business entity, in relation to advice, consultancy or assistance in any branch of law. However, any service provided by way of appearance before any court, tribunal or authority shall not amount to taxable service.

Here, "business entity" includes an association of persons, body of individuals, company or firm, but does not include an individual.

Thus, legal consultancy services shall not be liable to service tax in following cases:-

- (a) where such service is provided by way of appearance before any court, tribunal or authority;
- (b) where the service provider and/or service recipient is an individual.

The questions are now answered as follows:

- (i) Mr. Ramesh, being an individual service provider is not a business entity in terms of section 65(105)(zzzzm). Hence, Mr. Ramesh will not be liable to service tax.
 - (ii) Here, both service provider and service receiver are business entities in terms of section 65(105)(zzzzm). Thus, service tax will be applicable in this case.
 - (iii) In this case, Mr. Kamlesh, the service receiver is a individual and thus not a business entity in terms of section 65(105)(zzzzm). Thus, service tax will not be applicable in this case.
 - (iv) Here, though both the service provider and the service receiver are business entities, but the service being rendered is that of appearance before any court, tribunal or authority; which is excluded from the scope of taxable service. Hence, service tax will not be applicable in this case.
15. Section 65(105)(zzc) provides that the scope of taxable service shall include any service provided or to be provided to any person, by a commercial training or coaching centre in relation to commercial training or coaching.

As per section 65(27), a commercial training or coaching centre means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes but does not include preschool coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force.

The questions are now answered as follows:

- (i) *Notification No. 24/2004 ST dated 10.09.2004* inter alia exempts taxable services, provided in relation to commercial training or coaching by a vocational training institute to any person from the whole of the service tax leviable thereon. Here, vocational training institute means a commercial training or coaching centre which provides vocational coaching or training that impart skills to enable the trainee to seek employment or undertake self-employment, directly after such training or coaching.

However, *Circular No. 107/01/2009 ST dated 28.01.2009* has clarified that institutes offering general course on improving communication skills, how to be effective in group discussions or personal interviews, personality development, general grooming and finishing etc. are not covered under the definition of vocational training institute because they only improve the chances of success for a candidate possessing required skill and do not impart training to enable the trainee to seek employment or self-employment.

Thus, Pinnacle Institute is not entitled to exemption under the above notification and is liable to service tax.

- (ii) A B.Tech degree is recognised by law and thus institutes offering such degrees are excluded from the scope of the said taxable service. However, *Circular No. 107/01/2009 ST dated 28.01.2009* has clarified that an institution or establishment which is derecognized by the professional councils (such as All India Council for Technical Education-AICTE, Medical Council of India-MCI, Indian Council for Agricultural Research-ICAR, Bar Council of India-BCI) created through independent Union Acts does not fall under the category of institutes/establishments which issue diploma or certificate recognized by the law for the time being in force and hence is taxable under the category of commercial coaching and training services.

Thus, BTL Engineering College being derecognized by All India Council for Technical Education shall be liable to service tax.

16. (a) Yes. As per clause (i) of section 65(105)(zzzze), development of software is liable to service tax under information technology software services.

Yes, Aarush will be liable to pay service tax. Section 68 of the Finance Act, 1994 casts the liability to pay service tax upon the service provider or upon the person liable to pay service tax as per Rule 2(1)(d). This liability is not contingent upon the service provider realizing or charging the service tax at the prevailing rate. The statutory liability does not get extinguished if the service provider fails to realize or charge the service tax from the service receiver. Hence, Aarush will be liable to pay service tax.

- (b) When the assessee has not charged service tax because of the nature of service or has failed to recover the service tax from the client / customer as he is not aware that his services are taxable, the amount recovered from the client in lieu of having rendered the service is taken to be inclusive of service tax. Accordingly service tax payable is calculated by making back calculations.

Since, service tax is payable on receipt basis, in the F.Y. 2008-09, only Rs.1,50,000 will be liable to service tax.

The rate of service tax payable:

Basic rate	10%
Education cess of 2% and Secondary and higher education cess of 1% (3% of 10%)	10.30%

Value of taxable service

$$\frac{\text{Gross amount charged}}{(100 + \text{Effective rate})} \times 100$$

$$= \frac{1,50,000 \times 100}{110.30}$$

= Rs.1,35,993.00 (approx.)

Service tax payable

$$= \frac{1,50,000 \times 10.30}{110.30}$$

= Rs.14,007.00

17. The statement is not correct. *Circular No. 96/7/2007 ST dated 23.08.2007* has clarified that exemption under the Income Tax Act on the ground of being a public charitable institution is of no consequence or relevance for service tax purposes. Levy of service tax is entirely governed by the provisions contained in the Finance Act, 1994 and the rules made thereunder.

“Charity” is defined as “aid given to the poor, the suffering or the general community for religious, educational, economic, public safety, or medical purposes”, and “charitable” is defined as “dedicated to a general public purpose, usually for the benefit of needy people who cannot pay for the benefits received” [Black’s Law Dictionary].

Whether a club or association is engaged in activity having objectives which are of a charitable nature or not is to be determined purely on the basis of the facts and circumstances of the case.

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

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

19. Along with ST-3 return following documents should be attached:

- (i) copies of TR-6 challans which indicate the payment of service tax for the months/quarter covered in the half-yearly return;
- (ii) a memorandum in form ST-3A giving full details of the difference between the amount of provisional amount of tax deposited and the actual amount payable for each month. Form-ST-3A is to be attached only when the assessee opts for provisional payment of service tax.

20. In addition method for computing VAT, all the factor payments including profits are aggregated to arrive at the total value addition on which the rate is applied to calculate

the tax. This type of calculation is mainly used with income variant of VAT. A drawback of this method is that it does not facilitate matching of invoices for detecting evasion.

21. Chartered Accountants have the following 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.

22.

Computation of invoice value

Particulars	Rs.	Rs.
Cost of goods purchased		2,50,000.00
Add: Expenses	35,000.00	
Profit margin	<u>15,000.00</u>	<u>50,000.00</u>
Product Sale Value		3,00,000.00
Add: VAT @ 4 %		<u>12,000.00</u>
Invoice Value		<u>3,12,000.00</u>

Computation of amount of tax payable under VAT

VAT charged on sales	12,000.00
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Less: Input credit of VAT paid on purchases @ 4% on 2,50,000	<u>10,000.00</u>
Tax Payable under VAT	<u>2,000.00</u>

23. Computation of sale price and VAT payable thereon

	Rs.
Raw material purchased from foreign market (Note – 1)	12,000.00
Add: Raw material purchased from local market (Rs. 20,800 – Rs. 800) (Note – 2)	20,000.00
Raw material purchased from neighbouring state (Note – 3)	7,140.00
Storage, transportation cost and interest	2,500.00
Other manufacturing expenses incurred	<u>600.00</u>
Cost of production	42,240.00
Add: Profit @10% on Rs.42,240	<u>4,224.00</u>
Sale Price	46,464.00
VAT @ 12.5% on sales	5,808.00

Computation of VAT liability:-

	Rs.
VAT on sale price	5,808.00
Less: Set-off of VAT on purchases	
On imports	Nil
On local purchases	<u>800.00</u>
Net VAT payable	5,008.00

Notes:-

1. Since, the duty paid on imports is not a State VAT; it will form part of cost of input.
 2. VAT charged by the local suppliers is Rs.800. Since, the credit of this would be available, it shall not be included in the cost of input.
 3. Credit/set-off for tax paid on inter-State purchases (inputs) is not allowed.
24. Under VAT system, one can avail input tax credit only under a valid tax invoice. The tax invoice clearly specifies the tax component out of the total consideration paid for purchase of material. Hence, a buyer knows exactly how much VAT has been paid by him at all stages. Thus, the system ensures transparency. This transparency enables the State Government to know as to what is the exact amount of tax coming at each stage. Thus, it is a great aid to the Government while taking decisions with regard to rate of tax etc.

25. The policy in the White Paper lays down that in relation to capital goods set off will be available to traders and manufacturers. Tax credit on capital goods may be adjusted over a maximum of 36 equal monthly instalments. The States may at their option reduce this number of instalments. The State of Maharashtra has decided to give full input tax credit in the month of purchases only. However, if the capital asset is sold within the period of 36 months proportionate input tax credit will be withdrawn. There will be a negative list for capital goods not eligible for input tax credit.

IMPORTANT CIRCULARS / NOTIFICATIONS ISSUED BETWEEN 1.5.2009 and 31.10.2009

Students may note that the Study Material for IPCC Group I Paper 4: Taxation A.Y. 2010-11 has been updated with the law as amended by the Finance (No.2) Act, 2009 and notifications and circulars issued upto 30.04.2009. This study material is relevant for the students of both IPCC and PCC appearing for May 2010 examination. The following are the amendments which have been made between 1.05.2009 and 31.10.2009. It may carefully be noted that for the students appearing in May 2010 examination, the amendments made by Notifications, Circulars etc. up to 31.10.2009 are relevant.

A. INCOME TAX

I CIRCULARS

1. Circular No. 4/2009, dated 29.6.2009

Section 195 mandates deduction of income tax from payments made or credit given to non-residents at the rates in force. The Reserve Bank of India has also mandated that except in the case of certain personal remittances which have been specifically exempted, no remittance shall be made to a non-resident unless a no objection certificate has been obtained from the Income Tax Department. This was modified to allow such remittances without insisting on a no objection certificate from the Income Tax Department, if the person making the remittance furnishes an undertaking (addressed to the Assessing Officer) accompanied by a certificate from an Accountant in a specified format. The certificate and undertaking are to be submitted (in duplicate) to the Reserve Bank of India / authorised dealers who in turn are required to forward a copy to the Assessing Officer concerned. The purpose of the undertaking and the certificate is to collect taxes at the stage when the remittance is made as it may not be possible to recover the tax at a later stage from non-residents.

There has been a substantial increase in foreign remittances, making the manual handling and tracking of certificates difficult. To monitor and track transactions in a timely manner, section 195 was amended vide Finance Act, 2008 to allow CBDT to prescribe rules for electronic filing of the undertaking. The format of the undertaking (Form 15CA) which is to be filed electronically and the format of the certificate of the Accountant (Form 15CB) have been notified vide Rule 37BB of the Income-tax Rules, 1962.

The revised procedure for furnishing information regarding remittances being made to non-residents w.e.f. 1st July, 2009 is as follows:-

- (i) The person making the payment (remitter) will obtain a certificate from an accountant <http://law.incometaxindia.gov.in/dittaxmann/circular/ftnstr.htm> (other than employee) as defined in the Explanation to section 288 in Form 15CB.
- (ii) The remitter will then access the website to electronically upload the remittance details to the Department in Form 15CA (undertaking). The information to be furnished in Form 15CA is to be filled using the information contained in Form 15CB (certificate).
- (iii) The remitter will then take a print out of this filled up Form 15CA (which will bear an acknowledgement number generated by the system) and sign it. Form 15CA (undertaking) can be signed by the person authorised to sign the return of income of the remitter or a person so authorised by him in writing.
- (iv) The duly signed Form 15CA (undertaking) and Form 15CB (certificate), will be submitted in duplicate to the Reserve Bank of India / authorized dealer. The Reserve Bank of India / authorized dealer will in turn forward a copy of the certificate and undertaking to the Assessing Officer concerned.
- (v) A remitter who has obtained a certificate from the Assessing Officer regarding the rate at or amount on which the tax is to be deducted is not required to obtain a certificate from the Accountant in Form 15CB. However, he is required to furnish information in Form 15CA (undertaking) and submit it along with a copy of the certificate from the Assessing Officer as per the procedure mentioned from Sl.No.(i) to (iv) above.

2. Circular No. 7/2009 dated 22.10.2009

The CBDT has, through this circular, withdrawn the following circulars:

- a) Circular No. 23 issued on 23rd July 1969 regarding taxability of income accruing or arising through, or from, business connection in India to a non-resident, under section 9 of the Income-tax Act, 1961.
- b) Circulars No. 163 dated 29th May, 1975 and No.786 dated 7th February, 2000 which provided clarification in respect of certain provisions of Circular No 23 dated 23rd July, 1969.

II NOTIFICATIONS

1. Notification No. 67/2009 dated 9.9.2009

The Central Government has, vide notification no.67/2009 dated 9.9.2009, specified the cost inflation index (CII) for the financial year 2009-10. The CII for F.Y. 2009-10 is 632.

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

2. Notification No. 70/2009, dated 22.9.2009

The CBDT has, in exercise of the powers conferred by section 139(1B), made an amendment in the notification of the Government of India relating to qualifications of an e-Return intermediary. The qualifications of an e-Return Intermediary, as amended, are detailed hereunder –

- (1) An e-Return Intermediary shall have the following qualifications, namely:-

- (a) it must be a public sector company as defined in section 2(36A) of the Act or any other company in which public are substantially interested within the meaning of section 2(18) of the Act and any subsidiary of those companies; or
 - (b) a company incorporated in India, including a bank, having a net worth of rupees one crore or more; or
 - (c) a firm of Chartered Accountants or Company Secretaries or Advocates, if it has been allotted a permanent account number; or
 - (d) a Chartered Accountants or Company Secretaries or Advocates or Tax Return Preparers, if he has been allotted a permanent account number; or
 - (e) a Drawing or Disbursing Officer (DDO) of a Government Department.
- (2) The e-intermediary shall have at least class II digital signature certificate from any of the Certifying authorities authorized to issue such certificates by the Controller of Certifying authorities appointed under section 17 of the Information Technology Act, 2002.
 - (3) The e-intermediary shall have in place security procedure to the satisfaction of e-return Administrator to ensure that confidentiality of the assessee's information is properly secured.
 - (4) The e-intermediary shall have necessary archival, retrieval and, security policy for the e>Returns which will be filed through him, as decided by e-Return Administrator from time to time.
 - (5) The e-intermediary or its Principal Officer must not have been convicted for any professional misconduct, fraud, embezzlement or any criminal offence.

B. SERVICE TAX

Notification No. 26/2009 ST dated 19.08.2009 has notified 01.09.2009 as the date on which the services introduced by the Finance (No. 2) Act, 2009 would become effective. Further, the amendments made in the existing services vide the Finance (No. 2) Act, 2009 would also become effective from 01.09.2009.

Exemptions

1. **Notification No. 16/2009 ST dated 07.07.2009** has exempted services provided by twenty two export promotion councils, which were earlier taxable under the category of club or association services. **Notification No. 35/2009 ST dated 03.09.2009** has amended the said notification so as to extend the exemption to the following organizations:
 - (i) Electronics and Computer Software Export Promotion Council, PHD House, 3 rd Floor, Ramakrishna Dalmia Wing, New Delhi-110 016.

- (ii) Indian Oilseeds & Produce Export Association Export Promotion Council, 62, Mittal Chambers, Nariman Point, Mumbai-400 021.
- (iii) Jute Manufacturers Development Council, 3A, Park Plaza, 71, Park Street, Kolkata-700016.
- (iv) Services Export Promotion Council, #1206, Chiranjiv Tower, 43, Nehru Place, New Delhi- 110 019.
- (v) Wool Industry Export Promotion Council, Churchgate Chamber, 7th Floor, 5, New Marine Lines, Mumbai - 400 020.

Thus, now total of twenty seven export promotion councils have been granted exemption under *Notification No. 16/2009*.

2. **Notification No. 40/2009 ST dated 30.09.2009** has amended *Notification No. 17/2009 ST dated 07.07.2009* which exempts certain specified taxable services received by an exporter and used for export of goods. The following service (inserted at point no. 17 in the original notification) received by an exporter and used for export of goods has also been exempted vide this notification:

17.	(zzzzl)	Service provided for transport of export goods through national waterway, inland water and coastal shipping.	The exporter shall- produce the Bill of Lading or a Consignment Note or a similar document by whatever name called, issued in his name; produce evidence to the effect that the said transport is provided for export of relevant goods.
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Other amendments

3. *Notification No. 9/2009 ST dated 03.03.2009* was issued to provide refund of service tax paid on taxable services specified in section 65(105) of the Finance Act, 1994 which are provided in relation to the authorised operations (as defined under SEZ Act, 2005) in a Special Economic Zone (SEZ), and received by a developer or units of a SEZ, whether or not the said taxable services are provided inside the SEZ.

Notification No. 15/2009 ST dated 20.05.2009 has been issued to amend the aforesaid *Notification 9/2009 ST dated 03.03.2009* to provide unconditional exemption to services consumed within the SEZ without following the refund route thus dispensing with the requirement of first paying the tax by the service provider and then claiming the refund thereof by developer/unit. The exemption by way of refund would be limited to situations only when taxable services provided to SEZ are consumed partially or wholly outside SEZ.

This has been done by making the following amendments in *Notification No. 9/2009 ST dated 03.03.2009*:

- A. Conditions (a) to (f) mentioned in paragraph 1 for claiming the exemption have been amended in the following manner:
- (i) The condition (c) for claiming the exemption has been substituted with the following condition:
“the exemption claimed by the developer or units of special economic zone shall be provided by way of refund of service tax paid on the specified services used in relation to the authorised operations in the special economic zone except for services consumed wholly within the special economic zone;”
 - (ii) The condition (d) for claiming the exemption has been substituted with the following condition:
“the developer or units of special economic zone claiming the exemption, by way of refund in accordance with clause (c), has actually paid the service tax on the specified services;”
 - (iii) Another condition (g) has been added after condition (f) for claiming the said exemption. The new condition (g) reads as follows:
“(g) the developer or unit of a special economic zone shall maintain proper account of receipt and utilisation of the taxable services for which exemption is claimed.”
- B. The manner of giving exemption mentioned in paragraph 2 has been amended. In paragraph 2, for the words, “shall be subject to the following conditions”, the words, “except for services consumed wholly within the Special Economic Zone, shall be subject to the following conditions” shall be substituted.

Note: The Budget Notifications issued on 07.07.2009 are given in the Supplementary Study Paper 2009. Further, they have also been incorporated in the Study Material of Taxation (Edition 2009). Therefore, the same have not been given here again.