

PAPER – 4 : TAXATION

Question No. 1 is compulsory.

Attempt any five questions from the remaining six questions.

Working notes should form part of the answer.

Wherever necessary, suitable assumptions may be made by the candidates.

Question 1

- (a) Mr. Soohan submits the following details of his income for the assessment year 2010-11.

<i>Particulars</i>	<i>Rs.</i>
Income from salary	3,00,000.00
Loss from let out house property	40,000.00
Income from sugar business	50,000.00
Loss from iron ore business b/f (discontinued in 2003-04)	1,20,000.00
Short term capital loss	60,000.00
Long term capital gain	40,000.00
Dividend	5,000.00
Income received from lottery winning (Gross)	50,000.00
Winnings in card games	6,000.00
Agricultural income	20,000.00
Long term capital gain from shares (STT paid)	10,000.00
Short term capital loss under section 111A	10,000.00
Bank interest	5,000.00

Calculate gross total income and losses to be carried forward. (5 Marks)

- (b) Mr. A is a proprietor of Akash Enterprises having 2 units. He transferred on 1.4.2009 his unit 1 by way of slump sale for a total consideration of Rs.25 lacs. The expenses incurred for this transfer were Rs.28,000. His Balance Sheet as on 31.3.2009 is as under:

The Suggested Answers for Income-tax are based on the provisions applicable for A.Y.2010-11, which is the assessment year relevant for November 2010 examination. The suggested answers for Service-tax and VAT are based on the provisions as amended by the Finance (No.2) Act, 2009 and notifications/circulars issued up to 30.04.2010 which are relevant for November 2010 examination.

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<i>Liabilities</i>	<i>Total Rs.</i>	<i>Assets</i>	<i>Unit 1 Rs.</i>	<i>Unit 2 Rs.</i>	<i>Total Rs.</i>
<i>Own Capital</i>	15,00,000	<i>Building</i>	12,00,000	2,00,000	14,00,000
<i>Revaluation Reserve (for building of unit 1)</i>	3,00,000	<i>Machinery</i>	3,00,000	1,00,000	4,00,000
<i>Bank loan (70% for unit 1)</i>	2,00,000	<i>Debtors</i>	1,00,000	40,000	1,40,000
<i>Trade creditors (25% for unit 1)</i>	1,50,000	<i>Other assets</i>	1,50,000	60,000	2,10,000
<i>Total</i>	21,50,000	<i>Total</i>	17,50,000	4,00,000	21,50,000

Other information:

- (i) *Revaluation reserve is created by revising upward the value of the building of unit 1.*
- (ii) *No individual value of any asset is considered in the transfer deed.*
- (iii) *Other assets of unit 1 include patents acquired on 1.7.2007 for Rs.50,000 on which no depreciation has been charged.*

Compute the capital gain for the assessment year 2010-11. (5 Marks)

- (c) *Smart & Express Co. is providing taxable information technology software services. The firm furnishes the following information relating to the services rendered, bills raised, amount received pertaining to this service, for the financial year ended on 31st March, 2010 as under :*

- | | <i>Rs.</i> |
|---|-------------|
| (i) <i>Amount received being 10% of the assignment fees on 31st March, 2010 for the upgradation and enhancement of software services to be rendered during the financial year 2010-11.</i> | 6,00,000 |
| (ii) <i>Services provided to UNICEF, an International Organisation in Gandhinagar, for analysis, design and programming of latest information technology software.</i> | 5,00,000 |
| (iii) <i>Services billed to clients - In one of the bill amounting to Rs.3,00,000 service tax was not charged due to conflicting nature and in another bill the firm failed to recover service tax from the client, which was charged separately, due to insolvency of the client, the bill details are as under:</i> | 3,00,00,000 |

	<i>Rs.</i>
<i>Being the charges for right to use IT software</i>	8,00,000
<i>Service tax @ 10%</i>	80,000
<i>Education cess @ 2%</i>	1,600
<i>Secondary & Higher education cess @ 1%</i>	800
	<u>8,82,400</u>

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- (iv) Amount received for services rendered during current financial year (excluding payment for 2 bills in item (iii) above for which also payment was received during current financial year) 1,04,78,500

Service tax and education cess have been charged separately in all the bills except wherever mentioned when it is not so charged separately.

Compute the value of total taxable services and service tax payable thereon for the year ended 31.03.2010, assigning reasons in brief to the treatment of all items. (5 Marks)

- (d) Mr. Rajesh is a registered dealer and gives the following information. You are required to compute the net tax liability and total sales value under value added tax:

Rajesh sells his products to dealers in his State and in other States.

The profit margin is 15% of cost of production and VAT rate is 12.5% of sales.

- (i) Intra State purchases of raw material Rs.2,50,000/- (excluding VAT @ 4%)
- (ii) Purchases of raw materials from an unregistered dealer Rs.80,000/- (including VAT @ 12.5%)
- (iii) High seas purchases of raw materials are Rs.1,85,000/- (excluding custom duty @ 10% Rs.18,500)
- (iv) Purchases of raw materials from other States (excluding CST @ 2%) Rs.50,000/-
- (v) Transportation charges, wages and other manufacturing expenses excluding tax Rs.1,45,000/-
- (vi) Interest paid on bank loan Rs.70,000/- (5 Marks)

Answer

- (a) Computation of gross total income of Mr. Soohan for the A.Y.2010-11

Particulars	Rs.	Rs.
Salaries		
Income from salary	3,00,000	
<u>Less:</u> Loss from house property set-off against salary income as per section 71	<u>(40,000)</u>	
		2,60,000
Profits and gains of business or profession		
Income from sugar business	50,000	
<u>Less:</u> Brought forward loss from iron-ore business set-off as per section 72(1)	<u>(50,000)</u>	Nil
Balance business loss of Rs.70,000 of P.Y.2003-04 carried forward to A.Y.2011-12		
Capital gains		
Long term capital gain	40,000	
<u>Less:</u> Short term capital loss set-off	<u>(40,000)</u>	Nil

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Balance short-term capital loss of Rs.20,000 to be carried forward

Short-term capital loss of Rs.10,000 under section 111A to be carried forward

Income from other sources

Winnings from lottery	50,000	
Winnings from card games	6,000	
Bank interest	<u>5,000</u>	
		<u>61,000</u>
Gross Total Income		<u>3,21,000</u>

Losses to be carried forward to A.Y.2011-12

Loss of iron-ore business	70,000
Short term capital loss	30,000

Notes:

1. The following income are exempt under section 10 –
 - (i) Dividend income [Exempt under section 10(34)], assuming that dividend is received from a domestic company.
 - (ii) Agricultural income [Exempt under section 10(1)]
 - (iii) Long-term capital gains on which STT is paid [Exempt under section 10(38)]
2. It is presumed that loss from iron-ore business relates to P.Y.2003-04, the year in which the business was discontinued.

(b) Computation of capital gains on slump sale of Unit 1

Particulars	Rs.
Sale value	25,00,000
Less: Expenses on sale	<u>28,000</u>
Net sale consideration	24,72,000
Less: Net worth (See Note 1 below)	<u>12,50,625</u>
Long term capital gain	<u>12,21,375</u>

Note 1 : Computation of net worth of Unit 1 of Akash Enterprises

Particulars	Rs.	Rs.
Building (excluding Rs.3 lakhs on account of revaluation)		9,00,000
Machinery		3,00,000
Debtors		1,00,000

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Patents (See Note 2 below)	28,125
Other assets (Rs.1,50,000 – Rs.50,000)	<u>1,00,000</u>
Total assets	14,28,125
<u>Less:</u> Creditors	37,500
Bank Loan	<u>1,40,000</u> <u>1,77,500</u>
Net worth	<u>12,50,625</u>

Note 2 : Written down value of patents as on 1.4.2009

Value of patents:	Rs.
Cost as on 1.7.2007	50,000
Less: Depreciation @ 25% for Financial Year 2007-08	<u>12,500</u>
WDV as on 1.4.2008	37,500
Less: Depreciation for Financial Year 2008-09	<u>9,375</u>
WDV as on 1.4.2009	<u>28,125</u>

For the purposes of computation of net worth, the written down value determined as per section 43(6) has to be considered in the case of depreciable assets. The problem has been solved assuming that the Balance Sheet values of Rs.3 lakh and Rs.9 lakh (Rs.12 lakh – Rs.3 lakh) represent the written down value of machinery and building, respectively, of Unit 1.

(c) Computation of value of taxable services and service tax payable by Smart & Express Co.

	Rs.
(i) Amount received in advance for upgradation and enhancement of software services is also liable though the services were rendered during the financial year 2010-11 [Refer Note 1]	6,00,000
(ii) Services rendered to UNICEF – not liable to service tax [Refer Note 2]	Nil
(iii) The actual amount realized is liable for service tax [Refer Note 3]	3,00,000
(iv) The actual amount realized is liable for service tax [Refer Note 3]	8,00,000
(v) Amount realized for services rendered (excluding items (ii) and (iii) above).	1,04,78,500
Total	1,21,78,500
Less: Service tax (Rs.1,21,78,500 x 10.3) / 110.3	11,37,249
Total value of taxable services	1,10,41,251
Service tax payable thereon @10%	11,04,125
Education cess @ 2%	22,083
Secondary and higher education cess @ 1%	11,041
Total service tax payable including education cesses	11,37,249

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Working Notes:

- (1) The scope of taxable service includes service provided towards upgradation, enhancement, implementation and other similar services related to information technology software.
- (2) As per *Notification No.16/2002 ST dated 02.08.2002*, the Central Government has exempted all the taxable services specified in section 65 of the Finance Act, 1994 provided by any person to the International organizations like UNICEF, from whole of the service tax leviable thereon under section 66 of the Act.
- (3) The statutory liability of paying service tax does not get extinguished if the service provider fails to realize or charge the service tax from the service receiver. In such cases, the amount realized is liable for service tax by deeming the same as inclusive of service tax.
- (4) Figures in point (i) and (v) are taken to be inclusive of service tax as they represent total amount received.

(d) Computation of net VAT liability and total sales value

	Rs.
Intra-State purchases of raw material (excluding VAT Rs. 10,000)	2,50,000
Purchases of raw materials from unregistered dealer [Refer Note 1]	80,000
High seas purchases of raw materials [Refer Note 2]	2,03,500
Purchase of raw materials from other States [Refer Note 3]	51,000
Transportation charges, wages and manufacturing expenses	1,45,000
Cost of production	7,29,500
Add : Profit margin 15%	1,09,425
	8,38,925
Add: VAT @ 12.5%	1,04,866
Total sales value	9,43,791

Computation of VAT liability:-	Rs.
VAT on above sales price @ 12.5%	1,04,866
Less: Set off of VAT on purchases:	
From high seas	Nil
From intra-State [Refer Note 4]	10,000
From inter-State	Nil
From unregistered dealer	Nil
Net VAT payable	94,866

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Notes:

1. Input tax credit is not available on the purchases of raw materials from unregistered dealer. Hence, VAT paid thereon is a part of cost of production.
2. Duty paid on high seas purchases i.e., imports is not a State VAT, so the input tax credit is not available in respect of the same and it is a part of cost of production.
3. Set-off of tax paid on inter-state purchases is not allowed.
4. Tax on intra-State purchases is Rs.10,000. As credit of the same will be available, it is not included in the cost of production.
5. Interest on loan has been excluded for calculating the cost of production on the presumption that the loan is availed for purposes other than working capital.
6. It has been assumed that the entire production is sold.

It may be noted that an unregistered dealer cannot charge VAT in his invoice.

Question 2

- (a) (i) *Which income of Sikkimese individual is exempted from tax under section 10(26AAA)?* (4 Marks)
- (ii) *How will you calculate the period of holding in case of the following assets?*
- (1) *Shares held in a company in liquidation*
 - (2) *Bonus shares*
 - (3) *Flat in a co-operative society*
 - (4) *Transfer of a security by a depository (i.e., demat account)* (4 Marks)
- (b) *How can an assessee adjust the excess payment of service tax against his liability of service tax for subsequent periods? What is the basic condition for it?* (4 Marks)
- (c) *What records should be maintained under VAT system by a registered dealer?* (4 Marks)

Answer

- (a) (i) **Exemption of income of Sikkimese individual under section 10(26AAA)**
- The following income which accrues or arises to a Sikkimese individual would be exempt from income-tax :
- (a) income from any source in the State of Sikkim or
 - (b) income by way of dividend or interest on securities
- This exemption will not be available to a Sikkimese woman who, on or after 1st April, 2008, marries a non-Sikkimese individual.
- (ii) (1) **Shares held in a company in liquidation** - The period after the date on which the company goes into liquidation shall be excluded while calculating the period of holding. Therefore, the period of holding shall commence from the date of acquisition of shares and shall end with the date on which the company goes into liquidation.

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- (2) **Bonus shares** - The period of holding shall be reckoned from the date of allotment of bonus shares and will end with the date of transfer.
- (3) **Flat in a co-operative society** - The period of holding shall be reckoned from the date of allotment of shares in the society and will end with the date of transfer.

Note – Any transaction whether by way of becoming a member of, or acquiring shares in, a co-operative society or by way of any agreement or any arrangement or in any other manner whatsoever which has the effect of transferring, or enabling enjoyment of, any immovable property is a transfer as per section 2(47)(vi). Hence, it is possible to take a view that any date from which such right is obtained may be taken as the date of acquisition.

- (4) **Transfer of a security by a depository (i.e., demat account)** - The period of holding shall be computed from the date of purchase to the date of sale. The first-in-first-out (FIFO) method will be adopted for determining the period of holding.
- (b) If the assessee has paid to the credit of Central Government any amount in excess of the payment required to be paid towards service tax liability for a month or quarter, as the case may be, he can adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter, as the case may be, subject to 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.1 lakh for the relevant month or quarter. If the assessee has opted for centralized registration, excess amount can be adjusted without monetary limit, provided the excess payment is on account of delayed receipt of details of payments from branch offices.
 - (iii) Adjustment can be made only in the succeeding month or quarter.
 - (v) 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.
- (c) The following records should be maintained under VAT system:
- (i) Purchase records;
 - (ii) Sales records;
 - (iii) VAT account;
 - (iv) Separate record of any exempt sale.
- Further, the following records should also be kept and produced to an Officer:
- (i) Copies of invoices issued, in serial number;
 - (ii) Copies of all credit & debit notes issued, in chronological order;

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- (iii) All purchase invoices, copies of customs entries, receipt for payment of customs duty or tax and credit and debit notes received to be filed chronologically either by date of receipt or under each supplier's name;
- (iv) Details of amount of tax charged on each sale or purchase;
- (v) Total of the output tax and the input tax in each period and a net total of the tax payable or the excess carried forward, as the case may be, at the end of each month;
- (vi) Details of goods manufactured and delivered from the factory of the taxable person;
- (vii) Details of each supply of goods from the business premises, unless such details are available at the time of supply in invoices issued at, or before, that time.

Question 3

- (a) *Dr. Shuba is a medical practitioner. Her age is 64 as on 1st January, 2010. The receipts and payments account of 2009-10 of her is as under:*

To	Rs.	By	Rs.
Balance B/f	10,000	Purchase of commercial vehicle before 30 Sep. 2009	4,00,000
Receipts from sale of medicine	2,50,000	Drawings	2,50,000
Consultation fee	50,000	Deposit in bank for 5 years	1,50,000
Visiting fee	2,00,000	Surgical instrument purchased before 30 Sep. 2009	50,000
Lecture fees	5,000	Instalment of loan paid (including interest Rs. 22,333)	1,21,000
Family pension	2,80,000	Medical insurance premium	32,000
Savings bank interest	1,000	Instalment of housing loan (Principal component Rs. 48,000)	1,08,000
Loan from bank	3,00,000	Advance tax paid	20,000
Share from HUF	50,000	Purchase of medicine	47,000
Agricultural income	1,00,000	Payment for medical journal	5,000
Income from lottery (net after deduction of TDS @ 30%)	35,000	Vehicle expenses	50,000
		Balance C/f	48,000
Total	12,81,000		12,81,000

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Other relevant information is as under:

- (i) She resides in her own house which was constructed in 1998 with a loan from LIC Housing of Rs. 10,00,000 out of which Rs.6,00,000 was still due. She got it refinanced from SBI on 01-04-09 at the rate of 10%. One-fourth portion of the house is used for clinic purposes.
- (ii) She invested in term deposit Rs. 1,50,000 in Bank of Baroda on 01-07-2009 for a period of 5 years in the name of her minor daughter at 9% interest p.a.
- (iii) She purchased a commercial vehicle on 1st July 2009 at Rs. 4,00,000. A loan of Rs. 3,00,000 was taken to buy the van at 8% interest. One fourth use of vehicle is estimated to be personal.
- (iv) She paid medical insurance premium for herself of Rs. 16,000 and for mother Rs. 16,000. Her mother is dependent on her.
- (v) She got her share from HUF's income of Rs. 50,000. (8 Marks)
- (b) Write a note in brief on provisional payment of service tax. (4 Marks)
- (c) State the variants of VAT. Present them in schematic diagram and explain each one briefly. (4 Marks)

Answer

- (a) Computation of total income of Dr. Shuba for A.Y. 2010-11

Particulars	Rs.	Rs.	Rs.	Rs.
Income from house property:				
Annual value of self-occupied house			Nil	
Less: Interest on loan				
[Rs.45,000, being 3/4 th of Rs.60,000]				
(Restricted to Rs.30,000)		<u>(30,000)</u>	(30,000)	
Income from profession:				
Sale of medicine	2,50,000			
Consultation fees	50,000			
Visiting fee	<u>2,00,000</u>			
Total income		5,00,000		
Less: Expenses				
Medicine purchases	47,000			
Medical journal	5,000			
Depreciation				
Surgical instrument(15% of Rs.50,000)	7,500			
Vehicle (3/4 th of 50% of Rs.4,00,000)	1,50,000			

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Vehicle expenses (3/4 th)	37,500		
Interest on loan (3/4 th)	16,750		
Interest on housing loan (1/4 th)	<u>15,000</u>		
Total expenses		<u>2,78,750</u>	2,21,250
Income from other sources			
Family Pension	2,80,000		
Less : 33 $\frac{1}{3}$ % or Rs.15,000, whichever is lower	<u>15,000</u>	2,65,000	
Lecture fees		5,000	
Savings bank interest		1,000	
Interest on bank FD in the name of minor daughter [1,50,000 × 9% × 9/12]	10,125		
Less : Exempt u/s 10(32)	<u>1,500</u>	8,625	
Winnings from lottery		<u>50,000</u>	
		<u>3,29,625</u>	
Gross Total Income			5,20,875
Less: Deductions under Chapter VI-A			
Under section 80C			
Repayment of housing loan (48,000 × $\frac{3}{4}$)		36,000	
Under section 80D			
Medical Insurance Premium			
Own (Rs.16,000 restricted to Rs.15,000)		15,000	
Mother (Senior Citizen, hence fully allowed since premium is less than Rs.20,000)		<u>16,000</u>	<u>31,000</u>
Total deduction			<u>67,000</u>
Total income			<u>4,53,875</u>

Notes:

1. Since the residential house was constructed before 01.04.1999, the deduction for interest is restricted to Rs.30,000.
2. Since $\frac{1}{4}$ th portion of house is used for business purposes, therefore, $\frac{1}{4}$ th share of interest paid is deductible while computing business income.
3. Agricultural income is exempt under section 10(1) and share of income from HUF is exempt under section 10(2).
4. Term deposit of Rs.1,50,000 in the name of minor daughter does not qualify for deduction under section 80C. However, principal repayment of housing loan (3/4th)

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would qualify for deduction under section 80C. Therefore, the deduction under section 80C would be Rs.36,000 (i.e. 3/4th of Rs.48,000).

5. Depreciation@15% has been provided on surgical instruments. It is also possible to assume that the surgical instruments mentioned in the question are life-saving medical equipment (for example, surgical laser) and therefore, eligible for depreciation@40%.

PS – Since the requirement of the question has not been specified, having regard to the information given in the question and the marks it carries, the computation has been restricted to the total income of Dr. Shuba and the tax liability has not been calculated.

- (b) In case the assessee is unable to correctly estimate, at the time of the deposit, the actual amount of service tax for any month or quarter, he may make a written request to Assistant/ Deputy Commissioner of Central Excise for making payment of service tax on provisional basis. The concerned officer may allow payment of service tax on provisional basis on such value of taxable service as may be specified by him.

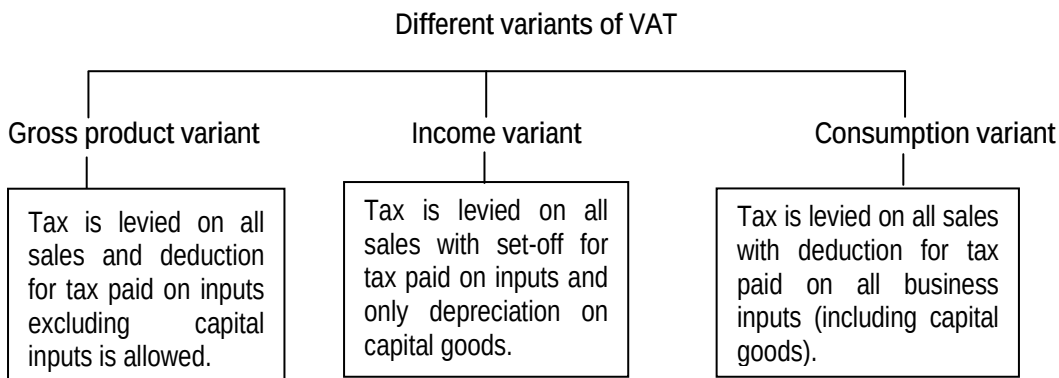
For the purpose of provisional assessment at the time of filing the return, the assessee is required to file a statement in form ST - 3A giving detail of difference between service tax deposited and the service tax liable to be paid for each month. The quarterly or half yearly statements should also accompany.

The Assistant/Deputy Commissioner of Central Excise, on the basis of memorandum in form ST - 3A may complete the assessment after calling for necessary documents or records, if need be.

- (c) VAT has following three variants:

- (a) Gross product variant
- (b) Income variant
- (c) Consumption variant

These variants are presented in a schematic diagram given below:



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(a) Gross product variant

The gross product variant allows deductions for taxes on all purchases of raw materials and components, but no deduction is allowed for taxes on capital inputs. That is, taxes on capital goods such as plant and machinery are not deductible from the tax base in the year of purchase and tax on the depreciated part of the plant and machinery is not deductible in the subsequent years.

(b) Income variant

The income variant of VAT on the other hand allows for deductions on purchases of raw materials and components as well as depreciation on capital goods. This method provides incentives to classify purchases as current expenditure to claim set-off. In practice, however, there are many difficulties connected with the specification of any method of measuring depreciation, which basically depends on the life of an asset as well as on the rate of inflation.

(c) Consumption variant

Consumption variant of VAT allows for deduction on all business purchases including capital assets. Thus, gross investment is deductible in calculating value added. It neither distinguishes between capital and current expenditures nor specifies the life of assets or depreciation allowances for different assets.

Question 4

- (a) (i) *Explain the consequences of not deducting tax and paying to Government account under section 201 of the Income-tax Act, 1961. (4 Marks)*
- (ii) *Can a political party claim exemption of its income under section 13A of the Income-tax Act, 1961? (4 Marks)*
- (b) *How will a taxable service be valued when the consideration thereof is not wholly or partly in terms of money? (4 Marks)*
- (c) *State with reasons in brief whether the following statements are correct or incorrect with reference to the provision of value added tax.*
- (i) *It is permitted to issue 'tax invoice' inclusive of VAT i.e. aggregate of sales price & VAT.*
- (ii) *A registered dealer is compulsorily required to get its books of accounts audited under VAT laws of different States irrespective of limit of turnover. (2 × 2 = 4 Marks)*

Answer

- (a) (i) (1) The following persons shall be deemed to be an assessee in default if they do not deduct the whole or any part of the tax or after deducting fails to pay the tax –
- (a) Any person who is required to deduct any sum according to the Act.
- (b) An employer paying tax on non-monetary perquisites under section 192(1A).

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- (2) No penalty shall be charged unless the Assessing Officer is satisfied that such person has failed to deduct and pay the tax without good and sufficient reasons.
 - (3) Such persons shall also be liable to pay simple interest @ 1% for every month or part of a month. Such interest is chargeable on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually paid.
 - (4) Such interest should be paid before furnishing the statements under section 200(3).
 - (5) Where the tax has not been paid after it is deducted, the amount of the tax together with the amount of simple interest shall be a charge upon all the assets of the person or the company.
 - (6) Disallowance under section 40(a) would be attracted in respect of expenditure which is subject to TDS, if tax is not deducted therefrom during the relevant previous year or after being deducted, is not paid within the prescribed time.
- (ii) Under section 13A, a political party registered under section 29A of the Representation of the People Act, 1951, can claim exemption under the following heads - Income from house property, capital gains and income from other sources. The income by way of voluntary contributions received by such political party is also exempt under section 13A.

These exemptions are subject to the following conditions:-

- (i) The political party must keep and maintain such books of account and other documents as would enable the Assessing Officer to properly deduce its income therefrom.
 - (ii) The political party should keep and maintain a record of each such voluntary contribution in excess of Rs.20,000 and the names and addresses of such contributors.
 - (iii) The accounts of the political party must be audited by a chartered accountant.
- (b) As per section 67(2) of the Finance Act, 1994, if the consideration for a taxable service is not wholly or partly in terms of money, then the value of such service shall be such amount in money, with the addition of service tax charged, is equivalent to the consideration.

In other words, where the service rendered is for a consideration not wholly or partly consisting of money the value of the taxable service is equivalent to the total value of the consideration. However, the total of such money and non-money values of the consideration has to be treated as inclusive of the service tax payable thereon.

- (c) (i) Incorrect

Reason: One of the requirements under the contents of the tax invoice is that rate and amount of tax charged in respect of taxable goods should be distinctly shown in the 'tax invoice', in order to claim input credit.

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(ii) Incorrect

Reason: Different States have determined different turnover limits above which a registered dealer will have to get its books of accounts audited under VAT laws.

Question 5

(a) *From the following details, find out the salary chargeable to tax for the assessment year 2010-11 -*

Mr. X is a regular employee of Rama & Co. in Gurgaon. He was appointed on 1.1.09 in the scale of 20,000-1,000-30,000. He is paid 10% D.A. & Bonus equivalent to one month pay. He contributes 15% of his pay and D.A. towards his recognized provident fund and the company contributes the same amount.

He is provided free housing facility which has been taken on rent by the company at Rs. 10,000 per month. He is also provided with following facilities:

- (i) *Facility of laptop costing Rs. 50,000.*
 - (ii) *Company reimbursed the medical treatment bill of his brother of Rs. 25,000, who is dependent on him.*
 - (iii) *The monthly salary of Rs. 1,000 of a house keeper is reimbursed by the company.*
 - (iv) *A gift voucher of Rs. 10,000 on the occasion of his marriage anniversary.*
 - (v) *Conveyance allowance of Rs. 1,000 per month is given by the company towards actual reimbursement.*
 - (vi) *He is provided personal accident policy for which premium of Rs. 5,000 is paid by the company.*
 - (vii) *He is getting telephone allowance @Rs. 500 per month.*
 - (viii) *Company pays medical insurance premium of his family of Rs. 10,000. (8 Marks)*
- (b) *What do you mean by e-filing of returns? Is there any facility of e-filing of service tax returns? If yes, then which of the services are eligible for this facility? (4 Marks)*
- (c) *What are the conditions to be fulfilled by the dealer accepting the composition scheme under the value added tax? (4 Marks)*

Answer

(a) **Computation of taxable salary of Mr.X for A.Y. 2010-11**

Particulars	Rs.
Basic pay [(20,000×9) + (21,000×3)] = 1,80,000 +63,000	2,43,000
Dearness allowance [10% of basic pay]	24,300
Bonus [See Note 1 below]	21,000

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Employer's contribution to RPF in excess of 12% (15%-12% =3% of Rs.2,67,300) [See Note 2 below]	8,019
Taxable allowances	
Telephone allowance	6,000
Taxable perquisites	
Rent-free accommodation [See Note 2 & 3 below]	44,145
Medical reimbursement (25,000 - 15,000) [See Note 5 below]	10,000
Reimbursement of salary of housekeeper	12,000
Gift voucher	<u>10,000</u>
Salary income chargeable to tax	<u>3,78,464</u>

Notes:

1. Bonus has been taken as one month's basic pay as at the end of the year i.e. Rs.21,000. In the alternative, the problem can also be worked out by taking bonus as Rs.20,000, being one month's basic pay upto 31.12.2009.
2. It has been assumed that dearness allowance forms part of salary for retirement benefits and accordingly, the perquisite value of rent-free accommodation and employer's contribution to RPF have been worked out.
3. Where the accommodation is taken on lease or rent by the employer, the value of rent-free accommodation provided to employee would be actual amount of lease rental paid or payable by the employer or 15% of salary, whichever is lower.

For the purposes of valuation of rent free house, salary includes:

- (i) Basic salary i.e., Rs.2,43,000
- (ii) Dearness allowance (assuming that it is included for calculating retirement benefits) i.e. Rs.24,300
- (iii) Bonus i.e., Rs.21,000
- (iv) Telephone allowance i.e., Rs.6,000

Therefore, salary works out to

$$2,43,000 + 24,300 + 21,000 + 6,000 = 2,94,300.$$

$$15\% \text{ of salary} = 2,94,300 \times 15/100 = 44,145$$

Value of rent-free house = Lower of rent paid by the employer (i.e. Rs.1,20,000) or 15% of salary (i.e., Rs.44,145).

Therefore, the perquisite value is Rs.44,145.

4. Facility of laptop is not a taxable perquisite.
5. Clause (v) of the proviso to section 17(2) exempts 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.

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Therefore, in this case, the balance of Rs.10,000 (i.e., Rs.25,000 – Rs.15,000) is a taxable perquisite. Medical insurance premium paid by employer is exempt.

6. Conveyance allowance is exempt since it is based on actual reimbursement for official purposes.
 7. Premium of Rs.5,000 paid by the company for personal accident policy is not liable to tax.
- (b) 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.

With effect from 01.04.2010, e-filing of service tax returns has been made mandatory for the assessee who have paid total service tax of Rs.10 lakh or more including the amount of service tax paid by utilization of CENVAT credit in the preceding financial year. The facility of e-filing of returns on the website (<http://exciseandservicetax.nic.in>) has been withdrawn and the assessee are now required to file their returns online or by uploading the downloadable off-line return utilities to the new ACES website (<http://www.aces.gov.in>).

This facility is available to all service providers.

- (c) The dealer accepting the composition scheme should fulfill the following conditions:
- (i) He should intimate to the Commissioner of VAT in writing that he is opting to such scheme for a year or a part of the year in which he gets himself registered.
 - (ii) If he avails this scheme, he is not required to maintain any statutory records as prescribed under the Act. Only the records for purchases, sales and inventory should be maintained.
 - (iii) The dealer should not have any stock of goods which were brought from outside the State on the date he opts to pay tax under composition scheme and should not use such goods after such date.
 - (iv) The dealer should not claim input tax credit on the inventory available on the date on which he opts for composition scheme.

Question 6

- (a) *Sai Ltd. has a block of assets carrying 15% rate of depreciation, whose written down value on 01.04.2009 was Rs. 40 lacs. It purchased another asset of the same block on 01.11.2009 for Rs. 14.40 lacs and put to use on the same day. Sai Ltd. was amalgamated with Shirdi Ltd. with effect from 01.01.2010.*

You are required to compute the depreciation allowable to Sai Ltd. & Shirdi Ltd. for the previous year ended on 31.03.2010 assuming the assets transferred to Shirdi Ltd. at Rs. 60 lacs. (8 Marks)

- (b) *State with reasons in brief whether the following statements are correct or incorrect with reference to the provisions of service tax:*

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- (i) *The scope of taxable service shall include any service provided or to be provided to business entity, by any other business entity, in relation to advice, consultancy or assistance in any branch of law including service provided by way of appearance before any court, tribunal or authority.*
- (ii) *Service tax provisions are not applicable in Jammu and Kashmir because State Government concurrence was not obtained in respect of Finance Act, 1944.*

(2 × 2 = 4 Marks)

- (c) *Mention the purchases which are not eligible for input tax credit (any eight items) under value added tax.*

(4 Marks)

Answer

- (a) Statement showing computation of depreciation allowable to Sai Ltd. & Shirdi Ltd. for P.Y. 2009-10

Particulars	Amount Rs.
Written down value (WDV) as on 1.4.2009	40,00,000
Addition during the year (used for less than 180 days)	<u>14,40,000</u>
Total	<u>54,40,000</u>
Depreciation on Rs.40,00,000 @ 15%	6,00,000
Depreciation on Rs.14,40,000 @ 7.5%	<u>1,08,000</u>
Total depreciation for the year	<u>7,08,000</u>
Apportionment between two companies:	
(a) Amalgamating company, Sai Ltd.	
Rs.6,00,000 × 275/365	4,52,055
Rs.1,08,000 × 61/151	<u>43,629</u>
	<u>4,95,684</u>
(b) Amalgamated company, Shirdi Ltd.	
Rs.6,00,000 × 90/365	1,47,945
Rs.1,08,000 × 90/151	<u>64,371</u>
	<u>2,12,316</u>

Notes:

- (1) The aggregate deduction, in respect of depreciation allowable to the amalgamating company and amalgamated company in the case of amalgamation shall not exceed in any case, the deduction calculated at the prescribed rates as if the amalgamation had not taken place. Such deduction shall be apportioned between the amalgamating company and the amalgamated company in the ratio of the number of days for which the assets were used by them.

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- (2) The price at which the assets were transferred, i.e., Rs.60 lacs, has no implication in computing eligible depreciation.
- (b) (i) Incorrect
Reason: Section 65(105) of Finance Act, 1994 specifically excludes services provided by way of appearance before any court, tribunal or authority from the scope of taxable legal consultancy services.
- (ii) Correct
Reason: As per Article 370 of the Constitution, any Act of Parliament applies to Jammu and Kashmir only with the concurrence of the State Government. Since, no such concurrence has been obtained in respect of Finance Act, 1994, service tax provisions are not applicable in Jammu and Kashmir.
PS – The words “Finance Act, 1944” mentioned in the question should be read as “Finance Act, 1994”.
- (c) The following purchases are not eligible for input tax credit:
- (i) purchases from unregistered dealer;
 - (ii) purchases from a registered dealer who opts for composition scheme;
 - (iii) purchases of goods as may be notified by the State Government;
 - (iv) purchases of goods where the purchase invoice is not available with the claimant;
 - (v) purchases of goods where invoice does not show the amount of tax separately;
 - (vi) purchases of goods which are being utilized in the manufacture of exempted goods;
 - (vii) purchases of goods used for personal use or provided free of charge as gifts;
 - (viii) imports from outside the territory of India;
 - (ix) imports from other States;
 - (x) goods in stock, which have suffered tax under an earlier Act, but under the VAT Act they are covered under exempted items.

Note: Any eight points may be given.

Question 7

- (a) Answer any *two* sub-parts out of *three* sub-parts of the question.
- (i) Mr. Shah, an Accounts Manager, has retired from JK Ltd. on 15.1.2010 after rendering services for 30 years 7 months. His salary is Rs. 25,000/- p.m. upto 30.09.2009 and Rs. 27,000/- thereafter. He also gets Rs. 2,000/- p.m. as dearness allowance (55% of it is a part of salary for computing retirement benefits). He is not covered by the Payment of Gratuity Act, 1972. He has received Rs. 8 Lacs as gratuity from the employer company.
- (ii) State under which heads the following incomes are taxable:
- (i) Rental income in case of dealer in property
 - (ii) Dividend on shares in case of a dealer in shares

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- (iii) Salary by a partner from his partnership firm
 - (iv) Rental income of machinery
 - (v) Winnings from lotteries by a person having the same as business activity
 - (vi) Salaries payable to a Member of Parliament
 - (vii) Receipts without consideration
 - (viii) In case of retirement, interest on employee's contribution if provident fund is unrecognized.
- (iii) Explain briefly the applicability of section 22 for chargeability of income-tax for:
- (i) House property situated in foreign country and
 - (ii) House property with disputed ownership. (2 × 4 = 8 Marks)
- (b) Shashwat Hotels Pvt. Ltd has given the following information for F.Y. 2009-10. You are required to compute the taxable services under Service Tax Act and the tax thereon for F.Y. 2009-10 without assigning any reason for the treatment.
- (i) Reception room and vehicle parking space were let out for a film shooting for 3 months. The charges received for this Rs.5 Lacs.
 - (ii) The conference hall was let out to a Gujarati Samaj Trust for a week for a music competition for Rs.50,000.
 - (iii) The hotel was booked by a customer for 3 days for a marriage function. The room booking charges were received in advance (excluding service tax) in the same year of Rs.50,000. The electricity charges separately billed Rs.20,000, hire charges including catering charges for 3 days billed of Rs.3,25,000 after deducting the advance.
 - (iv) During the year, the conference hall was let out to MNO Ltd. The charges received were as under:
Hall rent Rs.4,00,000, computer & projector systems charges Rs.25,000, electricity charges Rs.30,000. Hall rent includes charges for snacks and cold drinks Rs.50,000.
 - (v) The hotel garden was let out to a political party for 2 days for a meeting. The charges received Rs.25,000.
- The hotel charges 10% service charges which are later distributed as tips to employees.
The above charges are excluding service tax. All the charges have been received in F.Y. 2009-10.
- The hotel has already been registered under Service Tax Act in F.Y. 2008-09. (4 Marks)
- (c) Compute the VAT payable by Mr. Shyam, who purchased goods from a manufacturer on payment of Rs.4,16,000 (including VAT) and earned 20% profit on purchase price. VAT rate on both purchases and sales is 4%. (4 Marks)

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Answer

- (a) (i) Computation of gratuity taxable in the hands of Mr. Shah for the P.Y. 2009-10
As per section 10(10)(iii), gratuity received by an employee would be exempt upto the least of the following limits -

	Rs.
(i) Gratuity received	8,00,000
(ii) Half-month's salary for every year of completed service (See Note below)	4,00,500
(iii) Monetary limit	3,50,000

Therefore, Rs.3,50,000 would be exempt under section 10(10)(iii). The balance Rs.4,50,000 (i.e. Rs.8,00,000 – Rs.3,50,000) would be taxable.

Note

One of the limits for calculation of gratuity exempt under section 10(10)(iii) is one-half-month's salary for each year of completed service (fraction of a year to be ignored), calculated on the basis of average salary for the ten months immediately preceding the month of retirement. In this case, the month of retirement is January, 2010. Therefore, average salary for the months of March 2009 to December 2009 have to be considered. The salary is Rs.25,000 p.m. upto 30.9.2009 and Rs.27,000 p.m. from 1.10.2009. Hence, average salary would be $\text{Rs.}26,700[(\text{Rs.}25,000 \times 7) + (\text{Rs.}27,000 \times 3) + (2000 \times 55\% \times 10)]/10$.

Further, half-month's salary should be multiplied by the number of years of completed service and any fraction of a year has to be ignored. Therefore, in this case, half-month's salary should be multiplied by 30 and the fraction of 7 months should be ignored.

Computation of average salary	Rs.
Basic salary March 2009 to December 2009 $(25,000 \times 7 + 27,000 \times 3)$	2,56,000
Dearness allowance $(2,000 \times 10 \times 55\%)$	11,000
	2,67,000

Average salary = $2,67,000/10 = \text{Rs.}26,700$

Half-month's salary for every year of completed service (fraction is to be ignored)
 $[30 \times 26,700/2]$

PS – The requirement of the question has not been specified. Having regard to the information given in the question, the taxable gratuity has been computed.

(ii)	Particulars	Head of Income
(i)	Rental income in case of dealer in property	Income from house property

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(ii)	Dividend on shares in case of a dealer in shares	Income from other sources
(iii)	Salary by partner from his partnership firm	Profit and gains of business or profession
(iv)	Rental income of machinery (See Note below)	Income from other sources/ Profits and gains of business or profession
(v)	Winnings from lotteries by a person having the same as business activity	Income from other sources
(vi)	Salaries payable to a Member of Parliament	Income from other sources
(vii)	Receipts without consideration	Income from other sources`
(viii)	In case of retirement, interest on employee's contribution if provident fund is unrecognized	Income from other sources

Note - As per section 56(2)(ii), rental income of machinery would be chargeable to tax under the head "Income from Other Sources", if the same is not chargeable to income-tax under the head "Profits and gains of business or profession".

(iii) Applicability of section 22 for chargeability of income-tax for –

(i) House property situated in foreign country

A resident assessee is taxable under section 22 in respect of annual value of a house property situated in foreign country. A resident but not ordinarily resident or a non resident is taxable in respect of income from such property if the income is received in India during the previous year. Once incidence of tax is attracted under section 22, the annual value will be computed as if the property is situated in India.

(ii) House property with disputed ownership

If the title of ownership of the house property is under dispute in a court of law, the decision about who is the owner lies with the Income tax Department. The assessment cannot be held up for such dispute. Generally, a person who receives the income or who enjoys the possession of the house property as owner, though his claim is under dispute, is assessable to tax under section 22.

(b) Computation of Gross Taxable Services for the Financial Year 2009-10

	Rs.
I. Taxable Mandap Keeper Services	
1. Charges received for reception room and vehicle parking space let out for film shooting [Refer Note 1]	Nil
2. Charges received for music competition [Refer Note 2]	50,000
3. Charges received for marriage function (excluding room booking charges) [Refer Note 3]	

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Add: Catering & hire charges	3,25,000	
Electricity charges	<u>20,000</u>	
	3,45,000	
Less: Abatement @ 40% vide Notification No. 1/2006 ST dated 01.03.2006	<u>1,38,000</u>	2,07,000
4. Charges received for letting out the hotel garden for a meeting of the political party [Refer Note 4]		Nil
Total Taxable Mandap Keeper Services		2,57,000
II. Taxable Convention Services		
Charges received from MNO Ltd. [Refer Note 5]		
Add: Hall rent (excluding charges for snacks and cold drinks)	3,50,000	
Computer and projector Systems	25,000	
Electricity Charges	<u>30,000</u>	
Total Taxable Convention Services		4,05,000
Gross Taxable Services		6,62,000
Service tax @ 10%	66,200	
Add: Education Cess @ 2%	1324	
Secondary and Higher Education Cess @ 1%	<u>662</u>	1986
		68,186

It may be noted that the question does not require the students to provide any reason for the treatment of each item. However, the same are given hereunder for the better understanding of the students:

Note 1

Activity of shooting of films/T.V. serials cannot be considered as official, social or business function [Departmental clarification in the book entitled "Service Tax through Questions and Answers" – Similar view expressed in *Secretary, Town Hall Committee v. CCE, Mysore 2007 (8) STR 170 (Tri.-Bang.)*].

Note 2

Music competition is a social function and allowing temporary occupation of a hall for a consideration for organizing such function is liable to service tax under mandap keeper service [Circular No. 96/7/2007 ST dated 23.08.2007].

Note 3

- (i) Halls, rooms etc. let out by a hotel for a consideration for organizing social function like marriage is liable to service tax under mandap keeper service [Circular No. 96/7/2007 ST dated 23.08.2007].

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- (ii) Room booking charges are not liable to service tax under mandap keeper services [*Merwara Estates v. CCE 2007 6 STT 310/21 STT 327 (New Delhi - CESTAT)*]

Alternative view: It is possible to take a view that room booking charges are covered under mandap keeper services by virtue of New Delhi CESTAT's ruling in the case of *Rajmahal Hotels v. CCE 2006 3 STT 75*, wherein it was held that where for holding function like marriages, a hotel provided its hall and also allotted rooms to persons booking the hall, such room rent would also be includible in the value of taxable service.

- (ii) The gross amount charged for the taxable mandap keeper service includes charges towards supply of electricity, hire charges and catering charges [*CBEC FAQs*].
- (iii) Since, catering service is also provided along with mandap keeper services, benefit of abatement of 40% of the gross amount charged is available under *Notification No. 1/2006 ST dated 01.03.2006* on the following assumptions:
- bill issued for this purpose indicates that it is inclusive of charges for catering services;
 - no CENVAT credit on inputs/capital goods/input services has been taken;
 - the service provider has not availed the benefit under the *Notification No. 12/2003 ST, dated 20.06.2003*.

Note 4

Meeting of a political party is not a social function and thus not liable to service tax under mandap keeper service [*Secretary, Town Hall Committee, Mysore City Corporation v. CCE (2007) (8) STR 170 (Tri- Bang.)*].

Alternative view: It is possible to take a view that the meeting of a political party is an official function and thus allowing temporary occupation of the hotel garden for a consideration for organizing such meeting would be liable to service tax under mandap keeper services.

Note 5

- (i) It has been assumed that the conference hall let out to MNO Ltd. is for the purpose of organizing a seminar/conference and thus, the said activity falls under convention services.
- (ii) Since, snacks and cold drinks cannot be termed as "satisfying meal", benefit of abatement of 40% of the gross amount charged available under *Notification No. 1/2006 ST dated 01.03.2006* cannot be taken.

However, charges for snacks and cold drinks can be excluded by virtue of *Notification No. 12/2003 ST dated 20.06.2003* as these are goods sold during the

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provision of service on the following assumptions:

- there is documentary proof specifically indicating the value of the said goods and materials;
- no credit of duty paid on such goods and materials sold, has been taken under the provisions of the CENVAT Credit Rules, 2004; or
- where such credit has been taken by the service provider on such goods and materials, such service provider has paid the amount equal to such credit availed before the sale of such goods and materials.

Note 6

Service tax is leviable on 10% service charges [*Hotel Mela Plaza v. CCE 2005 1 STT 204*]. However, separate addition of 10% has not been made on the assumption that all the transactions/receipts are inclusive of such 10% service charges.

Note 7

It is presumed that assessee is not eligible for threshold exemption of Rs 10 lakh, as he was registered in FY 2008-09 itself.

PS – The words “Service Tax Act” mentioned in the question may be read as “Finance Act, 1994”.

(c) Computation of VAT payable by Mr. Shyam

	Rs.
Payment made to manufacturer	4,16,000
Less: VAT paid $[(4,16,000/104) \times 4]$	16,000
Purchase price	4,00,000
Add: Profit margin @ 20% on purchase price	80,000
Sale price before VAT	4,80,000
Add: VAT @ 4% on Rs.4,80,000	19,200
Less: Input credit	16,000
VAT payable by Mr. Shyam	3,200