SUGGESTED ANSWERS

EXECUTIVE PROGRAMME

TAX LAWS
(EP-TL/2010)

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Company Secretaries of India
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THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

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EXECUTIVE PROGRAMME

TAX LAWS

TEST PAPER 1/2010

(This Test Paper is based on Study Lessons 1 to 10)

Time allowed : 3 hours *Max. marks : 100*

NOTE : *Answer All Questions.*

Question No. 1

(a) (i) Briefly explain the special provisions for computing profit and gains of retail business.

(ii) State the exemption in respect of 'gratuity' under Section 10(10).

(5 marks each)

(b) Tarun submits the following information regarding his salary income which he gets from ABC Ltd.

(i)	*Basic Salary*	*12000 p.m*
(ii)	*CCA*	*200 p.m*
(iii)	*Children Education Allowance*	*500 p.m (for three children)*
(iv)	*Reimbursement of Medical Expenses*	*Rs. 21,500*

He was entitled for HRA of Rs.6,500 p.m from 1.04.09 to 31.08.09. He was paying a rent of Rs.7,600 p.m for a house in Delhi. With effect from 01.09.2009 he has been provided with accommodation by the company for which the company is paying the rent of Rs.5,500 p.m.

The company recovered from him Rs.1,200 p.m as rent for the accommodation. Compute the gross salary of Tarun for the Assessment Year 2010-11.

(10 marks)

Answer to Question No. 1(a)(i)

Provisions for Computing Profits and Gains of retail business (Section 44AF)

Section 44AF, overrides Sections 28 to 43C i.e., provisions for computation of income from business or profession.

The scheme of computation of income from business of retail trade on presumptive basis is as under:

(a) 5% of the total turnover of the retail business shall be deemed to be the taxable business income.

(b) The scheme shall not be applicable if the total turnover of such retail trade exceeds Rs. 40 lakhs in the previous year.

(c) Where the assessee is a partnership firm, the following amounts shall be deducted from the amount of 5% as is mentioned in para (1) above.

(i) Simple interest on capital to partners @12% per annum as per Section 40(b).

(ii) Salary to working partners allowable under Section 40(b).

No other deductions allowable under Sections 30 to 38 be deducted from the (a) above.

(d) The assessee may declare profits lower than 5% as is mentioned in para (1) above if he fulfills the following two conditions:

(i) He maintains the books of account as are mentioned in Section 44AA.

(ii) He gets his accounts audited under Section 44AB and furnishes the audit report along with the return of income.

Answer to Question No. 1(a)(ii)

As per Section 10(10) the exemption of gratuity is allowed to the employees in the following manner:

(A) In the case of Government Employees, the entire amount of death-cum-retirement gratuity received shall be exempt from Tax.

(B) In the case of employees who have received any gratuity received under the Payment of Gratuity Act, 1972 the minimum of the following shall be exempt:

(i) The amount of gratuity actually received.

(ii) 15/26 days salary for every completed year of service or part thereof in excess of six months.

(iii) Rs. 3,50,000.

(C) In case of other employees, any other gratuity received by an employee on his retirement or on his becoming incapacitated prior to such retirement or on termination of his employment, or any gratuity received by his widow, children or dependants on his death minimum of the following amounts shall be exempt:

(i) Actual amount of gratuity received.

(ii) Half months average salary for 10 months immediately preceding the month in which such event occur for every completed year of service.

(iii) Rs. 3,50,000.

However, where any gratuities referred to in this clause are received by an employee from more than one employer in the same previous year, the aggregate amount exempt from income-tax shall not exceed Rs. 3,50,000.

Further, where any such gratuity or gratuities was or were received in any one or more earlier previous years also and the whole or any part of the amount of such gratuity or gratuities was not included in the total income of the assessee of such previous year or years, the amount exempt from income-tax under this clause shall not exceed Rs. 3,50,000 as reduced by the amount or the aggregate amount not included in the total income of any such previous year or years.

Answer to Question No. 1(b)

Computation of Gross Salary of Tarun for the Assessment Year 2010-11

	Rs.	*Rs.*
• Basic Salary (12,000 × 12)		1,44,000
• CCA (200 × 12)		2,400
• Education allowance (500 × 12	6,000	
Less : Exempt (100 p.m ×2×12)	2400	3,600
• Reimbursement of Medical Expenses	21,500	
Less : Exempt	15,000	6,500
• HRA (6500×5)	32,500	
Less : Exempt	30,000	2,500
• Value of Accommodation at concessional rate	13,125	
Less : Rent Recovered (1,200×7)	8,400	4,725
Gross Salary		1,63,725

Working Notes:

(i) HRA Exemption:

Minimum of the following shall be exempt;

(a) 50% of Rs.60,000 (5 months salary)	Rs. 30,000
(b) Actual HRA received Rs.32,500	Rs. 32,500
(c) Excess of rent paid over 10% of salary (38000 - 6000)	Rs. 32,000

Therefore the HRA exemption shall be Rs.30,000.

(ii) Value of Rent free accommodation has been calculated as follows:

(a) Actual amount of rent paid by the employer (5,500×7)	Rs. 38,500
(b) 15% of salary (12,000×7+200×7+300×7)	Rs. 13,125

Whichever is lower of (a) & (b) i.e. Rs.13,125

Question No. 2

(a) Mrs. Reema own a house property in Delhi. From the particulars given below compute the income from house property, for the Assessment Year 2010-11.

	Rs.
Municipal Value	*2,00,000*
Fair Rent	*2,52,000*
Standard Rent	*2,40,000*

Actual Rent (per month)	*23,000*
Municipal Taxes	*20% of Municipal Value*
Municipal Taxes paid during the year	*50% of tax levied*
Expenses on Repairs	*20,000*
Insurance Premium	*5,000*

Mrs. Reema, Borrowed a sum of Rs.10,00,000 @12% p.a on 1.10.2007 and the construction of the property was completed on 28.02.2009. *(10 marks)*

(b) Write a short note on 'best judgment assessment' with suitable illustration. *(6 marks)*

Answer to Question No. 2(a)

Computation of Income from House Property of Mrs. Reema
For the Assessment Year 2010-11

	Rs.	*Rs.*
Gross Annual Value		
(a) Standard Rent	2,40,000	
(b) Annual Rent (23000×12)	2,76,000	
Whichever is higher		2,76,000
Less: Municipal Taxes paid (20% of 200000 × 50/100)		20,000
Net Annual Value		2,56,000
Less : Standard Deduction		
(a) 30% Net Annual Value (30% of 256000)	76,800	
(b) Interest on Loan		
(i) Pre Construction Period 1.10.2007 to 31.03.2008		
10,00,000 × 12/100×6/12×1/5	12,000	
(ii) Interest of current Year		
10,00,000 ×12/100	1,20,000	2,08,800
Income from House Property		**47,200**

Answer to Question No. 2(b)

Best Judgment Assessment (Section 144)

If any person:

(a) Fails to file the return under Section 139(1) and has not made a return or a revised return under Section 139(4) or 139(5) or

(b) Fails to comply with all the terms of a notice issued under Section 142(1) or fails to comply with a direction issued under Section 142(2A) or

(c) Having made a return, fails to comply with all the terms of a notice issued under section 143(2),

Then the Assessing Officer, after taking into account all relevant material which the Assessing Officer has gathered, shall, after giving the assessee an opportunity of being heard, make the assessment of the total income or loss to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment

However such opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgment.

Further it shall not be necessary to give such opportunity in a case where a notice under section 142(1) been issued prior to the making of Best Judgment Assessment.

Question No. 3

(a) Briefly explain and illustrate how the tax liability of an assessee is determined with reference to residence. (6 marks)

(b) Discuss briefly the provisions relating to filing of an appeal to the Income Tax Appellate Tribunal. (5 marks)

(c) "Expenditure on scientific research is allowed as deduction even if contribution is made to other institutions for scientific research". Explain the statement. (5 marks)

Answer to Question No. 3(a)

Tax incidence *vis-a-vis* residence is indicated by the following chart:

1. Where tax incidence arises in case of

	Resident or Resident & Ordinarily Resident	*Resident but not ordinarily resident*	*Non-resident*
Income received in India (Whether accrued in or outside India)	Yes	Yes	Yes
Income deemed to be received in India (Whether accrued in or outside India)	Yes	Yes	Yes
Income accruing or arising in India (Whether received in India or outside India)	Yes	Yes	Yes
Income deemed to accrue or arise in India (Whether received in India or outside India)	Yes	Yes	Yes
Income received and accrued outside India from a business controlled or a profession set up in India	Yes	Yes	Yes

Income received and accrued outside India from a business controlled from outside India or a profession set up outside India	Yes	No	No
Income earned and received outside India but later on remitted to India (whether tax incidence arises at the time of remittance?)	No	No	No

Answer to Question No. 3(b)

Appeals to the Appellate Tribunal (Section 253)

(1) Any assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order

(a) an order passed by a Commissioner (Appeals) under section 154, section 250, section 271, section 271A or section 272A; or

(b) an order passed by an Assessing Officer under clause (c) of section 158BC, in respect of search initiated under section 132;

(c) an order passed by an Assessing Officer under sub-section (1) of section 115VZC; or

(d) an order passed by a Commissioner under section 12AA or section 80G(5)(vi) or under section 263 or under section 271or under section 272A or an order passed by him under section 154 amending his order under section 263 or an order passed by a Chief Commissioner or a Director General or a Director under section 272A; or

(e) an order passed by an Assessing Officer under sub-section (3) of section 143 or section 147 in pursuance of the directions of the Dispute Resolution Panel or an order passed under section 154 in respect of such order.

(2) The Commissioner may, if he objects to any order passed by a Commissioner (Appeals) under section 154 or section 250, direct the Assessing Officer to appeal to the Appellate Tribunal against the order.

(3) Every appeal under sub-section (1) or sub-section (2) shall be filed within 60 days of the date on which the order sought to be appealed against is communicated to the assessee or to the Commissioner.

(4) The Assessing Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the Commissioner (Appeals) file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order within 30 days of the receipt of the notice.

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period if it is satisfied that there was sufficient cause for not presenting it within that period.

(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a fee.

Answer to Question No. 3(c)

Expenditure on scientific research (Section 35)

(1) In respect of expenditure on scientific research, the following deductions shall be allowed

(i) any expenditure not being in the nature of capital expenditure laid out or expended on scientific research related to the business.

(ii) an amount equal to 125% of any sum paid to a scientific research association which has as its object the undertaking of scientific research or to a university, college or other institution to be used for scientific research.

(iii) an amount equal to 125% of any sum paid to a company to be used by it for scientific research;

Provided that such company

(a) is registered in India,

(b) has as its main object the scientific research and development,

(c) is, for the purposes of this clause, for the time being approved by the prescribed authority in the prescribed manner, and

(d) fulfils such other conditions as may be prescribed.

(iv) an amount equal to 125% of any sum paid to a university, college or other institution to be used for research in social science or statistical research.

Question No. 4

(a) What are the essential conditions for claiming exemption under section 11 in the case of charitable trust. *(5 marks)*

(b) What is meant by 'pay-as-you-earn' scheme? *(3 marks)*

(c) Discuss the special provisions for computing profits and gains of shipping business in the case of Non-Residents under section 44B. *(8 marks)*

Answer to Question No. 4(a)

For claiming exemption under section 11 the following conditions must be satisfied:

(a) Trust must have been created for any lawful purpose;

(b) Such trust/institution must be for charitable or religious purposes. According to Section 2(15), charitable purpose includes relief of the poor, education, medical relief and the advancement of any other object of general public utility;

(c) The property from which income is derived should be held under trust by such charitable or religious trust/institution.

(d) The accounts of the trust/institution should be audited for such accounting year in which the total income, before giving effect to provisions of Section 11 or 12, exceeds the maximum amount which is not chargeable to tax and the person in respect of the income should obtain an audit report in Form No.10B [Rule 17B] and furnish the same along with the return of income.

(e) The trust must get itself registered with the Commissioner of Income-tax within the prescribed time.

(f) Where the "property held under a trust" includes a business undertaking, the provisions of Section 11(4) shall be applicable. On the other hand, if the trust wishes to carry on business, the profits or gains earned from such business shall not be exempt under section 11 unless the business is incidental to the attainment of the objectives of the trust/institution and separate books of accounts maintained.

(g) The charitable trust created on or after 1.1.1962 should satisfy the following further conditions:

  (a) It should not be created for the benefit of any particular religious community or caste;

  (b) No part of the income of such charitable trust or institutions should ensure directly or indirectly for the benefit of the settler or other specified persons;

  (c) The property should be held wholly for charitable purposes.

(h) The funds of the trust should be invested or deposited in the permissible forms and modes prescribed in Section 11(5).

Answer to Question No. 4(b)

'Pay-as-you-earn' Scheme

Sections 207 to 219 of the Income-tax Act lay down the provisions relating to advance payment of income-tax. The scheme of advance payment of tax is also known as 'Pay as you earn'. The income on which the assessee is required to pay advance tax is commonly known as 'income subject to advance tax' and the tax payable on such income is known as 'advance tax'.

The liability to pay advance tax arises during any financial year, in accordance with the provisions of Sections 208 to 219 (both inclusive), in respect of the total income of the assessee which would be chargeable to tax for the assessment year immediately following that financial year. Such income is, in Section 207, referred to as current income.

As per Section 208, advance tax shall be payable during a financial year in every case where the amount of such tax payable by the assessee during that year, as computed in accordance with the provisions of this Chapter, is five thousand rupees or more.

Assessee is liable to pay advance tax, if liability for tax exceeds Rs.10,000.

Answer 4(c)

Special provisions for computing profits and gains of shipping business in the case of non-residents (Section 44B)

In the case of a non-resident assessee, engaged in the business of operation of

ships, a sum equal to 7-1/2% of the aggregate of the following amounts shall be deemed to be the profits and gains of such business chargeable to tax under the head 'profits and gains of business or profession':

(i) The amount paid or payable (in India or outside) to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods shipped at any port in India; and

(ii) The amount received or deemed to be received in India, by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India.

Question No. 5

(a) R Ltd., a widely held company, owns the following assets as on 31-03-2010:

(i) Land at Bangalore purchased in 2003, on which a residential complex consisting of 24 flats, to be sold on ownership basis, is under construction for last 18 months;

(ii) Two office flats at Calcutta purchased for resale in the year 2001;

(iii) Shares of group companies, break-up value of which is Rs.6,40,000;

(iv) Cash at construction site Rs. 3,20,000;

(v) Residential flat in occupation of company's whole time director drawing a salary of Rs.1,80,000 per annum.

Which of the above assets will be liable for wealth tax? Give reasons in brief. (10 marks)

(b) What are the provisions of section 54F in relation to capital gain on transfer of asset, other than a residential house ? (6 marks)

Answer to Question No. 5(a)(i)

Land at Bangalore is not a taxable asset for wealth-tax purposes. Land at Bangalore is a part of 'stock-in-trade'. Explanation to section 2(ea) provides that any land held by the assessee as stock-in-trade is not treated a taxable asset, for a period of ten years from the date of acquisition by the assessee.

Answer to Question No. 5(a)(ii)

Section 2(ea)(i)(2) provides that any house for residential or commercial purposes which forms part of stock-in-trade, shall not be included in assessee's net wealth. Hence, two office flats at Calcutta purchased for resale in 2003 are not taxable assets.

Answer to Question No. 5(a)(iii)

Shares of company are not covered by the definition of asset, whether it is group company or otherwise.

Answer to Question No. 5(a)(iv)

Section 2(ea)(vi) provides that cash in hand, in excess of fifty thousand rupees, of individuals and Hindu undivided families and in the case of other persons any amount not

recorded in the books of account shall be included in the taxable wealth. Assuming that cash at construction site is recorded in the books of account, it will not be included in the taxable wealth of R Ltd.

Answer to Question No. 5(a)(v)

Section 2(ea)(i)(1) provides that a house meant exclusively for residential purposes and which is allotted by a company to an employee or an officer or a director who is in whole-time employment, having a gross annual salary of less than five lakh rupees is not included in taxable wealth.

Answer to Question No. 5(b)

Where an individual or HUF transfers any long-term capital asset, not being a residential house and invests the net sale proceeds to acquire a residential house, the exemption under section 54F is available provided following conditions are satisfied:

(i) The asset is transferred by an individual or HUF;

(ii) The asset transferred is a long-term capital asset;

(iii) The asset transferred is any capital asset other than a residential house;

(iv) The assessee has within the specified period purchased or constructed a residential house;

(v) The assessee does not own more than one residential house on the date of transfer of the original asset, exclusive of the one purchased for claiming exemption under this section i.e., Section 54F.

Specified Period

(i) One year before, or two years after the date on which the transfer took place, for purchase of a house;

(ii) A period of three years after the date on which the transfer took place, for construction of a house.

Assessee should not acquire or construct any other house within certain time : It has been further provided that the asessee should not purchase, within a period of one year after the date of transfer of original asset or construct within a period of three years after the date of transfer of original asset, any other residential house other than the new asset.

Quantum of Deduction

(i) If the net sale consideration of the original asset is equal to or less than the cost of the new house, the entire capital gain shall be exempt.

(ii) If the net sale consideration of the original asset is greater than the cost of the new house then the exemption shall be allowed in the same proportion in which the cost of the new house bears to the net sale considerations i.e., it shall be allowed proportionately as under :

$$\frac{\text{Long - term capital gain} \times \text{Amount invested in the new house}}{\text{Net sale consideration}}$$

Question No. 6

(a) Discuss the provisions relating to incidence of wealth-tax. *(5 marks)*

(b) Explain the provisions of set-off of loss from one head against income from another head under section 71. *(6 marks)*

(c) Discuss the provisions of maintenance of accounts by certain persons carrying on profession or business under section 44AA. *(5 marks)*

Answer to Question No. 6(a)

Incidence of Wealth Tax

Incidence of wealth tax in the case of an individual depends upon his residential status and nationality. Residential status is decided as per the provisions of the Income-tax Act.

The scope of liability to wealth tax is as follows:

(i) In the case of an individual who is a citizen of India and resident in India, a resident HUF and company resident in India;

Wealth tax is chargeable on net wealth comprising of:

— All assets in India and outside India;

— All debts in India and outside India are deductible in computing the net wealth.

(ii) In the case of an individual who is a citizen of India but non-resident in India or not ordinarily resident in India, HUF, non-resident or not ordinarily resident in India and a company non-resident in India;

(i) All assets in India are chargeable to tax.

(ii) All debts in India are deductible in computing the net wealth.

(iii) All assets and debts outside India are out of the scope of Wealth Tax Act.

(iii) In the case of an individual who is not a citizen of India whether resident, non-resident or not ordinarily resident in India:

(i) All assets in India are chargeable to tax.

(ii) All debts in India are deductible in computing the net wealth.

(iii) All assets and debts outside India are out of the scope of Wealth Tax Act.

Answer to Question No. 6(b)

In the following cases under section 71, Loss from one head of income can not be set-off from any other head of income:

(i) *Loss under the head 'capital gains'* : Capital loss whether short term or long term, shall not be allowed to be set off against income under any other head.

(ii) *Loss from speculation business* : Losses from speculation business shall not be allowed to be set off even from income from non speculation business.

(iii) Loss from the activity of owning and maintaining race horses shall not be allowed to be set off against the income from any other source.

(iv) Loss from lottery etc, can not be set off against winnings from lotteries, crossword puzzles, card games etc.

(v) Loss from a source, income from which is exempt cannot be set off against income from a taxable source.

(vi) Loss from business or profession shall not be allowed to be set-off from the head Salaries.

Answer to Question No. 6(c)

Prescribed books of account and documents to be kept and maintained under Section 44AA(3) by person carrying on certain professions or non-specified profession or carrying on business [Rule 6F]

Every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession notified by the Board is required to maintain prescribed books of accounts and documents, as may enable the Assessing officer to compute his total income.

The prescribed books of account and other documents under Rule 6F(2) are as follows :

(a) A cash book;

(b) A journal, if the accounts are maintained according to the mercantile system of accounting;

(c) A ledger;

(d) Carbon copies of bills, whether machine numbered or otherwise serially numbered wherever such bills are issued by the person and carbon copies of counter foils of machine numbered or otherwise serially numbered receipts issued by him excepting if the bill or receipts of an amount less than Rs.25; and

(e) Original bills wherever issued to the person and receipts in respect of expenditure incurred by the person or, where such bills and receipts are not issued and the expenditure incurred does not exceed fifty rupees, payment vouchers prepared and signed by the person.

Every person carrying on business or profession not specified under Section 44AA(1) whose total income exceeds Rs.1,20,000 or his total sales or gross receipts from such business exceed Rs.10,00,000 in any of the three years immediately preceding the relevant previous year is required to maintain books of accounts.

In case of a newly set up business or profession in the previous year then it is required to maintain the books of accounts if the income from business or profession is likely to exceed Rs. 1,20,000 or his total sales, turnover or gross receipts are likely to exceed Rs. 10 lakh during such previous year.

Books of accounts are also required to be maintained where the assessee claims his total income to be lower than the deemed income under Section 44AD or 44AE or 44AF or 44BB or 44BBB as the case may be.

TEST PAPER 2/2010

(This Test Paper is based on Study Lessons 11 to 16)

Time allowed : 3 hours *Max. marks : 100*

NOTE : *Answer All Questions.*

Question No. 1

(a) What do you mean by 'taxable services' in the context of service tax? What is the general rule regarding valuation of taxable services ? (8 marks)

(b) What do you mean by 'Reverse Charge' and which circumstances the service receivers are liable to pay service tax? Indicate such cases. (8 marks)

Answer to Question No. 1(a)

Section 65(105) of the Finance Act, 1994 defines taxable service to mean any service provided or to be provided to any person which is liable to payment of service tax. According to Section 67 of Chapter V of Finance Act, 194, the value of any taxable service shall be the 'gross amount' charged by the service provider for such service rendered by him. "Gross amount" means the amount actually charged by the service provider without making any deduction. The service provider will have to make a bill on the receiver of service showing clearly the gross amount charged.

For determining the value of taxable service, the following factors regarding identification of services have to take into consideration.

(a) Services to be included;

(b) Services to be excluded;

(c) Items which are statutorily includible or excludible;

(d) Items which are includible or excludible according to departmental clarifications;

(e) If permissible, reimbursement of out of pocket expenses have to be excluded;

(f) Inclusion of service tax element separately in the bills;

(g) Generally and specifically exempted services on which no service tax is leviable at all are not required to be considered for determining the value of taxable service. Such services are the services which are not covered under Section 65(105) of the Act and also those services which are provided in the state of Jammu & Kashmir. Where a service provider is providing more than one taxable service, the gross amount in respect of all the services should be determined separately in respect of each such service so that specific exemptions applicable to each service can be availed.

As per Section 67 of the Act, if the consideration for a taxable service is in terms of money, the value of such service shall be the gross amount charged by the service provider for such service. If the consideration is not received in money, the value of

taxable service shall be the amount of money (together with service tax) equivalent to the total consideration this arrived at.

If the gross amount charged by service provider is inclusive of service tax payable, the value of taxable service will be equal to = Gross amount charged x 100/100 + Rate of Service Tax.

Gross amount charged includes payment by cheque, credit card deduction from account and any form of payment by issue of credit or debit notes and book adjustments.

Answer to Question No. 1(b)

Reverse Charge

As per Section 68, every person providing taxable services i.e. provider of output service is liable to pay service tax. But in special cases service receiver is liable to pay service tax. This is also known as reverse charge.

As per Rule 2(1)(d) of Service tax Rules, 1994 the following receivers of service are liable to pay service tax:

(i) In general Insurance or Life Insurance services, the person carrying on the business of Insurance is liable and not the insurance agent.

(ii) In the case of services received in India from a place or person outside India, the recipient is liable.

(iii) In specified cases consignor or consignee who is paying freight charges is liable to pay service charge for the services received from a Goods Transport Agency.

(iv) In case mutual fund services, the mutual fund or asset management company is liable and not the agent.

(v) For sponsorship services, the receipient body corporate or firm is liable.

Question No. 2

(a) Explain in brief the provisions of service tax regarding following:

(i) Registration procedure under service tax

(ii) Doctrine of unjust enrichment

(iii) Adjustment of excess payment

(iv) Filing of return under service tax *(4 marks each)*

(b) Explain the provision regarding service tax on Company Secretaries. *(4 marks)*

Answer to Question No. 2(i)

Registration

1. *Procedure for registration* : For registration of Service Tax every person liable for paying the service tax shall make an application to the Superintendent of Central Excise in Form ST-1 for registration within a period of thirty days from the date on which the service tax is levied under section 66.

2. *Issue of Registration Certificate* : The registration shall be granted by the Superintendent of Central Excise in whose jurisdiction the premises or offices within 7 days from the date of receipt of registration in FORM ST-2.If the registration certificate is not granted within the said period, the registration applied for shall be deemed to have been granted.

3. *Time limit for registration* : Every person liable to pay service tax should make an application to the Superintendent of Central Excise within 30 days from the date service Tax is levied under section 66.

Answer to Question No. 2(ii)

Doctrine of Unjust Enrichment

Since service tax is indirect tax, it is recoverable from customer. If you recover the amount from customer and again claim refund, you will get double benefit. Hence, provisions of 'unjust enrichment' have been made in the law.

As per the doctrine of unjust enrichment, refund will be granted to assessee only if assessee had not passed on the tax burden to the customer/client. It will be presumed that assessee has passed on the burden of service tax. Thus, assessee will have to prove that he has not passed on the burden to his customer. If he is unable to prove it, refund will be paid to 'Consumer Welfare Fund' and not to assessee, as provided in Section 12C of Central Excise Act.

If assessee has shown the amount of service tax separately in invoice (which assessee is legally required to do), it will be difficult for assessee to establish that he has not passed on the tax burden to the client/customer.

Refund of service tax is governed by provisions of Section 11B of Central Excise Act– confirmed in *International Security Organisation* v. *CCE* 2002 (CEGAT).

If application for refund is rejected by AC/DC, appeal can be filed with Commissioner (Appeals).

Answer to Question No. 2(iii)

Adjustment of Service Tax

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

The adjustment of excess amount paid, shall be subject to the following conditions, namely :

(i) Excess amount paid is on account of reasons not involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification,

(ii) Excess amount paid by an assessee registered under Rule 4(2), on account of delayed receipt of details of payments towards taxable services may be adjusted without monetary limit,

(iii) In cases other than specified in clause (ii) above, the excess amount paid may

be adjusted with a monetary limit of Rupees one lakh rupees for a relevant month or quarter as the case may be.

(iv) The details and reasons for such adjustment shall be intimated to the jurisdictional Superintendent of Central Excise within a period of fifteen days from the date of such adjustment.

Answer to Question No. 2(iv)

Returns under Service Tax

Rule 7 of the Service Tax Rules,1994 return under Service Tax is required to be filed by every assessee on half yearly basis in Form ST-3 or Form ST-3A, as the case may be, along with a copy of the Form TR-6, in triplicate for the months covered in the half-yearly return.

Every assessee shall submit the half yearly return by the 25th of the month following the particular half-year.

Revision of Returns

An assessee may submit a revised return, in Form ST-3, in triplicate, to correct a mistake or omission, within a period of ninety days from the date of submission of the return under rule 7

Similar facility is also there for returns to be filed by assessee under CENVAT Credit Rules, 2004 [Rule 9(11) of CENVAT Credit Rules].

Answer to Question No. 2(b)

"Practising Company Secretary" is a person who is a member of the Institute of Company Secretaries of India and is holding a certificate of practice granted under the provisions of the Company Secretaries Act, 1980 and includes any concern engaged in rendering services in the field of Company Secretary Ship.

Taxable service means any service provided to a client, by a practicing company secretary in his professional capacity, in any manner.

The following are the taxable services in case service provided by the company secretaries are :

(i) Accounting and auditing; or

(ii) Cost accounting and cost auditing; or

(iii) Secretarial auditing; or

(iv) Certification under Companies Act.

(v) Certification for exchange control purposes under FEMA.

Value of Taxable Service

In the case of Practicing Company Secretary—"Value of taxable service shall be the gross amount charged by the service provider for such services rendered by him.

Service tax is charged only on the Practicing Company Secretary not on company secretary who are in services (employment).

Question No. 3

(a) What is the due date for payment of service tax? What is the rate of interest for delayed payment and penalty for default in payment of service tax ? *(8 marks)*

(b) Discuss the 'Advance Ruling' provisions in service tax. *(6 marks)*

Answer to Question No. 3(a)

Payment of Service Tax and Due date

Section 68 provides that every person providing taxable services to any person should pay service at the rate specified in Section 66. Rule 6 lays down the following rules for payment of service tax:

(a) *In case of an individual and partnership firm* : The service tax received during any quarter shall be paid to the Government by the 5th of the month immediately following the relevant quarter.

(b) *In case of others* : The service tax received during any calendar month should be paid to the credit of the Central Government by the 5th of the month immediately following the relevant calendar month.

31st March will be the due date for payment of service tax for the month of March or for the quarter ending March.

Where payment is made through internet banking, such e-payment can be made by 6th of the month.

Interest on delayed payment of Service Tax

Any person who has failed to pay the tax to the Government within the prescribed time limit, such person shall pay simple interest @ 13% p.a. for the period of delay.

Penalty for failure to pay Service Tax

If any person who is liable to pay service tax has failed to pay within prescribed time limit, he will be liable to pay interest @ 13% p.a. and also penalty. Penalty for failure to pay service tax shall be Rs. 200 per day or 2% of such tax per month whichever is higher, starting from the first day after the due date till the date of actual payment of the outstanding amount of service tax. However, total amount of penalty shall not exceed the amount of service tax payable.

Answer to Question No. 3(b)

Advance Ruling

Section 96A(a) defines 'Advance Ruling' as the determination, by the authority of a question of law or fact specified in the application, regarding the liability to pay service tax in relation to a service proposed to be provided by the applicant.

As per Section 96C(2), an advance ruling may be sought on a question of law or fact, in respect of –

(a) Classification of any service as a taxable service, under Chapter V of the Finance Act, 1994.

(b) The valuation of a taxable service for charging service tax.

(c) The principles to be adopted for the purposes of determination of value of the taxable services.

(d) Applicability of notifications issued under Chapter V of the Finance Act, 1994.

(e) Admissibility of credit of service tax.

(f) Determination of the liability to pay service tax on a taxable service under the provisions of Chapter V.

Questions not to be considered for Advance Ruling

An application for Advance Ruling on a question shall not be entertained if:

(a) The same question is already pending in a case before any Central Excise Authority, Appellate Tribunal or any Court, or

(b) It is the same as in a matter already decided by the Appellate Tribunal or Court.

Persons Eligible to seek Advance Ruling

As per Section 96A(b) an application for Advance Ruling may be made by following persons:

(a) A non-resident setting up a joint venture in India in collaboration with a non-resident or a resident and proposing to undertake a business activity in India.

(b) A resident setting up a joint venture in India in collaboration with a non-resident, and proposing to undertake business activity in India;

(c) A wholly owned subsidiary Indian company of a foreign holding company, proposing to undertake a business activity in India.

(d) A joint venture in India;

(e) A resident falling within a notified class or category of persons.

Application for obtaining Advance Ruling

A person desiring to obtain an Advance Ruling shall make an application in Form AAR-ST (in quadruplicate).

Question No. 4

(a) Write notes on the following :

(i) Registration under VAT

(ii) Filing of return under VAT

(iii) Rates of VAT (5 marks each)

(b) Discuss the advantages of introduction of VAT in India. (5 marks)

Answer to Question No. 4(a)(i)

Registration under VAT

All dealers are required to get registration under the VAT law, only then, he as a registered dealer can carry on his business of purchasing and selling goods on payment of VAT.

Requirement for registration : All dealers with gross turnover exceeding the prescribed limit will get the registration. All existing dealers will automatically get registered under the concerned VAT Act. New dealers will be allowed 30 days time from the date of tax liability to get registered. An application is to be made to the Commissioner for this purpose.

Compulsory registration : In case an assessee fails to get registration, he will be compulsorily registered by the Commissioner, after assessing his tax liability on the basis of evidence available with him. Failure to get registered will attract penalty for default and forfeiture of eligibility to avail input tax credit and set off of tax.

Voluntary registration : A dealer who does not require registration can voluntarily obtain it after satisfaction of the Commissioner regarding the requirement.

Cancellation of registration : A registration can be cancelled on:

(i) discontinuance of business; or

(ii) disposal of business; or

(iii) transfer of business to a new location; or

Answer to Question No. 4(a)(ii)

Filing of return under VAT

Returns are to be filed monthly/quarterly/annually along with tax paid challans according to the provisions of State Act. They should contain details of output tax liability, value of input tax credit and payment of VAT and filed within the prescribed time schedule. In case of any mistakes, revised returns may be filed. The returns will be checked and any deficiency in payment of tax may have to be made good.

Filing of returns under VAT are designed with a view

(i) To reduce cost of compliance

(ii) To encourage business to comply with their obligations; and

(iii) To ensure efficient processing of data.

Answer to Question No. 4(a)(iii)

Rates of VAT

To reduce the multiplicity of VAT rates between various states in India it was recommended that VAT will have broadly five tax rates:

(a) Zero rate of or tax free goods;

(b) 1% on precious and semi previous metals i.e. bullion etc.;

(c) 4% on declared goods;

(d) 20% on luxury goods;

(e) 12.5% on other goods.

Answer to Question No. 4(b)

Liability to pay VAT

With the objective of tax reform at the state level, the VAT was introduced in India on the recommendation of the Empowered Committee of State Finance Minister headed by the Bengal Finance Minister Dr. Asim Dasgupta. The white paper submitted by the committee specified that only those dealer whose annual gross turnover was more than Rs.5 lacs required registration under VAT Act. However, the Committee has subsequently allowed the states to increase the limit from Rs.5 lacs to 10 lacs. It was also suggested that the concerned state shall have to bear the revenue loss on account of increase in the limit beyond Rs.5 lacs.

Advantages

1. *No tax evasion* : The system is logical and scientific. Credit of duty/tax is allowed against the liability on the final product manufactured or sold. For this purpose, proper records have to be maintained. Therefore tax evasion would become difficult.

2. *Neutrality* : The system does not interfere in the choice of decision to make purchases. As the effect of the system is anti-cascading, the amount of addition to value or the stage at which it is made is not of any relevance.

3. *Certainty* : VAT is a simple procedure relying on transactions only and therefore results in certainty of revenue collection.

4. *Transparency* : The buyers will have full transparency of tax component. Government will be enabled to take proper decisions in respect of tax rates.

5. *Better revenue collection* : In VAT, possibility of leakage of revenue is minimum because tax credit can be availed only if proof of payment of tax at an earlier stage is produced. Even if tax is evaded at one stage, it will invariably be collected at the subsequent or final stage or from a person who is not able to produce such a proof. Thus, an invoice of VAT will be self-enforcing which naturally results in a stable source of revenue to Government.

6. *Better accounting systems* : The system of availing VAT credit of earlier stages will bring about a compliance of proper maintenance of accounts.

7. *Effect on retail price* : The system of availing credit of tax paid at earlier stages will not only remove cascading effect of taxation but also curb the inflationary trend in prices of goods.

Question No. 5

(a) What are the different modes of computation of Value added tax (VAT) and what are the advantages of adoption of tax credit method ? (7 marks)

(b) What do you mean by Exempt Sale and how it is different from Zero Rating Sale? (7 marks)

Answer to Question No. 5(a)

There are three different modes of computation of VAT:

(i) *Addition Method* : Under this method identification of value added is estimated by adding values of all the elements of production wages, profits, rent and interest. Under this method, the incidence of tax evasion is greater because it does not require matching of invoices.

(ii) *Subtraction Method* : In this method value added is computed by subtracting inputs from outputs. This is also known as the product approach.

(iii) *Tax Credit Method* : Under this method, VAT payable by a dealer is arrived at by deducting tax on inputs from the tax on sales. This method is known as the invoice method. This method is universally used because of the advantages of computing tax liability under this method. As rate of tax is different in respect of inputs and outputs, the addition method and the subtraction method are not practicable in the case of a manufacturer.

The advantages of using tax credit method are:

(i) Under this method exports are exempted from levy of domestic indirect taxes as exports are taxed at Zero rate and refund of input taxes paid.

(ii) Under this method, dealers at intermediate stage are indifferent to tax rates because burden of VAT is dependent upon rate of tax at the final stage.

(iii) Under this method, cross-checking of tax paid at earlier stages is comparatively easier because of the fact that dealers are required to specify the amount of tax in their invoices.

Answer to Question No. 5(b)

Exempted Sale

When a certain sale is exempted from tax, the dealer effecting the exempt sale will not be entitled to any VAT credit on the inputs purchased by him. The sale effected by him will also be exempt from any tax. This results in breaking of the VAT chain. The following are the examples of Exempted Sale.

— *Samples or Gifts*

An example where reversal will be required is when goods are sold as samples or gifts i.e., non-taxable transactions and the input tax credit relating thereto has already been availed against output tax payable on other sale transactions. In such circumstances, the credit earned will be reversed. This is called “Reverse Credit of Input Tax”.

— *Consignment transfer*

Stock/Consignment transfers are exempt from VAT as these were never under the purview of the State Tax Acts. The input tax paid on such commodities or on the inputs that go into producing such commodities can be taken credit to the extent of excess of input tax over and above 4%. Thus, if the input used in the

commodity that is transferred, or the product itself when purchased, was taxed at say 10%, credit can be taken by the transferring dealer to the extent of 6% against other taxable dispatches.

Imported goods will continue to be exempt from VAT on imports.

Zero Rating : Zero rating means that the tax payable on sale of a commodity is fixed at 0%. Though apparently, it looks similar to an exempt transaction, there is a significant difference between the two. While in an exempt transaction, the tax paid on input lapses i.e., it cannot be set off, under the Zero rated sales, prior stage tax is set off against the 0% tax paid, and effectively the entire tax paid on purchases is eligible for refund. Thus, Zero Rating is advantageous to the dealer compared to exempting of sale transactions. Generally, export sales are zero rated and thereby, exporters are granted refund of taxes paid by them on their inputs. Exporters gain significantly due to the Zero Rating.

Question No. 6

(a) Explain briefly the Credit and Set-off provisions under VAT. (6 marks)

(b) Discuss the jurisdictional powers of VAT authorities in the following states:

(i) Karnataka

(ii) Tamilnadu. (5 marks each)

Answer to Question No. 6(a)

Credit and Set-Off Under VAT

VAT aims at providing set-off for the tax paid earlier and this is given effect through the concept of input tax credit. Input tax credit in relation to any period means setting the amount of input tax by a registered dealer against the amount of his output tax.

Tax paid on the earlier point is termed as, “input tax”. This amount is adjusted against the tax payable by the purchasing dealer on his sales. This credit availability is called input tax credit. Input tax is the tax paid or payable in the course of business on purchase of any goods made from a registered dealer of the State. Output tax means the tax charged or chargeable under the Act, by a registered dealer for the sale of goods in the course of business. In simple words, input tax is the tax a dealer pays on his local purchases of business inputs, which include the goods that he purchases for resale, raw materials, capital goods as well as other inputs for use directly or indirectly in his business. Output tax is the tax that a dealer charges on his sales that are subject to tax. The input tax credit is to be given for both manufacturers and traders for purchase of inputs/ supplies meant for both sales within the State as well as to other States, irrespective of when these were utilized or sold. This also reduces immediate tax liability.

Input tax paid in excess of 4% will be eligible for tax credit. It is also to be noted that in certain cases, partial input tax credit is available in respect of input used for manufacture of exempted goods.

Input tax credit is allowable to a registered dealer for purchase of any goods made within the State from a dealer holding a valid certificate of registration under the Act. Input tax credit on capital goods is available for traders and manufacturers.

Input tax paid under the VAT Act is eligible for being set off against Central Sales Tax payable on inter-State sales. Therefore, excess of input tax over and above the output tax payable under the VAT Act can be applied towards Central Sales Tax payable. While taxes paid on raw materials and inputs are eligible for set off against taxes on output, taxes paid on capital goods are not eligible for immediate set-off. The reason perhaps is the huge credit that States may have to grant in cases of capital purchases of large value. Due to this, tax on capital goods may be granted, but over a certain period of time. However, the credit is limited only to capital goods actually used for manufacture and hence may not be available to a trader.

In some cases, the input tax paid and taken credit of, may have to be reversed, such as for example, when the material is consumed for personal purposes and not business purposes, or when the input including packing materials is used for manufacture and/or sale as exempt goods etc.

All tax-paid goods purchased on or after April 1, 2004 and still in stock as on April 1, 2005 will be eligible to receive input tax credit, subject to submission of requisite documents. Resellers holding tax-paid goods on April 1, 2005, and input tax credit shall be given for the sales tax already paid in the previous year. This tax credit shall be available over a period of 6 months after an interval of three months needed for verification.

Answer to Question No. 6(b)(i)

KARNATAKA

Appointment, jurisdiction and powers of the authority

Under section 58 of the Karnataka Value Added Tax Act, 2003, the State Government may appoint

— A Commissioner of Commercial Taxes and

— as many Additional, Joint, Deputy, Assistant Commissioners,

— State Representatives and Commercial Tax Officers

as they think for the purpose of performing the functions. The Commissioner may empower an officer not below the rank of an Assistant Commissioner or an Advocate or a Chartered Accountant [or a Cost Accountant] or a Tax Practitioner to perform the functions of a State Representative.

Under section 41 of the Act The Commissioner has power of rectification of assessment or re-assessment in certain cases.

Under section 51 of the Act The Commissioner has power to withhold refund in certain cases.

Under section 61, the Additional Commissioner, Joint Commissioner, Deputy Commissioner, Assistant Commissioner and Commercial Tax officer shall perform their function in respect of such areas or such dealers or classes of dealers or such cases or class of cases as the Commissioner may direct.

Answer to Question No. 6(b)(ii)

TAMILNADU

Appointment, jurisdiction and powers of the authority

Under section 55 of the Tamilnadu Value Added Tax Act, 2006, the State Government may appoint

— A Commissioner of Commercial taxes and as many

— Joint Commissioner of Commercial taxes,

— Appellate Deputy Commissioner of Commercial taxes,

— Deputy Commissioner of Commercial taxes,

— Appellate Assistant Commissioner of Commercial taxes,

— Territorial Assistant Commissioner of Commercial taxes,

— Administrative Assistant Commissioner of Commercial taxes,

— Assistant Commissioner of Commercial taxes (Assessment),

— Assistant Commissioner of Commercial taxes (Enforcement), and

— Commercial Tax Officers and other officers, as they may think fit, for the purpose of performing the functions respectively conferred on them by or under this Act.

The Commissioner shall perform the functions conferred on him through the State, and the other officers shall perform their functions within such local limits as the Government or any authority or officer empowered in this behalf may assign to them.

TEST PAPER 3/2010

(This Test Paper is based on entire Study Lessons)

Time allowed : 3 hours *Max. marks : 100*

NOTE : *Answer All Questions.*

PART A

Question No. 1

(a) Choose the most appropriate answer from the given options in respect of the following:

(i) Unabsorbed depreciation can be set-off against other income in subsequent assessment year except:

(a) Income from speculation business

(b) Income under the head house property

(c) Income under the head other sources

(d) Income under the head Salaries.

(ii) When annual value of one self occupied house is nil, the assessee will be entitled to the standard deduction of:

(a) 30%

(b) Nil

(c) 15%

(d) 20%

(iii) Special provisions of Section 44AF for computing profits and gains of retail business shall not be applicable if the total turnover of such retail trade exceeds rupees:

(a) 35 lakhs

(b) 40 lakhs

(c) 30 lakhs

(d) 38 lakhs

(iv) A capital asset held by the assessee for not more than 36 months immediately preceding the date of transfer is known as short term capital asset however_____ held for more than 12 months but less than 36 months treated as long term capital asset:

(a) Building

(b) Furniture

(c) Computer

(d) Zero coupon bonds

(v) *Every Domestic Company having total income exceeding Rs._____ then the income tax shall be increased by the surcharge at the rate 10% on such Income Tax:*

(a) *10 lakh*

(b) *1 crore*

(c) *50 lakh*

(d) *None of the above*

(vi) *Which of the following is covered under section 80D of the Income Tax Act, 1961 :*

(a) *Repayment of loan taken for higher education*

(b) *Medical treatment of handicapped dependent*

(c) *Medical insurance premium*

(d) *Reimbursement of medical expenses*

(vii) *The rate of Dividend Distribution Tax for financial year 2009-10 is:*

(a) *16.995%*

(b) *13.956%*

(c) *14.1625%*

(d) *16.83%*

(viii) *The amount qualifying as amortization of preliminary expenses under section 35D shall be allowed as deduction in:*

(a) *10 equal instalments*

(b) *5 equal instalments*

(c) *8 equal instalments*

(d) *3 equal instalments*

(ix) *Interest free loan to an employee, where the amount of loan does not exceed any one of the following, shall be treated as the tax-free perquisites in all cases under section 17(2):*

(a) *Rs.10,000*

(b) *Rs.15,000*

(c) *Rs. 20,000*

(d) *Rs. 25,000*

(x) *An individual can get deduction from gross total income under section 80C towards:*

(a) *Contribution to any Pension Fund*

(b) *The cost of any addition, alteration to or renovation or repair of the house property.*

(c) *Payment of tuition fess*

(d) *None of the above.* *(1 mark each)*

(b) *What are the conditions which are to be satisfied for availing deduction under section 33AB? What is the quantum of deduction ?* *(5 marks)*

Answer to Question No. 1(a)(i)

(d) Income under the head salaries.

Answer to Question No. 1(a)(ii)

(b) Nil.

Answer to Question No. 1(a)(iii)

(b) 40 lakhs.

Answer to Question No. 1(a)(iv)

(d) Zero coupon bond.

Answer to Question No. 1(a)(v)

(b) 1 crore.

Answer to Question No. 1(a)(vi)

(c) Medical insurance premium.

Answer to Question No. 1(a)(vii)

(a) 16.995%.

Answer to Question No. 1(a)(viii)

(b) 5 equal instalments.

Answer to Question No. 1(a)(ix)

(c) Rs. 20,000.

Answer to Question No. 1(a)(x)

(c) Payment of tuition fees.

Answer to Question No. 1(b)

Essential Conditions

(i) The assessee is engaged in the business of growing and manufacturing tea or coffee or rubber in India;

(ii) The assessee has, within six months from the end of the previous year or before the due date of furnishing return of income whichever is earlier;

(a) deposited with National Bank for Agriculture and Rural Development (NABARD) any amount(s) in a special account maintained by the assessee with that bank in accordance with and for the purpose specified in a scheme approved in this behalf by the Tea Board or the Coffee Board or the Rubber Board; or

(b) deposited any amount in the Deposit Account opened by the assessee in accordance with and for the purpose specified in a scheme framed by the Tea Board or the Coffee Board or the Rubber Board with the previous approval of the Central Government.

(iii) The assessee must get its accounts audited by an Accountant as defined in the Explanation below Section 288(c) and furnish the report of such audit in Form No.3AC, along with the return of income. In a case where the assessee is require by or under any other law to get his accounts audited, it shall be sufficient compliance if such assessee gets the accounts of such business audited under such law and furnishes the report of the audit as required under such other law and a further report in the Form No.3AC.

Quantum of Deduction

Quantum of deduction shall be:

(i) The amount(s) deposited in the schemes referred to above; or

(ii) 40% of the profits of such business computed under the head profits and gains of business or profession, whichever is less.

Question No. 2

(a) Write short notes on the following:

(i) Short term Capital Gain

(ii) Return of Loss under Section 139(3) *(5 marks each)*

(b) Explain in brief the provision of Section 45(1A) in case of damage or destruction of capital asset. *(5 marks)*

Answer to Question No. 2(a)(i)

Short-term Capital Gain

A capital asset held by an assessee for not more than 36 months immediately preceding the date of its transfer is known as a short-term capital asset and gain arise on the transfer of such asset is known as Short Term Capital Gain.

However, the following assets shall be treated as short-term capital assets if they are held for not more than 12 months (instead of 36 months mentioned above) immediately preceding the date of its transfer :

(a) Equity or Preference shares held in a company.

(b) Any other security listed in a recognized stock exchange in India.

(c) Units of the Unit Trust of India or units of a Mutual Fund specified under Section 10(23D).

(d) Zero coupon bond.

Answer to Question No. 2(a)(ii)

Return of Loss under Section 139(3)

If a person has sustained a loss under the head “Profits and gains of business or profession” or under the head “Capital Gains” and claims that such loss or any part thereof should be carried forward under section 72 or section 73 or section 74 or section 74A then he may furnish a return of loss within the time prescribed under Section 139(1) and all the provisions of this Act shall apply as if it were a return under Section 139(1).

It is not mandatory to file a return of loss (except in case of a company or a firm) as there is no taxable income. However, as per Section 80 losses under the head business or profession and capital gain cannot be carried forward unless the return of loss is submitted on or before the due date mentioned under Section 139(1) and it is duly assessed. If the return of loss is not submitted or is submitted after the due date, such losses cannot be carried forward.

Answer to Question No. 2(b)

Provision of Section 45(1A) in case of damage or destruction of capital asset

Where any person receives at any time during any previous year any money or other assets under insurance from an insurer on account of damage to, or destruction of, any capital asset, as a result of—

(i) Flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature; or

(ii) Riot or civil disturbance; or

(iii) Accidental fire or explosion; or

(iv) Action by an enemy or action taken in combating an enemy (whether with or without a declaration of war);

Then, any profits or gains arising from receipt of such money or other assets shall be chargeable to income-tax under the head "Capital Gains" and shall be deemed to be the income of such person of the previous year in which such money or other asset was received and for the purposes of Section 48, value of any money or the fair market value of other assets on the date of such receipt shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital asset.

Question No. 3

(a) Re-write the following sentences after filling up the blank spaces with appropriate word(s)/figure(s):

(i) Any person other than an individual or a HUF is responsible for paying to resident in India, any income by way of rent amounting in aggregate to more than rupees_____ in a financial year.

(ii) No notice under section 143(2) shall be served on the assessee after the expiry of _____ from the end of financial year in which return is furnished.

(iii) For belated filing of income tax return, the assessee is liable to pay interest @ _____ for every month.

(iv) The Losses from speculative business can be set off against income from _____.

(v) The balance of income after deductions admissible under section 80C to 80U is called _____. (1 mark each)

(b) Mr. Brown supplies you the following information for the year ended 31.03.2010.

		Rs.
(i)	*Interest on bank deposits*	*60,000*
(ii)	*Dividend on shares of foreign companies received abroad*	*40,000*
(iii)	*Interest from deposits in Indian Companies (gross)*	*38,000*
(iv)	*Income from horse race in India*	*15,500*

Mr. Brown is a resident. He has donated a sum of Rs.20,000 to Municipal Corporation of Delhi for family planning. He has paid Rs.8000 by credit card to New India Assurance Company for mediclaim for himself. He has also spent Rs.16,000 on medical treatment of his minor son who is physically handicapped.

Compute total income of Mr. Brown for the assessment year 2010-11.

(5 marks)

(c) How the valuation of Jewellery to be made under Wealth Tax Act, 1957.

(5 marks)

Answer to Question No. 3(a)

(i) Any person other than an individual or a HUF is responsible for paying to resident in India, any income by way of rent amounting in aggregate to more than rupees **1,20,000** in a financial year.

(ii) No notice under section 143(2) shall be served on the assessee after the expiry of **six months** from the end of financial year in which return is furnished.

(iii) For belated filing of income tax return, the assessee is liable to pay interest @ **1%** for every month.

(iv) The Losses from speculative business can be set off against income from **Speculation** .

(v) The balance of income after deductions admissible under section 80C to 80U is called **Total Income** .

Answer to Question No. 3(b)

Computation of Total Income of Mr. Brown for the Assessment Year 2010-11

Income from other sources:		*Rs.*
Interest on bank deposits		60,000
Dividend on shares of foreign companies received abroad		40,000
Interest from deposits in India companies (gross)		38,000
Income from horse race		15,500
Gross total income		1,53,500
Less : Deduction under section 80 to 80U		
— Under Section 80D	8,000	
— Under Section 80DD	16,000	
— Under Section 80G 100% of Rs.12,950	12,950	36,950
10% of adjusted gross total income (1,53,500 - 24,000)		
Total Income		1,16,550

Answer to Question No. 3(c)

Valuation of Jewellery under Wealth Tax Act, 1957

The value of Jewellery shall be estimated to be the price which it would fetch, if sold, in the open market on the valuation date, which may be referred to as Fair Market Value.

Valuation of jewellery shall be determined in the following manner:

(i) *Where the Fair Market Value, as estimated by the assessee, does not exceed Rs. 5,00,000* :

In this case, the assessee shall have to file a statement in Form No.O-8A, along with a return of net wealth submitted by him. However, if the Assessing Officer is of the opinion that the Fair Market Value of the jewellery exceeds the value of the jewellery declared by the assessee in his return by more than 33 1/3% of the returned value or Rs.50,000, he may refer the valuation of such jewellery to a Valuation Officer under Section 16A(1) and the value of the jewellery in such case shall be the Fair Market Value as estimated by the Valuation Officer.

(ii) *Where the Fair Market Value, as estimated by the assessee, exceeds Rs.5,00,000*:

In this case, the assessee has to obtain and furnish a report of a Registered Valuer in FormNo.O-8, along with a return of net wealth submitted by him. However, if the Assessing Officer is of the opinion that the Fair Market Value of the jewellery exceeds the value of the jewellery declared by the assessee in his return, he may refer the valuation of such jewellery to a Valuation Officer under section 16A(1) and the value of the jewellery in such case, shall be the Fair Market Value as estimated by the Valuation Officer. It may be observed, that in this case, the reference to the Valuation Officer can be done irrespective of the excess of the Fair Market Value, as estimated by the Assessing Officer over the Fair Market Value estimated by the Registered Valuer.

Question No. 4

(a) An assessee used to file his return of income showing income from rent on receipt basis and was assessed accordingly up to the assessment year 2009-10. During the financial year 2009-10, he received a sum of Rs.1,00,000 by way of enhancement for the last six years as the Government department (tenant) enhanced the rate of rent with retrospective effect. Will the sum of Rs.1,00,000 be taxable in the assessment year 2010-11? Can it be spread over the last six years? Is there any provision of tax relief in such cases, like section 89(1) of the Income Tax Act, 1961? What are the provisions of the Act governing such cases? (5 marks)

(b) Describe in brief the special provisions for computing profits and gains of business of plying, hiring or leasing goods carriages. (5 marks)

(c) Compute the net wealth of R from the following details as on 31-03-2010 for the

assessment year 2010-11. The individual is engaged in the business of processing and selling of gold and silver articles and ornaments in India and outside India:

	Rs.
Bank Balance	*4,30,000*
Unaccounted cash balance	*70,000*
Gold articles	*25,00,000*
Jewellery made of silver	*14,00,000*
Guest house	*35,00,000*
Motor cars	*6,40,000*
Factory Building	*8,00,000*

R has taken a loan of Rs. 8,00,000 by mortgaging guest house for purchasing factory building. *(5 marks)*

Answer to Question No. 4(a)

As per new section 25B the arrears of rent shall be taxable in the previous year in which such arrears are received. However, the assessee shall be allowed statutory deduction @30% of such amount received. Further, it is not necessary that the assessee should be owner of such house property in the previous year in which such arrears are received.

Thus, Rs. 70, 000 (Rs.1,00,000 – 30% of Rs.1,00,000 i.e., 30,000) shall be chargeable to income-tax under the head income from house property in the Assessment Year 2010-11.

Answer to Question No. 4(b)

Special provisions for computing profits and gains of business of plying, hiring or leasing goods carriages [Section 44AE] :

Notwithstanding anything to the contrary contained in Sections 28 to 43C the scheme under Section 44AE provides for a system for estimating the income of an assessee engaged in the business of plying, hiring or leasing of goods carriages. The broad features of the scheme are:

(i) The scheme is applicable to an assessee who owns not more than 10 goods carriages at any time during the previous year and who is engaged in the business of plying, hiring or leasing of such goods carriages;

(ii) The profits and gains of each goods carriage owned by the above assessee in the previous year shall be estimated as under :

(a) For heavy goods vehicle — Rs. 3,500 for every month or part of a month during which the heavy vehicle is owned by the assessee in the previous year;

(b) For goods ‘carriage other than heavy goods vehicle — Rs. 3,150 for every month or part of a month during which the goods carriage is owned by the assessee in the previous year.

The assessee may choose not to opt for the scheme and may declare an income lower than the specified amount. In this case the assessee may require to maintain the books of account and get his accounts audited by a Chartered Accountant.

Answer to Question No. 4(c)

Computation of Net wealth of R for the Assessment Year 2010-11

	Rs.
Bank Balance	Not an asset
Unaccounted cash balance only in excess of Rs. 50,000	20,000
Gold Article (being Stock in trade hence Not an asset)	Not an asset
Jewellery made of silver (being Stock in trade hence Not an asset)	Not an asset
Guest house	35,00,000
Motor Cars	6,40,000
Factory Building	Not an asset
Gross Wealth	41,60,000
Less : Basic exemption	30,00,000
Taxable Net Wealth	11,60,000

Note :

1. Bank balance, Gold articles and Factory buildings are not taxable wealth.
2. Loan of Rs. 8,00,000 is not deductible for computing net wealth as factory building is not a taxable wealth.

PART B

Question No. 5

(a) Re-write the following sentences after filling up the blank spaces with appropriate word(s)/figure(s):

(i) The assessee should deposit the service tax liable to be paid by him into any bank authorized by CBEC through a _____ challan.

(ii) Every person whose aggregate value of taxable service exceeds the threshold limit liable to pay Service tax shall make an application for registration within_____ .

(iii) An assessee may submit a revised return in form _____ in triplicate to correct a mistake or omission within a period _____ from the date of submission of return under Rule 7.

(iv) Every assessee shall submit the half yearly return by the_____ of the month following the particular half-year.

(5 marks)

(b) Write short notes on:

(i) Services of Companies secretaries

(ii) Advance Ruling in service tax (5 marks each)

(c) Discuss briefly the procedure for registration for service tax provider. (5 marks)

Answer to Question No. 5(a)

(i) The assessee should deposit the service tax liable to be paid by him into any bank authorized by CBEC through a **TR-6** challan.

(ii) Every person whose aggregate value of taxable service exceeds the threshold limit liable to pay Service tax shall make an application for registration within **30 days** .

(iii) An assessee may submit a revised return in form **ST-3** in triplicate to correct a mistake or omission within a period **90 days** from the date of submission of return under Rule 7.

(iv) Every assessee shall submit the half yearly return by the **25th** of the month following the particular half-year.

Answer to Question No. 5(b)(i)

"Practising Company Secretary" is a person who is a member of the Institute of Company Secretaries of India and is holding a certificate of practice granted under the provisions of the Company Secretaries Act, 1980 and includes any concern engaged in rendering services in the field of Company Secretary Ship.

Taxable service means any service provided to a client, by a practicing company secretary in his professional capacity, in any manner.

The following are the taxable services in case service provided by the company secretaries are:

(i) Accounting and auditing; or

(ii) Cost accounting and cost auditing; or

(iii) Secretarial auditing; or

(iv) Certification under Companies Act.

(v) Certification for exchange control purposes under FEMA.

Value of Taxable Service

In the case of Practising Company Secretary—"Value of taxable service shall be the gross amount charged by the service provider for such services rendered by him.

Service tax is charged only on the Practicing Company Secretary not on company secretary who are in services (employment).

Answer to Question No. 5(b)(ii)

Advance Ruling

Section 96A(a) defines 'Advance Ruling' as the determination, by the authority of a question of law or fact specified in the application, regarding the liability to pay service tax in relation to a service proposed to be provided by the applicant.

As per Section 96C(2), an advance ruling may be sought on a question of law or fact, in respect of –

(a) Classification of any service as a taxable service, under Chapter V of the Finance Act, 1994.

(b) The valuation of a taxable service for charging service tax.

(c) The principles to be adopted for the purposes of determination of value of the taxable services.

(d) Applicability of notifications issued under Chapter V of the Finance Act, 1994.

(e) Admissibility of credit of service tax.

(f) Determination of the liability to pay service tax on a taxable service under the provisions of Chapter V.

Questions not to be considered for Advance Ruling

An application for Advance Ruling on a question shall not be entertained if:

(a) The same question is already pending in a case before any Central Excise Authority, Appellate Tribunal or any Court, or

(b) It is the same as in a matter already decided by the Appellate Tribunal or Court.

Persons Eligible to seek Advance Ruling

As per Section 96A(b) an application for Advance Ruling may be made by following persons:

(a) A non-resident setting up a joint venture in Indian in collaboration with a non-resident or a resident and proposing to undertake a business activity in India.

(b) A resident setting up a joint venture in India in collaboration with a non-resident, and proposing to undertake business activity in India;

(c) A wholly owned subsidiary Indian company of a foreign holding company, proposing to undertake a business activity in India.

(d) A joint venture in India;

(e) A resident falling within a notified class or category of persons.

Application for obtaining Advance Ruling

A person desiring to obtain an Advance Ruling shall make an application in Form AAR-ST (in quadruplicate).

Answer to Question No. 5(c)

Provisions of Registration under Service Tax

1. *Person specified to make an application*

   — An input service provider

   — Any provider of taxable service whose aggregate value of taxable service exceed Rs. 9 lakhs.

2. *Procedure for registration* : For registration of Service Tax every person liable for paying the service tax shall make an application to the Superintendent of Central Excise in Form ST-1 for registration within a period of thirty days from the date on which the service tax is levied under section 66.

3. *Issue of Registration Certificate* : The registration shall be granted by the Superintendent of Central Excise in whose jurisdiction the premises or offices within 7 days from the date of receipt of registration in FORM ST-2.If the registration certificate is not granted within the said period, the registration applied for shall be deemed to have been granted.

4. *Time limit for registration* : Every person liable to pay service tax should make an application to the Superintendent of Central Excise within 30 days from the date service Tax levied under section 66.

5. Surrender of Certificate of Registration: In the following cases the certificate of registration shall be surrendered by the assessee:

   — When a registered assessee transfers his business, he should surrender his registration.

   — When a registered assessee ceases to carry on the service activity for which he is registered

PART C

Question No. 6

(a) Who is liable to pay VAT? Discuss the advantages of introduction of VAT in India. (5 marks)

(b) Write short notes on the following:

(i) Credit and set off under VAT system

(ii) Zero rating. (5 marks each)

(c) Explain in brief the rates of Value Added Tax under VAT regime. (5 marks)

Answer to Question No. 6(a)

Liability to pay VAT

With the objective of tax reform at the state level, the VAT was introduced in India on the recommendation of the Empowered Committee of State Finance Minister headed by

the Bengal Finance Minister Dr. Asim Dasgupta. The white paper submitted by the committee specified that only those dealer whose annual gross turnover was more than Rs.5 lacs required registration under VAT Act. However, the Committee has subsequently allowed the states to increase the limit from Rs.5 lacs to 10 lacs. It was also suggested that the concerned state shall have to bear the revenue loss on account of increase in the limit beyond Rs.5 lacs.

Advantages

1. *No tax evasion* : The system is logical and scientific. Credit of duty/tax is allowed against the liability on the final product manufactured or sold. For this purpose, proper records have to be maintained. Therefore tax evasion would become difficult.

2. *Neutrality* : The system does not interfere in the choice of decision to make purchases. As the effect of the system is anti-cascading, the amount of addition to value or the stage at which it is made is not of any relevance.

3. *Certainty* : VAT is a simple procedure relying on transactions only and therefore results in certainty of revenue collection.

4. *Transparency* : The buyers will have full transparency of tax component. Government will be enabled to take proper decisions in respect of tax rates.

5. *Better revenue collection* : In VAT, possibility of leakage of revenue is minimum because tax credit can be availed only if proof of payment of tax at an earlier stage is produced. Even if tax is evaded at one stage, it will invariably be collected at the subsequent or final stage or from a person who is not able to produce such a proof. Thus, an invoice of VAT will be self-enforcing which naturally results in a stable source of revenue to Government.

6. *Better accounting systems* : The system of availing VAT credit of earlier stages will bring about a compliance of proper maintenance of accounts.

7. *Effect on retail price* : The system of availing credit of tax paid at earlier stages will not only remove cascading effect of taxation but also curb the inflationary trend in prices of goods.

Answer to Question No. 6(b)(i)

Credit and Set-Off Under VAT

VAT aims at providing set-off for the tax paid earlier and this is given effect through the concept of input tax credit. Input tax credit in relation to any period means setting the amount of input tax by a registered dealer against the amount of his output tax.

Tax paid on the earlier point is termed as, “input tax”. This amount is adjusted against the tax payable by the purchasing dealer on his sales. This credit availability is called input tax credit. Input tax is the tax paid or payable in the course of business on purchase of any goods made from a registered dealer of the State. Output tax means the tax charged or chargeable under the Act, by a registered dealer for the sale of goods in the course of business. In simple words, input tax is the tax a dealer pays on his local

purchases of business inputs, which include the goods that he purchases for resale, raw materials, capital goods as well as other inputs for use directly or indirectly in his business. Output tax is the tax that a dealer charges on his sales that are subject to tax. The input tax credit is to be given for both manufacturers and traders for purchase of inputs/ supplies meant for both sales within the State as well as to other States, irrespective of when these were utilized or sold. This also reduces immediate tax liability.

Input tax paid in excess of 4% will be eligible for tax credit. It is also to be noted that in certain cases, partial input tax credit is available in respect of input used for manufacture of exempted goods.

Input tax credit is allowable to a registered dealer for purchase of any goods made within the State from a dealer holding a valid certificate of registration under the Act. Input tax credit on capital goods is available for traders and manufacturers.

Input tax paid under the VAT Act is eligible for being set off against Central Sales Tax payable on inter-State sales. Therefore, excess of input tax over and above the output tax payable under the VAT Act can be applied towards Central Sales Tax payable. While taxes paid on raw materials and inputs are eligible for set off against taxes on output, taxes paid on capital goods are not eligible for immediate set-off. The reason perhaps is the huge credit that States may have to grant in cases of capital purchases of large value. Due to this, tax on capital goods may be granted, but over a certain period of time. However, the credit is limited only to capital goods actually used for manufacture and hence may not be available to a trader.

In some cases, the input tax paid and taken credit of, may have to be reversed, such as for example, when the material is consumed for personal purposes and not business purposes, or when the input including packing materials is used for manufacture and/or sale as exempt goods etc.

All tax-paid goods purchased on or after April 1, 2004 and still in stock as on April 1, 2005 will be eligible to receive input tax credit, subject to submission of requisite documents. Resellers holding tax-paid goods on April 1, 2005, and input tax credit shall be given for the sales tax already paid in the previous year. This tax credit shall be available over a period of 6 months after an interval of three months needed for verification.

Answer to Question No. 6(b)(ii)

Zero Rating

Zero rating means that the tax payable on sale of a commodity is fixed at 0%. Though apparently, it looks similar to an exempted transaction, there is a significant difference between the two. While in an exempted transaction, the tax paid on input lapses i.e. it cannot be set off, under the Zero rated sales, prior stage tax can be set off against the 0% tax paid and effectively the entire tax paid on purchases is eligible for refund. Thus, 'Zero Rating' is advantageous to the dealer compared to 'exempting' of sale transactions. Generally, export sales are zero rated and thereby, exporters are granted refund of taxes paid by them on their inputs. Exporters gain significantly due to the 'Zero rating'.

Answer to Question No. 6(c)

Rates of taxes under VAT

To reduce the multiplicity of VAT rates between various states in India it was recommended that VAT will have broadly five tax rates:

(a) Zero percent rate or tax free goods for unprocessed agricultural goods and goods of special importance.

(b) 1% on precious and semi precious metals i.e. bullion etc.

(c) 4% for inputs used for manufacturing and on declared goods, capital goods and other essential items.

(d) 20% on luxury goods and

(e) 12.5% on other goods.

TEST PAPER 4/2010

(This Test Paper is based on entire Study Lessons)

Time allowed : 3 hours *Max. marks : 100*

NOTE : *Answer All Questions.*

PART A

Question No. 1

(a) Choose the most appropriate answer from the given options in respect of the following :

(i) The maximum amount not chargeable to tax for senior citizen shall be an amount equal to:

(a) 2,40,000

(b) 2,25,000

(c) 1,90,000

(d) 1,60,000

(ii) In certain cases, income of other person is included in the income of assessee. It is called—

(a) Clubbing of income

(b) Increase in income

(c) Addition to income

(d) Set-off of income

(iii) The method of accounting for computing income is the method of accounting regularly employed by the assessee under the head:

(a) House Property

(b) Capital Gain

(c) Salaries

(d) Profits and gains from Business or profession

(iv) A company is said to be a resident in India in previous year, if:

(a) It is an Indian company

(b) The control and management is wholly situated in India

(c) Either it is a Indian company or the control and management is wholly situated in India

(d) It is both an Indian Company and the control and management is wholly situated in India.

(v) *The income which is not exempt under section 10 of the Income Tax Act, 1961:*

(a) *Income of minor child up to Rs.10000*

(b) *Dividend income in the hands of shareholders*

(c) *Income from units in the hand of Unit holders*

(d) *Gain from sale of shares listed in a recognized Stock Exchange.*

(vi) *The maximum amount of gratuity exempt under section 10(10)(ii) amount to rupees:*

(a) *3,25,000*

(b) *3,30,000*

(c) *3,50,000*

(d) *3,40,000*

(vii) *In determining annual value the following factors should be taken into consideration, except:*

(a) *Actual rent received*

(b) *Fair rent of the property*

(c) *Deposit received from tenants*

(d) *Standard rent*

(viii) *Which of the following is not an asset under section 2(ea) of the Wealth Tax Act, 1957—*

(a) *Motor car*

(b) *Boats and aircrafts*

(c) *Guest house*

(d) *Cash at bank*

(ix) *Provisions of section 44AD shall not apply in the following cases:*

(a) *Where gross receipts exceed Rs.40 lakhs*

(b) *Where assessee claims that the profits and gains from the business are less than 8% of gross receipts.*

(c) *Either gross receipt exceeds Rs.40 lakhs or assessee claims that the profits and gains from the business are less than 8% of gross receipts.*

(d) *Both gross receipts exceed Rs.40 lakhs and assessee claims that the profits and gains from the business are less than 8% of gross receipts.*

(x) *The following are considered as capital assets as per section 2(14) of Income Tax Act, 1961, except:*

(a) *Paintings*

(b) *Sculptures*

(c) *Any work of Arts*

(d) *Stock in Trade* *(1 mark each)*

(b) Mrs. Radhika received the following amounts during the financial year 2009-10:

	Rs.
Gross salary	*5,00,000*
Family pension @ Rs. 2000 p.m	*24,000*
Income of minor child	*6,000*
Accumulated balance in provident fund of her husband after his death	*1,20,000*
Gratuity received after the death of her husband	*90,000*

Calculate taxable income of Mrs. Radhika for the assessment year 2010-11. *(5 marks)*

Answer to Question No. 1(a)(i)

(a) 2,40,000

Answer to Question No. 1(a)(ii)

(a) Clubbing of income

Answer to Question No. 1(a)(iii)

(d) Profits and gains from Business or Profession

Answer to Question No. 1(a)(iv)

(c) Either it is a Indian company or the control and management is wholly situated in India.

Answer to Question No. 1(a)(v)

(a) Income of minor child upto Rs.10,000

Answer to Question No. 1(a)(vi)

(c) 3,50,000

Answer to Question No. 1(a)(vii)

(c) Deposit received from tenants

Answer to Question No. 1(a)(viii)

(d) Cash at Bank

Answer to Question No. 1(a)(ix)

(c) Either gross receipts exceed Rs. 40 lakhs or assessee claims that the profits and gains from the business are less than 8% of gross receipts

Answer to Question No. 1(a)(x)

(d) Stock-in-trade.

Answer 1(b)

Computation of Taxable Income of Mrs. Radhika for the Assessment Year 2010-11

			Rs.
Income from Salary:			
Gross Salary			5,00,000
Income from other sources:			
Family Pension		24,000	
Less :	Deduction under Section 57 in Respect of family pension (1/3rd of 24,000)	8,000	16,000
Income from Minor Child under section 64		6,000	
Less : Exemption under section 10(32)		1,500	4,500
Gross Total Income			5,20,500
Less : Deductions Under Section 80 to 80U			—
Taxable Income			5,20,500

Note : Gratuity received by Mrs. Radhika on the death of her husband is not taxable in her hands vide Circular No.573 dated August 21, 1990.

Question No. 2

(a) Write Short Notes on:

(i) Provisions for computing profits and gains of retail business under section 44AF

(ii) Income of Political Parties under section 13A. (5 marks each)

(b) What are the essential conditions for claiming exemption under section 11 in the case of a charitable trust ? (5 marks)

Answer to Question No. 2(a)(i)

Provisions for Computing Profits and Gains of retail business (Section 44AF)

Section 44AF, overrides sections 28 to 43C i.e. provisions for computation of income from business or profession.

The scheme of computation of income from business of retail trade on presumptive basis is as under:

(a) 5% of the total turnover of the retail business shall be deemed to be the taxable business income.

(b) The scheme shall not be applicable if the total turnover of such retail trade exceeds Rs. 40 lakhs in the previous year.

(c) Where the assessee is a partnership firm, the following amounts shall be deducted from the amount of 5% as is mentioned in para (1) above.

(i) Simple interest on capital to partners @ 12% per annum as per Section 40(b).

(ii) Salary to working partners allowable under Section 40(b).

No other deductions allowable under Sections 30 to 38 be deducted from the (a) above.

(d) The assessee may declare profits lower than 5% as is mentioned in para (1) above if he fulfills the following two conditions:

(i) He maintains the books of account as are mentioned in Section 44AA.

(ii) He gets his accounts audited under Section 44AB and furnishes the audit report along with the return of income.

Answer to Question No. 2(a)(ii)

Special provision relating to incomes of political parties (Section 13A):

Any income of a political party which is chargeable under the head "Income from house property" or "Income from other sources" or "Capital gains" or any income by way of voluntary contributions received by a political party from any person shall not be included in the total income of the previous year of such political party.

Provided that

(a) such political party keeps and maintains such books of account and other documents as would enable the Assessing Officer to properly deduce its income therefrom;

(b) in respect of each such voluntary contribution in excess of twenty thousand rupees, such political party keeps and maintains a record of such contribution and the name and address of the person who has made such contribution; and

(c) the accounts of such political party are audited by an accountant as defined in the Explanation below sub-section (2) of section 288.

Provided further that if the treasurer of such political party or any other person authorised by that political party in this behalf fails to submit a report under sub-section (3) of section 29C of the Representation of the People Act, 1951 (43 of 1951) for a financial year, no exemption under this section shall be available for that political party for such financial year.

Answer to Question No. 2(b)

For claiming exemption under section 11 the following conditions must be satisfied:

(a) Trust must have been created for any lawful purpose;

(b) Such trust/institution must be for charitable or religious purposes. According to

Section 2(15), charitable purpose includes relief of the poor, education, medical relief and the advancement of any other object of general public utility;

(c) The property from which income is derived should be held under trust by such charitable or religious trust/institution.

(d) The accounts of the trust/institution should be audited for such accounting year in which the total income, before giving effect to provisions of Section 11 or 12, exceeds the maximum amount which is not chargeable to tax and the person in respect of the income should obtain an audit report in Form No.10B [Rule 17B] and furnish the same along with the return of income.

(e) The trust must get itself registered with the Commissioner of Income-tax within the prescribed time.

(f) Where the "property held under a trust" includes a business undertaking, the provisions of Section 11(4) shall be applicable. On the other hand, if the trust wishes to carry on business, the profits or gains earned from such business shall not be exempt under section 11 unless the business is incidental to the attainment of the objectives of the trust/institution and separate books of accounts maintained.

(g) The charitable trust created on or after 1.1.1962 should satisfy the following further conditions:

  (a) It should not be created for the benefit of any particular religious community or caste;

  (b) No part of the income of such charitable trust or institutions should ensure directly or indirectly for the benefit of the settler or other specified persons;

  (c) The property should be held wholly for charitable purposes.

(h) The funds of the trust should be invested or deposited in the permissible forms and modes prescribed in section 11(5).

Question No. 3

(a) From the following particulars submitted by Raju. Compute his income from other sources for the assessment year 2010-11.

Director's meeting fees received from Y Ltd	*4,000*
Agricultural income from land situated in India	*12,000*
Agricultural income from Nepal	*20,000*
Interest:	
(a) From bank on FDR (Net)	*30,000*
(b) On post office saving account	*12,000*
(c) On Government securities	*6,500*
(d) On Public Provident Fund	*13,000*
(e) On National Savings Certificate VIII issue	*8,000*
Dividend from A Limited declared on 25-08-2009	*35,000*

Lottery prize received after T.D.S *27,640*

Rent from Sub Letting of a flat *12,000*
(rent paid to landlord for the flat is Rs. 6,000)

Raju spent Rs.600 for realizing the rent. He had also spent Rs.10,000 for the purchase of lottery tickets and received the prize on one ticket. *(5 marks)*

(b) Discuss the provisions relating to incidence of wealth-tax. *(5 marks)*

(c) Explain the provisions of "Belated Return" in the context of Income Tax Act, 1961. *(5 marks)*

Answer to Question No. 3(a)

Computation of income under the head "income from other sources"

		Rs.
Director's Meeting fee		4,000
Agricultural income from Nepal		20,000
Interest on fixed deposits (30,000×100/89.7)		33,445
Post Office Saving Bank Account		Exempt
Government Securities		6,500
Public Provident Fund		Exempt
National Savings Certificate		8,000
Dividend from A Limited		Exempt
Lottery (27,640×100/69.1)		40,000
Rent received	12,000	
Less : Rent paid and expenses for releasing rent.	6,600	5,400
Income from Other Sources :		1,17,345

Answer to Question No. 3(b)

Incidence of Wealth Tax

Incidence of wealth tax in the case of an individual depends upon his residential status and nationality. Residential status is decided as per the provisions of the Income-tax Act.

The scope of liability to wealth tax is as follows:

(i) In the case of an individual who is a citizen of India and resident in India, a resident HUF and company resident in India;

Wealth tax is chargeable on net wealth comprising of:

— All assets in India and outside India;

— All debts in India and outside India are deductible in computing the net wealth.

(ii) In the case of an individual who is a citizen of India but non-resident in India or not ordinarily resident in India, HUF, non-resident or not ordinarily resident in India and a company non-resident in India;

(a) All assets in India are chargeable to tax.

(b) All debts in India are deductible in computing the net wealth.

(c) All assets and debts outside India are out of the scope of Wealth Tax Act.

(iii) In the case of an individual who is not a citizen of India whether resident, non-resident or not ordinarily resident in India:

(iv) All assets in India are chargeable to tax.

(v) All debts in India are deductible in computing the net wealth.

(vi) All assets and debts outside India are out of the scope of Wealth Tax Act.

Answer to Question No. 3(c)

Belated Return under Section 139(4):

Any person who has not furnished a return within the time allowed to him under sub-section (1), or within the time allowed under a notice issued under sub-section (1) of section 142, may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

Provided that where the return relates to a previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, the reference to one year aforesaid shall be construed as a reference to two years from the end of the relevant assessment year.

Question No. 4

(a) State whether the following statement are True or False:

(i) Deduction in respect of maintenance including medical treatment of a dependent who is a person of disability shall be allowed to a non- resident in India.

(ii) Only 35% of Income from growing and manufacturing of rubber is liable to tax.

(iii) A business loss can be set-off against income from speculation business but loss in respect of a speculation business can only be set off against income of another speculation business.

(iv) Remuneration received by Member of Parliament are taxable under the head "Profits and Gains from Business or Profession".

(v) Zero Coupon bond shall be treated as 'Short term capital asset' if held for more than 12 months but not more than 36 months. (1 mark each)

(b) What are assets included in computing the net wealth of assessee though they belong to others ? (5 marks)

(c) Discuss in brief the deduction in respect of medical insurance premium. (5 marks)

Answer to Question No. 4(a)(i)

False.

Deduction in respect of maintenance including medical treatment of a dependent who is a person of disability shall not be allowed to a non- resident in India.

Answer to Question No. 4(a)(ii)

True.

Only 35% of Income from growing and manufacturing of rubber is liable to tax.

Answer to Question No. 4(a)(iii)

True.

A business loss can be set-off against income from speculation business but loss in respect of a speculation business can only be set off against income of another speculation business.

Answer to Question No. 4(a)(iv)

False.

Remuneration received by Member of Parliament is taxable under the head "Other Sources".

Answer to Question No. 4(a)(v)

False.

Zero Coupon bond shall be treated as 'Short term capital asset' if held for not more than 12 months.

Answer to Question No. 4(b)

According to Section 4, the following transfers shall be included in the net-wealth of an assessee:

(1) *Assets transferred to spouse [Section 4(1)(a)(i)]*

Assets transferred by an individual to his or her spouse directly or indirectly, otherwise than for adequate consideration or in connection with an agreement to live apart.

(2) *Assets held by minor child [Section 4(1)(a)(ii)]*

Assets held by a minor child (not being minor married daughter) of such individual. Where the assets held by the minor child are to be clubbed with that of his parents, the following rule shall apply:

(a) where the marriage of his parents subsists, in the net wealth of that parent whose net wealth (excluding the assets of the minor child so includible under this sub-section) is greater; or

(b) where the marriage of his parents does not subsist, in the net wealth of that parent who maintains the minor child in the previous year,

and where any such assets are once included in the net wealth of either parent, they will not be included in the net wealth of the other parent unless the Assessing Officer is satisfied after giving that parent an opportunity of being heard that it is necessary so to do.

However, such assets as have been acquired by the minor child out of his income referred to in the proviso to Section 64(1A) of the Income-tax Act (i.e. such income as accrues or arises to the minor child on account of any manual work done by him or any activity involving application of his skill, talent or specialized knowledge, experience etc.) and which are held by him on the valuation date are not be included in computing the net wealth of such individual.

(3) *Assets transferred to a person or association of persons [Section 4(1)(a)(iii)]*

Assets transferred by an individual to a person or association of persons after 31.3.56 directly or indirectly, otherwise than for adequate consideration for the immediate or deferred benefit of the transferor, his or her spouse are to be included in net-wealth of the transferor.

(4) *Assets transferred under revocable transfers [Section 4(1)(a)(iv)]* are included in the net wealth of the transferor. For this purpose, the following transactions are treated as revocable transfers [Clause (b) of Explanation to Section 4]:

(i) transfer revocable within a period of six years or during the transferee's lifetime; or

(ii) if the transferor derives any benefit, directly or indirectly, from the assets transferred; or

(iii) if the transferor has a right to re-transfer, directly or indirectly, in respect of the whole or any part of the assets or income from the assets to be transferred; or

(iv) if the transferor has the right to re-assume power, directly or indirectly, over the whole or any part of the assets or income from the assets so transferred.

(5) *Assets transferred by an individual to son's wife or son's minor child including step child and adopted child [Section 4(1)(a)(v)]*

Assets held by son's wife to whom such assets have been transferred by the individual directly or indirectly on or after 1.6.1973, otherwise than for adequate consideration shall be included in the net wealth of the assessee for wealth-tax purposes. [*CWT* v. *Sushiladevi* (1998) 232 ITR 556 (MP)].

(6) *Assets transferred by an individual for the benefits of son's wife [Section 4(1)(a)(vi)]*

Directly or indirectly, assets transferred on or after 1.6.1973 without adequate consideration, to a person or an association of persons for the immediate or deferred benefits of the son's wife are deemed to be the assets of the assessee.

(7) *Interest in the assets of the firm, etc. [Section 4(1)(b)]*

The value of the partner's interest in the assets of the firm includible in the net wealth shall be determined in the manner laid down in Schedule III. Where a

minor is admitted to the benefits of partnership in a firm, the value of such minor's interest, determined as per Schedule III shall be included where the marriage of the parents subsists in the net wealth of that parent of the minor whose net wealth (excluding the minor's interest) is greater. Once such interest is included in the net wealth of either parent for any assessment year, the same shall not be included in the net wealth of the other parent unless the Assessing Officer is satisfied, after giving that parent an opportunity of being heard, that it is necessary so to do.

Answer to Question No. 4(c)

Deduction under Section 80D

Essential conditions for claiming deduction under this section:

(i) Deduction is permissible, under this section, only to an individual or HUF.

(ii) It is allowed in respect of any sum paid in the previous year to General Insurance Corporation (GIC) or any other insurer, towards medical insurance premium on the health of the following:

(a) in the case of an individual :

(i) his own health of the family;

(ii) the health of parents whether dependent or not;

'Family' for the purpose of clause (i) means spouse and dependent children of the individual.

(b) in the case of a HUF

— any member of the family.

(iii) Such insurance should be in accordance with a scheme framed in this behalf by (a) GIC and approved by the Central Government or (b) any other insurer and approved by the Insurance Regulatory and Development Authority.

(iv) The payment should be made by him by any mode of payment other than cash.

(v) The amount is paid out of his income chargeable to tax.

Quantum of deduction

1. *Where the assessee is an individual*

The deduction allowed shall be the aggregate of the following, namely:

(a) The whole of the amount paid to effect or to keep in force in insurance on the health of the assessee or his spouse and dependent children as does not exceed in aggregate Rs. 15,000; and

(b) The whole of the amount paid to effect or to keep in force an insurance on the health of the parent or parents (whether dependent or not) of the assessee as does not exceed in aggregate Rs. 15,000.

2. *Where the assessee is a Hindu Undivided Family*

The deduction allowed shall be the whole of the amount paid to effect or to keep in force an insurance on the health of any member of that Hindu undivided family as does not exceed in aggregate Rs.15,000.

Additional deduction of Rs. 5,000 : Where the sum specified in clause (1)(a) and (b) and (clause (2) above is paid to effect or keep in force an insurance on the health of any person specified therein, and who is a senior citizen, an additional deduction of Rs.5,000 shall be allowed in each case.

PART B

Question No. 5

(a) What is the due date for payment of service tax ? What is the rate of interest for delayed payment and penalty for default in payment of service tax ? (5 marks)

(b) What are conditions subject to which excess payment can be adjusted ? Explain.

(c) Explain the provisions of Registration of a person providing services under Rule 4 of Service Tax Rules, 1944. (5 marks)

(d) Discuss briefly advance ruling applicable to taxable services under service tax. (5 marks)

Answer to Question No. 5(a)

Payment of Service Tax and Due date

Section 68 provides that every person providing taxable services to any person should pay service at the rate specified in Section 66. Rule 6 lays down the following rules for payment of service tax:

(a) *In case of an individual and partnership firm* : The service tax received during any quarter shall be paid to the Government by the 5th of the month immediately following the relevant quarter.

(b) *In case of others* : The service tax received during any calendar month should be paid to the credit of the Central Government by the 5th of the month immediately following the relevant calendar month.

31st March will be the due date for payment of service tax for the month of March or for the quarter ending March.

Where payment is made through internet banking, such e-payment can be made by 6th of the month.

Interest on delayed payment of Service Tax

Any person who has failed to pay the tax to the Government within the prescribed time limit, such person shall pay simple interest @ 13% p.a. for the period of delay.

Penalty for failure to pay Service Tax

If any person who is liable to pay service tax has failed to pay within prescribed time limit, he will be liable to pay interest @ 13% p.a. and also penalty. Penalty for failure to

pay service tax shall be Rs.200 per day or 2% of such tax per month whichever is higher, starting from the first day after the due date till the date of actual payment of the outstanding amount of service tax. However, total amount of penalty shall not exceed the amount of service tax.

Answer to Question No. 5(b)

Adjustment of Service Tax

Where an assessee has paid to the credit of "Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter.

The adjustment of excess amount paid, shall be subject to the following conditions, namely:

(i) Excess amount paid is on account of reasons not involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification.

(ii) Excess amount paid by an assessee registered under Rule 4(2), on account of delayed receipt of details of payments towards taxable services may be adjusted without monetary limit;

(iii) In cases other than specified in clause (ii) above, the excess amount paid may be adjusted with a monetary limit of Rupees one lakh for a relevant month or quarter as the case may be.

(iv) The details and reasons for such adjustment shall be intimated to the jurisdictional Superintendent of Central Excise within a period of fifteen days from the date of such adjustment.

Answer to Question No. 5(c)

Provisions of Registration under Service Tax

1. *Person specified to make an application*

   (a) An input service provider

   (b) Any provider of taxable service whose aggregate value of taxable service exceed Rs.9 lakhs.

2. *Procedure for registration* : For registration of Service Tax every person liable for paying the service tax shall make an application to the Superintendent of Central Excise in Form ST-1 for registration within a period of thirty days from the date on which the service tax is levied under section 66.

3. *Issue of Registration Certificate* : The registration shall be granted by the Superintendent of Central Excise in whose jurisdiction the premises or offices within 7 days from the date of receipt of registration in FORM ST-2.If the registration certificate is not granted within the said period, the registration applied for shall be deemed to have been granted.

4. *Time limit for registration* : Every person liable to pay service tax should make

an application to the Superintendent of Central Excise within 30 days from the date service Tax levied under section 66.

5. *Surrender of Certificate of Registration* : In the following cases the certificate of registration shall be surrendered by the assessee:

— When a registered assessee transfers his business, he should surrender his registration.

— When a registered assessee ceases to carry on the service activity for which he is registered.

Answer to Question No. 5(d)

Advance Ruling

Section 96A(a) defines 'Advance Ruling' as the determination, by the authority of a question of law or fact specified in the application, regarding the liability to pay service tax in relation to a service proposed to be provided by the applicant.

As per Section 96C(2), an advance ruling may be sought on a question of law or fact, in respect of –

(a) Classification of any service as a taxable service, under Chapter V of the Finance Act, 1994.

(b) The valuation of a taxable service for charging service tax.

(c) The principles to be adopted for the purposes of determination of value of the taxable services.

(d) Applicability of notifications issued under Chapter V of the Finance Act, 1994.

(e) Admissibility of credit of service tax.

(f) Determination of the liability to pay service tax on a taxable service under the provisions of Chapter V.

Questions not to be considered for Advance Ruling

An application for Advance Ruling on a question shall not be entertained if:

(a) The same question is already pending in a case before any Central Excise Authority, Appellate Tribunal or any Court, or

(b) It is the same as in a matter already decided by the Appellate Tribunal or Court.

Persons Eligible to seek Advance Ruling

As per Section 96A(b) an application for Advance Ruling may be made by following persons:

(a) A non-resident setting up a joint venture in India in collaboration with a non-resident or a resident and proposing to undertake a business activity in India.

(b) A resident setting up a joint venture in India in collaboration with a non-resident, and proposing to undertake business activity in India;

(c) A wholly owned subsidiary Indian company of a foreign holding company, proposing to undertake a business activity in India.

(d) A joint venture in India;

(e) A resident falling within a notified class or category of persons.

Application for obtaining Advance Ruling

A person desiring to obtain an Advance Ruling shall make an application in Form AAR-ST (in quadruplicate).

PART C

Question No. 6

(a) State whether the following statement are True or False:

(i) Under the Addition Method, the tax rate is applied to the difference between the value of output and the cost of input.

(ii) TIN stand for Tax Payer's Identification Number and it is code number to identify a tax payer, having 11 digit numerals allotted for the entire country.

(iii) A special VAT rate of 2% is prescribed for precious and semi precious metals.

(iv) Karnataka was the first state to implement VAT with effect from 1st April, 2003.

(v) Under Zero rated sales, prior stage tax is set off against the 0% tax paid, and effectively the entire tax paid on purchases is eligible for refund.

(1 mark each)

(b) Discuss, with suitable example, various methods for computation of VAT liability.

(5 mark)

(c) Write Short Notes on the following :

(i) Exempt sale

(ii) Rates of Value Added Tax *(5 marks each)*

Answer to Question No. 6(a)(i)

False, under this method value added is estimated by adding all the payments that are payable to the factors of production viz. wages, profits, rent and interest.

Answer to Question No. 6(a)(ii)

True, TIN stand for Tax Payer's Identification Number and it is code number to identify a tax payer

Answer to Question No. 6(a)(iii)

False, the rate for precious and semi-precious metal is 1%.

Answer to Question No. 6(a)(iv)

False, Haryana was the first state to implement VAT.

Answer to Question No. 6(a)(v)

True, Under Zero rated sales, prior stage tax is set off against the 0% tax paid, and effectively the entire tax paid on purchases is eligible for refund

Answer to Question No. 6(b)

Methods for computation of VAT

There are three different modes of computation of VAT:

(a) *Addition Method* : Under this method value added is estimated by adding all the payments that are payable to the factors of production viz. wages, profits, rent and interest. Under this method, the incidence of tax evasion is greater because it does not require matching of invoices.

(b) *Subtraction Method* : In this method value added is computed by subtracting value of inputs from the value of outputs. VAT rate shall be applied on the computed value added. This is also known as the product approach.

(c) *Tax Credit Method* : Under this method, VAT payable by a dealer is arrived at by deducting tax on inputs from the tax on sales. This method is known as the invoice method. This method is universally used because of the advantages of computing tax liability under this method. As rate of tax is different in respect of inputs and outputs, the addition method and the subtraction method are not practicable in the case of a manufacturer.

Answer to Question No. 6(c)(i)

Exempt Sale

When a certain sale is exempted from tax, the dealer effecting the exempt sale will not be entitled to any VAT credit on the inputs purchased by him. The sale effected by him will also be exempt from any tax. This results in breaking of the VAT chain. The following are the examples of Exempt sale:

- *Samples or Gifts*

  An example where reversal will be required is when goods are sold as samples or gifts i.e., non-taxable transactions and the input tax credit relating thereto has already been availed against output tax payable on other sale transactions. In such circumstances, the credit earned will be reversed. This is called “Reverse Credit of Input Tax”.

- *Consignment transfer*

  Stock/Consignment transfers are exempt from VAT as these were never under the purview of the State Tax Acts. The input tax paid on such commodities or on the inputs that go into producing such commodities can be taken credit to the extent of excess of input tax over and above 4%. Thus, if the input used in the commodity that is transferred, or the product itself when purchased, was taxed at say 10%, credit can be taken by the transferring dealer to the extent of 6% against other taxable dispatches.

  Imported goods will continue to be exempt from VAT. Under VAT, there is no place for entry tax and Octroi.

Answer to Question No. 6(c)(ii)

Rates of taxes under VAT

To reduce the multiplicity of VAT rates between various states in India it was recommended that VAT will have broadly five tax rates:

(a) Zero percent rate or tax free goods for unprocessed agricultural goods and goods of special importance.

(b) 1% on precious and semi precious metals i.e. bullion etc.

(c) 4% for inputs used for manufacturing and on declared goods, capital goods and other essential items.

(d) 20% on luxury goods and

(e) 12.5% on other goods.

TEST PAPER 5/2010

(This Test Paper is based on entire Study Lessons)

Time allowed : 3 hours *Max. marks : 100*

NOTE : *Answer All Questions.*

PART A

Question No. 1

(a) Choose the most appropriate answer from the given options in respect of the following :

(i) Any rent or revenue derived from land may be treated as agricultural income if-

(a) It is derived from land

(b) The land is situated in India

(c) The land is used for agricultural purpose

(d) All the above conditions are satisfied

(ii) Which of the following is covered under section 80D of the Income Tax Act, 1961 :

(a) Repayment of loan taken for higher education

(b) Medical treatment of handicapped dependent

(c) Medical insurance premium

(d) Reimbursement of medical expenses

(iii) The circulars issued by the CBDT in exercise of the powers conferred under section 119 are binding on the-

(a) Income tax authorities

(b) Assessees

(c) ITAT

(d) Commissioner (Appeals)

(iv) Transport allowance granted to an employee per month to meet expenditure for the purpose of commuting from office to residence is exempt to the extent of rupees-

(a) 1200

(b) 800

(c) 500

(d) 1000

(v) *An assessee shall be allowed a standard deduction from net annual value of a sum equal to _____ under the head house property:*

(a) *15%*

(b) *20%*

(c) *25%*

(d) *30%*

(vi) *The deduction allowable in respect of family pension taxable under the head 'income from other sources' is—*

(a) *33.33% of the pension*

(b) *30% of the pension or Rs.15,000 whichever is less*

(c) *33.33% of the pension or Rs.15,000 whichever is less*

(d) *None of the above*

(vii) *Which of the following are not allowed as deduction under section 36 of Income Tax Act, 1961 :*

(a) *Securities Transaction Tax*

(b) *Commodities Transaction Tax*

(c) *Banking Cash Transaction Tax*

(d) *None of the above.*

(viii) *Deduction under section 33AB is granted to persons engaged in the business of growing and manufacturing-*

(a) *Tea*

(b) *Rubber*

(c) *Coffee*

(d) *Any of the above*

(ix) *Which of the following considered as transfer under section 2(47) of Income tax Act, 1961-*

(a) *Extinguishment of any right*

(b) *Compulsory Acquisition*

(c) *Maturity and redemption of Zero Coupon Bond*

(d) *All the above*

(x) *Income of a minor child clubbed in the hands of parents under section 64(1A) is exempt which does not exceed*

(a) *3000 per child*

(b) *1500 per child*

(c) *2000 per child*

(d) *2500 per child* *(1 mark each)*

(b) *Write short Notes on the following:*

(a) *Best Judgment Assessment*

(b) *Deduction under section 80D* *(5 marks each)*

Answer to Question No. 1(a)(i)

(d) All the above conditions are satisfied.

Answer to Question No. 1(a)(ii)

(c) Medical insurance premium.

Answer to Question No. 1(a)(iii)

(a) Income tax authorities.

Answer to Question No. 1(a)(iv)

(b) 800.

Answer to Question No. 1(a)(v)

(d) 30%.

Answer to Question No. 1(a)(vi)

(c) 33.33% of the pension or Rs.15000 whichever is less.

Answer to Question No. 1(a)(vii)

(d) None of the above.

Answer to Question No. 1(a)(viii)

(d) Any of the above.

Answer to Question No. 1(a)(ix)

(d) All the above.

Answer to Question No. 1(a)(x)

(b) 1500 per child.

Answer to Question No. 1(b)(a)

Best Judgment Assessment (Section 144)

Assessing Officer, after taking into account all relevant material which he has gathered, is under an obligation to make an assessment of the total income or loss to the Best Judgment Assessment and determine the tax payable by the assessee in the following cases:

(i) Where any person fails to make the return under Section 139(1) and has not made a return or a revised return under Section 139(4) or Section 139(5);

(ii) Where any person fails to comply with the terms of a notice issued under Section 142(2A) for getting the account audited;

(iii) Where any person, having made a return, fails to comply with all the terms of a notice issued under Section 143(2);

Opportunity must be given to the assessee : The Best Judgment Assessment can only be made after giving the assessee an opportunity of being heard by giving

notice to the assessee to show cause why the assessment should not be completed under Section 144. However, it will not be necessary to give such notice where a notice under Section 142(1) has already been issued prior to making assessment under this section.

Answer to Question No. 1(b)(b)

Deduction under Section 80D

Essential conditions for claiming deduction under this section:

(i) Deduction is permissible, under this section, only to an individual or HUF.

(ii) It is allowed in respect of any sum paid in the previous year to General Insurance Corporation (GIC) or any other insurer, towards medical insurance premium on the health of the following:

(a) in the case of an individual :

(i) his own health of the family;

(ii) the health of parents whether dependent or not;

'Family' for the purpose of clause (i) means spouse and dependent children of the individual.

(b) in the case of a HUF

— any member of the family.

(iii) Such insurance should be in accordance with a scheme framed in this behalf by (a) GIC and approved by the Central Government or (b) any other insurer and approved by the Insurance Regulatory and Development Authority.

(iv) The payment should be made by him by any mode of payment other than cash.

(v) The amount is paid out of his income chargeable to tax.

Quantum of deduction

1. *Where the assessee is an individual* : The deduction allowed shall be the aggregate of the following, namely :

(a) The whole of the amount paid to effect or to keep in force in insurance on the health of the assessee or his spouse and dependent children as does not exceed in aggregate Rs. 15,000; and

(b) The whole of the amount paid to effect or to keep in force an insurance on the health of the parent or parents (whether dependent or not) of the assessee as does not exceed in aggregate Rs.15,000.

2. *Where the assessee is a Hindu Undivided Family*

The deduction allowed shall be the whole of the amount paid to effect or to keep in force an insurance on the health of any member of that Hindu undivided family as does not exceed in aggregate Rs. 15,000.

Additional deduction of Rs.5,000 : Where the sum specified in clause (1)(a) and (b) and (clause (2) above is paid to effect or keep in force an insurance on the health of any person specified therein, and who is a senior citizen, an additional deduction of Rs.5,000 shall be allowed in each case.

Question No. 2

(a) Compute the net wealth of Rajan, a resident individual, as on 31st March 2010 from the following particulars:

(i) He has a house property at Delhi valued at Rs. 20,00,000 which is used for business purposes;

(ii) Vehicles for personal use – Motor car: Rs. 8,40,000; Motor Van: 4,50,000; and Jeep: Rs. 3,54,000;

(iii) Cash in hand: Rs. 3,50,000;

(iv) Jewellery: Rs. 15,60,000; and

(v) He had transferred an urban house plot in February 2010 in favour of his niece, which was not revocable during her life time. His niece died on 14th March, 2010 and Rajan could get the title of plot re-transferred to his name on 15th April, 2010. Market value of house plot as on 31st March, 2010 is Rs. 14,10,000. (7 marks)

(b) Explain the provisions relating to carry forward & set off of accumulated losses and unabsorbed depreciation in case of demerger. (8 marks)

Answer to Question No. 2(a)

Statement showing computation of net wealth of Rajan as on 31.3.2010

		Rs.
	Motor Car	8,40,000
	Motor Van	4,50,000
	Jeep	3,54,000
	Cash in hand (Rs. 3,50,000 – 50,000)	
3,00,000		
	Jewellery	15,60,000
	Urban house	14,10,000
	Gross wealth	49,14,000
	Less : Deduction	—
	Net Wealth	49, 14,000

Notes :

(i) Under Section 2(ea) of the Wealth-tax Act, the term 'assets' does not include,

inter alia any house which the assessee may occupy for any business or profession carried on by him. Here the house property at Delhi is occupied by the assessee for business purpose.

(ii) As per Section 4(5) of the Wealth-tax Act, the value of any asset transferred under an irrevocable transfer shall be liable to be included in computing the net wealth of the transferor as and when the power to revoke arises to the assessee. In this case on death of the niece of Mr. Rajan he is able to revoke the transfer which is on 14.3.2010. The actual time of transfer of property i.e. 15.4.2010 is immaterial.

Answer to Question No. 2(b)

Carry forward of and set off of accumulated losses and unabsorbed depreciation in case of demerger [Section 72A(4) and (5)]

Notwithstanding anything contained in any other provisions of this Act, in the case of a demerger, the accumulated loss and the allowance for absorbed depreciation of the demerged company shall —

(i) where such loss or unabsorbed depreciation is directly relatable to the undertakings transferred to the resulting company, be allowed to be carried forward and set off in the hands of the resulting company. In this case, the accumulated loss will be carried forward for the balance unexpired period and the unabsorbed depreciation can be carried forward indefinitely;

(ii) where such loss or unabsorbed depreciation is not directly relatable to the undertakings transferred to the resulting company, be apportioned between demergee company and the resulting company in the same proportion in which the assets of the undertakings have been retained by the demerged company and transferred to the resulting company, and be allowed to be carried forward and set off in the hands of the demerged company or the resulting company, as the case may be. In this case, the accumulated loss will be carried forward for the unexpired period and the unabsorbed depreciation will be carried forward indefinitely.

The Central Government may, for the purposes of this Act, by notification in the Official Gazette, specify such conditions as it considers necessary to ensure that the demerger is for genuine business purposes.

Question No. 3

(a) State with reasons whether the following expenses are admissible as deduction while computing "Profits and Gains from Business or Profession".

(i) Travelling expenses of Rs.20,000 incurred by a director on a tour to U.S.A in connection with negotiation of purchase of a new machinery.

(ii) Interest paid to bank Rs.15000 in connection with overdraft obtained for paying dividend.

(iii) Rs.20,000 were spent in the previous in connection with statutory income tax proceedings.

(iv) An expenditure of Rs. 20000 incurred towards cost of neon signs fixed on office premises for advertising the products of the assessee.

(2 marks each)

(b) Rameshwer, a resident aged 66 years submits the following information for the previous year 2009-10

		Rs.
(1)	*Income from Salary*	*3,36000*
(2)	*Interest on Fixed Deposits with Banks*	*34,000*
(3)	*Long Term Capital Gains*	*1,50,000*
(4)	*Short-Term capital gains on the sale of equity shares on which securities transaction tax has been paid*	*15,000*

He pays Rs.5,000 as Life Insurance Premium on a policy of Rs.40,000 and deposits Rs.22,000 in Public Provident Fund Account.

Compute the tax payable by Rameshwer for the assessment year 2010-11.

(7 marks)

Answer to Question No. 3(a)(i)

Traveling expenses of Rs. 20,000 of the Director are fully allowed because the tour was for business purposes. It may also be treated as part of the cost of new machine, if the assessee so desires.

Answer to Question No. 3(a)(ii)

Interest of Rs.15,000 paid to bank for overdraft for payment of dividend is allowed.

Answer to Question No. 3(a)(iii)

Amount spent on income-tax proceedings are allowed as legal charges, hence Rs.20,000 is deductible.

Answer to Question No. 3(a)(iv)

Deduction of expenditure on advertisement is allowed under Section 37(1) and according to this section only expenditure which is of revenue nature shall be allowed. Therefore capital expenditure on neon sign will only be subject to depreciation.

Answer to Question No. 3(b)

Computation of Tax payable by Rameshwar for the Assessment Year 2010-11

	Rs.
Income from salaries	3,36000
Income from Capital Gains	
— Long Term Capital Gain	1,50,000
— Short Term Capital Gain	15,000
Income From other sources	
— Interest on Fixed Deposits with banks	34,000

	Gross Total Income	5,35,000
Less :	Deduction permissible under section 80C	27,000
	(Not available from LTCG and STCG)	
	Total Income	5,08,000
Total Tax Payable		
Tax @10% on Rs.1,03,000 (Amount in excess of Rs.2,40,000)		10,300
Tax on long-term capital gain (20% of Rs.1,50,000)		30,000
Tax on short-term capital gain (10% of Rs.15,000)		1500
Total tax payable		41,800
Add : Education cess @ 2%		836
Add : SHEC @ 1%		418
Total tax payable		43,054

Question No. 4

(a) Explain the provisions of section 5 of wealth tax Act, 1957 in relation of assets which are exempt. (5 marks)

(b) What are the provisions of section 54F in relation to capital gain on transfer of asset, other than a residential house ? (5 marks)

(c) Briefly explain and illustrate how the tax liability of an assessee is determined with reference to residence. (5 marks)

Answer to Question No. 4(a)

The following assets are exempt under section 5 of the Wealth Tax Act, 1957

1. *Property held under a trust [Section 5(i)]*

   Any property (i.e. six assets) held by the assessee under trust or other legal obligation for any public purpose of charitable or religious nature in India is exempt from tax. However, this exemption is subject to the provisions of Section 21A, which has an over-riding effect on Section 5(i). As per Section 21A, the exemption under Section 5(1) will be forfeited and the trustee of the trust will become taxable under wealth tax as if the property was held by an individual who is a citizen of India and resident in India if :

   (i) any part of such property or any income of such trust is used or applied for the benefit of person referred to in Section 13(3) of the Income-tax Act, or

   (ii) any part of income of the trust ensures for the benefit of the person referred to in Section 13(3); or

   (iii) any funds of the trust are invested or deposited in any mode other than given under Section 11(5).

2. *Interest in the coparcenary property of the HUF [Section 5(ii)]*

   As the Hindu Undivided Family is itself a unit for taxation under the Wealth-tax Act, the interest of the assessee in the coparcenary property of any Hindu Undivided Family of which he is a member, shall be exempt.

3. *One Official residence of a Ruler [Section 5(iii)]*

   The erstwhile Ruler of an Indian State has been given an exemption in respect of any one building in his occupation, being a building which has been declared by the Central Government as his official residence, immediately before the commencement of the Constitution (Twenty Sixth Amendment) Act, 1971.

4. *Heirloom Jewellery of an erstwhile Ruler [Section 5(iv)]*

   A former Ruler is entitled to an exemption in respect of Jewellery in his possession provided the following conditions are satisfied:

   (i) Such Jewellery should not be his personal property;

   (ii) Such Jewellery must have been recognized before 1.4.1957 by the Central Government as his heirloom; or where no such recognition exists, it must have been recognized by the CBDT as his heirloom Jewellery at the time of his first wealth-tax assessment.

5. *Money and the assets brought into India by citizen of India or person of Indian Origin [Section 5(v)]*

   An assessee who is an individual is entitled to exemption under this clause in respect of any money or asset brought into India provided the following conditions are satisfied:

   (i) Such individual should be a citizen of India or a person of Indian origin;

   (ii) He was ordinarily residing in a foreign country;

   (iii) He, on leaving such country, has returned to India with the intention of permanently residing in India.

6. *One house or part of a house [Section 5(vi)]:*

   Exemption under this clause is allowed only to individual and HUF assessee. The exemption is allowed in respect of:

   (i) One house; or

   (ii) A part of the house; or

   (iii) A plot of land exceeding 500 sq. mts.

Answer to Question No. 4(b)

Where an individual or HUF transfers any long-term capital asset, not being a residential house and invests the net sale proceeds to acquire a residential house, the exemption under section 54F is available provided following conditions are satisfied:

(i) The asset is transferred by an individual or HUF;

(ii) The asset transferred is a long-term capital asset;

(iii) The asset transferred is any capital asset other than a residential house;

(iv) The assessee has within the specified period purchased or constructed a residential house;

(v) The assessee does not own more than one residential house on the date of transfer of the original asset, exclusive of the one purchased for claiming exemption under this section i.e., Section 54F.

Specified Period

(i) One year before, or two years after the date on which the transfer took place, for purchase of a house;

(ii) A period of three years after the date on which the transfer took place, for construction of a house.

Assessee should not acquire or construct any other house within certain time: It has been further provided that the asessee should not purchase, within a period of one year after the date of transfer of original asset or construct within a period of three years after the date of transfer of original asset, any other residential house other than the new asset.

Quantum of Deduction

(i) If the net sale consideration of the original asset is equal to or less than the cost of the new house, the entire capital gain shall be exempt.

(ii) If the net sale consideration of the original asset is greater than the cost of the new house then the exemption shall be allowed in the same proportion in which the cost of the new house bears to the net sale considerations i.e., it shall be allowed proportionately as under :

$$\frac{\text{Long - term capital gain x Amount invested in the new house}}{\text{Net sale consideration}}$$

Answer to Question No. 4(c)

Tax incidence *vis-a-vis* residence is indicated by the following chart:

1. Where tax incidence arises in case of

	Resident or Resident & Ordinarily Resident	*Resident but not ordinarily resident*	*Non-resident*
Income received in India (Whether accrued in or outside India)	Yes	Yes	Yes
Income deemed to be received in India (Whether accrued in or outside India)	Yes	Yes	Yes
Income accruing or arising in India (Whether received in India or outside India)	Yes	Yes	Yes
Income deemed to accrue or arise in India (Whether received in India or outside India)	Yes	Yes	Yes
Income received and accrued outside India from a business controlled or a profession set up in India	Yes	Yes	Yes

	Resident or Resident & Ordinarily Resident	*Resident but not ordinarily resident*	*Non-resident*
Income received and accrued outside India from a business controlled from outside India or a profession set up outside India	Yes	No	No
India but later on remitted to India (whether tax incidence arises at the time of remittance?)	No	No	No

PART B

Question No. 5

(a) Re-write the following sentences after filling up the blank spaces with appropriate word(s)/figure(s):

(i) At present, service tax is levied under the Union Government's power to tax vide Entry _____ of List I of Schedule VII to the Constitution of India.

(ii) A provider of service tax whose aggregate value of taxable service in a financial year exceeds _____ shall make an application for registration.

(iii) Every assessee shall submit a _____ return in Form ST-3.

(iv) Taxable service of aggregate value of _____ is exempt from the service tax leviable under section 66.

(v) The provisions of service tax extends to whole of India except _____.

(1 mark each)

(b) How excess payment of service tax can be adjusted ? And what are conditions to be satisfied for adjustment of excess service tax. (5 marks)

(c) Under certain circumstances, the service receivers are liable to pay service tax. Indicate such cases. (5 marks)

(d) What do you mean by 'taxable services' in the context of service tax? How the value of taxable services determined ? (5 marks)

Answer 5(a)

(i) At present, service tax is levied under the Union Government's power to tax vide Entry **92C** of List I of Schedule VII to the Constitution of India.

(ii) A provider of service tax whose aggregate value of taxable service in a financial year exceeds **9 lakhs** shall make an application for registration.

(iii) Every assessee shall submit a **Half yearly** return in Form ST-3.

(iv) Taxable service of aggregate value of **Rupees Ten lakhs** is exempt from the service tax leviable under section 66.

(v) The provisions of service tax extends to whole of India except **Jammu & Kashmir** .

Answer to Question No. 5(b)

Adjustment of Service Tax

Where an assessee has paid to the credit of "Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter.

The adjustment of excess amount paid, shall be subject to the following conditions, namely:

(i) Excess amount paid is on account of reasons not involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification.

(ii) Excess amount paid by an assessee registered under Rule 4(2), on account of delayed receipt of details of payments towards taxable services may be adjusted without monetary limit;

(iii) In cases other than specified in clause (ii) above, the excess amount paid may be adjusted with a monetary limit of Rupees one lakh for a relevant month or quarter as the case may be.

(iv) The details and reasons for such adjustment shall be intimated to the jurisdictional Superintendent of Central Excise within a period of fifteen days from the date of such adjustment.

Answer to Question No. 5(c)

As per Section 68, every person providing taxable services i.e. provider of output service is liable to pay service tax. But in special cases service receiver is liable to pay service tax. This is also known as reverse charge.

As per Rule 2(1)(d) of Service tax Rules, 1994 the following receivers of service are liable to pay service tax :

(i) In general Insurance or Life Insurance services, the person carrying on the business of Insurance is liable and not the insurance agent.

(ii) In the case of services received in India from a place or person outside India, the recipient is liable.

(iii) In specified cases consignor or consignee who is paying freight charges is liable to pay service charge for the services received from a Goods Transport Agency.

(iv) In case mutual fund services, the mutual fund or asset management company is liable and not the agent.

(v) For sponsorship services, the recipient body corporate or firm is liable.

Answer to Question No. 5(d)

Section 65(105) of the Finance Act, 1994 defines taxable service to mean any service provided or to be provided to any person which is liable to payment of service tax.

According to Section 67 of Chapter V of Finance Act, 1994, the value of any taxable service shall be the 'gross amount' charged by the service provider for such service rendered by him. "Gross amount" means the amount actually charged by the service provider without making any deduction. The service provider will have to make a bill on the receiver of service showing clearly the gross amount charged.

For determining the value of taxable service, the following factors regarding identification of services have to take into consideration.

(i) Services to be included;

(ii) Services to be excluded;

(iii) Items which are statutorily includible or excludible;

(iv) Items which are includible or excludible according to departmental clarifications;

(v) If permissible, reimbursement of out of pocket expenses have to be excluded;

(vi) Inclusion of service tax element separately in the bills;

(vii) Generally and specifically exempted services on which no service tax is leviable at all are not required to be considered for determining the value of taxable service. Such services are the services which are not covered under Section 65(105) of the Act and also those services which are provided in the state of Jammu & Kashmir. Where a service provider is providing more than one taxable service, the gross amount in respect of all the services should be determined separately in respect of each such service so that specific exemptions applicable to each service can be availed.

As per Section 67 of the Act, if the consideration for a taxable service is in terms of money, the value of such service shall be the gross amount charged by the service provider for such service. If the consideration is not received in money, the value of taxable service shall be the amount of money (together with service tax) equivalent to the total consideration this arrived at.

If the gross amount charged by service provider is inclusive of service tax payable, the value of taxable service will be equal to

= Gross amount charged x 100/(100 + Rate of Service Tax).

Gross amount charged includes payment by cheque, credit card deduction from account and any form of payment by issue of credit or debit notes and book adjustments.

PART C

Question No. 6

(a) Write Short Notes on :

(i) Methods for computation of VAT

(ii) Rates of taxes under VAT. *(5 marks each)*

(b) What do you understand by exempt sale and zero rating under VAT regime? *(5 marks)*

(c) Re-write the following sentences after filling up the blank spaces with appropriate word(s)/figure(s):

(i) VAT helps in checking _____ and in achieving neutrality.

(ii) _____ means that the tax payable on sale of a commodity is fixed at 0%.

(iii) _____ was the first state to introduce VAT in India.

(iv) Under _____ method rate of tax applied to the difference between value of output and cost of input.

(v) The rate of VAT on precious and semi-precious metals is _____.

(1 mark each)

Answer to Question No. 6(a)(i)

Methods for computation of VAT

There are three different modes of computation of VAT:

(a) *Addition Method* : Under this method value added is estimated by adding all the payments that are payable to the factors of production viz. wages, profits, rent and interest. Under this method, the incidence of tax evasion is greater because it does not require matching of invoices.

(b) *Subtraction Method* : In this method value added is computed by subtracting value of inputs from the value of outputs. VAT rate shall be applied on the computed value added. This is also known as the product approach.

(c) *Tax Credit Method* : Under this method, VAT payable by a dealer is arrived at by deducting tax on inputs from the tax on sales. This method is known as the invoice method. This method is universally used because of the advantages of computing tax liability under this method. As rate of tax is different in respect of inputs and outputs, the addition method and the subtraction method are not practicable in the case of a manufacturer.

Answer to Question No. 6(a)(ii)

Rates of taxes under VAT

To reduce the multiplicity of VAT rates between various states in India it was recommended that VAT will have broadly five tax rates:

(a) Zero percent rate or tax free goods for unprocessed agricultural goods and goods of special importance.

(b) 1% on precious and semi precious metals i.e. bullion etc.

(c) 4% for inputs used for manufacturing and on declared goods, capital goods and other essential items.

(d) 20% on luxury goods and

(e) 12.5% on other goods.

Answer to Question No. 6(b)

Exempt Sale

When a certain sale is exempted from tax, the dealer effecting the exempt sale will not be entitled to any VAT credit on the inputs purchased by him. The sale effected by him will also be exempt from any tax. This results in breaking of the VAT chain. The following are the Examples of exempted sale:

- *Samples or Gifts*

  An example where reversal will be required is when goods are sold as samples or gifts i.e., non-taxable transactions and the input tax credit relating thereto has already been availed against output tax payable on other sale transactions. In such circumstances, the credit earned will be reversed. This is called "Reverse Credit of Input Tax".

- *Consignment transfer*

  Stock/Consignment transfers are exempt from VAT as these were never under the purview of the State Tax Acts. The input tax paid on such commodities or on the inputs that go into producing such commodities can be taken credit to the extent of excess of input tax over and above 4%. Thus, if the input used in the commodity that is transferred, or the product itself when purchased, was taxed at say 10%, credit can be taken by the transferring dealer to the extent of 6% against other taxable dispatches.

Imported goods will continue to be exempt from VAT.

Zero Rating

Zero rating means that the tax payable on sale of a commodity is fixed at 0%. Though apparently, it looks similar to an exempted transaction, there is a significant difference between the two. While in an exempted transaction, the tax paid on input lapses i.e. it cannot be set off, under the Zero rated sales, prior stage tax can be set off against the 0% tax paid and effectively the entire tax paid on purchases is eligible for refund. Thus, 'Zero Rating' is advantageous to the dealer compared to 'exempting' of sale transactions. Generally, export sales are zero rated and thereby, exporters are granted refund of taxes paid by them on their inputs. Exporters gain significantly due to the 'Zero rating'.

Answer to Question No. 6(c)

(i) VAT helps in checking **tax evasion** and in achieving neutrality.

(ii) **Zero rating** means that the tax payable on sale of a commodity is fixed at 0%.

(iii) **Haryana** was the first state to introduce VAT in India.

(iv) Under **subtraction** method rate of tax applied to the difference between value of output and cost of input.

(v) The rate of VAT on precious and semi-precious metals is **1%** .