
# SUGGESTED SOLUTION

## INTERMEDIATE NOVEMBER 2018 EXAM

### SUBJECT- TAXATION

## Test Code - CIN 5019

**BRANCH - () (Date : 09/09/2018)**

**Head Office :Shraddha, 3rd Floor, Near Chinai College, Andheri (E), Mumbai – 69.**
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**Part A – Direct Tax**

**Answer 1:**

**Computation of total income of Mr.Kabir for the A.Y. 2018-19**

| Particulars | | Rs. | Rs. |
|---|---|---|---|
| **Profits and gains of business or profession** | | | |
| **(a) Own business [Note2]** | | | 6,60,000 |
| **(b) Income from partnership firm [Note1]** | | | |
| Interest on capital | | 2,00,000 | |
| [As per section 28(v), chargeable in the hands of the partner only to the extent allowable as deduction in the firm's hand i.e. @12%] | | | |
| Salary of working partner (Since the same has been fully allowed as deduction in the hands of thefirm) | | 90,000 | 2,90,000 |
| **Income from other sources** | | | |
| (a) LIC JeevanDhara pension | | 24,000 | |
| (b) Interest from bank FD (gross) | | 50,000 | 74,000 |
| **Gross Total Income** | | | **10,24,000** |
| *Less:* **Deductions under Chapter VIA** | | | |
| **Section 80C** | | | |
| Life insurance premium for policy in the name of wife qualifies for deduction. However, the same has to be restricted to 10% of sum assured i.e. 10% of Rs.2,00,000. | 20,000 | | |
| Contribution to PPF | 70,000 | 90,000 | |
| **Section 80D** | | | |
| Mediclaim premium for father, a senior citizen | 32,000 | | |
| (qualifies for deduction, even though the father is not dependent on the assessee, subject to a maximum of Rs. 30,000) | | 30,000 | 1,20,000 |
| **Total Income** | | | **9,04,000** |

**Notes:**

**(1)** The income by way of interest on capital and salary of Mr. Kabirfrom the firm, Nayasa&Co., in which he is a working partner, to the extent allowed as deduction in the hands of the firm under section 40(b), has to be included in the business income of the partner as per section 28(v). Accordingly, Rs. 2,90,000 [i.e., Rs. 90,000 (salary) + Rs. 2,00,000 (interest@12%)] should be included in his businessincome.

**(2)** Computation of income from own business

| Particulars | Rs. | Rs. |
|---|---|---|
| Net profit as per profit and loss account | | 6,48,000 |
| Less: Items credited to profit and loss account not taxable under this head/ exempt | | |
| Interest on bank FD (Net of TDS) | 45,000 | |

| | | |
|---|---|---|
| LIC policy matured [Exempt under section 10(10D)] **[Note 3]** | 1,50,000 | |
| Agricultural income [Exempt under section 10(1)] | 1,60,000 | |
| Pension from LIC JeevanDhara | 24,000 | 3,79,000 |
| | | 2,69,000 |
| Add: Items debited to profit and loss account to be disallowed/considered separately | | |
| Advance tax | 1,05,000 | |
| Depreciation: | | |
| - Car | 3,00,000 | |
| - Machinery | 1,25,000 | |
| Car expenses disallowed for personal use (Rs. 50,000 x 2/5) | 20,000 | |
| Salary to manager disallowed under section 40A(3) since it is paid in cash and the same exceeds Rs. 10,000 | 18,000 | 5,68,000 |
| | | **8,37,000** |
| Less: Depreciation (See Working Note below) | | 1,77,000 |
| **Income from business** | | **6,60,000** |

**Working Note:**

**Computation of depreciation allowable under the income-tax Act, 1961**

| Particulars | | Rs. | Rs. |
|---|---|---|---|
| On Car: | | | |
| Depreciation @15% on Rs. 3,00,000 | | 45,000 | |
| Less: 2/5th for personal use | | 18,000 | |
| **Depreciation on Car allowable as deduction** | | | **27,000** |
| On Machinery: | | | |
| Opening WDV | 6,50,000 | | |
| Additions during the year (used for more than 180 days) | | | |
| - New Machinery purchased on 10.6.17 | 2,00,000 | | |
| - Second hand machinery purchased on 20.9.17 | 1,25,000 | | |
| Additions during the year (used for less than 180 days) | 3,00,000 | | |

| | | |
|---|---|---|
| Normal Depreciation | | |
| Depreciation @15% on Rs. 6,50,000 | 97,500 | |
| [As per second proviso to section 43(1), the expenditure for acquisition of asset, in respect of which payment to a person in a day exceeds Rs. 10,000 has to be ignored for computing actual cost, if such payment is made otherwise than by way of A/c payee cheque/ bank draft or ECS. Accordingly, depreciation on second hand machinery purchased on 20.9.2017 and on new machinery purchased on 10.6.2017 is not allowable since the payment is made otherwise than by A/c payee cheque/A/c payee draft/ ECS to a person in a day] | | |
| Depreciation @ 7.5% on Rs. 3,00,000 | 22,500 | |
| Total normal depreciation on machinery (A) | **1,20,000** | |
| Where an asset acquired during the year is put to use for less than 180 days, 50% of the rate of depreciation is allowable. This restriction does not apply to assets acquired in an earlier year. | | |
| Additional depreciation (B) | | |
| New machinery | | |
| Used for less than 180 days = 10% of Rs. 3,00,000 | 30,000 | |
| Total permissible depreciation on machinery (A) + (B) | | **1,50,000** |
| Depreciation allowable under section 32 | | **1,77,000** |

**(3)** The maturity proceeds received under a life insurance policy are wholly exempt from tax under section 10(10D), assuming that the conditions given thereunder are satisfied (i.e., the

annual premiumdoesnotexceedthespecifiedpercentageofactualcapitalsumassured).

**Answer 2:**

**(A)**

During the previous year 2017-18, Mr. C was in India for 173 days (i.e. 22 + 30 + 31+ 31+ 28 + 31 days). His stay in the last 4 years is:

| | | | |
|---|---|---|---|
| 2016-17 | - | 46 | |
| 2015-16 | - | 62 | (i.e. 30 + 31 + 1) |
| 2014-15 | - | 365 | (since he left India on 1.6.2015 after 10 years) |
| 2013-14 | - | 365 | (since he left India on 1.6.2015 after 10 years) |
| | | 838 | |

Mr. C is a resident since his stay in the previous year 2017-18 is 173 days and in the last 4 years is more than 365 days.
For the purpose of being ordinarily resident, it is evident from the above calculations, that

(i) his stay in the last 7 years is more than 729 days and

(ii) since he was in India for 10 years prior to 1.6.2015, he was a resident in at least 2 out of the last 10 years preceding the relevant previous year.

Therefore, Mr. C is a resident and ordinarily resident for the A.Y. 2018-19.

**(B)**

**Computation of Business Income and Agriculture Income of Mr. Charan for A.Y. 2018-19**

| Particulars | Business Income | Agricultural Income | |
|---|---|---|---|
| | Rs. | Rs. | Rs. |
| **Sale of Rice** | | | |
| **Business income** | | | |
| Sale Proceeds of Rice | 38,00,000 | | |
| ***Less:*** Market Value of paddy (60%) | 28,60,000 | | |
| ***Less:*** Manufacturing expenses | 3,60,000 | | |
| | **5,80,000** | | |
| **Agricultural Income** | | | |
| Market value of paddy (60%) | | 28,60,000 | |
| ***Less:*** Cost of cultivation | | 14,40,000 | |
| | | | 14,20,000 |
| **Sale of Paddy** | | | |
| **Agricultural Income** | | | |
| Sale proceeds of paddy produce (40%) | | 18,50,000 | |
| ***Less:*** Cost of cultivation | | 9,00,000 | |
| | | | 9,50,000 |
| | | | **23,70,000** |

**Answer 3:**

**(A)**

**Significant Differences between TDS andTCS**

| | TDS | TCS |
|---|---|---|
| (1) | TDS is tax deduction at source | TCS is tax collection at source. |
| (2) | Person responsible for paying is required to deduct tax at source at the prescribed rate. | Seller of certain goods or provider of services is responsible for collecting tax at source at the prescribed rate from the buyer. Person who grants licence or lease (in respect of any parking lot, toll plaza, mine or quarry) is responsible for collecting tax at source at the prescribed rate from the Licensee or lessee, as the case may be. |
| (3) | Generally, tax is required to be deducted at the time of credit to the account of the payee or at the time of payment, whichever is earlier. However, in certain cases, tax is required to be deducted at the time of payment. For e.g., in case of payment of salary, payment in respect of life insurance policy | Generally, tax is required to be collected at source at the time of debiting of the amount payable by the buyer of certain goods to the account of the buyer or at the time of receipt of such amount from the said buyer, whichever isearlier. However, in case of sale of motor vehicle of the value exceeding Rs. 10 lakhs, tax collection at source is required at the time of receipt of saleconsideration. |

**(B)**

**Computation of taxable capital gain of Mr. 'X' for A.Y. 2018-19**

| Particulars | | Rs. | Rs. |
|---|---|---|---|
| Sale consideration received on sale of 10,000 shares @ Rs. 500 each | | | 50,00,000 |
| *Less:* Indexed cost of acquisition | | | |
| (a) | 5,000 shares received as gift from father on 1.6.2000 Indexed cost 5,000 x Rs. 200 x 272/100 | 27,20,000 | |
| (b) | 2,000 bonus shares received from AB Ltd | Nil | |
| | Bonus shares are acquired on 21.7.2008 i.e. after 01.04.2001. Hence, the cost is Nil. | | |
| (c) | 3000 shares purchased on 1.2.2011 @ Rs. 350 per share. The indexed cost is Rs. 3000 x Rs. 350 x 272/167 | 17,10,180 | 44,30,180 |
| **Long term capital gain** | | | **5,69,820** |
| *Less :* Exemption under section 54F ***(See Note below)*** Rs. 5,69,820 x Rs. 25,00,000 / Rs. 50,00,000 | | | 2,84,910 |
| **Taxable long term capital gain** | | | **2,84,910** |

**Note:** Exemption under section 54F can be availed by the assessee subject to fulfillment of the following conditions:

(a) The assessee should not own more than one residential house on the date of transfer of the long-term capital asset;

(b) The assessee should purchase a residential house within a period of 1 year before or 2 years after the date of transfer or construct a residential house within a period of 3 years from the date of transfer of the long-term capital asset.

In this case, the assessee has fulfilled the two conditions mentioned above. Therefore, he is entitled to exemption under section 54F.

**Answer 4:**
**(A)**

(i) As per Explanation 3 to section 40(b), "book profit" shall mean the net profit as per the profit and loss account for the relevant previous year computed in the manner laid down in Chapter IV-D as increased by the aggregate amount of the remuneration paid or payable to the partners of the firm if the same has been already deducted while computing the net profit.

In the present case, the net profit given is before deduction of depreciation on plant and machinery, interest on capital of partners and salary to the working partners. Therefore, the book profit shall be as follows:

**Computation of Book Profit of the firm under section 40(b)**

| Particulars | Rs. | Rs. |
|---|---|---|
| Net Profit (before deduction of depreciation, salary and interest) | | 6,00,000 |
| Less: Depreciation under section 32 (See note below) | NIL | |
| Interest @ 12% p.a. [being the maximum allowable as per section 40(b)] (5,00,000 × 12%) | 60,000 | 60,000 |
| Book Profit | | 5,40,000 |

Note: As per second proviso to section 43(1), the expenditure for acquisition of asset, in respect of which payment to a person in a day exceeds Rs. 10,000 has to be ignored for computing actual cost, if such payment is made otherwise than by way of A/c payee cheque/ bank draft or ECS. Accordingly, depreciation on plant and machinery purchased on 15.7.2017 is not allowable since the payment is made otherwise than by A/c payee cheque/ A/c payee draft/ ECS to a person in a day.

(ii) Salary actually paid to working partners = Rs. 20,000 × 2 × 12 = Rs. 4,80,000.

As per the provisions of section 40(b)(v), the salary paid to the working partners is allowed subject to the following limits -

| | |
|---|---|
| On the first Rs. 3,00,000 of book profit or in case of loss | Rs.1,50,000 or 90% of book profit, whichever is more |
| On the balance of book profit | 60% of the balance book profit |

Therefore, the maximum allowable working partners' salary for the A.Y. 2018-19 in this case would be:

| **Particulars** | **Rs.** |
|---|---|
| On the first Rs.3,00,000 of book profit [(Rs.1,50,000 or 90% of Rs. 3,00,000) whichever is more] | 2,70,000 |
| On the balance of book profit [60% of (Rs. 5,40,000 - Rs. 3,00,000)] | 1,44,000 |
| Maximum allowable partners' salary | 4,14,000 |

Hence, allowable working partners' salary for the A.Y. 2018-19 as per the provisions of section 40(b)(v) is Rs. 4,14,000.

**(B)**

As per section 139(5), if any person, having furnished a return under section 139(1), within the due date or a belated return under section 139(4), discovers any omission or any wrong statement therein, he may furnish a revised return at any time –

(a) before the end of the relevant assessment year or

(b) before the completion of assessment, whichever is earlier.

For assessment year 2018-19, the belated return has to be **furnished before 31st March 2019 or before completion of assessment**, whichever is earlier.

Since Mr. Atharv has filed **his return after 31.7.2018**, being the due date of filing return of income under section 139(1) in his case, **but before 31.3.2019/completion of assessment**, the said return is a **belated return**.

Thus, in the present case, Mr. Atharv**can file a revised return**, since he has found an omission in the belated return filed by him for A.Y.2018-19 and assessment is yet to be completed5 and 31.3.2019, being the end of A.Y.2018-19 has not elapsed.

**Answer 5:**

The residential status of Mr. Ram and Mr. Shyam has to be determined on the basis of the number of days of their stay in India. Since Mr. Ram is settled in USA since 1990, he would be a non-resident forA.Y. 2018-19. His visit to India for 40 days every year would not change his residential status. However, Mr. Shyam would be resident and ordinarily resident for A.Y. 2018 -19, since he is settled in India permanently since 1995.

Based on their residential status, the total income of Mr. Ram and Mr. Shyam would be determined as follows:

**Computation of total income of Mr. Ram & Mr. Shyam for the A.Y. 2018-19**

| S. No. | Particulars | Mr. Ram (Non-Resident) (Rs.) | Mr. Shyam (Resident) (Rs.) |
|---|---|---|---|
| (i) | Income from profession in USA (set up in India) received there (***Note 1)*** | - | - |
| (ii) | Profit from business in Mumbai, but managed directly from USA (***Note 1)*** | 45,000 | - |
| (iii) | Rent (computed) from property in USA deposited in a Bank at USA, later on remitted to India through approved banking channels (***Note 1)*** | - | - |
| (iv) | Dividend from USA Company received in USA (***Note 1)*** | - | 10,000 |
| (v) | Cash gift received from a friend on Mr. Shyam's 50thbirthday ***Note:*** *As per section 56(2)(x), cash gifts received from a non- relative would be taxable, if the amount exceeds Rs. 50,000 in aggregate during the previous year.* | - | 51,000 |
| (vi) | Past foreign untaxed income brought to India ***[Not taxable, since it does not represent income of the P.Y.2017-18].*** | - | - |
| (vii) | Fees for technical services rendered in India, but received in USA ***(Note 1)*** | 22,500 | - |
| (viii) | Interest on debentures in an Indian company (Mr. Ram received the same in USA) ***(Note2)*** | 18,500 | 14,000 |

| | | | |
|---|---|---|---|
| (ix) | Short-term capital gain on sale of shares of an Indian company ***(Note 2)*** | 15,000 | 25,500 |
| **Total income** | | **1,01,000** | **1,00,500** |

**Notes:**

(1) As per section 5(1), global income is taxable, in case of a resident. However, as per section 5(2), only the following incomes are chargeable to tax, in case of a non-resident:
   (i) Income received or deemed to be received in India; and
   (ii) Income accruing or arising or deemed to accrue or arise in India.

Therefore, income from profession in USA, rent from property in USA and dividend from USA company received in USA by Mr. Ram, a non-resident, would not be taxable in India, since both the accrual and receipt are outside India.

However, profit from business in Mumbai would be taxable in India in the hands of Mr. Ram, even though it is managed directly from USA.

Further, by virtue of section 9(1)(vii), fees for technical services rendered in India would also be taxable in the hands of Mr. Ram, since it is deemed to accrue or arise in India.

(2) The income referred to in S. No. (viii) and (ix) are taxable in the hands of both Mr. Ram and Mr. Shyam due to their accrual/deemed accrual in India, even though the entire interest on debentures in Indian company is received by Mr. Ram outside India.

**Answer 6:**
**(A)**

**ComputationofamountchargeabletotaxinhandsofMrs.SonuforA.Y.2018-19**

| | **Particulars** | **Rs.** |
|---|---|---|
| (i) | Cash gift of Rs. 2,10,000 received on the occasion of her marriage is not taxable, since gifts received by an individual on the occasion of marriage is excluded from tax under section 56(2)(x), even if the same are from non-relatives. | Nil |
| (ii) | Even though father's maternal uncle does not fall within the definitionof "relative" under section 56(2)(x), gift of Rs.45,000 received from him by cheque is not chargeable to tax since the aggregate sum of money received by Mrs. Sonuwithout consideration from non-relatives (other than on the occasion of marriage) during the previous year 2017-18 does not exceed Rs.50,000. | Nil |
| (iii) | Purchase of vacant site for inadequate consideration on 12.2.2018 would attract the provisions of section 56(2)(x). Where any immovable property is received for a consideration which is less than the stamp duty value of the property by an amount exceeding Rs.50,000, the difference between the stamp duty value and consideration is chargeable to tax in the hands of Individual. Therefore, in the given case Rs.80,000 (Rs.1,92,000- Rs.1,12,000) is taxable in the hands of Mrs.Sonu. | 80,000 |
| (iv) | Since shares are included in the definition of "property" and difference between the purchase value and fair market value of shares is Rs. 58,000 (Rs. 1,33,000 - Rs. 75,000) i.e. it exceeds Rs. 50,000, the difference would be taxable under section 56(2)(x). | 58,000 |

| | |
|---|---|
| Amount chargeable to tax | 1,38,000 |

**(B)**

a. **The statement is correct.** The deduction under section 80E available to an individual in respect of interest on loan taken for his higher education or for thehighereducationofhisrelative.Forthispurpose,relativemeans,interalia, spouse and children of the individual. Therefore, Mr. Amit will get the deduction under section 80E. It is immaterial that his son is already employed in a firm.This would not affect Mr. Amit's eligibility for deduction under section 80E.

b. **The statement is correct.** Under section 80C(2) subscription to such bonds issuedbyNABARD(astheCentralGovernmentmaynotifyintheOfficialGazette) would qualify for deduction under section80C.

c. **Thestatementisnotcorrect.**Thereisnostipulationundersection80Cthatthe investment,subscription,etc.shouldbemadefromoutofincomechargeableto tax.

d. **The statement is not correct.** Deduction under section 80E is in respect of interestpaidoneducationloan.Hence,thedeductionwillbelimitedtoRs.14,000.

e. **Thestatementisnotcorrect.**Aprovisohasbeeninsertedinsection80CCD(3)to providethattheamountreceivedbythenominee,onclosureofNPSaccounton thedeathoftheassessee,shallnotbedeemedtobetheincomeofthenominee. Hence, amount received by Mrs. Sheela would not be deemed to be her income for A.Y.2018-19.

**Answer 7:**
**(A)**

**Computation of taxable salary of Mrs. Anjali for A.Y. 2018-19**

| **Particulars** | | **Rs.** |
|---|---|---|
| Basic pay [(Rs. 20,000×11) + (Rs. 22,500×1)] = Rs. 2,20,000 + Rs. 22,500 | | 2,42,500 |
| Dearness allowance [30% of basic pay] | | 72,750 |
| Bonus [Rs. 22,500 × 2] | | 45,000 |
| Employer's contribution to Recognized Provident Fund in excess of 12% (15% - 12% = 3% of Rs. 3,15,250) | | 9,458 |
| Taxable allowances | | |
| Transport allowance (Rs. 2,000 x 12) | 24,000 | |
| Less: Exemption under section 10(14) read with Rule 2BB) @ Rs. 1,600 p.m. | 19,200 | 4,800 |
| Hostel allowance (Rs. 4,000 x 3) | 12,000 | |
| Less: Exemption under section 10(14) read with Rule 2BB) @ Rs. 300 p.m. per child maximum for two children | 7,200 | |
| Taxable perquisites | | 4,800 |
| Rent-free accommodation [See Note 1 below] | | 55,478 |
| Medical reimbursement (Rs. 35,000 - Rs. 15,000) [See Note 2 below] | | 20,000 |

| | |
|---|---|
| Gift voucher [See Note 3 below] | 6,000 |
| Value of free lunch facility [See Note 4 below] | - |
| Professional tax paid by the company [See Note 6 below] | 2,000 |
| Gross Salary | 4,62,786 |
| Less: Professional tax paid by the company [Section 16(iii)] | 2,000 |
| Salary chargeable to tax | 4,60,786 |

**Notes:**

1. Where the accommodation is taken on lease or rent by the employer, the value of rent -free accommodation provided to employee would be actual amount of lease rental paid or payable by the employer or 15% of salary, whichever is lower.
   For the purposes of valuation of rent free house, salary includes:

| | | |
|---|---|---|
| (i) | Basic salary | 2,42,500 |
| (ii) | Dearness allowance | 72,750 |
| (iii) | Bonus | 45,000 |
| (iv) | Transport allowance | 4,800 |
| (v) | Hostel allowance | 4,800 |
| **Total** | | 3,69,850 |

15% of salary = Rs. 3,69,850 × 15/100 = Rs. 55,478

Value of rent-free house will be

- Actual amount of lease rental paid by employer (i.e. Rs. 60,000) or
- 15% of salary (i.e., Rs. 55,478), whichever is lower.

Therefore, the perquisite value is Rs. 55,478.

2. Any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family is exempt to the extent of Rs. 15,000. Therefore, in this case, the balance of Rs. 20,000 (i.e., Rs. 35,000 – Rs. 15,000) is a taxable perquisite.

3. The value of any gift or voucher or token in lieu of gift received by the employee or by member of his household is below Rs. 5,000 in aggregate during the previous year is exempt. In this case, the gift voucher was received on the occasion of marriage anniversary and the sum exceeds the limit of Rs. 5,000. Therefore, entire amount of Rs. 6,000 is liable to tax as perquisite.

***Alternative View***:

An alternate view possible is that only the sum in excess of Rs. 5,000 is taxable in view of the language of Circular No. 15/2001 dated 12.12.2011 that such gifts upto Rs. 5,000 in the aggregate per annum would be exempt, beyond which it would be taxed as a perquisite. As per this view, the value of perquisite would be Rs. 1,000.

Free lunch provided by the employer during office hours is not a perquisite, assuming that the value does not exceed Rs. 50 per meal.

As per Rule 3(7)(vii), facility of use of laptop and computer is an exempt perquisite, whether used for official or personal purpose or both.

Professional tax paid by employer on behalf of employee is a taxable perquisite, hence, included in gross salary as a perquisite.

**(B)**

The income of an assessee for a previous year is charged to income-tax in the assessment year following the previous year. However, in a few cases, the income is taxed in the previous year in which it is earned. These exceptions have been made to protect the interests of revenue. The exceptions are as follows:

(i) Where a ship, belonging to or chartered by a non-resident, carries passengers, livestock, mail or goods shipped at a port in India, the ship is allowed to leave the port only when the tax has been paid or satisfactory arrangement has been made for payment thereof. 7.5% of the freight paid or payable to the owner or the charterer or to any person on his behalf, whether in India or outside India on account of such carriage is deemed to be his income which is charged to tax in the same year in which it is earned.

(ii) Where it appears to the Assessing Officer that any individual may leave India during the current assessment year or shortly after its expiry and he has no present intention of returning to India, the total income of such individual for the period from the expiry of the respective previous year up to the probable date of his departure from India is chargeable to tax in that assessment year.

(iii) If an AOP/BOI etc. is formed or established for a particular event or purpose and the Assessing Officer apprehends that the AOP/BOI is likely to be dissolved in the same year or in the next year, he can make assessment of the income up to the date of dissolution as income of the relevant assessment year.

(iv) During the current assessment year, if it appears to the Assessing Officer that a person is likely to charge, sell, transfer, dispose of or otherwise part with any of his assets to avoid payment of any liability under this Act, the total income of such person for the period from the expiry of the previous year to the date, when the Assessing Officer commences proceedings under this section is chargeable to tax in that assessment year.

(v) Where any business or profession is discontinued in any assessment year, the income of the period from the expiry of the previous year up to the date of such discontinuance may, at the discretion of the Assessing Officer, be charged to tax in that assessment year.

***[Note – Any 3 may be given in the answer]***

## Part – B : Indirect Taxation

**Answer 8:**

**(A)**

**Computation of value of special machine**

| **Particulars** | **Rs.** |
|---|---|
| Price of machinery | 5,00,000 |
| *Add:* Packing charges [Note 1] | 10,000 |
| Extra design charges [Note 2] | 17,000 |
| Freight [Note 3] | 13,000 |
| Total | 5,40,000 |
| *Less*: 2% cash discount on price of machinery [Rs.5,00,000 x 2%] [Note 4] | 10,000 |

| | |
|---|---|
| Value of taxable supply | 5,30,000 |

**Notes:**

(1) All incidental expenses including packing charged by the supplier to the recipient of a supply are includible in the value of supply in terms of section 15(2)(c) of CGST Act, 2017.

(2) Any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods is includible in the value of supply in terms of section 15(2)(c) of CGST Act, 2017. Thus, extra designing charges are to be included in the value of supply.

(3) Cash discount was given at the time of supply and also recorded in invoice, so the same is not to be included while computing value of supply in terms of section 15(3)(a) of CGST Act, 2017.

(4) The given supply is a composite supply involving supply of goods (special machine) and services (freight) where the principal supply is the supply of goods.

As per section 8(a) of the CGST Act, 2017, a composite supply is treated as a supply of the principal supply involved therein and charged to tax accordingly. Thus, tax rate applicable to the goods (special machine) has been considered

**(B)**

As per section 25 read with CGST Rules, 2017, where an applicant submits application for registration within 30 days from the date he becomes liable to registration, effective date of registration is the date on which he becomes liable to registration. Since, Sangri Services Ltd.'s turnover exceeded Rs.20 lakh on 12th August, it became liable to registration on same day. Further, it applied for registration within 30 days of so becoming liable to registration, the effective date of registration is the date on which he becomes liable to registration, i.e. 12th August.

As per section 31 read with CGST Rules, 2017, every registered person who has been granted registration with effect from a date earlier than the date of issuance of certificate of registration to him, may issue Revised Tax Invoices. Revised Tax Invoices shall be issued within 1 month from the date of issuance of certificate of registration. Revised Tax Invoices shall be issued within 1 month from the date of issuance of registration in respect of taxable supplies effected during the period starting from the effective date of registration till the date of issuance of certificate of registration.

Therefore, in the given case, Sangri Services Ltd. has to issue the Revised Tax Invoices in respect of taxable supplies effected during the period starting from the effective date of registration (12th August) till the date of issuance of certificate of registration (6th September) within 1 month from the date of issuance of certificate of registration, i.e. on or before 6th October.

**Answer 9:**

**(A)**

*Notification No. 12/2017 CT (R) dated 28.06.2017* exempts services by an artist by way of a performance in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, if the consideration charged for such performance is not more than Rs. 1,50,000. However, exemption will not apply to service provided by such artist as a brand ambassador.

In view of the aforesaid provisions, services provided by KesarMaharaj are exempt from GST as consideration for the classical dance performance has not exceeded Rs. 1,50,000. Therefore, his GST liability is nil.

(i) If KesarMaharaj is a brand ambassador of a food product and aforesaid performance is for the promotion of such food product, he will be liable to pay GST as aforesaid exemption is not applicable to service provided by an artist as a brand ambassador. His CGST and SGST liability would, therefore, be Rs. 13,365 (Rs. 1,48,500 × 9%) and Rs. 13,365 (Rs. 1,48,500 × 9%) respectively.

(ii) If KesarMaharaj gives a contemporary Bollywood style dance performance, such performance will not be eligible for aforesaid exemption. The reason for the same is that although the consideration charged does not exceed Rs. 1,50,000, said performance is not in folk or classical art forms of dance. Hence, GST would be payable on the same. His CGST and SGST liability would, therefore, be Rs. 13,365 (Rs. 1,48,500 × 9%) and Rs. 13,365 (Rs. 1,48,500× 9%) respectively.

(iii) If the consideration charged for the classical dance performance by KesarMaharaj is Rs. 1,60,000, he will be liable to pay GST on the same as although the performance is by way of classical art form of dance, consideration charged for such performance has exceededRs. 1,50,000. His CGST and SGST liability would, therefore, be Rs. 14,400 (Rs. 1,60,000 × 9%) and Rs. 14,400 (Rs. 1,60,000 × 9%) respectively.

**(B)**

Section 49(8) of CGST Act, 2017 prescribes the chronological order in which the liability of a taxable person has to be discharged:

(a) self -assessed tax and other dues for the previous tax periods have to be discharged first.

(b) self -assessed tax and other dues for the current tax period have to be discharged next.

(c) Once these two steps are exhausted, thereafter any other amount payable including demand determined under section 73 or section 74 is to be discharged. In other words, the liability if any, arising out of demand notice and adjudication proceedings comes last. This sequence has to be mandatorily followed.

The expression "other dues" referred above mean interest, penalty, fee or any other amount payable under the Act or the rules made there under.

**Answer 10:**

**(A)**

The view taken by ABC Consultancy is not valid in law. The scope of supply is defined by section 7(1) of CGST Act, 2017. It includes deemed supply given under Schedule II. The paragraph 5(e) of Schedule II provides that agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act is treated as supply of service.

Thus, any consideration received for agreeing to the obligation to refrain from an act, is subject to GST. Consideration received for non-compete agreement is deemed as consideration for supply of services Consideration of Rs. 45 lakh received on the promise of ABC consultancy of not providing similar services to any other person, is consideration for supply which is chargeable to GST.

**(B)**

The advice given by tax manager is valid in law. Payment of taxes by the normal tax payer is to be done on monthly basis by the 20$^{th}$of the succeeding month. Cash payments will be first deposited in the Cash Ledger and the tax payer shall debit the ledger while making payment in the monthly returns and shall reflect the relevant debit entry number in his return. However, payment can also be debited from the Credit Ledger. Payment of taxes for the month of March shall be paid by the 20$^{th}$of April. Composition tax payers will need to pay tax on quarterlybasis.

**Answer 11:**

**(A)**

Section 7 of the CGST Act, 2017 stipulates that in order to qualify as supply:

(a) Supply should be of goods and/or services.
(b) Supply should be made for a consideration.
(c) Supply should be made in the course or furtherance of business.

Further, Schedule I of the CGST Act, 2017 illustrates the activities to be treated as supply even if made without consideration. One such activity is permanent transfer or disposal of business assets where input tax credit has been availed on such assets, i.e. said activity is to be treated as supply even if made without consideration. In view of said provisions, permanent transfer of air conditioners by Sahab Sales from its stock for personal use at its residence, though without consideration, would amount to supply.

However, sale of air-conditioner by Aakash to Sahab Sales will not qualify as supply under section 7 of the CGST Act, 2017 as although it is made for a consideration, but its not in the course or furtherance of business.

**(B)**

**Computation of input tax credit (ITC) available with Cloud Seven Private Limited for the month of February, 20XX**

| Particulars | Rs. |
|---|---|
| Trucks used for the transport of raw material [Note-1] | 1,20,000 |
| Foods and beverages for consumption of employees working in the factory [Note-2] | Nil |
| Inputs are to be received in five lots, out of which third lot was received during the month [Note-3] | Nil |
| Membership of a club availed for employees working in the factory [Note-4] | Nil |
| Capital goods (out of five items, invoice for one item was missing and GST paid on that item was Rs. 50,000) [Note-5] | 3,50,000 |
| Raw material to be received in March, 20XX [Note-6] | Nil |
| **Total ITC** | **4,70,000** |

**Notes:-**

1. ITC on motor vehicles is disallowed in terms of section 17(5) of the CGST Act, 2017, except when they are used *inter alia*, for transportation of goods.
2. ITC on food or beverages is specifically disallowed unless the same is used for making outward taxable supply of the same category or as an element of the taxable composite or mixed supply- [Section 17(5)].
3. When inputs are received in instalments, ITC can be availed only on receipt of last instalment- [Section 16(2)].
4. Membership of a club is specifically disallowed under section 17(5) of the CGST Act, 2017.
5. ITC cannot be taken on missing invoice. The registered person should have the invoice in its possession to claim ITC [Section 16(2) of CGST Act, 2017] .
6. Input tax credit is available only upon the receipt of goods in terms of section 16(2) of CGST Act, 2017.

**Answer 12:**

**(A)**

GST is a win-win situation for the entire country. It brings benefits to all the stakeholders of industry, Government and the consumer. It will lower the cost of goods and services, give a boost to the economy and make the products and services globally competitive.

The significant benefits of GST are discussed hereunder:

- **Creation of unified national market:** GST aims to make India a common market with common tax rates and procedures and remove the economic barriers thus paving the way for an integrated economy at the national level.
- **Mitigation of ill effects of cascading:** By subsuming most of the Central and State taxes into a single tax and by allowing a set-off of prior-stage taxes for the transactions across the entire value chain, it would mitigate the ill effects of cascading, improve competitiveness and improve liquidity of the businesses.
- **Elimination of multiple taxes and double taxation:** GST has subsumed majority of existing indirect tax levies both at Central and State level into one tax i.e., GST which is leviable uniformly on goods and services. This will make doing business easier and will also tackle the highly-disputed issues relating to double taxation of a transaction as both goods and services.
- **Boost to 'Make in India' initiative:** GST will give a major boost to the 'Make in India' initiative of the Government of India by making goods and services produced in India competitive in the national as well as international market.
- **Buoyancy to the Government Revenue:**GST is expected to bring buoyancy to the Government Revenue by widening the tax base and improving the taxpayer compliance.

**(Note: Any two points may be mentioned)**

**(B)**

**(i)** Supply, under section 7 of the CGST Act, 2017, *inter alia,*

- includes import of services for a consideration
- even if it is not in the course or furtherance of business.

Thus, although the import of service for consideration by Miss. ShrinitiKaushik is not in course or furtherance of business, as the vaastu consultancy service has been availed in respect of residence, it would amount to supply.

**(ii)** Section 7 of the CGST Act, 2017 read with Schedule I provides that import of services by a taxable person from a related person located outside India, without consideration is treated as supply if it is provided in the course or furtherance of business.

In the given case, import of service without consideration by Miss Shriniti from her brother – Mr. Varun [brother, being member of the same family, is a related person] will not be treated as supply as it is not in course or furtherance of business.

**(iii)** Section 7 of the CGST Act, 2017 read with Schedule I provides thatimport of services by a taxable person from a related person located outside India, without consideration is treated as supply if it is provided in the course or furtherance of business.

Thus, import of service without consideration by Miss Shriniti from her brother – Mr. Varun (brother, being member of the same family, is a related person) will be treated as supply as she receives vaastu consultancy service for her business premises, i.e. in course or furtherance of business.

**(C)**

**(1)** Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the prescribed period, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding 18% as may be notified by the Government on the recommendations of the Council. *Notification No. 13/2017 CT dated 28.06.2017* has notified the rate of interest as 18% per annum.

(2) The period of interest will be from the date following the due date of payment to the actual date of payment of tax.

(3) A taxable person who makes an undue or excess claim of input tax credit under section 42(10) or undue or excess reduction in output tax liability under section 43(10), shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding 24% as may be notified by the Government on the recommendations of the Council. *Notification No. 13/2017 CT dated 28.06.2017* has notified the rate of interest as 24% per annum.